Vol.42—No.232
12–2–77

PAGES
61237–61439

federal register

FRIDAY, DECEMBER 2, 1977

highlights

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Reservations for January are being accepted for the free Wednesday workshops on how to use the FEDERAL REGISTER. The sessions are held at 1100 L St. N.W., Washington, D.C. in Room 9409, from 9 to 11:30 a.m.

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Philadelphia, Pennsylvania, 12–12 and 12–13–77
(Details: Federal Register of November 15, 1977)
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CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

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

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

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

federal register

Area Code 202 Phone 523-5240

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"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	**202**–523–5022
Scheduling of documents for publication.	523–3187
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5237
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–3517
Code of Federal Regulations (CFR)	523–3419
	523–3517
Finding Aids	523–5227

PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5286
Weekly Compilation of Presidential Documents.	523–5284
Public Papers of the Presidents	523–5285
Index	523–5285
PUBLIC LAWS:	
Public Law dates and numbers	523–5266
	523–5282
Slip Laws	523–5266
	523–5282
U.S. Statutes at Large	523–5266
	523–5282
Index	523–5266
	523–5282
U.S. Government Manual	523–5287
Automation	523–5240
Special Projects	523–4534

HIGHLIGHTS—Continued

contents

CONTENTS

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

EXECUTIVE ORDERS:

12021 61237

5 CFR

213 (6 documents) 61239, 61240
332 61240
831 61240

7 CFR

271 61240
910 61242
1822 61243

PROPOSED RULES:

1701 61279

9 CFR

73 (2 documents) 61245, 61246
113 61246

PROPOSED RULES:

317 61279
381 61279

10 CFR

205 61271

12 CFR

217 61247
226 61248
335 61249
511 61250

13 CFR

PROPOSED RULES:

107 61284

14 CFR

207 61251

PROPOSED RULES:

369 61408
371 61420
372 61420

14 CFR—Continued

PROPOSED RULES—Continued.

372a 61420
373 61420
378 61420
378a 61420

15 CFR

377 61253

21 CFR

73 61254
81 61254
175 61254
177 61254
178 61254
436 61255
520 (3 documents) 61255
522 61256
540 61256
546 61256
556 61256
558 61256
660 61257
701 61257
1010 61257
1020 61257

PROPOSED RULES:

16 61285
52 61285
71 61285
101 61285
170 61285
171 61285
207 61287
310 61285
312 61285
314 61285
320 61285
330 61285
430 61285
431 61285

21 CFR—Continued

PROPOSED RULES—Continued

510 61285
511 61285
514 61285
570 61285
571 61285
601 61285
607 61287
630 61285
701 61285
807 61287
1010 61285

29 CFR

2510 61258

40 CFR

180 61259
750 61259

PROPOSED RULES:

Ch. I 61287
211 61289

45 CFR

12 61263
228 61263

PROPOSED RULES:

185 61402

47 CFR

PROPOSED RULES:

73 61290

49 CFR

1033 (2 documents) 61269

50 CFR

20 61270
258 61270

PROPOSED RULES:

17 61290

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

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

CUMULATIVE LIST OF PARTS AFFECTED DURING DECEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during December.

1 CFR

Ch. I 61029

3 CFR

EXECUTIVE ORDERS:

12021 61237

5 CFR

213 ..... 61239, 61240
332 61240
831 61240

7 CFR

2 61029
105 61030
271 61240
907 61030
910 61242
1822 61243

PROPOSED RULES:

1701 61279

9 CFR

73 ..... 61245, 61246
113 61246

PROPOSED RULES:

317 61279
381 61279

10 CFR

205 61271

12 CFR

217 61247
226 61248
335 61249
511 61250

PROPOSED RULES:

7 61058

13 CFR

123 61031

PROPOSED RULES:

107 61284

14 CFR

39 61034–61036
71 61036–61038
73 61038
75 61039
97 61039
207 61251

PROPOSED RULES:

21 61048
39 61048
71 61049
73 61049
369 61408

14 CFR—Continued

PROPOSED RULES—Continued

371 61420
372 61420
372a 61420
373 61420
378 61420
378a 61420

15 CFR

377 61253

21 CFR

73 61254
81 61254
175 61254
177 61254
178 61254
436 61255
520 61255
522 61256
540 61256
546 61256
556 61256
558 61256
660 61257
701 61257
1010 61257
1020 61257

PROPOSED RULES:

16 61285
52 61285
71 61285
101 61285
170 61285
171 61285
207 61287
310 61285
312 61285
314 61285
320 61285
330 61285
430 61285
431 61285
510 61285
511 61285
514 61285
570 61285
571 61285
601 61285
607 61287
630 61285
701 61285
807 61287
1010 61285

23 CFR

PROPOSED RULES:

620 61050

29 CFR

2510 61258

PROPOSED RULES:

2617 61051

33 CFR

117 ..... 61041, 61042

PROPOSED RULES:

117 61051

36 CFR

2 61042

37 CFR

PROPOSED RULES:

201 61051

40 CFR

180 61259
750 61259

PROPOSED RULES:

Ch. I 61287
211 61289

41 CFR

8–5 61043
101–44 61043

45 CFR

12 61263
163 61226
163a 61226
178 61043
198 61232
228 61263

PROPOSED RULES:

185 61402

46 CFR

4 61200
536 61047

47 CFR

PROPOSED RULES:

73 61290

49 CFR

850 61204
1033 61269

50 CFR

20 61270
258 61270

PROPOSED RULES:

17 61290

FEDERAL REGISTER PAGES AND DATES—DECEMBER

Pages	*Date*
61029–61236	Dec. 1
61237–61439	2

presidential documents

[3195–01]

Title 3—The President

Executive Order 12021 • **November 30, 1977**

Amending the Civil Service Rules To Exempt Certain Positions From the Career Service

By virtue of the authority vested in me by the Constitution of the United States of America, and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. That portion of Section 6.8 of Civil Service Rule VI following the heading "Specified Exceptions." (5 C.F.R. 6.8) is designated subsection (a) and a new subsection (b) is added as follows:

"(b) Positions in the Community Services Administration and ACTION whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS–15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS–15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.".

SEC. 2. That portion of Section 9.11 of Civil Service Rule IX following the heading "Career Executive Assignments; selection and assignment." (5 C.F.R. 9.11) is designated subsection (a) and a new subsection (b) is added as follows:

"(b) The regional director or regional administrator positions in the Defense Civil Preparedness Agency and the General Services Administration shall be designated as Noncareer Executive Assignments and the Limited Executive Assignments of any incumbents of these positions on November 29, 1977, are converted to Noncareer Executive Assignments. Incumbents of these positions who are, on November 29, 1977, serving in Career Executive Assignments shall not be affected by the foregoing provisions of this subsection.".

THE WHITE HOUSE,
November 30, 1977.

[FR Doc.77–34785 Filed 11–30–77;4:58 pm]

rules and regulations

[6325–01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—Excepted Service

Community Services Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Special Assistant to the Associate Director for Economic Development is excepted from the competitive service under Schedule C because it is confidential in nature.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3373 (1) is added as set out below:

§ 213.3373 Community Services Administration.

* * * * *

(1) *Office of Economic Development.*

(1) One Special Assistant to the Associate Director.

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

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

[FR Doc.77–34725 Filed 12–1–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Staff Assistant to the Inspector General is excepted from the competitive service under Schedule C because it is confidential in nature.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3331(f)(3) is added as set out below:

§ 213.3331 Department of Energy.

* * * * *

(f) *Office of the Inspector General.* * * *

(3) One Staff Assistant to the Inspector General.

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

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

[FR Doc.77–34605 Filed 12–7–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Confidential Assistant to the Administrator, Health Care Financing Administration, is expected under Schedule C because it is confidential in nature.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3316(s)(2) is added as set out below:

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(s) *Health Care Financing Administration.* * * *

(2) One Confidential Assistant to the Administrator.

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

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

[FR Doc.77–34322 Filed 12–1–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Department of the Interior

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This part is amended to reflect the following title changes: Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs to Special Assistant to the Assistant to the Secretary and Director, Office of Congressional and Legislative Affairs. This change reflects the new title of the superior. One position of Assistant to the Secretary (Congressional Liaison) is changed to one position of Special Assistant to the Assistant to the Secretary and Director, Office of Congressional and Legisaltive Affairs. This change in title reflects the new title of the superior and also reflects more appropriately the duties of the position. In addition, two positions of Assistant to the Secretary (Congressional Liaison) are revoked under the automatic revocation provisions because they have been vacant for more than 60 days.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3312(a)(17) is amended and (a)(26) is revoked as set out below:

§ 213.3312 Department of the Interior.

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

(17) Two Special Assistants to the Assistant to the Secretary and Director, Office of Congressional and Legislative Affairs.

(26) [Revoked]

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

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

[FR Doc.77–34604 Filed 12–1–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

National Aeronautics and Space Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Due to organization changes in the National Aeronautics and Space Administration (NASA), the following title changes are made in the excepted service regulations that apply to NASA: (1) From: Associate Administrator for Space Flight, To: Associate Administrator for Space Transportation Systems; (2) From: Associate Administrator for Applications, To: Associate Administrator for Space and Terrestrial Applications; (3) From: Associate Administrator for Tracking and Data Acquisition, To: Associate Administrator for Space Tracking and Data Systems; and (4) From: Associate Administrator for Cen-

ter Operations, To: Associate Administrator for Management Operations.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION ON POSITION AUTHORITY CONTACT:

John W. McKee, Civil Service Commission, 202-632-4625.

FOR FURTHER INFORMATION ON POSITION CONTENT CONTACT:

William L. Lee, Staff Assistant, Executive Position and Salary Committee, NASA, 202-755-3993.

Accordingly, 5 CFR 213.3348(g), (r), (s), and (t) are amended as set out below:

§ 213.3348 National Aeronautics and Space Administration.

* * * * *

(g) Associate Administrator for Space Transportation Systems.

* * * * *

(r) Associate Administrator for Space and Terrestrial Applications.

(s) Associate Administrator for Space Tracking and Data Systems.

(t) Associate Administrator for Management Operations.

(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.77-34321 Filed 12-1-77; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

U.S. Arms Control and Disarmament Agency

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment (1) Changes the title of one position of Congressional Assistant to the General Counsel to Special Assistant for Congressional Relations to more accurately reflect the duties of the position; (2) revokes one position of Confidential Assistant to the General Counsel because the position has been vacant for more than 60 days; and (3) excepts under Schedule C one position of Congressional Assistant to the General Counsel because it is confidential in nature.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3364(i) is amended, (j) is revoked, and (n) is added as set out below:

§ 213.3364 U.S. Arms Control and Disarmament Agency.

* * * * *

(i) One Special Assistant for Congressional Relations.

(j) [Revoked].

* * * * *

(n) One Congressional Assistant to the General Counsel.

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

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

[FR Doc.77-34323 Filed 12-1-77; 8:45 am]

[6325-01]

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

AGENCY: Civil Service Commission.

ACTION: Final regulation.

SUMMARY: This revision standardizes and simplifies the Commission's procedures for handling objections to eligibles and passovers of veterans on Commission certificates without making any substantive changes in what happens to a person on a certificate. Essentially, it eliminates "passovers" as a separate procedure while incorporating under a standardized objection procedure the requirements of law pertaining to the referral of veterans. The changes are designed to (1) eliminate the confusion caused by having two separate procedures to accomplish the same end, and (2) accord essentially equal treatment to all eligibles on Commission certificates.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Raleigh Neville, 202-632-6817.

Accordingly, 5 CFR 332.406 is revised, § 332.407 is deleted and present § 332.408 is renumbered § 332.407 as set out below:

§ 332.406 Objections to Eligibles.

(a) An appointing officer is not required to consider an eligible to whose certification for the particular position he makes an objection that is sustained by the Commission for any of the reasons stated in § 339.101 or § 731.201 of this chapter or for other reasons considered by the Commission to be disqualifying for the particular position. The Commission may also sustain an objection to certification of an otherwise qualified eligible for an overseas position on the basis of special overseas selection factors.

(b) An appointing officer may not pass over a preference eligible to select a nonpreference eligible unless an objection to the preference eligible is sustained by the Commission.

(c) Pending Commission action on an agency's objection to an eligible, the agency may not appoint an eligible who would be within reach only if the objection is sustained.

(d) Paragraphs (b) and (c) above do not apply if the agency has more than one position to fill from the same certificate and holds a position for the individual objected to in the event the Commission does not sustain the objection.

(e) Agencies shall follow the procedures for objecting to an eligible published by the Commission in the Federal Personnel Manual.

(5 U.S.C. 3301, 3302, E.O. 10577.)

NOTE.—The Civil Service Commission has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

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

[FR Doc.77-34324 Filed 12-1-77; 8:45 am]

[6325-01]

PART 831—RETIREMENT

Allotments From Civil Service Annuities; Correction

AGENCY: Civil Service Commission.

ACTION: Correction to final rule.

SUMMARY: This document corrects a final rule which appeared at 42 FR 52372, September 30, 1977, regarding the numbering of the sections contained in Subpart O of Part 831.

EFFECTIVE DATE: September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank D. Titus, Program Analyst, Bureau of Retirement, Insurance and Occupational Health, Civil Service Commission, Washington, D.C. 20415, phone: 202-632-4650.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-28667, the sections contained in Subpart O were inadvertently numbered 831.1301, 1311, and 1321; they should be numbered 831.1501, 1511, and 1521.

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

[FR Doc.77-34325 Filed 12-1-77; 8:45 am]

NOTE.—This document originally appeared in the FEDERAL REGISTER for Wednesday, November 30, 1977. It is reprinted in this issue to meet the assigned day-of-the-week publication schedule.

[3410-30]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. No. 127]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends and clarifies the procedures for handling utility

expenses by providing households an allowance for amounts billed rather than amounts actually paid and requires State agencies to make prompt adjustments for households experiencing significant increases in utility costs. This change in policy will make the Food Stamp Program more responsive to the high winter heating costs of food stamp households.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

William R. Tlucek, Chief, State Agency Operations Branch, Food Stamp Division, 500 12th Street SW., Washington, D.C. 20250, 202-447-8360.

SUPPLEMENTAL INFORMATION: At present, the Food Stamp Program Regulations include a provision for deducting a household's shelter costs which exceed 30 percent of net income after other deductions. The shelter deduction is calculated using costs on an as paid basis. Shelter costs include rent or mortgage payments, utilities and property taxes. Allowable utility expenses are electricity, heating and cooking fuel, water and sewage, garbage and trash collection fees and the basic service fee for one telephone.

Utility costs can be the standard allowances set by the State agency or actual costs. If the State has standard allowances the household may claim actual costs if these are higher than the standard and the household provides verification.

Anticipating utility costs only on an as paid basis does not meet the needs of households with spiraling costs. A household that purchases its stamps may not have enough funds to pay a substantially increased utility bill that has not been reflected in its food stamp basis of issuance. Conversely, a household that pays an unanticipatedly high utility bill may not have the funds remaining to purchase its stamps. The result, in which a household may face a choice between paying a bill and getting adequate nutrition, is contrary to the purposes of the food stamp program. Therefore, to more accurately reflect a household's actual utility expenses, we are amending and clarifying the regulations to require that utility costs must be anticipated "as billed" and that the state agency must expedite certification and adjustments in participation when households document significant changes in their utility bills. This is designed to assure that households may both pay their utility bills and purchase their stamps.

Prior payment of a utility expense will not be required. Those expenses for which the household is billed are now to be counted. This amendment continues the policy of deducting only those shelter costs which exceed 30 percent of the household's net income and does not affect current methods of computing other components of the shelter deduction.

Effective January 1, 1978, upon initial or subsequent certification, the household's monthly utility allowance will be calculated in one of the following ways: (1) using the standard utility allowance, if applicable, or (2) using the bills the household is anticipated to receive during the certification period, based on the most recent actual bills received by the household and other accurate information available. In addition, effective January 1, 1978, a household shall receive an adjustment in its utility allowance whenever its most recent bills exceed the amount that has been anticipated

The first method continues the State agency option of setting standard utility allowances in accordance with 7 CFR 271.3(c)(1)(iii)(h). The second method requires projection of the allowance using the most recent month's bills and any other information available to the applicant or the State agency which will result in the most accurate prediction of the household's utility bills over the certification period. Whenever, during a certification period, a household's most recent bills exceed the amount anticipated, the household shall be entitled to an adjustment in its allowance on the basis of such bills. The amendment also specifies the treatment of households whose utilities are billed on a "budget payment plan".

After the State agency has calculated the household's utility allowance in accordance with one of these methods, any previously undeducted, overdue utility expenses the household paid or intends to pay in the certification period shall be added. This provision is intended to ease the transition to the "as billed" method. A household can only receive this additional allowance if it can verify payment or has sufficient income and/or resources to cover an intended payment, and the expense was billed and received before the date of implementation of this amendment. Households making application for initial or subsequent certification which document increases of more than $25.00 in their utility expenses shall be certified within ten days of submission of an application. Setting an amount for the increase ensures uniform national application of this provision and corresponds to current policy on reporting changes in income and deductions.

The State agency cannot average several previous months' utility bills to compute the household's utility allowance. The household must be given an allowance based on the State's standard or on its most recent utility bills. For example, if a household applies in December, the State agency must use the most recent utility bills received by the household and cannot require previously paid bills from the household to compute an average. If the anticipated expenses are not believed to remain stable throughout the duration of the certification period, the household should be assigned a variable basis of issuance or a shorter certification period. Adjustments must be made monthly if changes of more than $25.00 in utility expenses are reported.

The State agency must adjust the basis of issuance for households which report increases of more than $25.00 a month in utility costs subsequent to certification but prior to purchasing their monthly allotments. Adjustments must be processed so that a household receives an opportunity to purchase within 10 days, or in less time if the allotment month is ending. Areas using authorization to purchase (ATP) cards must issue a replacement ATP card to show the correct basis of issuance. An over-the-counter (manual) ATP card must be issued if a machine ATP card cannot be provided within the deadlines. Changes in utility bills of $25.00 or less will be processed in accordance with the normal procedures specified in 7 CFR 271.3(a)(1)(iii).

In States using utility standards, households are allowed to switch to or from the standard allowance once during a certification period of two months or more. In addition, when a State updates its standard allowance, households are entitled to switch during their certification period from actual bills to the updated standard allowance.

State agencies must publicize notice of these new procedures in the media in each project area and post a notice in each welfare office as soon as possible but no later than December 31, 1977. The notice must be posted through April 30, 1978 and must be provided in languages other than English where appropriate. Additionally, they shall notify each of their outreach contact groups of this change. By no later than January 15, 1978, State agencies must provide individual written notice to each participating household. This notice may be sent with ATP cards or assistance checks or by individual mailings or other appropriate means. If the State agency does not implement these procedures by January 1, 1978, and/or does not provide individual notice by January 15, 1978, households with increased utility expenses beginning in January are entitled to file claims for restoration of lost benefits. If a household receives an allowance for incurred expenses that are never paid, no claim for overissuance shall be filed.

It is the policy of this Department to give the public and the State agencies an opportunity to comment on regulatory changes before issuance. However, because of the need for timely implementation to benefit households experiencing higher utility costs this winter, the Department had decided that it is contrary to the public interest to give notice of proposed rulemaking. The Department intends this rulemaking to ensure lower purchase prices this winter for such households and to ensure prompt adjustments for participating households having unexpectedly high utility expenses. The publication of this amendment as a final rulemaking will give State agencies as much time as possible to prepare for the January 1, 1978, implementation date.

Because the Department feels that the public and the State agencies should have an opportunity to comment, comments are solicited through December 31, 1977. Written comments are to be submitted to: Nancy Snyder, Director, Food Stamp Division, Food and Nutrition Service, United States Department of

Agriculture, Washington, D.C. 20250. This amendment may be revised after considering the comments, if changes are appropriate or necessary.

Accordingly § 271.3 of Chapter II, Title 7, Code of Federal Regulations, is amended as follows:

In § 271.3, a new paragraph (f) is added which reads as follows:

§ 271.3 Household eligibility.

* * * * *

(f) *Utility costs deduction.* (1) Effective January 1, 1978, households which claim utility expenses as part of their shelter costs under 7 CFR 271.3(c)(1)(iii)(h) shall have them computed in accordance with the procedures in this paragraph. Allowable utility expenses are: electricity; heating and cooking fuels; water and sewage; trash and garbage collection fees and the basic service fee for one telephone.

(2) Households documenting an increase of more than $25 in utility expenses, either at the time of initial or subsequent certification, shall be certified within ten days of submission of an application.

(3) Except as provided in (4) below, the household's monthly utility allowance shall be projected at the time of initial or subsequent certification using one of the following:

(i) the standard utility allowance as provided in 7 CFR 271.3(c)(1)(iii)(h), if the State agency has adopted a standard utility allowance; or

(ii) the bills the household is anticipated to receive during the certification period, based on the most recent actual bills received by the household and other accurate information available.

(iii) the amount the household is billed on a payment schedule established in agreement with the utility provider.

If applicable, add to any utility allowance computed above the amount a household is entitled to in accordance with (4) below.

(4) The State agency shall include as part of the household's utility allowance any payment during a certification period of a utility bill received by the household prior to implementation of this amendment if:

(i) the bill represents an allowable utility expense, but was not used in any previous shelter allowance computations.

(ii) the expense is not already included as part of the household's utility allowance; and

(iii) the expense has been paid by the household or it intends to pay it and has sufficient income and/or resources available.

(5) The State agency shall not average previously paid utility costs to compute the household's monthly utility allowance.

(6) If the household expects that its utility expenses will fluctuate substantially during its certification period, the State agency should assign a shorter certification period or a variable basis of issuance. A household shall receive an adjustment in its utility allowance whenever its most recent bills exceed the amount that has been anticipated.

(7) If a certified household reports an increase of more than $25 in its utility costs and has not purchased its monthly allotment, the State agency shall adjust the household's basis of issuance and provide the household with an opportunity to purchase within ten days, or less if the allotment month ends in less than ten days. If the State agency cannot provide the household with an opportunity to purchase within these time limits using its normal issuance system, alternative methods shall be used. No adjustment for that month shall be made after the household has purchased its allotment. Changes in utility bills of $25 or less will be processed in accordance with the normal procedures specified in 7 CFR 271.3(a)(1)(iii).

(8) In States using utility standards, a household certified for more than one month shall be allowed to switch to or from the standard once during its certification period or to the standard if the standard is updated during its certification period.

(9) State agencies shall publicize the provisions of this paragraph in the media in each project area and by a notice posted in each welfare office. The notice shall be posted as soon as possible but not later than December 31, 1977, shall remain posted through April 30, 1978, and shall be in languages other than English where appropriate. In addition, the State agency shall notify each of their outreach contact groups.

Each participating household shall also be notified individually not later than January 15, 1978. The notice may be sent with the household's ATP card(s) or assistance check, by a separate mailing, or other appropriate means.

(10) State agencies which do not implement these procedures by January 1, 1978 and/or do not provide individual notices by January 15, 1978, are subject to claims for restoration of lost benefits by households which were adversely affected.

(11) A household given an allowance for an incurred utility expense which is never paid shall not be subject to a claim for overissuance.

* * * * *

(78 Stat. 703, as amended; (7 U.S.C. 2011–2027).)

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A–107.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: November 28, 1977.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc.77-34379 Filed 11-29-77;8:45 am]

[3410-02]

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

[Lemon Reg. 122; Lemon Reg. 121, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agrictutural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 4–10, 1977, and increases the quantity of such lemons that may be so shipped during the period Nov. 27–Dec. 3. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 4, 1977, and the amendment is effective for the period November 27–December 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202–447–3545.

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

The committee met on November 29, 1977, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is generally good on all sizes and grades.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the

amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

1. Lemon Regulation 122 (7 CFR 910.422) reads as follows:

§ 910.422 Lemon Regulation 122.

(a) *Order.* The quantity of lemons grown in California and Arizona which may be handled during the period December 4, 1977, through December 10, 1977, is established at 235,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

§ 910.42 [Amended]

2. The provisions of paragraph (a) in § 910.421 Lemon Regulation 121 (42 FR 60113) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period November 27, 1977, through December 3, 1977, is established at 235,000 cartons."

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

Dated: November 30, 1977.

D. S. KURYLOSKI,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-34778 Filed 12-1-77;8:45 am]

[3410-07]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.3]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart B—Section 502 Rural Housing Weatherization Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its 502 Rural Housing Weatherization (RHW) loan regulations to make these loans available to rural consumers of Public Utilities (utilities). The revision allows RHW loan funds to be used to pay for inspection and technical services provided by the utility and thereby extend the availability of the program. The intended effect of this revision is to extend this credit to more members of the public.

DATES: Effective December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Jerry B. Ireton, 202–447–4296.

SUPPLEMENTARY INFORMATION: On pages 43980–43982 of the FEDERAL REGISTER dated September 1, 1977, there was published notice of proposed rulemaking revising Subpart B of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations (42 FR 14867). Interested persons were given the opportunity to submit not later than October 3, 1977, comments, suggestions or objections regarding the proposed revision. Several comments and suggestions were received and given due consideration. As a result of the comments certain editorial changes were made. This revision provides simplified procedures for making and servicing FmHA Section 502 Rural Housing loans to finance home improvements that will reduce energy consumption for rural homeowners and includes rural public utility consumers. At the present time only Rural Electric Cooperative Consumers may use the simplified procedures. Under the provisions of the Cooperative Agreement which is attached as Exhibit A to this subpart, participating utilities will receive applications and process, close, and service Section 502 Rural Housing Weatherization loans for eligible utility consumers. The Farmers Home Administration will determine the eligibility of applicants, and approve the loans based upon certifications provided by the applicants and the utility. The revision also allows loan funds to be used for inspection and technical services provided by the utility.

Accordingly, as revised, Subpart B reads as follows:

Subpart B—Section 502 Rural Housing Weatherization Loans

Sec.

AUTHORITY: 42 U.S.C. 1480, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23 delegation of Authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subpart B—Section 502 Rural Housing Weatherization Loans

§ 1822.21 General.

This regulation provides policies and procedures and delegates the authority for processing and approving Section 502 Rural Housing Weatherization (RHW) loans made under Title V of the Housing Act of 1949, as amended. Public Utilities (utilities) are authorized herein to process and service Section 502 Rural Housing (RH) loans to utility consumers for weatherization purposes. Loans will be made in accordance with this regulation and § 1822.3 (c), and (d), and § 1822.5 (FmHA Instruction 444.1, paragraphs III C and D and paragraph V). Section 1822.3 (e), (n), (o), and § 1822.4 (FmHA Instruction 444.1, paragraph III E, N and O, and paragraph IV) also are applicable to this regulation, except as modified herein or in Exhibit A.

§ 1822.22 Objective.

The objective of the Farmers Home Administration (FmHA) in making Section 502 RHW loans is to assist rural homeowners in making improvements to their homes that will reduce energy consumption and provide a more comfortable living environment for their families. In the case of farmowners Section 502 RHW loans can be made to weatherize dwellings located on the farm and occupied by the tenant, sharecropper, farm manager, or farm laborers.

§ 1822.23 Cooperative agreement.

Exhibit A of this regulation is a Cooperative Agreement which sets forth the procedures and regulations for making and servicing Section 502 RHW loans to consumers served by participating utilities. The FmHA State Director is authorized to enter into a Cooperative Agreement with any public utility with headquarters located in his State. He will be responsible for providing sufficient training to ensure that all of the provisions of the agreement are understood and that the utility has the ability to make and service loans in the manner prescribed.

§ 1822.24 Loan approval authority.

The Director, Finance Office or his delegated representative is the authorized approval official for Section 502 RHW Loans. Loans will be approved based solely on information and certifications on the completed Form FmHA 444–20, "Application and Promissory Note for Rural Housing Weatherization." The certifications will be as follows:

(a) Applicant certifies:

(1) That the applicant has an ownership interest in the housing to be weatherized and it is occupied by the applicant or is located on the applicant's farm and is occupied by a tenant, sharecropper, farm manager or farm laborer.

(2) The adjusted annual income of all adults residing with the applicant.

(3) That with the addition of the weatherization improvements, the housing being improved will provide decent, safe, and sanitary living conditions.

(4) The applicant will, at the request of the FmHA, proceed with diligence to refinance the indebtedness through cooperative or other responsible private credit souces whenever the FmHA determines that the applicant's circumstances and earning capacity are such that the applicant is able to do so upon reasonable terms and conditions, and that the occupancy of the housing will continue as provided in paragraph (a) (1) of this section.

(5) That the applicant has received Form FmHA 410–9, "Statement Required by the Privacy Act."

(6) That the applicant is unable to provide the weatherization improvement needed with the applicant's own resources and that the applicant is unable to secure the credit necessary for this purpose from other sources upon

terms and conditions which the applicant can reasonably be expected to fulfill. The applicant certifies that the statements made in the application are true, complete and correct to the best of the applicant's knowledge and belief, and they are made in good faith to obtain a loan.

(b) The utility certifies:

(1) The applicant's property is located in a rural area as set forth in the Cooperative Agreement.

(2) The applicant has paid bills owed to the utility in a satisfactory manner.

(3) The information furnished by the applicant is correct to the best of the utility's knowledge.

(4) The weatherization work has been completed to the satisfaction of the applicant who has authorized payment.

(5) The required Truth in Lending Form and Privacy Act Form have been delivered to the applicant.

§ 1822.25 County Office responsibilites.

(a) *Loan making.* County Offices will not process or approve Section 502 RHW loans authorized by this regulation. However, applicants for weatherization loans who are not participating utility consumers or who do not appear to be eligible for an RHW loan will be referred to the FmHA. Their applications will be handled in accordance with Part 1822, Subpart A or Part 1904, Subpart G of this chapter, as appropriate.

(b) *Loan servicing.* When a utility notifies the FmHA Finance Office that an RHW loan is 90 days delinquent and forwards the loan account records to the Finance Office, the loan will be assigned a County Office code, a case number, and loan number. Form FmHA 444–20 will be forwarded from the Finance Office through the State Office to the appropriate County Office for further servicing in accordance with the appropriate FmHA Regulation.

§ 1822.26 State Director's responsibility.

In addition to the administrative policy matters covered in item (J) of the Cooperative Agreement, the State Director should request an additional allocation of loan funds if they are needed in his State(s). The State Director is responsible for seeing that his State's funding allocations are not exceeded, and that the utility is notified in the future of any interest rate, income limit, or other program changes. Also, the utilities are to be provided a copy of the National Register of Historic Places and its supplements so that the utility is able to notify the State Director before weatherization improvements are made to an historic building. The State Director must comply with the National Historic Preservation Act of 1966, as amended; and Executive Order 11593, including the procedures prescribed by the advisory council on Historic Preservation in 36 CFR Part 800, as set forth in Part 1890r of this chapter.

EXHIBIT A

COOPERATIVE AGREEMENT
between
----
and
FARMERS HOME ADMINISTRATION

Purpose:

This Cooperative Agreement and attachments establish authorities and procedures whereby the ----------,
Name of Organization
----------,
Address Phone No.
a ---------- utility, (enter type of utility such as Rural Electric Co-op, Gas, Water, or Investor Owned Electric Company) hereinafter referred to as the "utility," will process and service Section 502 rural housing (RHW) loans, authorized under the Housing Act of 1949, to weatherize dwellings of its consumers. It is agreed that the utility will receive loan applications and process, close, and service loans as provided in this agreement. The Farmers Home Administration, hereinafter referred to as the "FmHA," will determine the eligibility of applicants for loans for authorized purposes, based upon certificates provided by the applicant and the utility and will approve the loans.

Effective date of this agreement. This agreement shall be effective on the date of the last signature hereto.

Duration of agreement. This agreement shall continue to be in effect until all loans made are collected by the utility or returned to the FmHA for servicing because of delinquency or other justified reasons.

Policies. The utility will inform its consumers that FmHA loans will be made available to eligible applicants through the utility. Loans will be made under the existing laws and regulations governing the FmHA and utility. Regulations and guidance for loan making and loan servicing are provided in this part of the agreement.

A. *Loan Eligibility.* Loans may be made to applicants who: 1. Have an ownership interest in the housing to be weatherized. The housing must either be occupied by the applicant or be located on the applicant's farm and occupied by his/her tenant, sharecropper, farm manager, or farm laborer. The Housing must be served by the utility and located in a rural area. A rural area is defined in 7 CFR 1822.3(c) and identified by the State Director pursuant to paragraph N, 1 of this agreement. The dwelling, after improvements are completed, must be adequate for the family needs and be decent, safe, and sanitary.

2. Have an income of not more than the moderate-income limit for the State, as set forth in Exhibit D of Subpart A of this part, available in any FmHA Office. For the purpose of this agreement, "income" is defined as the net business income plus gross income from all other sources planned to be received during the next 12 months by all adults who will occupy the applicant's home.

3. Are unable to pay for the needed improvements without a loan and are unable to obtain a loan from another source on terms they could reasonably expect to meet.

B. *Terms.* 1. The interest rate used will be the rate in effect for FmHA Section 502 RH loans on the date the application is submitted to the utility. The FmHA State Director will notify the utility of the interest rate to be charged.

2. The loan will not exceed $1,500 (except in Alaska not to exceed $3,000) and will be evidenced by a promossory note on Form FmHA 444–20, "Application and Promissory Note for Rural Housing Weatherization Loan."

3. The term of the loan will not exceed 5 years. Shorter repayment periods are recommended for smaller loans.

C. *Loan Purposes.* Loan funds may be used to buy and install weatherproofing items such as insulation, siding, caulking material, and storm windows and doors. Loan funds of not more than $25 (except in Alaska, not to exceed $50) plus 1 percent of the cost of weatherization work may be used to pay for technical services such as determining the type and amount of weatherization improvements needed and obtaining cost estimates, or inspections made or arranged for by the utility to insure that weatherization improvements are properly completed.

D. *Minimum Standards.* Weatherization improvements must meet FmHA's minimum standards for existing housing (at this time, HUD MPS 4900.1 § 100–3), or standards established by the utility, whichever are greater. All improvements to the property will conform to applicable laws, ordinances, codes, and regulations which relate to the safety and the sanitation of the dwelling.

E. *Loan Processing.* 1. The utility will assist its consumers in completing an application and promissory note on Form FmHA 444–20.

2. The utility will provide or arrange for technical assistance as needed to determine improvements to be made and their costs.

3. The utility will certify that the applicant has paid bills owed to the utility in a satisfactory manner, and process loans for eligible applicants. Applicable Loan Disclosure and Truth in Lending requirements must be met by the utility.

4. The utility may contract with the applicant to do the weatherization work or arrange for the improvements to be installed by a contractor satisfactory to the utility and the applicant. In either case, the applicant will sign a contract agreement covering the planned improvements. Also, the applicant may act as his/her own contractor provided the utility is reasonably sure the applicant has the necessary skills and labor available to perform the work.

5. Each month, the utility will mail a completed Form FmHA 444–22, "Billing Statement," with attached Form FmHA 444–20 to the FmHA Finance Office, 1520 Market Street, St. Louis, Mo. 63103, for those applicants who are to receive an FmHA loan where payment is authorized by the applicant for work satisfactorily completed. The FmHA will approve the loan and notify the borrower. The Finance Office will then obligate the loans and send a single check to the utility for the total loans approved and obligated each month. If an individual loan cannot be approved, the Finance Office will notify the utility of the reason(s) for disapproval.

F. *Payment for the Work.* The utility will pay the contractor after making such inspection of the work as it deems necessary. The agreement between the contractor and the homeowner should require the contractor to warrant and guarantee for a period of 90 days from the date of completion that the work is free from all defects due to faulty materials or workmanship and that the contractor shall promptly make such corrections as may be necessary by reason of such defects.

G. *Account Servicing.* 1. The utility will follow acceptable accounting practices in maintaining and servicing the borrower's account during the life of the loan. Scheduled note payments will be collected with the borrower's utility service billing. The FmHA will

provide the monthly payment amortization table to be used by the utility. For billing cycles other than monthly, the amortization factors to be used will first be approved by the FmHA Finance Office.

2. The utility will remit to the Finance Office, all collections received from borrowers weekly or when receipts reach $2,500, whichever occurs first. Form FmHA 444-23, "Payment Transmittal to the Farmers Home Administration," will be used for this purpose, summarizing payments by FmHA loan number assigned to the utility.

3. When the borrower's account is paid in full, the utility will forward Form FmHA 444-24, "Notification of Final Payment or Transfer of loan to Farmers Home Administration," to the Finance Office. The Promissory Note will be marked "PAID" and returned to the utility for distribution to the borrower.

4. If the utility is unable to collect the FmHA payment from the borrower and the borrower's account becomes more than 90 days delinquent, the utility will submit Form FmHA 444-24, to the Finance Office and notify the borrower of the action taken. The Finance Office will send the borrower's Promissory Note through the State Office to the appropriate County Office for further servicing of the account as provided in FmHA regulations. Once an account has been transferred to FmHA, the utility must no longer accept payments from the borrower.

5. Under no circumstances can a borrower's indebtedness be transferred to another borrower.

6. For income tax purposes, the utility will be responsible for informing the borrower of the interest paid on the loan for each calendar year by January 31 of the next calendar year.

7. On a semi-annual basis, the FmHA Finance Office will send to each utility a detailed list of advances and payments for reconciliation purposes.

8. Interest on unpaid interest shall not be charged.

H. *Bonding.* Fidelity bonding coverage must be provided for the utility officials entrusted with the receipt, custody, and disbursement of funds. The amount of the bond must be at least equal to the maximum amount of money that the utility officials will have access to at any one time.

I. *Inspection of Records.* The utility will provide FmHA (or other appropriate Federal Agencies) at all reasonable times, access to all books and records relating to FmHA loans made to its consumers under the provisions of this Agreement.

J. *Referrals to FmHA.* Applicants who are unable to qualify for a loan as provided herein because the cost of repairs will exceed $1,500, because of lack of repayment ability, or because the applicant is not a utility consumer should be referred to the FmHA County Office serving the area for further consideration of eligibility under other FmHA programs.

K. *Equal Opportunity Clause.* This equal opportunity clause applies to the utility executing the Cooperative Agreement rather than to the contractor performing weatherization work.

1. In the Equal Opportunity clause the term "contractor" means the "utility" and "contract" means "Cooperative Agreement."

2. During the performance of this contract, the contractor agrees as follows: (a) The contractor will not discriminate against any employee or applicant for employment because race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Farmers Home Administration setting forth the provisions of his nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Farmers Home Administration, advising the said labor union or workers' representative of the contractor's commitments under this agreement as required pursuant to section 301 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of such Executive Order and of all relevant rules, regulations, and orders of the Secretary of Labor and of any prior authority which remain in effect.

(e) The contractor will furnish all information and reports required by such Executive Order, rules, regulations, and orders, or pursuant thereto, and will permit access to his books, records, and accounts by the Farmers Home Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in such Executive Order and such other sanctions may be imposed and remedies invoked as provided in the Executive Order or by any such rule, regulation, or order, or as otherwise provided by law.

(g) The contractor will include the provisions of the FmHA Equal Opportunity Agreement (Form FmHa 400-1 available in all FmHA offices) in every subcontract or purchase order, unless exempted by such rules, regulations, or orders, so that such provisions will be binding upon each such subcontractor or vendor. The contractor will take such action as the Farmers Home Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by Farmers Home Administration, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

L. *Personal Benefit Clause.* No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this agreement or to any benefit to arise therefrom, unless it be made with a corporation for its general benefit.

M. *Payment for Services.* Consumers may be charged customary fees for technical services provided in determining the type and amount of weatherization improvements, obtaining cost estimates, and for inspections made to insure that the improvements have been properly completed. Loan funds may only be used for these purposes to the extent set forth in paragraph C. However, neither the FmHA nor the applicant/borrower will pay a loan origination or packaging fee, nor will a fee be paid for servicing the account during the life of the loan.

N. *Administrative Policy.* The FmHA State Director, in conjunction with the signing of this agreement, will advise the utility of the following: 1. Eligible rural areas. 2. The interest rate to be charged; 3. The current income limits. 4. Any funding limitations likely to be encountered in the foreseeable future.

5. The processing requirements for this type of loan.

6. Consideration is to be given the potential effect of any weatherization loan made on a historic property. The State Director must provide the utility a list of historic properties (including districts) listed in the National Register of Historic Places. (Listings and updates are published regularly in the FEDERAL REGISTER.) Before weatherization improvements are made to historic buildings, the utility must contact the State Director. The State Director, in accordance with Part 1890r of this Chapter, will assure that the proposed improvement will not damage the historic integrity or fabric of the building.

7. The FmHA State Director will be responsible for seeing that the utility is notified in the future of any interest rate, income limit, or other program changes. The State Director will provide the needed forms for loan processing to the utility. The utility will advise the State Director when additional forms are required or assistance is needed. The address of the FmHA State Office is

---
Address

Phone Number

Name

Title of Utility Representative
Date: ---

Name

State Director
Date: ---

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

Dated: November 17, 1977.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc.77-34569 Filed 12-1-77;8:45 am]

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 73—SCABIES IN CATTLE

Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Haskell County in Kansas because of the existence of cattle scabies. Psoroptic cattle scabies was confirmed November 23, 1977, in Haskell County. Therefore, in order to prevent the dissemination of cattle scabies it is necessary to quarantine the infested area.

EFFECTIVE DATE: November 28, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goat, Equine, and Ectoparasites Staff, USDA, APHIS, VS, Federal Building, Room 737, 6505 Belcrest Road, Hyattsville, Md. 20782, 301–436–8322.

SUPPLEMENTARY INFORMATION: This amendment quarantines a portion of Haskell County in Kansas because of the existence of cattle scabies. The restrictions pertaining to the interstate movement of cattle from quarantined areas as contained in 9 CFR Part 73, as amended, will apply to the area quarantined.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended as follows:

In § 73.1a, in paragraph (d) relating to the State of Kansas a new paragraph (5) relating to Haskell County is added to read:

§ 73.1a Notice of quarantine.

* * * * *

(d) * * *

(5) That portion of Haskell County comprised of sec. 19, T. 29, R. 30.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

The amendment imposes certain further restrictions necessary to prevent the interstate spread of cattle scabies and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 28th day of November, 1977.

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

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77–34629 Filed 12–1–77;8:45 am]

[3410–34]

PART 73—SCABIES IN CATTLE

Release of Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Finney County in Kansas from areas quarantined because of cattle scabies. Surveillance activity indicates that cattle scabies no longer exists in the area quarantined.

EFFECTIVE DATE: November 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goat, Equine, and Ectoparasites Staff, USDA, APHIS, VS, Room 737, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301–436–8322.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Finney County in Kansas from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded area.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended in the following respect:

In § 73.1a, paragraph (d) (1) relating to the State of Kansas is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

The amendment relieves restrictions no longer deemed necessary to prevent the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 25th day of November 1977.

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

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc.77–34628 Filed 12–1–77;8:45 am]

[3410–34]

SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS

PART 113—STANDARD REQUIREMENTS

Miscellaneous Amendments

AGENCY: Animal and Plant Health Inspection Service (APHIS).

ACTION: Final rule.

SUMMARY: This amendment adds a potency test to the Standard Requirements which may be used to evaluate biological products containing Clostridium Sordellii Bacterin-Toxoid instead of the test which is written into the Outline of Production. A potency test of each serial of such products is required by the regulations before it can be released for sale.

EFFECTIVE DATE: This amendment becomes effective January 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, 301–436–8245.

SUPPLEMENTARY INFORMATION:

PROPOSAL PUBLISHED

On June 3, 1977, a proposed notice of amendment to § 113.94 was published in 42 FR 28549. The proposed amendment contained a guinea pig test which can be used to evaluate each serial of a biological product containing Clostridium Sordellii Bacterin-Toxoid for potency before its release for sale.

Comments on this proposed amendment were solicited and eight responses were received. Objections were made to the use of guinea pigs as the only test animals. Objections were also made to the use of a 9 to 10 day interval between doses of product administered to the test animals.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice of rulemaking, and the above comments, and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158), the amendments of Part 113, Subchapter E, Chapter I, Title 9 of

the Code of Federal Regulations, as contained in the aforesaid notice, are hereby adopted and are set forth herein subject to the following noted modifications:

The introductory portion of paragraph (c) of § 113.94 is changed to provide for either the use of a potency test written into the filed Outline of Production or the guinea pig potency test published in this amendment.

Some producers have expressed a preference for continuing to use a host animal, such as a calf, in conducting potency tests rather than a lab animal, such as the guinea pig. Since the use of a host animal also results in a valid potency test for a product, it has been determined that a test using a host animal, submitted with the filed Outline of Production, may be used in lieu of the guinea pig test set forth in this amendment.

Paragraph (c)(1) of § 113.94 is changed to provide a 21 to 23 day interval between the injection of the two doses of product instead of the 9 to 10 day interval stated in the proposal, since a longer interval would result in a more reliable test.

A printing error in paragraph (c)(3) of § 113.94 has been corrected.

The first letter of each word in the heading for § 113.94 is to be capitalized.

1. Section 113.94 is amended by revising paragraph (c) to read:

§ 113.94 **Clostridium Sordellii Bacterin-Toxoid.**

* * * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency using the test written into the filed Outline of Production or the two stage test provided in this paragraph.

(1) Each of eight guinea pigs, each weighing 300 to 500 grams, shall be injected subcutaneously with a guinea pig dose. A second guinea pig dose shall be injected 21 to 23 days after the first dose. Each guinea pig dose shall be one-fifth of the dose recommended on the label for a calf.

(2) *Clostridium sordellii* challenge material, available upon request from Veterinary Services, shall be used for challenge 14 to 15 days following the second injection of the product. Each of the eight vaccinates and each of five additional non-vaccinated guinea pigs for controls shall be injected intramuscularly with approximately 100 LD_{50} of challenge material. This dose shall be determined by statistical analysis of results of titrations of the challenge material. The vaccinates and controls shall be observed for 3 days post-challenge and all deaths recorded.

(3) For a valid test, at least 80 percent of the controls shall die within the 3 day post-challenge observation period. If this requirement is met, the result of the potency test shall be evaluated according to the following table:

Stage	Number of vaccinates	Cumulative Deaths for satisfactory test	Cumulative Deaths for unsatisfactory test
1	8	1 or less	3 or more.
2	16	4 or less	5 or more.

The second stage shall be required only when exactly two animals die in the first stage. The second stage shall be conducted in a manner identical to the first stage.

(21 U.S.C. 151 and 154; 37 FR 28477, 28646; 38 FR 19141.)

Effective date. This amendment takes effect January 2, 1978.

Done at Washington, DC, this 28th day of November 1977.

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

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77-34624 Filed 12-1-77;8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Q: Docket No. R-0133]

PART 217—INTEREST ON DEPOSITS

Loans Upon Security of Depositor's Time and Savings Deposits

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This rule reduces the minimum rate of interest that a member bank must charge on loans to depositors secured by time and savings deposits. Regulation Q currently provides that a member bank may make a loan to a depositor upon the security of the depositors' time or savings deposit maintained in that member bank provided that the rate of interest on such loan is not less than 2 percent per annum in excess of the rate of interest on the deposit. In the case of loans secured by savings deposits, the 2 percent differential requirement applies only if it is the practice of the member bank to require prior notice of withdrawal of savings deposits. Under the regulation as amended, member banks will be permitted to make loans to depositors secured by depositors' time or savings deposits maintained in that member bank at a rate of interest not less than 1 percent per annum in excess of the rate of interest on the time or savings deposits.

The Board believes that a one percent differential requirement will provide substantial public benefits and is sufficient to ensure compliance with the Federal Reserve Act.

EFFECTIVE DATE: November 23, 1977.

FOR FURTHER INFORMATION, CONTACT:

Anthony F. Cole, Attorney, Legal Division, Board of Governors of the Federal Reserve System, room M-3421, Washington, D.C. 20551, 202-452-3711.

SUPPLEMENTARY INFORMATION: Section 217.4(f) of Regulation Q (12 CFR 217) currently permits a member bank to make a loan to a depositor on the security of the depositor's time deposit only when the interest rate charged for the loan is at least 2 percent higher than the rate of interest paid on the depositor's time deposit. Section 217.5(b) of Regulation Q contains a similar provision applicable to loans secured by savings deposits with respect to which it is the practice of the member bank to require prior notice of withdrawal. (It should be noted that this requirement does not apply when a member bank extends a loan to a person secured by the person's time or savings deposit in another institution.) For depositors faced with a need for time deposit funds, a loan secured by the depositor's time deposit is generally a less expensive alternative than a premature withdrawal subject to the interest forfeiture penalty contained in § 217.4(d) of Regulation Q.

The purpose of the current 2 percent differential requirement is to ensure compliance with statutory prohibitions contained in section 19 of the Federal Reserve Act (12 U.S.C. 371a and 371b) against the payment of interest on demand deposits and the payment of time deposits before maturity except upon such conditions and in accordance with such rules and regulations as the Board may prescribe. The 2 percent differential requirement assists in preventing evasions of the above statutory provisions since a loan extended at the same rate being paid on the time or savings deposit would be tantamount to payment of the time or savings deposit before maturity or prior to the expiration of a required notice period. In this connection, the Board believes that a 1 percent loan differential requirement is sufficient to ensure compliance with the underlying statutory provisions and, accordingly, has amended sections 217.4(f) and 217.5(b) to reduce the current 2 percent loan differential requirement to 1 per-

cent. These amendments apply to outstanding loans made by member banks that are secured by a depositor's time or savings deposits. The Board notes that these amendments generally conform the Board's rules to the rules applicable to Federally insured savings and loan associations promulgated by the Federal Home Loan Bank Board.

In view of the substantial public benefits that will immediately result from adoption of these amendments which reduce the minimum rate of interest that a member bank must charge on loans to depositors secured by time and savings deposits, and, in view of the fact that these amendments relieve existing regulatory restrictions, the Board has determined that the notice and public participation requirements of 5 U.S.C. § 553 are unnecessary and contrary to the public interest and that the deferred effectiveness provisions of that section are inapplicable. Therefore, pursuant to sections 19(i) and 19(j) of the Federal Reserve Act (12 U.S.C. 371a and 371b), § 217.4(f) and the second sentence of § 217.5(b) of Regulation Q, effective November 23, 1977, are amended to read as follows:

§ 217.4 Payment of time deposits before maturity.

* * * * *

(f) Loans upon security of time deposits. A member bank may make a loan to the depositor upon the security of his time deposit provided that the rate of interest on such loan shall be not less than 1 percent per annum in excess of the rate of interest on the time deposit.

§ 217.5 Withdrawal of savings deposits.

* * * * *

(b) Loans on security of savings deposits. * * * If it is the practice of a member bank to require notice of withdrawal of a savings deposit, such bank may make loans to a depositor upon the security of such deposit, but the rate of interest on such loans shall be not less than 1 percent per annum in excess of the rate of interest paid on such deposit.

* * * * *

Board of Governors of the Federal Reserve System, November 21, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-34563 Filed 12-1-77;8:45 am]

[6210-01]

[Reg Z; FC-0129 through FC-0132]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official Staff Interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Acting Chief, Fair Credit Practices Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2412.

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR Part 261.6.

(2) Official staff interpretations may be reconsidered upon request of interested parties and in accordance with 12 CFR Part 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(3) 15 U.S.C. 1640(f).

12 CFR Part 226, FC-0129

§ 226.4(a)—Cost of insurance policy against latent defects, offered to both cash and credit customers who purchase automobiles, may be disclosed as part of "cash price" or as an "other charge."

§ 226.8(c)—Cost of insurance policy against latent defects, offered to both cash and credit customers who purchase automobiles, may be disclosed as part of "cash price" or as an "other charge."

NOVEMBER 2, 1977.

This is in response to your letter of * * *, in which you request an official staff interpretation of Regulation Z regarding disclosure of the cost of optional insurance coverage against latent defects in a new automobile.

The facts on which your question is based are similar to those addressed in Official Staff Interpretation FC-0019, which dealt with an optional service contract offered by an automobile dealer on the sale of an automobile to both cash and credit customers. In FC-0019, the service contract involved the use of a coupon book or certificate which entitled the purchaser to certain privileges for work performed by the dealer during a stated period. Staff took the position that the cost of a service contract is not a finance charge for purposes of § 226.4 and need not be itemized in order to be excluded from the finance charge computation. The interpretation further provided that the cost may be disclosed either as part of the cash price under § 226.8(c)(1) or as an "other charge" under § 226.8(c)(4).

Your inquiry differs from the facts of FC-0019 in that the contract regarding latent defects is in the form of an insurance policy and does not specifically contemplate that the dealer will perform any service with regard to the automobile. You request confirmation of staff's views regarding the necessary disclosures.

Staff is of the opinion that the insurance policy you describe, which is offered to both cash and credit customers, is analogous to the service contract discussed in FC-0019. Consequently, in staff's opinion, it is permissible to disclose the cost of such a policy as part of the "cash price" or as an "other charge."

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d) and limited in its application to the facts and issues set forth herein. We note that your client may be a creditor that is subject to the laws of the State of Massachusetts. Since Massachusetts has been granted an exemption under the relevant provisions of the Federal Truth in Lending Act, you may wish to obtain the views of the Commissioner of Banks for the State of Massachusetts regarding this matter. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

12 CFR Part 226, FC-0130

§ 226.2(kk)—Consummation and disclosures may be deferred provided State law permits deferral and customer is under no obligation to purchase.

§ 226.8(a)—Consummation and disclosures may be deferred provided State law permits deferral and customer is under no obligation to purchase.

NOVEMBER 2, 1977.

This will respond to your letter of * * *, in which you request formal Board interpretations or official staff interpretations of Regulation Z.

You first describe a situation where a customer wishes to purchase an automobile from your client, a dealer, and finance the sale. At the time the customer selects a car and requests financing, the terms of the instalment sales contract, as well as the identity of the finance company ultimately purchasing it, are uncertain, making completion of the instalment sales contract impractical. You wish to know whether insertion of the following provision in the sales contract would defer "consummation" of the transaction, as that term is defined by § 226.2(kk) of Regulation Z, and permit the dealer to make the disclosures required by Regulation Z when financing is accepted by customer.

If this is a credit sale and the disclosure statement has not been completely filled in this order is not binding on the buyer and buyer may cancel it and recover the deposit.

The staff has previously taken the position that, for purposes of giving the disclosures required by Regulation Z for closed end credit, "consummation" occurs when the customer binds himself to the transaction, unless State law provides that consummation occurs at some earlier time (see Public Information Letters 623 and 841). Therefore, in the opinion of the staff, where State law does not provide otherwise, the required disclosures could be given when financing is accepted by the customer, provided that no contractual obligation to purchase exists until the customer accepts financing.

You next describe a similar situation in which your client wishes to provide a customer with a car immediately, before financing can be arranged and the appropriate disclosures made under Regulation Z. You ask whether the following provision in a sales contract would permit the dealer to defer the disclosures required by Regulation Z until financing is accepted by the customer.

On or before the _____ day of _____, 1977, buyer will return the vehicle to dealer at which time buyer will be advised, in accordance with the requirements of Regulation Z, of the terms of whatever financing dealer may have been able to arrange for buyer. At that time, buyer, at his option, will do one of the following:

1. Accept whatever financing has been obtained by dealer; or
2. Pay in cash for the vehicle; or
3. Cancel this order and pay for any damage which may have been caused to the vehicle between the date hereof and the date of the return of the vehicle.

As in the previous situation, the Regulation Z disclosures must be given when the transaction is "consummated." In the opinion of the staff, consummation and, therefore, the disclosures may be deferred until financing is accepted by the customer, assuming State law does not provide that consummation occurs before this time and that, prior to the customer's acceptance of financing, there is no obligation on the part of the customer to purchase the vehicle.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation and limited in its applicability to the facts outlined herein. I trust this will prove helpful to you.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

12 CFR Part 226, FC–0131

§ 226.6(g)—Change in law affecting disclosures delivered before change became known or reasonably should have become known is subsequent occurrence.

NOVEMBER 11, 1977.

This is in response to your letter of * * *, in which you requested an official staff interpretation concerning the requirements of § 226.6(g) of Regulation Z.

You indicated that your client, a mortgage lender, forwards a written commitment letter to mortgage applicants outlining the terms under which your client agrees to provide a mortgage loan. A Truth in Lending disclosure statement concerning the proposed loan is enclosed with the commitment letter. Pursuant to § 226.4(b) of Regulation Z, the disclosure statement includes an itemized estimate of recording charges imposed by State law. Prior to September 1, 1977, the estimated recording charges were disclosed as $11. However, as a result of a New York State law which became effective September 1, 1977, these recording charges were raised so that the usual amount of recording charges incurred by borrowers after September 1 was increased to $20. You have asked whether a lender who forwarded a disclosure statement indicating estimated recording charges based upon the law existing prior to September 1, 1977, would be required to issue an amended Truth in Lending disclosure statement to borrowers who had received disclosure statements prior to September 1, 1977, but did not close their mortgage transactions until September 1, 1977, or after.

Staff is of the opinion that the change in the amount of recording charges effected by the new law should be considered a subsequent occurrence under § 226.6(g) with regard to those disclosure statements delivered prior to the time that the change in law became known or reasonably should have become known to the creditor. On the other hand, if the creditor knows or reasonably should know of an upcoming change in law which will have an impact on disclosures, the disclosures should appropriately reflect those changes. No now or amended disclosures are required by the regulation in cases where subsequent occurrences, as contemplated by § 226.6(g), render the original disclosures inaccurate.

Staff's position should not be construed to indicate that a creditor would be permitted to disclose an incorrect fee subsequent to the effective date of the change merely because the creditor was not aware of the change.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the regulation and confined to the facts as stated herein. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

12 CFR Part 226, FC–0132

§ 226.9(c)—Finance charges may accrue during rescission period, but may not be collected by creditor if customer rescinds the transaction.

NOVEMBER 11, 1977.

This is in response to your letter of * * *, which requested an official staff interpretation of Regulation Z. Specifically, you inquire whether § 226.9(c) permits a financial institution to assess finance charges from the date of consummation of a rescindable transaction, or whether the institution must delay the imposition of finance charges until the expiration of the rescission period.

Your client engages in credit transactions in which a security interest is or will be acquired in real property which is used or expected to be used as the principal residence of the customer. Your client, upon consummation of a transaction subject to rescission and in accordance with § 226.9(c)(1), places the loan proceeds in escrow until reasonably satisfied that the client has not exercised his or her right of rescission, after which the proceeds are disbursed. The finance charges begin to accrue on the date of consummation.

Although § 226.9(c) prohibits performance of certain actions during the rescission period (such as disbursement of proceeds other than in escrow), it does not prohibit the assessment of finance charges during the period. Section 226.9(d) does prohibit the creditor from collecting "any finance or other charge" from a customer who has exercised his or her right to rescind the transaction. Thus, finance charges that accrue during the rescission period may not be collected by the creditor if the customer rescinds the transaction.

It should also be noted that, although the Truth in Lending Act and Regulation Z do not prohibit accrual of finance charges during the rescission period, State law may have an effect on a creditor's latitude in setting the date on which finance charges begin to accrue. You may wish to examine the applicable State law to determine whether such a limit exists.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) and limited in its application to the facts as presented in this letter. I trust it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Board of Governors of the Federal Reserve System, November 25, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-34548 Filed 12-1-77;8:45 am]

[6714–01]

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 335—SECURITIES OF INSURED STATE NONMEMBER BANKS

Disclosure of Interim Results in Financial Reports; Notice of Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Correction to final rule.

SUMMARY: This document corrects a final rule which was published at 42 FR 13104, March 9, 1977 regarding disclosure of interim results in financial reports.

DATE: Nonapplicable.

FOR FURTHER INFORMATION CONTACT:

Gerald J. Gervino, 202-389-4384.

In FR Doc. 77-7017 appearing at page 13104, for the issue of Wednesday, March 9, 1977, on page 13105, the amendment to "§ 335.7(d)(15)(v)", should be to "§ 335.7(d)(3)(v)".

Dated: November 22, 1977.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc.77-34547 Filed 12-1-77;8:45 am]

[6720-01]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER A—GENERAL

PART 511—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Amendments Relating to Board Employee Loans and Reimbursement of Expenses

AGENCY: Federal Home Loan Bank Board.

ACTION: Final amendment.

DATED: November 8, 1977.

SUMMARY: These amendments place restrictions upon the acceptance of loans from Federal Home Loan Bank System member institutions by Board employees that are comparable with limitations on loans to affiliated persons contained in the industry conflict of interest regulations. These amendments also limit employees to reimbursement by the Board for lodging and travel expenses incurred in the performance of Board business.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Martha J. Watson, Attorney/Advisor, 320 First Street NW., Washington, D.C. 20552, telephone 202-376-3187.

SUPPLEMENTARY INFORMATION:

DEFINITIONS OF THE TERM "EMPLOYEE"

Section 511.735-2 is amended to include within the definition of "employee" any corporation or organization of which an employee is an officer or general partner (or a limited partner within interest of 5 percent or more or having with other employees an interest of 10 percent or more) or in which such employee is the owner of 5 percent or more of any class of its equity securities, or with other employees of 10 percent or more of any class of such equity securities. Under existing § 511.735-40, interests of a spouse, minor child, or other member of an employee's immediate household are considered to be interests of the employee. Accordingly, it is intended that such interests be considered interests of the employee for purposes of amended § 511.735-2.

LOANS FROM MEMBER INSTITUTIONS

Prior to these amendments § 511.735-11(b)(1) permitted employees to accept loans from, and to engage in other financial relations with, member institutions in the ordinary course of business of such institutions, so long as the employee was granted terms no more favorable than were available in like circumstances to persons not employed by the Board.

Under the amendments adopted by this Resolution, an employee may only obtain from a member institution (1) a loan on a single-family dwelling or mobile home used as the employee's principal residence, (2) a loan on one additional single-family dwelling or mobile home which is or will be used by the employee as a second home or vacation home, (3) loans in the aggregate not exceeding $10,000 for consumer purposes or for constructing, adding to, improving, altering, repairing, equipping, or furnishing the employee's principal or second home, (4) loans on the security of a savings account, and (5) educational loans in the aggregate not exceeding $10,000.

Under the Board's conflict of interest regulations with respect to insured institutions, although an insured institution is restricted with respect to loans to affiliated persons of the institution, such persons may obtain such loans from other insured institutions with which they have no affiliation. The restrictions adopted by this Resolution, however, limit transactions between employees of the Board and all member institutions. For this reason, loans for one second or vacation home—which are not permitted to be made by an institution to an affiliated person of that institution under the industry conflicts regulations—are permitted for employees of the Board. Because of the predominence of savings and loan associations in the field of housing, to bar Board employees from obtaining such loans, could result in hardship. Accordingly, although such loans are permitted, they are limited as above noted.

REIMBURSEMENT FOR LODGING AND TRAVEL EXPENSES

Prior to these amendments paragraphs (4) and (5) of section 511.735-11(b) permitted employees, under certain circumstances, to accept lodging and reimbursement for travel expenses from organizations other than the Board while on Board business.

Under the amendments adopted by this Resolution, paragraphs (4) and (5) of section 511.735-11(b) are revoked to limit employees to reimbursement by the Board for lodging and travel expenses incurred in the performance of Board business.

To the extent that any provision of any contract now in effect between the Board and a union, as the bargaining agent and representative of certain Board employees, is inconsistent with the amendments herein adopted, the provisions of such contract will continue to prevail until such provision is re-negotiated or otherwise expires.

Since the above amendments involve matters relating to Board management and personnel, the Board finds that notice and public procedure with respect to said amendments are unnecessary under the provisions of 5 U.S.C. 553(b) and of 12 CFR 508.11; and since publication of said amendments for the 30-day period specified in 12 U.S.C. 553(d) and 12 CFR 508.14 prior to the effective date of said amendments would in the opinion of the Board be unnecessary because said amendments relate to personnel matters, the Board hereby provides that said amendments shall become effective upon publication. These amendments were approved by the Civil Service Commission on November 22, 1977.

Accordingly, 12 CFR Part 511 is amended by revising §§ 511.735-2(b) and 511.735-11(b)(1) and revoking § 511.735-11(b)(4) and (5) thereof to read as set forth below, effective December 2, 1977.

1. In § 511.735-2, paragraph (b) is revised to read as follows:

§ 511.735-2 Definitions.

* * * * *

(b) "Employee" means:

(1) An officer or employee of the Agency, but does not include a special Government employee;

(2) A Member of the Board; or

(3) Any corporation or organization of which any employee referred to in paragraph (b)(1) or (b)(2) above is an officer or general partner (or a limited partner with a 5 percent or greater interest or with other employees has a 10 percent or greater interest) or in which such employee is the owner of 5 percent or more of any class of its equity securities or the owner with other employees of 10 percent or more of any class of such equity securities.

* * * * *

2. In § 511.735-11, paragraphs (b)(4) and (5) are reserved and paragraph (b)(1) is revised to read as follows:

§ 511.735-11 Gifts, entertainment, favors and loans.

* * * * *

(b) *Exceptions.* Paragraph (a) of this section does not prohibit any activity that is necessary to, or compatible with the duties and responsibilities of, the Agency and its employees. These activities include:

(1) The acceptance from member institutions in the ordinary course of business of the member institutions, so long as the employee is granted terms no more favorable than would be available in like circumstances to persons who are not employees of the Agency, of:

(i) A loan secured by a single-family dwelling, or a mobile home, owned and occupied by the employee as his principal residence, and one additional loan secured by a single-family dwelling, or a mobile home, which is or will be used by

the employee as a second or vacation home;

(ii) Loans in the aggregate not exceeding $10,000 for customer purposes or constructing, adding to, improving, altering, repairing, equipping, or furnishing a single-family dwelling owned and occupied by the employee as his principal or second residence;

(iii) Loans secured by savings accounts maintained by the employee at the institution;

(iv) Loans in the aggregate not exceeding $10,000 for payment of educational expenses.

* * * * *

(4) [Reserved]
(5) [Reserved]

(E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR, 1965 Supp.: 5 CFR 735.104.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR.Doc.77-34583 Filed 12-1-77;8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[ER-1030, Amdt. No. 12]

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

Off-Route Charter Limitations

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board amends the rules limiting off-route charters by scheduled carriers, to allow more flexibility in providing charter services. Some of the changes are: Volume limits for combination carriers are raised to 5 percent of the first 50 million, plus 2.5 percent of the remaining, base revenue plane-miles. Volume limits for all-cargo carriers are raised to 10 percent of base revenue plane-miles. Domestic frequency and regularity restrictions are eliminated. International regularity restrictions are eliminated.

DATES: Effective: November 22, 1977. Adopted: November 22, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Civil Aeronautics Board, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

SUPPLEMENTARY INFORMATION: The frequency, regularity, and volume restrictions for off-route charters flown by scheduled carriers are contained in Part 207 of the Board's Economic Regulations, 14 CFR 207.1, 205.5, 207.6, and 207.7a. By EDR-307, 41 FR 45021, October 14, 1976, the Board proposed to make changes in each aspect of these restrictions. Petitions for amendments had been received from the Office of the Consumer Advocate (OCA), certain local service carriers, Pan American World Airways, Trans International Airlines, National Air Carriers Association (NACA), and National Airlines. A discussion of these petitions and the Board's disposition of them was contained in EDR-307.

Comments were received from the U.S. Department of Transportation (DOT), the Las Vegas Parties, American Airlines, Continental Air Lines, Delta Air Lines, Eastern Air Lines, National Airlines, Northwest Airlines, Pan American World Airways, Trans World Airlines, United Air Lines, Allegheny Airlines, Frontier Airlines, Ozark Air Lines, Southern Airways, Texas International Airlines, Aloha Airlines, NACA, Capitol International Airways, Airlift International, Flying Tiger Line, Seaboard World Airlines, Pacific American Airlines, American Express, American Leadership Study Groups, David Travels, Davis Agency/Airline Charter Tour Operators Association, Duncan Travel Service, Gogo International, Moore Tours, Nationwide Leisure, and Willi's Travel Service.

DOMESTIC FREQUENCY AND REGULARITY RESTRICTIONS—PASSENGER CHARTERS

The domestic frequency restrictions presently prohibit any carrier from performing more than eight off-route charter flights in the same direction, between any "pair of points," during any period of four successive calendar weeks. The regularity restrictions prohibit series of off-route charter flights between a pair of points with these characteristics: (1) Occurring on the same day of successive calendar weeks, (2) consisting of more than three flights in the same direction during two successive calendar weeks, unless followed by a break of one calendar week with no flights, (3) arranged to place the "off" weeks at "regularly recurring intervals," or (4) arranged so as to "result in any uniform pattern or normal consistency of operations." The proposal was to eliminate these restrictions entirely for domestic operations, to allow efficient and economic charter programs, and to eliminate unnecessary ferry flights.

Arguments against doing this were submitted by some of the trunklines and local service carriers, and by the supplemental carriers, who opposed the entire proposal. The scheduled carriers that opposed removing the frequency and regularity restrictions (Delta, Eastern, National, Northwest, TWA, Frontier, and Southern) did so on grounds of diversion from scheduled service to charters. TWA argued that these restrictions are the "only thing left which serves to distinguish charter and scheduled services." United's position was that all restrictions on off-route charters, domestic and foreign, should be eliminated. It claimed, however, that merely eliminating the domestic frequency and regularity restrictions, while maintaining stringent volume limitations and other limits on international operations, was unfair to carriers like itself. Such action, it argued, would expose it to considerable additional competition on the domestic front, while not allowing United any significant compensating liberalization.

The elimination of these restrictions was supported by the U.S. Department of Transportation (Comment filed December 9, 1976), OCA, several of the trunk and local service carriers (American, Continental, Allegheny, Ozark, and Texas International), all the tour operator commenters except one, and the Las Vegas Parties. These parties argued that the regulations no longer served any useful purpose, and that their removal would lower the cost of charters by enabling scheduled carriers to run them back-to-back and eliminate ferry mileage. Several commenters pointed out, in relation to these and the volume restrictions, that removal of these restrictions was especially needed by the local service carriers to allow them to use their smaller planes in medium-haul and thinner markets that are underserved by both the large scheduled carriers and the supplementals. As Allegheny pointed out, since most of its points served are smaller communities, a much larger percentage of its potential charter business is off-route than in the case of the trunk carriers, hence the restrictions are more limiting.

The Board has decided to revoke these restrictions, as it proposed in EDR-307.[1] It is true, as NACA pointed out in its comments, that when the Board put the restrictions into effect in 1965, it did so partly in order to offer protection to the supplementals from off-route charter flights by scheduled airlines. ER-443, Sept. 2, 1965, 30 FR 11381. At that time, however, the supplemental system, as specialized carriers of charters, was just being formed, and passenger charters were a tiny, restricted portion of the air travel market. Today, charters, under greatly liberalized Board rules, are becoming a normal form of discretionary air travel for the general public. In light of the way in which charters have grown in the past decade, the Board does not consider it to be in the public interest for the scheduled carriers, with some 98 percent of the passenger-carrying fleet, to be indefinitely hobbled by restrictions that prevent them from mounting charter programs, at least in the domestic market, in the most cost-efficient fashion.

NACA argued that the supplementals have suffered decreases in their share of the market, and that some of them are in precarious financial condition, hence needing a continuation of the protection offered by the off-route charter restrictions. Particularly with respect to domestic frequency and regularity restrictions, the Board finds this argument wanting. The supplementals have generally concentrated on the few most heavily traveled markets. These markets all receive

[1] In response to a motion by NACA, an informal hearing was held on August 4, 1977. A transcript of the oral comments has been placed in the docket of this proceeding, and they have been given full consideration by the Board.

scheduled service from several carriers, which accordingly can already run charters on an on-route basis, with absolutely no restriction as to frequency, regularity, or volume. Whatever the competitive factors and conditions may be in these markets, it does not appear that allowing a few other scheduled carriers to enter them on an off-route basis would have a material effect on the demand for the supplementals' services. Several of the comments suggested that the real need in the domestic area is for more available charter carriers in the less heavily traveled markets, for which the supplementals have been unavailable. These markets might well be the main beneficiaries of the removal of the frequency and regularity restrictions.

The Board finds also without merit the arguments of some of the scheduled carriers that removal of the domestic frequency and regularity restrictions should be avoided because of its diversionary effect on scheduled service. As recently stated in SPDR–56 (42 FR 12066, March 2, 1977), the question is "not whether diversion takes place, but whether as a result scheduled service on particular routes is reduced to the point that it no longer serves the convenience of the public that wishes to use it." For a change in the domestic off-route charter restrictions to have such a major diversionary effect on scheduled service, however, there would have to have been a serious shortage of available charter services. This seems unlikely, since any domestic markets that would offer potential for frequent and regular charter flights are, by and large, already served by several scheduled carriers, who, along with the supplementals, are free to supply on-route charter flights without limitation. According to the comments received, the main markets that are short of available equipment for charter flights are the thinner ones that could use the smaller planes of the local service carriers, on which the frequency and regularity restrictions would have little or no impact. While it is likely that loosening the restrictions will bring about new entries or higher levels of activity in some domestic charter markets, it does not appear that these changes will have dramatic diversionary effects.

Volume Limitations—Passenger Charters

The present rule limits the off-route charters of combination carriers for a calendar year to 2 percent of the base revenue plane-miles flown during the previous year. The proposal was to expand this, with respect to passenger charters, to 5 percent of the first 50 million base revenue plane-miles plus 2 percent of the remainder, in order to give the scheduled carriers, especially the local service carriers, a better chance to compete in the expanding charter market. Cargo charters would be treated separately, with both combination and all-cargo carriers restricted to 10 percent of the previous year's base revenue all-cargo plane-miles.

Among the domestic scheduled carriers, liberalization of the volume restrictions was opposed only by Delta, Eastern, Northwest, and TWA, on grounds of the adverse effect they foresaw on scheduled service. United, on the other hand, opposed the proposal because it did not go far enough, arguing that the two-tiered formula penalized the larger carriers by giving them the smallest overall increase in off-route charter mileage. Pan American also argued that the two-tiered system was too restrictive, and that the volume allowance should be raised at least to 5 percent of the total base revenue mileage. Pan American suggested that using plane mileage was also discriminatory against it, since it utilizes widebody aircraft extensively, and that seat-mileage should be the basis for computation. The Board will consider this last suggestion in connection with further rulemaking in this area.

The Office of the Consumer Advocate supported this aspect of the proposal.

The U.S. Department of Transportation argued that the proposal did not go far enough in this area, and that all volume restrictions should be removed for all off-route domestic flights and for international charters to "regions" where the carrier is already providing scheduled service. DOT argued that removing the restrictions would provide more efficient charter service, and that the protections in the present rule are no longer needed.

The local service carriers supported the increase in the volume limitation, but asserted that it did not go far enough. Several argued for allowing 10 percent of the first 50 million base revenue plane-miles, while retaining the 2 percent limit for base mileage over that. All the tour operators except one, and the Las Vegas parties, also supported the proposal in this respect.

The Board considers liberalization of the volume restrictions on off-route charters to be desirable, for the same general reasons as those discussed above for revoking the domestic frequency and regularity restrictions. Indeed, it recognizes considerable validity in the arguments of commenters such as United, Pan American, and the local service carriers that the proposed relaxation of the volume restrictions does not go far enough in that it may still operate as an uneven constraint on the operations of various carriers. Because local service carriers, for example, serve the thinner markets, a larger proportion of the charters they are offered the chance to fly is off-route, as compared to the trunklines.

TWA pointed out that treating the passenger and cargo charters separately, as proposed, worked a hardship on it in that it would substantially cut its off-route cargo charter authority, since most of its cargo is carried in combination service. The Board finds this argument valid, and therefore in this final rule will retain the existing method of calculation, under which cargo and passenger off-route charters are treated together for combination carriers.

On consideration of all the comments, the Board by this issuance is raising the volume restriction for combination carriers to 5 percent of the first 50 million base revenue plane-miles, plus 2.5 percent (instead of 2 percent as proposed) of the remaining base revenue plane-miles. The adjustment to 2.5 percent of the base mileage over 50 million is in recognition of the arguments such as those of United and Pan American that the proposed figures were overweighted in favor of the smaller carriers.

International Frequency and Regularity Restrictions—Passenger Charters

EDR–307 proposed to alter both the frequency and the regularity restrictions [2] for foreign air transportation. The Board is not acting in the frequency area, but is considering a different set of restrictions, in connection with further rulemaking concerning off-route charters.

EDR–307 also proposed to revoke the regularity restrictions, which have been found to be inconsistent with current charter policies in that they inhibit the most efficient types of charter operation, and are overly restrictive. Little substantive support for them was offered in the comments, and the Board by this issuance is revoking those restrictions.

Cargo Carriers

In EDR–307 the Board proposed to make several changes in the restrictions of 14 CFR Part 207 on off-route charters operated by all-cargo carriers. All-cargo carriers have been limited by § 207.6 to 2 percent of their base revenue plane-miles in flying off-route charters. They have had the same frequency and regularity restrictions (above, footnote 2) as are set forth in 14 CFR 207.7a for all scheduled carriers. There was an important exception to these restrictions, however, for the "areas of operations" as-

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[2] "No air carrier shall perform off-route Hawaiian, transatlantic, or transpacific charter trips, or any other off-route charter trips between any pair of points, or special services between any pair of points:

(a) In excess of a total of eight (8) flights in the same direction during any period of four successive calendar weeks,

(b) In the same direction on the same day of two or more successive calendar weeks,

(c) In excess of a total of three (3) flights in the same direction during any period of two successive calendar weeks unless such period is followed by a break of at least one calendar week during which no flights are operated in such market or between such points,

(d) Which are so arranged as to result in observance of breaks required by paragraph (c) of this section at regularly recurring intervals, or

(e) Which are so arranged as to result in any uniform pattern or normal consistency of operations: *Provided*, That the restrictions imposed by this section shall not be applicable to off-route cargo charters performed by an all cargo carrier within its area of operations as set forth in § 207.6."

signed to each of the three present all-cargo carriers,[3] within which they may fly unlimited off-route charters. The proposal was to eliminate the areas of operations, raise the volume limits for cargo charters to 10 percent of base revenue all-cargo plane miles, apply the same more relaxed frequency restrictions as for passenger charters, and remove the regularity restrictions.

Congress has recently amended the Federal Aviation Act (Pub. L. 95-163), November 9, 1977) to allow the certification of carriers for interstate all-cargo service without restriction as to points served, thus in effect removing the "off-route" concept from interstate all-cargo service. The remaining restrictions on off-route cargo charters will therefore apply, for carriers so certified, only to overseas (except for Puerto Rico and the Virgin Islands) and foreign air transportation.

The all-cargo carriers objected to the proposal, on grounds that it would liberalize the cargo authority of the competing combination carriers while not providing them with sufficient compensating liberalization. They argued that the larger combination carriers and the unlimited supplemental carriers would provide overwhelming competition if the present restraints were loosened. The all-cargo carriers objected particularly to removing the "area of operations" conit were done the volume restrictions cept from the rule, on grounds that if would be too limiting, that loss of the "first refusal" that the Board has given them within the areas of operations would be crippling, and that the base of plane mileage on which the volume is figured would be unacceptable decreased.[4]

The Board does not agree that liberalization of the restrictions on cargo charters would not be desirable. Applications for waivers of these restrictions have become very frequent, and they evidently are operating as a severe restraint on some carriers. As described above, the volume restrictions for combination carriers' off-route charters, both passenger and cargo considered together, have been raised to 5 percent of the first 50 million base revenue plane miles, plus 2 percent of the remainder. On consideration of the comments received and developments since EDR-307 was issued, the Board is considering the issuance of a proposal to relax or eliminate restrictions on cargo charters by all-cargo carriers.

Since the off-route restrictions on combination carriers are being eased by this notice, an immediate relaxation of the limitations on all-cargo carriers is also called for to preserve some competitive parity between the two classes of carriers in the interim period pending final action on a new proposal. The volume restrictions on cargo charters by all-cargo carriers are therefore hereby raised to 10 percent of the base revenue plane miles for the previous calendar year, as proposed. The revocation of the regularity restrictions discussed above also applies, of course, to charters by all-cargo carriers.

Because this amendment relieves restrictions that would otherwise require carriers to modify their plans or seek waivers pending its effectiveness, it is found for good cause that an immediate effective date is in the public interest.

ISSUANCE OF AMENDMENT

In light of the foregoing, the Board hereby makes the following amendments, effective immediately, to 14 CFR Part 207, *Charter Trips and Special Services:*

1. Table of Contents is amended to reflect the title change of § 207.7a, as follows:

Sec.

* * * * *

207.7a Restriction on frequency of off-route charter trips and other special services in foreign air transportation.

* * * * *

2. Section 207.5 is amended to read as follows:

§ 207.5 Limitation on amount of charter trips which may be performed by combination carriers.

A combination carrier shall not, during any calendar year, perform off-route charter trips that in the aggregate exceed the total of 5 percent of the first 50 million, plus 2.5 percent of the remaining, base revenue plane-miles flown by it during the preceding year.

§ 207.6 [Amended]

3. In § 207.6, *All-cargo carrier: Limitations on amount of charter trips which may be performed,* the figure "2 percent" in the first sentence is amended to read "10 percent."

4. Section 207.7a is retitled and revised to read as follows:

§ 207.7a Restriction on frequency of off-route charter trips and other special services in foreign air transportation.

No air carrier shall perform off-route transatlantic or transpacific charter trips, or any other off-route charter trips or special services between any pair of points in foreign air transportation, in excess of a total of eight flights in the same direction during any period of four successive calendar weeks. However, this section shall not be applicable to off-route cargo charters performed by an all-cargo carrier within its area of operations as set forth in § 207.6.

(Secs. 204, 401, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754 (49 U.S.C. 1324, 1371).)

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-34627 Filed 12-1-77;8:45 am]

[3] "(1) Within the 48 contiguous States—The Flying Tiger Line Inc.; Airlift International, Inc.; and Seaboard World Airlines, Inc.

(2) Between the 48 contiguous States and Europe—Seaboard World Airlines, Inc.

(3) Between the 48 contiguous States, on the one hand, and the islands of the Caribbean, on the other—Airlift International, Inc.

(4) Between the 48 contiguous States and Asia as far west as longitude 70° east, including Japan and the Philippines, but not including Indonesia—The Flying Tiger Line Inc."

[4] In one respect the carriers evidently had misinterpreted the existing rule, in arguing the eliminating the areas of operations would itself decrease their base mileage. Although the existing 14 CFR 207.6 provides that off-route charters flown within a carrier's area of operations are not counted against its volume limitation, such charters are nonetheless off-route, and do not contribute to base revenue plane-miles, defined in 14 CFR 207.1 as "revenue mileage operated by an air carrier in scheduled services, extra sections, and *on-route* charter trips or special services." (Italic supplied.)

[3510-25]

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 377—SHORT SUPPLY CONTROLS

Petroleum Coke, Calcined and Uncalcined; Deletion of Requirement for Certain Documentation to Accompany Export License Applications

AGENCY: Department of Commerce, Office of Export Administration.

ACTION: Final rule.

SUMMARY: These regulations remove an export license documentation requirement which has had the effect of impeding exports of petroleum coke, both calcined and uncalcined. Due to environmental restrictions in many U.S. jurisdictions which prevent the burning of petroleum coke as a fuel, and a consequent, current build-up of stock levels in the United States, the Department has determined that exports of both calcined and uncalcined petroleum coke may be permitted at this time without regard to the commodity's intended end use at foreign destinations.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230, telephone: 202-377-4196.

SUPPLEMENTARY INFORMATION: Export Administration Bulletin Number 160, of September 30, 1976 (41 FR 44155, Oct. 7, 1976) extended validated licensing control, but not quota restriction, to exports of petroleum coke, both calcined and uncalcined. Applications to export these commodities were required to be accompanied by either (a) a statement, in affidavit format, setting forth the proposed nonenergy end use and the name, location and type of facility of the ultimate end user, *or* (b) a certification that the total quantity of the commodity for which the applicant has submitted license applications during the current calendar quarter does not

exceed the applicant's average quarterly exports of such commodity during the period June 1, 1974 through June 30, 1976. This documentation requirement has had the effect of limiting exports of petroleum coke for energy end use to historical base period levels.

Based upon its continuing review of industry trends, and export data, production and domestic inventory levels of both calcined and uncalcined petroleum coke, and following consultation with other appropriate federal agencies, the Department has concluded:

(1) There is a current build up of stock levels of petroleum coke in the United States.

(2) Environmental restrictions in many U.S. jurisdictions prevent the burning of petroleum coke as a fuel because of its high sulfur dioxide emissions. And

(3) Under current market conditions, it is not economical to manufacture petroleum coke specifically for export in lieu of other liquid petroleum products, primarily residual fuel oil.

The Department has accordingly determined that exports of both calcined and uncalcined petroleum coke may be permitted at this time without regard to the commodity's intended end use at foreign destinations. The requirement that either an affidavit setting forth the end use or a certification with respect to the average quarterly level of base period exports accompany each application for a license to export these commodities is accordingly being deleted. However, in order to maintain vigilance over exports of these commodities and to assure that other petroleum commodities which are subject to export limitation are not exported under this designation, inadvertently or otherwise, exports of petroleum coke, both calcined and uncalcined, will remain subject to validated licensing and the requirement that an independent inspectors' certificate of analysis of the product to be exported accompany each license application.

Accordingly, the Export Administration Regulations (15 CFR Part 368 *et seq.*) are amended by revising Section 377.6(e)(7) to read as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(e) * * *

(7) *Group P.* An application for a validated license to export a commodity from Commodity Group P must be submitted with the same documentation required by § 377.6(e)(2), together with an independent inspector's certificate of analysis of the product to be exported.

AUTHORITY: Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212); sec. 2, E.O. 11912, 41 FR 15825 (1976); sec. 201, Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7430); sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185); Department of Organization Order 10-3, dated Nov. 17, 1975, 40 FR 58876 (1975), as amended; and Domestic and International Business Administration Organization and Function Order 46-1, dated November 17, 1975, 40 FR 59764 (1975), as amended.

NOTE.—The Office of Export Administration has determined that this document does not contain a major action requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

LAWRENCE J. BRADY,
Acting Director,
Office of Export Administration.

[FR Doc.77-34729 Filed 11-30-77;3:02 pm]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 77C-0233]

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Bismuth Oxychloride; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule:

SUMMARY: This document confirms the effective date of November 1, 1977, of an order concerning the use of bismuth oxychloride as a color additive in externally applied drugs and in cosmetics generally, including those drugs and cosmetics intended for use in the area of the eye.

DATE: Effective date confirmed: November 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: A regulation published in the FEDERAL REGISTER of September 30, 1977 (42 FR 52394) added §§ 73.1162 and 73.2162 (21 CFR 73.1162 and 73.2162) to Subparts B and C, respectively, of Part 73 (21 CFR Part 73) to provide for the safe use of bismuth oxychloride in externally applied drugs and in cosmetics generally, including those drugs and cosmetics intended for use in the area of the eye. The regulation also amended § 81.1(g) (21 CFR 81.1(g)) by deleting "bismuth oxychloride" from the provisionally listed colors.

Under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), notice is given that no objections or requests for hearing were filed in response to the order of September 30, 1977. Accordingly, the amendments promulgated thereby became effective on November 1, 1977.

Dated: November 21, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-34448 Filed 12-1-77;8:45 am]

[1505-01]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 75F-0207]

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

Subpart C—Substances for Use as Components of Coatings

Correction

In FR Doc. 77-25655 appearing on page 44222 in the issue of Friday, September 2, 1977, in the 3rd column, in § 175.300(b)(3)(xx), the paragraph in small type, the 1st three lines should read:

"2-Ethylhexyl acrylate-ethyl acrylate copolymers prepared by copolymerization of 2-ethylhexyl acrylate and ethyl acrylate in a * * *".

[1505-01]

[Docket No. 76 N-0070]

PART 177—INDIRECT ADDITIVES: POLYMERS ACRYLONITRILE COPOLYMERS USED TO FABRICATE BEVERAGE CONTAINERS; FINAL DECISION

Correction

In FR Doc. 77-27755 appearing on page 48528, in the issue of Friday, September 23, 1977 in the paragraph, "FOR FURTHER INFORMATION CONTACT:", the telephone number should read (301-443-3480).

On page 48534, in the middle column, the paragraph in small type, the citation in the last line should read, "*Dandridge* v. *Williams*, 397 U.S. 471, 486-87 (1968).".

In the next paragraph, the 3rd sentence should read, "The issue in this proceeding is not how acrylonitrile beverage bottles rank with other food containers in terms of safety, but whether acrylonitrile beverage containers are lawfully approved under the food additive provisions of the Act.".

On page 48543, in the center column, paragraph 8, the citation in the 1st sentence should read, "21 U.S.C. 321(s) and 348".

[1505-01]

[Docket No. 77F-0108]

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Specification for Dimyristyl Thiodipropionate

Correction

In FR Doc. 77-27953, appearing on page 49452 in the issue of Tuesday, September 27, 1977, in § 178.2010(b) five

asterisks should follow the material in the chart.

On page 49453, the 1st line, in the 1st column, "[in-] clude a detailed description and anal-[ysis]", was inadvertently misplaced and should be the 1st line in the 3rd column.

[1505–01]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N–0453]

ANTIBIOTIC DRUGS

Vidarabine Monohydrate; Vidarabine Monohydrate Ophthalmic Ointment

Correction

In FR Doc. 77–25422 appearing on page 44223 in the issue of Friday, September 2, 1977, the entry "5" in the table at the top of page 44224 should be centered under the column headed "Diluent (diluent number as listed in sec. 436.31)".

[1505–01]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FROM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Haloxon Drench

Correction

In FR Doc. 77–27253 appearing on page 47192 in the issue of Tuesday, September 20, 1977, § 520.1120a(f)(2)(i) should read, *"Sheep and goats*—(i) *Amount.*—44.9, 70.7, or 141.5 grains of haloxon per packet.".

[4110–03]

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Haloxon Drench and Boluses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of two supplemental new animal drug application's (NADA's) providing for the change of sponsor from Cooper U.S.A., Inc., to Burroughs Wellcome Co.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard P. Lehmann, Bureau of Veterinary Medicine (HFV–120), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301–443–3134.

SUPPLEMENTARY INFORMATION: Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, N.C. 27709, filed two supplemental NADA's (48–913V and 92–483V) providing for the change of sponsor for haloxon drench and haloxon boluses.

This action reflects an intercorporate change of sponsor. This independent action has not required a reevaluation of the parent NADA's and does not constitute a reaffirmation of the drug's safety and efficacy.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 520.1120a Halaxon drench is amended by deleting from paragraph (c) the number "011492" and inserting in its place the number "000081," and § 520.1120b Haloxon boluses is amended by deleting from paragraph (c) the number "011492" and inserting in its place the number "000081."

Effective date. This regulation shall be effective December 2, 1977.

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

Dated: November 21, 1977.

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

[FR Doc.77–34446 Filed 12–1–77;8:45 am]

[4110–03]

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Mebendazole Oral Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application (NADA) filed by Pitman-Moore, Inc., providing for use of a mebendazole powder as an anthelmintic in treating dogs for intestinal worms.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Washington Crossing, N.J. 08560, filed an NADA (102–987V) providing for the use of a mebendazole powder containing 40 milligrams of mebendazole per gram for use in the food of dogs for treatment of infections of certain roundworms, hookworms, whipworms, and tapeworms.

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 520.1320 is revised to read as follows:

§ 520.1320 Mebendazole oral.

(a) *Chemical name.* Methyl 5-benzoylbenzimindazole-2-carbamate.

(b) *Specifications.* As oral powder: Each gram contains either 40 or 166.7 milligrams of mebendazole. As oral paste: Each gram contains 200 milligrams of mebendazole.

(c) *Sponsor.* See No. 011716 in § 510.600(c) of this chapter.

(d) *Conditions of use*—(1) *Horses*—(i) *Amount.* 1 gram of mebendazole per 250 pounds of body weight per dose, as an oral powder or paste.

(ii) *Indications for use.* It is used in horses for treatment of infections caused by large roundworms (*Parascaris equorum*), large strongyles (*Strongylus edentatus, S. equinus, S. vulgaris*), small strongyles (*Cyclicocyclus spp., Gyalocephalus spp., Poteriostumum spp., Trichonema spp., Triodontophorus spp.*), and pinworms (*oxyuris equi*), including many larval stages.

(iii) *Limitations*—(a) *Oral powder.* The drug is given by sprinkling directly on the grain portion of the ration or dissolving in 2 to 4 pints of water and administering by stomach tube. The drug is compatible with carbon disulfide, which can be used concurrently for bot control (*Gastrophilus spp.*). Routine cautions regarding the use of carbon disulfide must be observed. Do not administer to horses intended for use as food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(*b*) *Oral paste.* The drug is given by dosing gun (syringe), inserting the tip of the gun at the interdental space in the horse's mouth and depositing the paste on the animal's tongue. The hand is placed under the animal's jaw, and the head is raised to assure that the paste is deposited on the roof of the mouth. Not for use in horses intended for food. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

(2) *Dogs*—(i) *Amount.* Forty milligrams of mebendazole per 10 pounds of body weight, once daily for 5 days, as an oral powder.

(ii) *Indications for use.* The drug is used for treatment of infections of roundworms (*Toxocara canis*), hookworms (*Ancylostoma caninum*), whipworms (*Trichuris vulpis*), and tapeworms (*Taenia pisiformis*).

(iii) *Limitations.* Administer as an oral powder by mixing with a small quantity of food, preferably before the regular

meal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. December 2, 1977.

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

Dated: November 25, 1977.

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

[FR Doc.77-34546 Filed 12-1-77;8:45 am]

[4110-03]

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Pyrilamine Maleate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends a regulation for pyrilamine maleate injections to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data. These conditions of use were classified as probably effective as the result of the National Academy of Science—National Research Council, Drug Efficacy Study Group (NAS/NRC) evaluation of the product. In lieu of certain efficacy data, approvals may require submission of bioequivalence or similar data. A previous FEDERAL REGISTER publication has reflected this product's compliance with the conclusions of the review.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert A. Baldwin, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The NAS/NRC review of this product was published as a notice in the FEDERAL REGISTER of July 22, 1970 (35 FR 11713). In that notice the Academy concluded and the Food and Drug Administration (FDA) concurred that the product was probably effective for use in cattle, horses, and dogs in conditions where antihistaminic therapy may be expected to lead to alleviation of some signs of disease. The Academy noted that efficacy is not well established except in the case of exposure to an antigen to which the animal has preexisting sensitivity; that the sedative and antiemetic actions on the central nervous system may have prophylactic and therapeutic value in selected situations; that dosages should be stated on a body weight basis; and that labeling should cover certain side effects. The Academy's evaluation is concerned only with the drug's effectiveness and safety to the animal and does not take into account the safety for food use of food derived from drug-treated animals.

This announcement was published to inform holders of new animal drug applications (NADA's) as to the findings of the Academy and the agency and to inform all interested persons that such articles may be marketed providing they are the subject of an approved NADA or otherwise comply with the requirements of the Federal Food, Drug, and Cosmetic Act. Norden Laboratories, Inc., Lincoln, Nebr. 68501, responded by submitting a supplemental NADA (7-404V) providing current information concerning manufacturing and controls, and revised labeling. No new efficacy data were required. The supplement was approved by issuance of a regulation in the FEDERAL REGISTER of March 12, 1973 (38 FR 6669). The regulation reflecting this approval (21 CFR 135b.75, recodified 21 CFR 522.-2063) did not specify those conditions of use which were NAS/NRC approved. These are the drug uses for which approval of an NADA does not require efficacy data as specified by § 514.1(b)(8)(ii) (21 CFR 514.1(b)(8)(ii)) of the animal drug regulations. This document amends the regulations to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data required for approval in § 514.111(a)(5)(vi) of the animal drug regulations. In lieu of that data, approval may require bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC reviewed generic drugs, available with the Hearing Clerk (HFC-20), Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 522.-2063 *Pyrilamine maleate injection* is amended in paragraph (c) (1), (2), (3), and (4) by adding after each paragraph the footnote reference "[1]" and at the end of the section the footnote "[1] These claims are NAS/NRC reviewed and are deemed effective. Applications for these uses need not include the effectiveness data specified by § 514.111 of this chapter."

Effective date: December 2, 1977.

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

Dated: November 21, 1977.

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

[FR Doc.77-34449 Filed 12-1-77;8:45 am]

[1505-01]

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Amoxicillin Tablets

Correction

In FR Doc. 77-27954 appearing on page 49453 in the issue of Tuesday, September 27, 1977, on page 49454, the heading, § 540.103a [Amended]" should be deleted.

[1505-01]

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

Tetracycline Hydrochloride and Sodium Novobiocin Tablets

Correction

In FR Doc. 77-29743 appearing at page 54801 in the issue for Tuesday, October 11, 1977, on page 54802, at the end of § 546.180h(a)(3)(i) delete "intensity" and insert "identity" in its place.

[4110-03]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lasalocid Sodium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffman-LaRoche, Inc., providing for the use of lasalocid sodium in complete chicken feeds at a concentration of 68 to 113 grams per ton and for a withdrawal from use in chicken feed for 3 days prior to slaughter. The supplemental NADA also establishes the target tissue level of the marker residue that corresponds to the total tolerance level of the microbiologically active residue of the parent compound.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Hoffman-LaRoche, Inc., Nutley, N.J. 07110, filed a supplemental NADA (96-298V) providing that the tolerance established for total residues of lasalocid sodium in chickens contain a statement of action level, that use of the drug in the feed of broiler and fryer chickens be permitted from 68 to 113 grams per ton (0.0075 to 0.0125 percent), and that the withdrawal time for the drug from the feed of those chickens be reduced to 3 days prior to slaughter.

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

20857, Monday through Friday, 9 a.m. to 4 p.m., except on Federal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 556 and 558 are amended as follows:

1. In Part 556, § 556.347 is revised to read as follows:

§ 556.347 **Lasalocid sodium.**

A tolerance of 0.05 part per million is established for total residues of lasalocid sodium in the edible tissues of chickens. A tissue residue assay measuring microbiologically active residues in the target tissues, skin and fat, with a sensitivity of 0.01 part per million, serves to monitor the total residue in edible tissues. A marker residue concentration of 0.025 part per million in the target tissues corresponds to a total residue level of 0.05 part per million.

2. Part 558 is amended in § 558.311 by revising the introductory text of paragraph (e) and the first entry in the table in paragraph (e), to read as follows:

§ 558.311 **Lasalocid sodium.**

* * * * *

(e) *Conditions of use.* It is used in feed for broiler or fryer chickens as follows:

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) 68 (0.0075 pct) to 113 (0.0125 pct.).		For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*	For broiler or fryer chickens only, feed continuously as the sole ration; withdraw 3 days before slaughter.	000004

* * * * * * *

Effective date. December 2, 1977.

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

Dated: November 21, 1977.

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

[FR Doc.77-34447 Filed 12-1-77;8:45 am]

[4110-03]

SUBCHAPTER F—BIOLOGICS

[Docket No. 75N-0313]

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

Blood Grouping Serum; Extension of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Extension of effective date.

SUMMARY: This document extends from December 6, 1977 to April 6, 1978 the time within which manufacturers must comply with the additional standards governing the manufacture of Blood Grouping Serum. The Commissioner has concluded that a 4-month extension of the effective date is required for manufacturers to implement the processing changes required by the new standards.

DATES: Effective December 2, 1977; compliance with §§ 660.20 through 660.27 and § 660.29 by April 6, 1978; compliance with § 660.28 remains August 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Donna C. Williams or Al Rothschild (HFB-620), Bureau of Biologics, Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockvile Pike, Bethesda, MD 20014, 301-443-1920.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued in the FEDERAL REGISTER of October 7, 1977 (42 FR 54534) additional standards for Blood Grouping Serum, with an effective date of December 6, 1977 except for labeling requirements which are effective August 7, 1978. Although the standards prescribe requirements for specificity testing and manufacturing methods that are more stringent than those originally proposed, the Commissioner believed that these requirements could be implemented during the 60-day delayed effective date. However, the Commissioner has received requests from manufacturers to extend the effective date to enable revision of specificity testing methods, processing procedures, and quality control procedures and to locate donors for certain rare red blood cell antigens that are required for testing of antisera. A 4-month extension was requested to preclude disrupting the supply of reagents to users while these changes are made.

The Commissioner concludes that a 4-month extension will provide sufficient time for manufacturers to comply with the regulations without undue hardship and to preclude disrupting the supply of these reagents to users. Accordingly, he is granting an extension until April 6, 1978. Changes required to implement the new standards must be submitted to the Director, Bureau of Biologics, in the form of a license amendment. Manufacturers should note that the effective date for labeling requirements remains August 7, 1978, as originally published in the final regulation of October 7.

Dated: November 29, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-34695 Filed 12-1-77;8:45 am]

[1505-01]

SUBCHAPTER G—COSMETICS

[Docket No. 76N-0153]

PART 701—COSMETIC LABELING

Ingredient Designation of Cosmetics Sold by Direct Mail

Correction

In FR Doc. 77-26755 appearing on page 46514 in the issue of Friday, September 16, 1977; on page 46516, in § 701.3(r), the last line should read, "additional requirements are met:".

[1505-01]

SUBCHAPTER J—RADIOLOGICAL HEALTH

[Docket No. 75N-0259]

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

Exemptions From Performance Standards for Products Intended for United States Government Use

Correction

In FR Doc. 77-25676 appearing in the issue for Friday, September 2, 1977 on page 44229, in § 1010.5(c) the address in the 7th line should read, "Rockville, MD 20857".

On page 44230, § 1010.5(e), the introductory phrase should read, *"Ruling on an application."*.

[1505-01]

[Docket No. 75N-0331]

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

Performance Standard for Diagnostic X-Ray Systems and Their Major Components

Correction

In FR Doc. 77-25425 appearing on page 44230 in the issue of Friday, September 2, 1977, the 3rd column, the last paragraph, the citation in the 4th line should read, "§ 1020.30(b)(54)".

On page 44233, the 3rd column, the date in the 5th line, should read, "September 5, 1978".

[4510-29]

Tile 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PLANS, DEPARTMENT OF THE LABOR

SUBCHAPTER B—DEFINITIONS AND COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F AND G OF THIS CHAPTER

Sheltered Annuity Programs

AGENCY: U. S. Department of Labor.

ACTION: Interim and proposed rule.

SUMMARY: This document announces the adoption on an interim basis and the proposal for permanent adoption of a regulation which sets forth the circumstances under which certain tax sheltered annuity programs under the Internal Revenue Code of 1954, as amended (the Code) will not be subject to certain requirements of the Employee Retirement Income Security Act of 1974 (the Act).

DATES: Interim regulation effective retroactively from January 1, 1975. Comments concerning the proposed final regulation due on or before January 16, 1978.

ADDRESS: Comments concerning this interim regulation will be received for consideration in the preparation of a final regulation. Interested persons are invited to submit written data, views, or arguments (at least six copies) concerning any part or all of the proposed regulation contained in this document to "Section 2510.3-2(f), Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216." All written submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Robert Doyle, Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8685 (not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (the Department) has adopted interim regulation § 2510.3-2(f), effective January 1, 1975, and proposes this regulation for permanent adoption. Section 2510.3-2(f) states that, under certain specified conditions, tax sheltered annuity programs which are described in section 403(b) of the Code (section 403(b) programs) are not "established or maintained" by an employer. Only plans which are "established or maintained" by an employer or employee organization, or both can be "employee pension benefit plans" and "pension plans" as defined in section 3(2) of the Act. Inasmuch as section 403(b) programs clearly are not "employee welfare benefit plans" as defined in section 3(1) of the Act, section 403(b) programs meeting the conditions set forth in the regulation would not be "employee benefit plans" as defined in section 3(3) of the Act and, accordingly, would not be subject to the requirements of Title I of the Act. See, section 4(a) of the Act.

BACKGROUND

The Department has received a substantial number of inquiries from the public which indicate that there is considerable uncertainty as to the applicability of Title I of the Act to section 403(b) programs. Pursuant to section 403(b) programs, certain employers (such as religious, charitable, or educational organizations described in section 501(c)(3) of the Code, and educational organizations where the employer is a State, political subdivision of a State or agency or instrumentality of such persons) may purchase annuities for their employees.[1] While these section 403(b) programs are not required to meet the tax qualification requirements for ordinary pension plans, employees who participate under these programs receive certain tax advantages. There are two principal sources of contributions to section 403(b) programs. The first involves an agreement between an employee and his employer whereby the employee will accept a reduction in salary or forgo an increase in salary, and the employer will purchase an annuity for the employee with the salary reduction or forgone salary increase. The second source of contribution is the employer's own assets which are used to purchase an annuity for the employee.

Section 3(2) of the Act defines the terms "employee pension benefit plan" and "pension plan" to mean

> any plan, fund, or program which was heretofore or is hereafter *established or maintained by an employer or by an employee organization, or by both,* to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—
>
> (A) provides retirement income to employees, or
>
> (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. [Emphasis added.]

Section 4(a) of the Act provides that the provisions of Title I of the Act, generally, shall apply to any employee benefit plan if it is *established or maintained*—

> (1) By any employer engaged in commerce or in any industry or activity affecting commerce; or
>
> (2) By any employee organization or organization representing employees engaged in commerce or in any industry or activity affecting commerce; or
>
> (3) By both. [Emphasis added.]

The Department believes that section 403(b) programs, where contributions result from salary reduction agreements or agreements to forego salary increases between an employer and employee, and certain other conditions are met, are not plans which are "established or maintained" by an employer or employee organization or both. Section 403(b) programs, where the conditions of the regulations are not met, would be plans "established or maintained" by an employer for purposes of section 3(2) of the Act, and, therefore, would be subject to the requirements of Title I of the Act, unless another exception, such as that applicable to "governmental plans" or "church plans" is available.

Tax sheltered annuity programs differ from ordinary pension or deferred compensation plans in important respects. First, they may be tailored to the desires and financial means of the individual employee, and the annuity contributions must be vested only in annuity contracts or in certain custodial accounts, the assets of which are invested in regulated investment company shares for the purpose of providing retirement benefits (section 403(b)(7) of the Code). Second, the existing regulatory supervision of insured annuity contracts and of regulated investment companies (as defined in section 851(a) of the Code) provides much of the disclosure, fiduciary and funding protection afforded by Title I of the Act. Finally, because section 403(b) programs may be individually tailored, the reporting and disclosure provisions of Title I would present substantial administrative difficulties for the employer and for the Department.

Additionally, section 403(b) programs are similar in some respects to those individual retirement accounts exempt from the provisions of Title I of the Act pursuant to § 2510.3-2(d). The Department believes that the similarity between these two arrangements is an added reason to consider section 403(b) programs which meet the conditions set forth in this regulation not to have been "established or maintained" by an employer.

REGULATION § 2510.3-2(f)

As noted above, section 2510.3-2(f) makes it clear that annuities purchased by an employer, described in section 403(b)(1)(A) of the Code, pursuant to a section 403(b) program, in accordance with salary reduction agreements or agreements to forego an increase in salary, are not "established or maintained" by an employer under section 3(2) of ERISA, provided that certain other factors are present. These factors are: (1) That participation of employees is completely voluntary, (2) that all rights under the annuity contract are enforce-

[1] Certain "governmental plans", defined in section 3(32) of the Act, and "church plans", defined in section 3(33) of the Act are excepted from the requirements of Title I of the Act by section 4(b)(1) and (2) of the Act.

able solely by the employee or beneficiary of such employee, or by any authorized representative of such employee or beneficiary, (3) that the involvement of the employer is limited to certain specified activities, and (4) that the employer receive no consideration other than reasonable reimbursement for the services rendered in connection with the employer's obligations under the agreements with employees. In this latter regard, if an employer, or a person acting in the interest of any employer, receives, for example, such other consideration from an annuity contractor, the employer could be deemed to have "established or maintained" a plan.

Under paragraph (f)(3) of the regulation the involvement of the employer is limited to: permitting an annuity contractor to publicize its product to employees; requesting and summarizing relevant information in a manner which will help employees compare various programs; and collecting and remitting payments, as required by its agreements with employees. The regulation also includes different provisions for retroactive and prospective applicability with respect to the permissible scope of employer activity. This is done in order to recognize and accommodate what the Department believes to have been common practice among employers offering these types of programs prior to publication of this regulation when adequate guidance was not available from the Department. The regulation provides that an employer may previously have limited the funding media or products available to employees, or contractors who could approach employees, to those which, in the judgment of the employer, afforded employees with appropriate investment opportunities. However, beginning February 7, 1978, an employer may not for the future exercise this degree of authority and, thus, would have less discretion in limiting the choices available to its employees; rather, it could impose such limitations only when doing so would not preclude affording employees a reasonable choice in light of all relevant circumstances. Accordingly, if after February 6, 1978, an employer, for example, limits access of annuity contractors to employees and thereby precludes employees from having a reasonable choice, that employer would be deemed to have "established or maintained" a pension plan. This provision is designed to prevent an employer in the future from limiting available contractors to one selected by the employer when several seek to make their services and products available to employees unless to do so would afford employees a reasonable choice, in light of relevant circumstances. This provision would not require an employer to seek out annuity contractors.

The regulation contained in this document is adopted on an interim basis effective retroactive to January 1, 1975, and is proposed for final adoption pursuant to authority provided in section 505 of the Act (Pub. L. 93-406, 88 Stat. 829, 894, 29 U.S.C. 1135). The reason for making this regulation effective immediately on a temporary basis is that plans covered by the Act, in most cases, are required to file summary plan descriptions within 120 days after the regulations regarding summary plan descriptions were published in the FEDERAL REGISTER on July 19, 1977. Consequently, section 403(b) programs must be notified of their status as to coverage as soon as possible in order to minimize unnecessary filings. For the foregoing reason, the undersigned finds that good cause exists for making this regulation temporarily effective without advance publication as specified in the Administrative Procedure Act (5 U.S.C. 533(d)(3)).

Accordingly, Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

By adding to § 2510.3-2 a new paragraph (f) to read as follows: Section 2510.3-2(f) Tax Sheltered Annuities.

§ 2510.3-2 Employee pension benefit plan.

* * * * *

(f) *Tax Sheltered Annuities.* For the purpose of Title I of the Act and this chapter, a program for the purchase of an annuity contract described in section 403(b) of the Code pursuant to salary reduction agreements or agreements to forego an increase in salary which meets the requirements of 26 CFR 1.403(b)-1(b)(3) shall not be "established or maintained by an employer" as that phrase is used in the definition of the terms "employee pension benefit plan" and "pension plan" if

(1) Participation is completely voluntary for employees;

(2) All rights under the annuity contract are enforceable solely by the employee, by a beneficiary of such employee, or by any authorized representative of such employee or beneficiary;

(3) The sole involvement of the employer, other than pursuant to paragraph (f)(2) of this section, is

(i) To permit an annuity contractor to publicize its product to employees,

(ii) To request certain information concerning proposed funding media, products or annuity contractors,

(iii) To summarize or otherwise compile the information provided with respect to the proposed funding media or products which are made available, or the annuity contractors whose services are provided in order to facilitate review and analysis by the employees,

(iv) To collect annuity considerations as required by salary reduction agreements or by agreements to forego salary increases and to remit them to annuity contractors,

(v) Before February 7, 1978, to have limited the funding media or products available to employees, or annuity contractors who could approach employees, to those which, in the judgment of the employer, afforded employees appropriate investment opportunities, or

(vi) After February 6, 1978 to limit the funding media or products available to employees, or the annuity contractors who may approach employees, which is designed to afford employees a reasonable choice in light of all relevant circumstances; and

(4) The employer receives no direct or indirect consideration or compensation in cash or otherwise other than reasonable compensation to cover expenses to be properly and actually incurred by such employer in the performance of the employer's duties pursuant to the salary reduction agreements or agreements to forego salary increases described in this paragraph (f).

* * * * *

Effective date: January 1, 1975.

Signed at Washington, D.C., this 29th day of November 1977.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, United States Department of Labor.

[FR Doc.77-34679 Filed 12-1-77;8:45 am]

[1505-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 807-4; PP 5F1535/R135]

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

Aluminum Phosphide

Correction

In FR Doc. 77-30697, appearing at page 56113 in the issue for Friday, October 21, 1977, in § 180.225, in the last paragraph (page 56114), "0.1 part per million" should be changed to read "0.01 part per million".

[6560-01]

SUBCHAPTER R—TOXIC SUBSTANCES CONTROL ACT

PART 750—PROCEDURES FOR RULEMAKING UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

AGENCY: Environmental Protection Agency.

ACTION: Final rules.

SUMMARY: Section 6 of the Toxic Substances Control Act, 15 U.S.C. 2605, allows EPA to control potentially toxic substances by rulemaking. The statute requires EPA to follow certain procedures in promulgating these rules. It must establish a record to contain the documents being considered, and hold a hearing with some opportunity for cross-examination.

On April 21, 1977 EPA proposed procedures for implementing these requirements. 42 FR 20640. Comments have been received and analyzed, and the regulations are now being promulgated in final form. Only minor changes from the reg-

ulation as proposed have been made; those changes are discussed in "Supplemental Information" below.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

William F. Pedersen, Jr. (A–130), Office of General Counsel, Environmental Protection Agency, 401 M. Street SW., Washington, D.C. 20460, telephone: 202–755–0434.

SUPPLEMENTARY INFORMATION: These regulations will take effect upon promulgation. This will enable the final procedural regulations to govern EPA's rulemaking implementing the provisions of TSCA which call for a gradual phasing out of all uses of polychlorinated biphenyls. Regulations to implement those provisions will be proposed shortly.

We find that good cause exists to make these regulations effective upon promulgation in that (i) 5 U.S.C. 554(d) only applies to "substantive" rules and these are procedural rules, (ii) the changes from the proposed rule are minimal and in the direction of greater flexibility, and (iii) it is desirable that the final rules govern the rulemaking on the PCB "ban" regulations.

A detailed Response to Comments document has been prepared to summarize and respond to the comments received, and to discuss the changes made to the regulation between proposal and promulgation. This document is an integral part of our decision to issue the rules promulgated today. Copies are available at the address given above.

The following changes to the regulation are of enough significance to warrant mention here in the preamble, as well as in the detailed Response to Comments:

1. A number of comments asserted the need for greater flexibility in the procedures as proposed. In response, the procedures have been modified to provide that flexibility in several respects. All deadlines contained in the rules will be subject to extension by the Record and Hearing Clerk or by the person chairing the hearing panel. Methods of clarifying the record that may be preferable to cross-examination or adequate substitutes for it are explicitly provided for. Finally, a strictly limited opportunity for cross-examination during the legislative hearing is provided.

This does not mean that deadlines will be extended as a normal matter. We anticipate that extensions will be granted only rarely, and only in the discretion of the hearing panel. Similarly, requests for cross-examination during the legislative hearing will be granted only in very exceptional cases, when the need for cross-examination is completely clear and it would be burdensome to defer it. The panel is to be left the very broadest discretion to deny requests for cross-examination at this stage.

In addition to these changes in the regulations aimed at greater flexibility, we will continue to conduct the panel hearing in a flexible manner. In the first two hearings, for example, comments from the floor and the reappearance of witnesses to make brief responses to later witnesses have both been allowed, and have worked well.

Indeed, though a number of comments asserted the need for more formal procedures and greater reliance on cross-examination, the fact is that the two hearings held under section 6 of TSCA to date have not resulted in any serious cross-examination requests. The more flexible procedures that were used apparently produced a record satisfactory to all participants without cross-examination.

2. Comments also urged EPA to make clear that EPA employees or staff members were potentially subject to cross-examination. We agree that that is the proper reading of the statute. To the extent cross-examination of such persons is necessary to provide full and true disclosure with respect to disputed issues of material fact which it is necessary to resolve, it may be held provided the standards set forth in § 750.8 can be met.

3. One comment argued that hearing participants should have subpoenas available to them if a need for additional information could be justified. We agree that one purpose of public comment on a proposed rule could be to persuade EPA to use its subpoena power to obtain information necessary to a sound decision. Accordingly, the procedures have been amended to explicitly provide for such requests. The amendment also permits EPA to obtain similar information on its own motion.

The test provided in the statute for issuing subpoenas is whether the information at issue is needed by EPA to discharge its responsibilities under TSCA, not whether it would be useful to some other person in making a case. In addition, the legislative history indicates that subpoena authority should be sparingly exercised. For these reasons, and also to avoid delay in rulemaking, we anticipate that requests for subpoenas will be granted only in rare cases where the need for a subpoena is clearly demonstrated.

4. One comment stated that persons who did not participate in the hearing should have the right to submit reply comments. Nothing in either the proposed regulations or these final regulations was meant to forbid that.

5. Finally, one point of terminology should be clarified. As used in these rules the term "informal hearing" means the whole course of oral proceedings from the opening of the panel hearing through the end of any cross-examination; the term "legislative hearing" means the hearing before an EPA panel under section 750.7.

These final rules are issued under authority of section 6 of the Toxic Substances Control Act, 15 U.S.C. 2605.

Dated: November 21, 1977.

DOUGLAS M. COSTLE,
Administrator.

Title 40 of the Code of Federal Regulations is amended by adding a new Part 750 as set forth below:

Sec.
750.1 Applicability.
750.2 Notice of proposed rulemaking.
750.3 Record.
750.4 Public comments.
750.5 Subpoenas.
750.6 Participation in informal hearing.
750.7 Conduct of legislative hearing.
750.8 Cross-examination.
750.9 Final rule.
Appendix A

AUTHORITY: 15 U.S.C. 2605.

§ 750.1 Applicability.

This Part applies to all rulemakings under authority of section 6 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605.

§ 750.2 Notice of proposed rulemaking.

(a) Each rulemaking subject to this Part shall begin with the publication of a Notice of Proposed Rulemaking in the FEDERAL REGISTER.

(b) Each such notice shall contain:

(1) A draft finding that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of the chemical substance(s) or mixture(s) at issue, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment.

(2) A Notice of Proposed Rulemaking stating with particularity the reasons for the proposed rule together with a statement why the proposed rule protects adequately against the risk(s) involved using the least burdensome requirements authorized by TSCA.

(3) Either the draft text of the proposed rule (which may include alternative approaches among which a final choice has not yet been made) or a description of the approaches and provisions being considered for inclusion in the rule, or some combination of the above.

(4) Except for rules published under authority of Section 6(e), a draft statement with respect to:

(i) the effects of the substance(s) or mixture(s) at issue on health and the magnitude of the exposure of human beings to such substance(s) or mixture(s);

(ii) The effects of the substance(s) or mixture(s) at issue on the environment and the magnitude of the exposure of the environment to such substance(s) or mixture(s).

(iii) The benefits of the substance(s) or mixture(s) at issue for various uses and the availability of substitutes for such uses; and

(iv) The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

(v) Major impacts of alternatives to the proposed rule shall also be analyzed.

(5) In cases where the Administrator, in his or her discretion, determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under a Federal law (or laws) other than TSCA administered in whole or in part by the Administrator, a finding that it is in the public interest to proceed against such risk under TSCA. Any such finding shall be accompanied by a brief statement discussing:

(i) All relevant aspects of the risk;

(ii) A comparison of the estimated costs of complying with actions taken under TSCA and under such other law (or laws); and

(iii) The relative efficiency of actions under TSCA and under such other law (or laws) to protect against such risk of injury.

Two or more or all of the statements required above may be combined in the same narrative for efficiency of exposition as long as each of the required points is discussed. Any statement required by this paragraph may reference other documents which are not published in the FEDERAL REGISTER. All such referenced documents shall be included in the rulemaking record. Either the statements required by this paragraph or the documents they reference shall contain a discussion of the factual, analytical, policy and legal considerations behind the agency decision to issue the proposed rule in the form chosen. A brief summary of these considerations shall be included in the preamble in any case. All factual materials and each analytical methodology seriously considered shall be fully disclosed. Significant areas of uncertainty known to the Agency under each heading shall be identified, and the manner in which the Agency intends to deal with them shall be specified.

(c) In addition to the material required under paragraph (b), each notice of proposed rulemaking shall contain:

(1) A statement of the time and place at which the informal hearing required by section 6(c)(2)(C) of TSCA shall begin, or, to the extent these are not specified, a statement that they will be specified later in a separate FEDERAL REGISTER notice *Provided*, That FEDERAL REGISTER notice of the date and city at which any informal hearing shall begin shall be given at least 30 days in advance;

(2) A statement identifying the place at which the official record of the rulemaking is located, the hours during which it will be open for public inspection, the documents contained in it as of the date the notice of proposed rulemaking was issued, and a statement of the approximate times at which additional materials such as public comments, hearing transcripts, and agency studies in progress will be added to the record. If any material other than public comments or material generated by a hearing is added to the record after publication of the notice required by this section, and notice of its future addition was not given at the time of that initial publication, a separate FEDERAL REGISTER notice announcing its addition to the record and inviting comment shall be published;

(3) The due date for public comments, which shall be at least two weeks prior to the informal hearing for main comments and no more than two weeks after the informal hearing for reply comments;

(4) The name, address and office telephone number of the Record and Hearing Clerk for the rulemaking in question; and

(5) A nonbinding target date for issuing the final rule.

§ 750.3 Record.

(a) No later than the date of proposal of a rule subject to this part, a rulemaking record for that rule shall be established. It shall consist of a separate identified filing space containing:

(1) All documents required by § 750.2(b);

(2) All documents cited in the documents required by § 750.2(b);

(3) All public comments timely received;

(4) All public hearing transcripts;

(5) All material received during an informal hearing and accepted for the record of that hearing; and

(6) Any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of the rule, in a notice published in the FEDERAL REGISTER.

All material in the record shall be appropriately indexed. Each record shall be available for public inspection during normal Agency business hours. Appropriate arrangements allowing members of the public to copy record materials that do not risk the permanent loss of such materials shall be made. All material required to be included in the record shall be added to the record as soon as feasible after its receipt by the Agency.

(b) The Record and Hearing Clerk for each rulemaking shall be responsible for Agency compliance with the requirements of paragraph (a) of this section.

§ 750.4 Public comments.

(a) Main comments shall be postmarked or received no later than the time specified in the Notice of Proposed Rulemaking and shall contain all comments on and criticisms of that Notice by the commenting person, based on information which is or reasonably could have been available to that person at the time.

(b) Reply comments shall be postmarked or received no later than two weeks after the close of all informal hearings on the proposed rule and shall be restricted to comments on:

(1) Other comments;

(2) Material in the hearing record; and

(3) Material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

(c) Extensions of the time for filing comments may be granted in writing by the Record and Hearing Clerk. Application for an extension shall be made in writing. Comments submitted after the comment period and all extensions of it have expired need not be added to the rulemaking record and need not be considered in decisions concerning the rule. Unless the Notice of Proposed Rulemaking states otherwise, four copies of all comments shall be submitted.

§ 750.5 Subpoenas.

(a) Where necessary, subpoenas requiring the production of documentary material, the attendance of persons at the hearing, or responses to written questions may be issued. Subpoenas may be issued either upon request as provided in paragraph (b) or by EPA on its own motion.

(b) All subpoena requests shall be in writing. Hearing participants may request the issuance of subpoenas as follows:

(1) Subpoenas for the attendance of persons, and for the production of documents or responses to questions at the legislative hearing may be requested at any time up to the deadline for filing main comments.

(2) Subpoenas for production of documents or answers to questions after the legislative hearing may be requested at any time between the beginning of the legislative hearing and the deadline for submitting reply comments.

(c) EPA will rule on all subpoena requests filed under paragraph (b)(1) no later than the beginning of the legislative hearing. Such requests may be granted, denied, or deferred. EPA will rule on all subpoena requests filed under paragraph (b)(2) and all deferred subpoena requests filed under paragraph (b)(1) no lated than the promulgation of the final rule. Such requests shall be either granted or denied.

§ 750.6 Participation in informal hearing.

(a) Each person or organization desiring to participate in the informal hearing required by section 6(c)(2)(C) of TSCA shall file a written request to so participate with the Record and Hearing Clerk which shall be postmarked or received no later than three weeks prior to the scheduled start of such hearing. The request shall include:

(1) A brief statement of the interest of the person or organization in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required: and

(4) If the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. No organization not filing

main comments in the rulemaking will be allowed to participate at the hearing, unless a waiver of this requirement is granted in writing by the Record and Hearing Clerk or the organization is appearing at the request of EPA or under subpoena.

(b) No later than one week prior to the start of the hearing, the Record and Hearing Clerk shall make a hearing schedule publicly available and mail or deliver it to each of the persons who requested to appear at the hearing. This schedule shall be subject to change during the course of the hearing at the discretion of those presiding over it.

(c) Opening statements should be brief, and restricted either to points that could not have been made in main comments, or to emphasizing points which are made in main comments, but which the participant believes can be more forcefully urged in the hearing context.

§ 750.7 Conduct of legislative hearing.

(a) A panel of EPA employees shall preside at each hearing conducted under section 6(c)(2)(C) of TSCA. In appropriate cases other Executive Branch employees may also sit with and assist the panel. The membership of the panel may change as different topics arise during the hearing. In general, the panel membership will consist of agency employees with special responsibility for the final rule or special expertise in the topics under discussion. One member of the panel shall be named to chair the proceedings and shall attend throughout the hearing, unless unavoidably prevented by sickness or similar personal circumstances.

(b) The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination by others will normally not be permitted at this stage. It may be granted in compelling circumstances at the sole discretion of the hearing panel. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions.

(c) Participants in the hearing may submit additional material for the hearing record and shall submit such additional material as the hearing panel may request. All such submissions shall become part of the record of the hearing. A verbatim transcript of the hearing shall be made.

§ 750.8 Cross-examination.

After the close of the legislative hearing conducted under § 750.7, any participant in that hearing may submit a written request for cross-examination. The request shall be received by EPA within one week after a full transcript of the legislative hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are "factual", rather than of an analytical or policy nature, the extent to which they are in "dispute" in the light of the record made thus far, and the extent to which and why they can reasonably be considered "material" to the decision on the final rule; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement by the cross-examination requested can be expected to result in "full and true disclosure" resolving the issue of material fact involved.

(b) Within one week after receipt of all requests for cross-examination under paragraph (a) of this section the hearing panel shall rule on them. The ruling shall be served by the Record and Hearing Clerk on all participants who have requested cross-examination and shall be inserted in the record. Written notice of the ruling shall be given to all persons requesting cross-examination and all persons to be cross-examined. The ruling shall specify:

(1) The issues as to which cross-examination is granted, (2) The persons to be cross-examined on each issue, (3) The persons to be allowed to conduct cross-examination, and (4) Time limits for the examination of each witness by each cross-examiner.

In issuing this ruling, the panel may determine that one or more participants who have requested cross-examination have the same or similar interests and should be required to choose a single representative for purposes of cross-examination. In such a case the order shall simply assign time for cross-examination by that single representative without identifying the representative further. Subpoenas for witnesses may be issued where necessary.

(c) Within one week after the insertion into the record of the ruling under paragraph (b) of this section, the hearing at which the cross-examination will be conducted shall commence. One or more members of the original panel shall preside for the Agency. The panel shall have authority to conduct cross-examination on behalf of any participant, although as a general rule this right will not be exercised. The panel shall also have authority to modify the governing ruling in any respect and to make new rulings on group representation under section 6(c)(3)(C) of TSCA. A verbatim transcript of the hearing shall be made.

(d)(1) No later than the time set for requesting cross-examination, a hearing participant may request that other alternative methods of clarifying the record (such as informal conferences or the submittal of additional information) be used. Such requests may be submitted either in lieu of cross-examination requests, or in conjunction with them.

(2) The panel in passing on a cross-examination request may as a precondition to ruling on its merits require that alternative means of clarifying the record be used whether or not that has been requested under paragraph (d)(1). In such a case the results of the use of such alternative means shall be made available to the person requesting cross-examination for a one-week comment period, and the panel shall make a final ruling on cross-examination within one week thereafter.

(e) Waivers or extensions of any deadline in this section applicable to persons other than EPA may be granted on the record of the hearing by the person chairing it or in writing by the Record and Hearing Clerk.

§ 750.9 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, the Agency shall issue a final rule. Final versions of the statements required by paragraph (b) of § 750.2 shall be published in the FEDERAL REGISTER together with the final rule. The Agency shall also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a FEDERAL REGISTER document, and

(2) The effective date of the rule.

APPENDIX A

To assist in reading the regulations set forth above, this Appendix sets forth the principal stages through which rules promulgated under sectioin 6 of TSCA will pass.

The second column gives the relationship that one date bears to another whenever that relationship is specified in the regulations, and cites the governing provision. The third column contains estimates of the time that a typical rulemaking is likely to require to reach and complete each stage of these proceedings. In drawing up this third column, we have assumed that 60 days will be allowed for the submission of main comments; that the legislative phase of the informal hearing will take two weeks, and that cross-examination will take four days. Since these are only estimates, in any given rulemaking shorter or longer times may actually be required for each of these stages.

Stage	Timing in relation to other stages	Estimated total time elapsed (days)
Proposed regulation..	Sec. 750.2.	
Requests to participate in informal hearing due.	3 weeks prior to beginning of hearing (sec. 750.5(a)).	53
Main comments due..	2 weeks prior to beginning of hearing (sec. 750.2(c)(3)).	60
Begin informal hearing.		74
End legislative hearing.		88
Requests for cross-examination due.	1 week after end of legislative hearing (sec. 750.8(a)).	95
Ruling on cross-examination requests.	1 week after requests are due (sec. 750.8(b)).	102
Cross-examination begins.	1 week after ruling on cross-examination requests (sec. 750.8(c)).	109
Cross-examination ends; informal hearing ends.		113
Reply comments due.	2 weeks after end of informal hearing (sec. 750.4(b)).	127

[FR Doc.77-34536 Filed 12-1-77;8:45 am]

[1505–01]

Title 45—Public Welfare

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR EDUCATIONAL AND PUBLIC HEALTH PURPOSES

Conveyance of Former Federal Real Estate for Public Health, or Educational Purposes

Correction

In FR Doc. 77-33574, appearing at page 59842 in the issue for Tuesday, November 22, 1977:

1. On page 59844, first column, the line above paragraph (d), the cite "§ 12.0" should read "§ 12.9".

2. On page 59845, second column, fourth line of paragraph (d) of § 12.9, "(e)" should read "(c)".

[4110–12]

CHAPTER II—SOCIAL AND REHABILITATION SERVICE, (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

Provisions Regarding Child Day Care Services; Group Eligibility; and Certain Other Requirements

AGENCY: Administration for Public Services (APS), Office of Human Development Services (OHDS), Department of Health, Education, and Welfare.

ACTION: Amendment to regulations.

SUMMARY: This rule amends sections of Part 228 which implement Pub. L. 94–401, the 1976 Amendments to Title XX of the Social Security Act. The rule was published first as interim rules on December 21, 1976, and then incorporated into final Title XX regulations on January 31, 1977. The purpose of the regulations is to clarify certain policies, increase State options in the provision of services, extend time periods for States to claim reimbursement for certain services, and correct errors. These regulations provide a basis upon which the States can operate their social services programs. This action also revises the effective date of the title XX regulations (45 CFR Part 228). The new effective date will reduce publication and administrative costs and aid public understanding of changes in the State's social services program by avoiding unnecessary amendments.

EFFECTIVE DATE: The several sections of the regulations which implement Pub. L. 94–401 are effective October 1, 1975 except as follows:

Additional allotments to States (§ 228.52(c)) are available from July 1, 1976 through September 30, 1977;

State grants to child day care providers to employe welfare recipients (Subpart J) may be made on or after September 7, 1976 for use through September 30, 1977; and

The option to waive Federal staffing standards in out-of-home facilities serving few title XX children (§ 228.42(c)(2)) is effective no earlier than September 7, 1976 and expires September 30, 1977.

Title XX regulations are effective at the beginning of the State's next program year following the January 31, 1977 publication date or earlier at State option with the following exceptions:

Section 228.70(d), regarding contracts with individual providers, is made retroactive to October 1, 1975 at State option; and

The several sections of Part 228 which implement Pub. L. 94–401 are effective as outlined above and further listed in the effective date statement.

FOR FURTHER INFORMATION CONTACT:

Mrs. Johnnie U. Brooks, Office of Policy Development, Interpretation, and Coordination, Administration for Public Services, 202–245–9415.

SUPPLEMENTARY INFORMATION: Notice of interim final rule making to implement Pub. L. 94–401, the 1976 amendments to title XX of the Social Security Act, was published in the FEDERAL REGISTER (41 FR 55668) on December 21, 1976. These amendments provided (1) additional allotments to the States for the provision of child day care services and for grants to promote the employment of welfare recipients in the provision of child day care services; (2) for waiver of Federal child day care staffing standards under certain conditions; (3) for group determination of eligibility for services; (4) for family planning as a universal service; and (5) for certain program changes with respect to comprehensive services to drug and alcohol abusers. The amended final regulations which follow are issued after analysis of the comments received during the 45-day comment period and after reconsideration of the issues and policies proposed in the interim final regulations.

Twenty-five responses were received containing 94 detailed and comprehensive comments. Respondents included seven State title XX agencies; one local title XX agency; four national organizations; one Senator, three Congressmen, three local organizations; one Indian Tribal Council; one State university; one State Office of Aging; one territorial Government; and the Advisory Council on Intergovernmental Relations.

The following is a summary, by subpart, of the comments received, the Department's response, and the changes made in the regulations. A few technical, editorial, and coding changes have also been made.

The coding of the interim final regulations issued on December 21, 1976 was based on the title XX regulations then in effect, i.e., the final regulations published June 27, 1975. When subsequent final title XX regulations (45 CFR Part 228) were published January 31, 1977, they incorporated the interim final regulations of December 21, 1976, with necessary coding changes. The following summary uses the January 31, 1977, coding.

SUMMARY

PREAMBLE TO THE DECEMBER 21, 1976 REGULATIONS

The preamble to the interim final regulations contained two incorrect dates with respect to temporary and permanent changes under Pub. L. 94–401. First, the confidentiality provisions of Section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 are a permanent feature of federally funded services for alcoholics and drug abusers. This provision does not expire September 30, 1977 as indicated in the preamble. (See § 228.48.) Second, the provision which allows States to waive Federal staffing standards in facilities serving few title XX children (§ 228.42(c)(2)(i)) expires September 30, 1977 and is not a permanent change as indicated in the preamble. For clarification, these time periods have also been incorporated into the regulation.

SUBPART C—COMPREHENSIVE ANNUAL SERVICE PROGRAM PLAN

Comment. A recommendation was made that the section entitled "Organizational Structure" (§ 228.30) contain the requirement that the State identify the point within its organizational structure for placing responsibility for granting waivers of Federal staffing standards.

Response. We accept the recommendation and have transferred the pertinent language from § 228.26(i) to § 228.30.

Comment. One respondent believed that clarifying language was needed in § 228.36, "Amendments to the final services plan," to make explicit that no disallowance of FFP would be made if services were provided on the basis of group eligibility from October 1, 1975.

Response. The Department believes that § 228.36(d) clearly delineates what a State must do to amend its final services plan and obtain reimbursement for services provided on the basis of group eligibility back to October 1, 1975. If these requirements for amending the services plan are met, no disallowance of expenditures for services provided on the basis of group eligibility would be made on this basis alone.

SUBPART D—LIMITATIONS: SERVICES

Comment. The law states that one condition which must be met before a State can grant a waiver of Federal staffing standards in day care centers and group day care homes is that they serve "few" title XX children. Current regulations define "few" title XX children as 20 percent of the total number of children served in a group day care home and 20 percent or 5, whichever is less, in a day care center.

Upon review of the pertinent language of the law, we have determined that it is

possible to interpret the langauge less restrictively. That is to say, under current regulations, only a day care center serving 5 or less title XX children could be considered for a waiver. This, in effect, prevents States from utilizing the 20 percent figure in those day care centers serving a total of 25 or more children ($25 \times 20\% = 5$).

Response. Since we believe that the law itself is not that restrictive, and since we wish to maximize State flexibility in this area, we have modified § 228.42(c)(2)(ii) to define "few" title XX children in a day care center as either 5 title XX children or not more than 20 percent of the total number of children served at any given time in the center.

Comment. Several respondents urged that the Department use the legislative history of H.R. 9803 (vetoed by the President, April 6, 1976, but identical to Pub. L. 94-401 in this particular respect) as a guide for specifying in the regulations the criteria that States must use in determining that it is not feasible to require compliance with Federal staffing standards in day care centers or group day care homes.

Response. We accept this recommendation. To quote from Representative Corman's discussion in the Congressional Record (Page H 2245, March 23, 1976):

> "If there is no day care center that meets the requirements within reasonable travel time, we would not want to force a welfare recipient, for example, that had a job to leave that job because of the day care problem. In most jurisdictions, in these days of work schedules and because of the age of the children involved, we would not want to force a working parent with a child in such day care to have to spend more than an hour taking or bringing a child to a center * * * But the matter of what is "infeasible" does not relate to cost considerations. If a given center operates at higher costs—and testimony I heard March 8 said it cost only a little more than a dollar a week to meet the requirements before we watered them down—that does not constitute an "infeasible" situation.

Therefore, § 228.42(c)(ii) is revised to specify that the criteria on which to base a "feasibility" decision shall be based only on factors pertaining to the geographic location of the facility or to its accessibility to the recipient of services. The criteria shall not be based on cost factors.

Comments. Several State title XX agencies pointed out that, as written, § 228.42(d) prevented States from counting (to determine adult to child ratios) the number of children of the family day care home operator over age 6, if it wished to do so. This meant, in effect, that States could not choose to implement higher standards (i.e., lower adult to child ratios) for better services to children.

Response. This recommendation is accepted, based on a broader interpretation of the law. It is in keeping with the intent of the law regarding day care services, namely, to protect children and to stimulate the provision of the best possible day care services. Therefore, § 228.42(d) is revised to show that States continue to be required to count the children of the family day care home operator under age 6 and may, at their option, count the children of the operator over age 6.

Comment. Section 228.42(c)(1) allows FFP under certain conditions for day care centers and group day care homes which do not meet Federal staffing standards if State staffing standards in effect September 15, 1975, are met. Several State title XX agencies asked if State standards which are equal to or higher than the Federal standards may be waived.

Response. The answer is no. There is no authority under law to waive the standards a State had in effect on September 15, 1975.

Comment. Some respondents confused the terms "staffing standards" and "staffing ratios." For example, they interpreted § 228.42(c)(1)(ii) and (iii) to say that a State could not get FFP for day care centers which had lower staffing ratios than those in effect on September 15, 1975.

Response. To clarify, when we say a day care center has a 1 to 4 staffing ratio, we mean that it has a ratio of one adult to four children. This is a relatively low staffing ratio but a high staffing standard. Therefore, with respect to § 228.42(c), FFP is available for day care services which have staffing standards as high or higher than those in effect on September 15, 1975. Such high staffing standards could include low staff to child ratios.

Section 228.39 was inadvertently omitted in the publication of the title XX final regulations on January 31, 1977, and has been added.

SUBPART E—LIMITATIONS: FINANCIAL

Comment. Several respondents found the final sentence in § 228.51(c) regarding the purpose of the additional funds under Pub. L. 94-401 misleading and limiting.

Response. We agree and have deleted the sentence.

Comment. A range of respondents (State title XX agencies, national and local organizations) asked for clarification regarding the use of additional funds under Pub. L. 94-401 for day care equipment and supplies, pre-employment medical examinations, renovations and minor construction to help day care facilities meet standards, etc.

Response. These questions are not appropriately addressed in a regulation. The Department has issued a technical assistance memorandum (No. AT-77-47, May 2, 1977) to answer these questions. Interested persons may obtain a copy by contacting the State title XX agency.

Comment. Several respondents recommended changes in § 228.56(b) (1) and (2), so that costs of services provided on the basis of group eligibility (now apportioned to the 50 percent rule by accepted statistical sampling procedures) be apportioned on the same basis as costs of services provided without regard to income (e.g., any appropriate method, including sampling or allocation of costs).

Response. The Department based this requirement on Section 2004(a)(4)(E) of the law as amended by Pub. L. 94-401, which states:

> In any case in which services are provided to individuals to whom the provisions of paragraph (14) (group eligibility) are applied, the proportion of the expenditures for such services which are attributable to individuals described in the preceding sentence may be determined on the basis of generally accepted statistical sampling procedures.

The Department believes more experience with provision of services on the basis of group eligibility is necessary before reconsidering additional methods of cost apportionment.

Comment. One organization representing provider agencies objected to the requirement that each provider of services must meet the 50 percent rule with respect to persons served under a purchase of services contract with the State title XX agency.

Response. This is not a Federal requirement. The regulation (§ 228.56) requires only that the 50 percent rule be computed against the State's total title XX social services program. It does not require testing in individual service facilities.

SUBPART F—LIMITATIONS INDIVIDUALS SERVED, ELIGIBILITY AND FEES

Comment. A State title XX agency recommended that an additional phrase be added in § 228.61(a)(3)(i) for the purpose of clarification.

Response. The recommendation is accepted and the language change incorporated.

Comment. Nine of the 25 commentators responded to the invitation to react to the definition of "substantially all" in § 228.61(a)(3)(iii). (The law requires that substantially all members of the group receiving a service on the basis of group eligibility be members of families whose gross monthly income is no more than 90 percent of the State's median income, adjusted for family size.)

Two State title XX agencies and one local title XX agency agreed that 75 percent constituted a reasonable definition of this term. Four respondents urged a less restrictive percentage definition. They suggested figures of 60 percent, 65 percent, 66⅔ percent, or 75 percent as a "recommended" percentage. Two respondents urged no percentage requirement (e.g., "let each State determine this by applying reasonable judgment in all good faith on a case-by-case basis"). The latter recommendation is in line with Senate discussion (Congressional Record, pages S 14463 and S 14468, August 24, 1976) while House discussion mentioned "approximately 80 percent" as a definition. (See Congressional Record, page H 7143 as corrected, July 1, 1976.)

Response. The Department has studied the comments, consulted fur-

ther with a range of interested parties, and thoroughly reconsidered this issue. We have decided to make no change at this time. We believe the recommendation for a no percentage definition of "substantially all," although less restrictive, is administratively infeasible and does not carry out the Departmental responsibilyt to administer the program with minimum ambiguity. Past experience has shown the difficulties that can arise when States do not have clear guidelines within which to operate their programs. Percentages of 60 and 66⅔ were weighed against the 80-percent figure. In sum, the admittedly somewhat arbitrary figure of 75 percent represents a reasonable compromise from among this range of percentage requirements. For further discussion of the basis of the Department's position, see the preamble to the interim final regulations, published December 31, 1976.

Comment. A State title XX agency asked for clarification of the seeming inconsistency between two regulation citations. Section 228.60(f)(2)(iv)(B) uses the phrase "* * * that substantially all of the individuals who would apply * * *" with respect to group eligibility. Section 228.61(a)(3) uses the phrase also with respect to group eligibility "* * * that substantially all members of the group who receive the particular service * * * *"

Response. These two phrases, although similar and seemingly inconsistent, have a specific meaning within their respective sub-sections.

Section 228.60(f) details the requirements regarding a request for services, i.e., conditions under which a request for services must be documented, the nature of the request, and any exceptions to a written or documented request. Specifically, Section 228.60(f)(2)(iv)(B) states that for certain services provided on the basis of group eligibility, persons receiving those services do not need to make a written request or provide information for a documented request. In this context, the phrase "individuals who would apply" (e.g., to senior service centers, to migrant day care centers, etc.) means that by their presence at the service site, such individuals are deemed to be requesting (applying for) the service.

In contrast, the purpose of § 228.61 is to spell out the requirements for the determination and redetermination of eligibility. Section 228.61(a)(3) uses the language of the law (i.e., that "substantially all members of the group who receive the particular service * * *") in defining the basis for a State's decision on the use of the group eligibility determination method.

Comment. A State title XX agency asked for clarification of the terms "geographic area" and "characteristics of the community" as used in § 228.61(a)(3)(i)(A) and (B). The respondent wondered if "geographic area" couldn't be subsumed under "characteristics of the community."

Response. Exactly the opposite is true. The term "geographic area" means the geographic area(s) the State has defined and described in the service plan for the purpose of administering its service program. The term "characteristics of the community" may mean any subpart of that geographic area. For example, with respect to services being provided on the basis of group eligibility, a State may offer a service on a group eligibility basis to all persons throughout one geographic area. As another alternate, the State may define as a "community" a sub-division within the geographic area (such as a county, a town, or a housing project) as a location in which it will offer a service on a group eligibility basis.

Comment. Regarding § 228.61(c)(2)(i) and (ii), one state title XX agency and a local advocacy organization recommended annual redetermination for all persons receiving services on the basis of group eligibility. One commentor did not see a significant difference between those "conditions and characteristics apt to change" (for which redetermination is required every 6 months) and those "conditions and characteristics not apt to change substantially" (for which annual redetermination is required).

Response. The Department recognizes the need to reduce State administrative actions and costs and has tried to accept as many such recommendations as possible. On the other hand, we are also cognizant of the legislative mandate that FFP is available only for services provided to eligible categories of persons as described in the State's services plan. In this context, we believe a definite distinction can be made between "conditions and characteristics apt to change" and "conditions and characteristics not apt to change substantially." We recognize, however, that the distinctions between these conditions cannot be drawn exactly and clearly in all cases. For some persons, a condition apt to change (e.g., income level, residence) may be a condition not apt to change for another person in different circumstances. Therefore, this recommendation is not accepted at this time.

Comment. Respondents pointed out that in § 228.61(c)(2)(iii), the requirement that the service be discontinued at the end of the month (in the case of an individual found ineligible for a service provided on the basis of group eligibility) does not allow, in certain instances, for services to continue during the 10-day notification period required under the Fair Hearing regulations.

Response. The Department accepts the suggestion and the regulation is revised to allow services to continue through the period of time required for continuation of services under § 205.10, Fair Hearings.

Section 228.61(b)(2) pertaining to individual determination of eligibility has also been revised to incorporate the identical change.

Comment. Several respondents, including State title XX agencies and local advocacy organizations, recommended that the time period for validation of the "substantially all" basis for establishing group eligibility in § 228.61(d)(2) be extended. Recommendations included extending the time period from 3 months to 6 months for States claiming back to October 1, 1975 and 12 months for all States. The recommendations were based on the fact that FFP for services provided on the basis of group eligibility has been somewhat confused since the inception of title XX.

Response. We accept the recommendation for a 6-month validation period (e.g., an additional 3 months) for States wishing to prepare claims for reimbursement back to October 1, 1975. The purpose of the change is the Department's wish to allow States to take full advantage of the opportunity to prepare claims for reimbursement back to October 1, 1975 as provided by law. However, the Department can find no justification for delaying for 12 months an initial validation check on services provided on the basis of group eligibility.

Comment. Two State title XX agency respondents suggested lengthening the 75-day period for discontinuance of services provided on the basis of group eligibility (required when a finding is made that less than 75 percent of the persons receiving the service meet the specified income standard), as specified in § 228.61(d)(6)(i). They recommended 120 days as more realistic. They claimed the 75-day period does not allow time to amend the State services plan, to provide a Notice of Fair Hearings to all persons concerned, and to determine persons eligible on an individual basis, when possible.

Response. The Department has reconsidered this matter and does not accept the recommendation. Section 228.61(d)(6)(i) allows a State to claim FFP for services for persons found "ineligible" not just for 75 days but until the end of the month in which the 75th day occurs. This could extend the time period to more than 100 days. The Department cannot justify a longer period to fund known "ineligibles" in view of its responsibility to assure that public funds under this program are spent in accordance with the law.

Comment. Regarding § 228.61(d)(6)(i), one State title XX agency recommended that no FFP be available for services provided on a group eligibility basis once a finding is made that less than 75 percent of the persons receiving the service meet the specified income standard.

Response. The Department believes this recommendation to be both fiscally and operationally restrictive and it is not accepted. The purpose of this section regarding group eligibility is to increase the State's capability to continue services while modifying their program or otherwise assisting individuals to meet eligibility requirements on an individual basis. Further, the purpose of the option regarding group eligibility is to encourage provision of services to recipients needing such services.

Comment. Regarding § 228.61(d)(6) (requiring State action when it finds that less than 75 percent of the persons receiving a service on the basis of group eligibility do not meet the specified income standard), a State title XX agency suggested that States should not be required to amend its services plan if the service had been available on both an individual and a group eligibility basis.

Response. This recommendation is not accepted on the basis that under title XX FFP is available only when the State services plan specifies the categories of individuals to whom the services will be available. Several sections in Subpart C and Subpart F clarify this requirement. (See §§ 228.24, 228.36, 228.60, and 228.61.)

To meet this requirement, a State services plan must show the categories of persons eligible to receive the service and any changes made in these categories. Although it can be argued that eligibility determination on a group basis is merely a method for the determination of eligibility and not a "category," the Department believes otherwise. For the provision of services on the basis of group eligibility, a State must, initially, define the group to be served, e.g., a category of persons who comprise that group. The group may have general or specific characteristics. They may be persons over 60 years of age, migrants, residents of a specific community, or, the example used in § 228.60(e)(2), teenage parents maintaining their home in public housing. Pub. L. 94–401 states the basis upon which a State can make the decision:

> If, because of the geographic area in which any particular service is provided to him, the characteristics of the community to which it is provided, the nature of the service, the conditions (other than income) of eligibility to receive it, or other factors surrounding its provision * * *

The purpose of the requirement that the services plan must include information regarding categories of persons eligible to receive the services lies in the purpose of the public information and participation process. Lack of information concerning services or conditions of eligibility deprives individuals (and organizations) of the opportunity to learn about and to avail themselves of services. Lack of such information also deprives persons of the opportunity to comment on changes made which affect their receipt of or eligibility for services.

SUBPART J—GRANTS TO CHILD DAY CARE PROVIDERS TO EMPLOY WELFARE RECIPIENTS

Comment. A national organization suggested that language from the current Comprehensive Employment and Training Act (CETA) regulations be included in § 228.100(b)(3) to clarify the word "displaced" in the requirement that an eligible welfare recipient has not displaced any other individual from employment by a qualified provider of day care services.

Response. The recommendation is accepted. For the purpose of clarification, the CETA language has been adapted to the purpose of this program and the regulation is revised accordingly.

Comment. Four respondents, including three State title XX agencies and a Congressman, urged that this subpart include criteria and definitions regarding the employment of low income persons in addition to the criteria and definitions pertaining to the employment of welfare recipients already contained in the regulations. These States reported few AFDC recipients and many low income persons appropriate for such employment.

Response. Although section 3(b) of Pub. L. 94–401 requires Federal funds "to be employed in such a way as to increase the employment of welfare recipients and other low income persons in jobs related to the provision of child day care services," the operative language of Pub. L. 94–401 relating to which employment expenses are subject to Federal financial participation does not appear in section 3(b) but rather in section 3(c)(1) and there provides that such participation is only available for costs relating to the employment of "welfare recipients." Accordingly, it is the Department's view that the reference in section 3(b) to "other low income persons" does not authorize the use of Federal funds for paying for the costs of employing such persons. That reference can presumably mean no more than that Federal funds are to be used to increase the employment of low income individuals by providing Federal funds to increase the employment of welfare recipients (who become low income individuals as a result of their employment).

Comment. A State title XX agency asked if the $4,000 and $5,000 grant to providers of day care services for the employment of the welfare recipient covered both salary and fringe benefits.

Response. The terms "salaries" in § 228.101 includes salary costs, i.e., fringe benefits such as FICA, unemployment compensation, and workmen's compensation, etc. However, the total salary for the employed welfare recipient is not limited to the amount of the grant. There is nothing to preclude the addition of other funds to these grants to meet the minimum wage or to pay a salary to the welfare recipient equal to the going rate in the community.

EFFECTIVE DATE STATEMENT—TITLE XX

Following publication of the final title XX regulations on January 31, 1977 (45 CFR Part 228), it came to our attention that a change was needed in the effective date statement concerning changes in the title XX regulations.

As stated in the regulations published January 31, 1977, the regulations became final 90 days after publication or earlier at State option. The two exceptions were § 228.70(d) and the several sections of Part 228 issued to implement Pub. L. 94–401.

The problem which became apparent was that the 90-day implementation date fell on May 1, 1977, and would have had the effect of requiring States to publish amendments to their current services plans by April 1 to meet the May 1 deadline. At the same time, many States were also planning to publish their proposed services plan for the coming program year by April 1. In addition, many of the new requirements in the title XX final regulations pertained to the inclusion of new data in the services plan, e.g., the operational definition of Family; the State's Federal allotment; a summary of public comments; a detailed description of the medical and remedial care the State is providing under § 228.40, and so forth.

In view of these factors (e.g., dates and timing of publication requirements and appropriate inclusion of many of the requirements in the State's proposed services plan), the effective date of the title XX regulations has been change to read: "These regulations shall be effective at the beginning of the State's next program year following the January 31, 1977 publication date, or earlier at State option * * *." The two exceptions (§ 228.70(d) and sections of Part 228 implementing Pub. L. 94–401) are unchanged. The purpose of this change is to reduce publication and administrative costs and aid public understanding of the changes made in the State's social services plan by avoiding unnecessary amendments.

EFFECTIVE DATE STATEMENT—PUB. L. 94–401

Questions have been raised regarding the use of the phrase "at State option" in two sentences in the effective date statement with respect to these sections of the regulations implementing Pub. L. 94–401. We have deleted these phrases and substituted new language in one instance.

To clarify, Pub. L. 94–401 contains multiple and complex provisions regarding requirements and options. For example, it gives States options with respect to certain services, e.g., provision of services on the basis of group eligibility, provision of family planning as a universal service, certain program changes with respect to services for alcohol and drug abusers, etc. The law also gives States the option to claim reimbursement for certain services back to October 1, 1975. Therefore, if a State chooses to implement any of the options available under Pub. L. 94–401, the regulations pertinent to that option are binding.

However, there are provisions that are binding even though a State does not choose to implement the additional options available under Pub. L. 94–401. For example, if a State provides services to drug and alcohol abusers, the law and implementing regulations at 42 CFR Part 2 require that the confidentiality of patient records be protected effective back to the beginning of the individual record if services did not end before March 21, 1972 in the case of drug abuse, or before May 14, 1974 in the case of alcohol abuse. (See § 228.48.) This re-

quirement is binding whether or not the State chooses to take advantage of the other options under Pub. L. 94-401 regarding services to alcoholics and drug abusers, e.g., the provisions in §§ 228.40, 228.41, and 228.44.

45 CFR Part 228 is revised as follows:

1. The Table of Contents for Subpart E is revised as set forth below:

* * * * *

Subpart E—Limitations: Financial

Sec.
228.50 Services and individuals covered in the services plan.
228.51 Matching rates.
228.52 Allotments to States.
228.53 Public sources of State's share.
228.54 Private sources of State's share.
228.55 [Reserved]
228.56 Fifty Percent Rule.

* * * * *

2. Section 228.20 is amended to correct the citation reference in paragraph (a) as follows:

§ 228.20 Conditions for FFP.

(a) The State's final services plan shall meet all requirements of this Subpart and of § 228.50; if it does not (except for family planning services provided pursuant to § 228.26(h)), there will be no FFP in expenditures for services under the services plan.

* * * * *

3. Section 228.26(a) is amended by adding two commas and revising and transferring the contents of paragraph (i) to § 228.30(c).

§ 228.26 Services.

The services plan shall: (a) Describe each discrete service, including the service(s) which is (are) available to individuals on the basis of group determination of eligibility, in as much detail as necessary to enable a reasonably prudent person to understand what is included in the service. For purposes of this paragraph, services such as "child welfare services", "services to alcoholics", or "protective services" are not discrete services but rather clusters of services, each of which shall be separately described. If medical or remedial care or room or board as described in §§ 228.40 and 228.41 are part of a service, the plan shall so specify in describing that service.

* * * * *

4. Section 228.30 is revised to recodify existing material and to incorporate the revised § 228.26(i) as § 228.30(c).

§ 228.30 Organizational structure.

The services plan shall:

(a) Describe the organizational structure of the State agency through which the program will be administered, including where individuals may apply for services and have their eligibility determined;

(b) Provide a brief description of the State's use of volunteers and volunteer activities or an estimated number of volunteers; and

(c) Identify the point in its organizational structure of the level of staff where it has placed authority:

(1) To make the decision for the State that it is not feasible to furnish child day care in a day care center or group day care home which complies with Federal staffing standards; and

(2) To furnish child day care by granting a waiver of otherwise applicable Federal staffing standards in a day care center or group day care home which serves few title XX funded children (see § 228.42(c)(2)) and meets applicable State staffing standards.

5. Subpart D is amended to reinstate § 228.39 which was inadvertently omitted from the regulations on January 31, 1977 (42 FR 5842).

Subpart D—Limitations: Services

§ 228.39 General.

FFP is available for services provided to eligible individuals pursuant to the State's services plan only if the requirements set forth in the sections of this subpart are met.

6. Section 228.42 is revised by amending paragraphs (c)(2)(i), (c)(2)(ii), and (d) as follows:

§ 228.42 Child care standards.

* * * * *

(c) Notwithstanding the Federal staffing requirements for out-of-home child day care services set forth in paragraph (a)(2)(ii)(B) of this section:

(1) FFP is available between October 1, 1975 and October 1, 1977 for title XX child day care services so long as day care centers and group day care homes providing day care services to children 6 weeks of age to 6 years of age apply staffing standards which:

(i) Are the State staffing standards which are in effect at the time the child day care services are provided;

(ii) Are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975; and

(iii) Are no lower, in the case of a particular day care center or group day care home, than the corresponding standards actually being met in such center or home on September 15, 1975.

(2)(i) For the period September 7, 1976 through September 30, 1977, when States find that it is not feasible to furnish day care (partly or totally funded under title XX) for children of any age in a day care center or group day care home that complies with Federal staffing standards, they may furnish day care services in a center or group day care home which does not meet such Federal standards if the following two requirements are met:

(A) The day care center or group day care home complies with applicable State staffing standards; and

(B) The day care center or group day care home serves few title XX children. (For a group day care home, few title XX children means not more than 20 percent of the total number of children served at any given time in that group day care home. For a day care center, few title XX children means either five children or not more than 20 percent of the total number of children served at any given time in the center.)

(ii) States shall establish criteria against which to assess the non-feasibility of their use of a day care center or group day care home which complies with Federal staffing standards. The criteria shall be based on the geographic location of the facility or its accessibility to the recipient of day care services. The criteria shall not be based on cost factors. States shall maintain a record of the waiver for each facility in terms of these criteria.

(d) Between October 1, 1975 and October 1, 1977, in applying Federal staffing standards, States shall be required to count only the children of the operator of a family day care home under 5 years of age.

7. Section 228.51 is revised to delete the final sentence in paragraph (c) to read as follows:

§ 228.51 Matching rates.

* * * * *

(c) *One hundred percent FFP.* Notwithstanding praagraph (a) of this section, FFP is available at the 100 percent rate up to the State's share of the additional allotments described in § 228.52(c)(3).

* * * * *

8. Section 228.61 is revised by amending paragraphs (a)(2)(iii), (a)(3)(i), (b)(2), (c)(2)(iii), and (d)(2) as follows:

§ 228.61 Determination and redetermination of eligibility.

(a) *Methods of determining (or redetermining) eligibility.* (1) Standards and methods for determination of eligibility will be consistent with the objectives of the program, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(2) States may establish any method or methods, including a declaration method, for determining individual eligibility in accordance with §§ 228.60 and 228.66.

(i) A determination of individual eligibility means a decision, reflected in the State's records, based on a dated and signed application and sufficient information which would lead a reasonable person to conclude that the criteria set forth in § 228.60 have been met and the individual is eligible to receive services on the basis of income or income maintenance status.

(A) *Documentation method* means that the State has sought and obtained verification regarding the source and amount of the gross family monthly in-

come of the individual applying, or has verified his income maintenance status.

(B) *Declaration method* means acceptance of an individual's statements regarding the source and amount of his family's gross monthly income, and the income maintenance status (as described in § 228.60(b)(1)) of any member of the family.

(ii) (For group determination of eligibility, see subparagraph (3) of this paragraph and § 228.60(f)(2)(iv).)

(3) (i) States may determine eligibility on a group basis if, upon consideration of one or more of the following factors, with respect to a particular service to be provided on a group eligibility basis, they can reasonably conclude without individual determination that substantially all members of the group who receive the particular service are members of families with monthly gross incomes of not more than 90 percent of the State's median income, adjusted for family size:

(A) The geographic area in which a particular service is provided;

(B) The characteristics of the community in which the service is provided;

(C) The nature of the service provided;

(D) The conditions, other than income, of eligibility to receive the service; or

(E) Other factors surrounding provision of the service.

(ii) "Substantially all" means that no less than 75 percent of the persons provided a service on the basis of group eligibility determination shall be members of families whose gross monthly incomes are no more than 90 percent of the State's median income, adjusted for family size.

* * * * *

(b) *Conditions for FFP.* (1) Regardless of the method chosen for determination or redetermination of eligibility:

(i) FFP is available in the cost of services provided prior to the actual date of an initial determination of eligibility only if such determination is made within 30 days of the date of application and the individual is properly determined to have been eligible when the services were initiated.

(ii) When a recipient of services was improperly determined to be eligible, FFP is not available in the cost of services provided during the period of improperly determined eligibility.

(2) When an individual properly determined to be eligible on the basis of information available to the agency at the time of determination of eligibility is subsequently found ineligible, FFP is available until the end of the month in which he is determined ineligible or through the period of time services are required to be provided under § 205.10 of this chapter regarding fair hearings. A proper determination of eligibility is a determination which is based on a correct assessment on the information available to the agency at the time of such determination, provided that all information necessary to make a determination is available; a proper redetermination is one which meets those criteria and, in addition, is made within the time limits established by paragraph (c) of this section.

(c) *When redetermination shall be made.* (1) Redetermination of eligibility shall be made for persons whose eligibility is determined on an individual basis:

(i) When required on the basis of information the agency has obtained about anticipated changes in the individual's situation;

(ii) Promptly, not to exceed 30 days, after information is obtained about changes which have occurred in the individual's circumstances that may make him ineligible; and

(iii) Periodically, but not less frequently than every 6 months except that for individuals whose family gross monthly income at the time of determination is derived exclusively from pensions, or social security benefits, or SSI, or a combination thereof, redetermination may be made at 12-month intervals.

(2) If the State has established specific conditions or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility (and, in accordance with § 228.60(g)(2)(iv)(A), has elicited information at intake that individuals applying for the service meet the conditions or have the characteristics for membership in the group), it shall, unless the characteristic is irreversible (such as being above a certain age), redetermine the eligibility of these individuals as follows:

(i) When the conditions or characteristics established by the State are apt to change in regard to an individual (such as place of residence, marital status, children living in the home), the State shall ascertain not less frequently than every 6 months whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group; or

(ii) When the conditions or characteristics established by the State are not apt to change substantially in regard to an individual (such as a physical disability), the State shall ascertain not less frequently than once a year whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group.

(iii) When an individual no longer meets the conditions or has the characteristics required for group membership, the State shall discontinue providing the service to the individual on the basis of group eligibility determination by the end of the month in which such a finding is made or at the end of the period of time services are required to be provided to the individual under § 205.10 of this chapter regarding fair hearings.

(d) *Validation of "substantially all" basis for establishing a group.* (1) Each group of persons receiving a service on the basis of group determination of eligibility shall be subject to a validation check of whether at least 75 percent of those receiving the service are members of families with gross monthly incomes of no more than 90 percent of the State's median income, adjusted for family size.

(2) States shall conduct their initial validation check not later than 6 months after they have started providing a service to individuals on the basis of group eligibility. (If a State claims expenditures for services on a group determination of eligibility basis retroactively, as permitted to October 1, 1975, the validation shall be made by no later than June 30, 1977.

9. Section 228.100(b)(3) is amended as follows:

Subpart J—Grants to Child Day Care Providers to Employ Welfare Recipients

§ 228.100 Definitions.

For purposes of this Subpart:

(a) A "qualified" child day care provider is one in whose facility at least 20 percent of the total number of children regularly served are partly or totally funded under title XX.

(b) An "eligible" welfare recipient is, as defined in section 50B(g) of the Internal Revenue Code of 1954, one who meets all the following requirements:

(1) Has been certified by the State or local welfare department as being eligible for financial assistance for aid to families with dependent children (AFDC) and as having continuously received AFDC during the 90-day period which immediately precedes the date on which the employee is hired;

(2) Has been a full-time employee of the provider for a period in excess of 30 consecutive days;

(3) Has not displaced any other individual from employment by the provider; (A "qualified" child day care provider may not terminate, lay-off, or reduce the working hours of an employee for the purpose of hiring an "eligible" welfare recipient with funds available under Pub. L. 94-401. Nor may an eligible welfare recipient be hired when another person is on lay-off from the same or any substantially equivalent job.); and

(4) Is not a migrant worker. (The Internal Revenue Code of 1954 defines a migrant worker as one who is employed in a job for which the customary period of employment by one employer is less than 30 days if the nature of the job requires the worker to travel from place to place over a short period of time.)

10. The effective date statement is revised as follows:

Effective date: These regulations shall be effective at the beginning of the State's next program year following the January 31, 1977 publication date, or earlier at State option with the following exceptions: (1) Section 228.70(d) is made retroactive to October 1, 1975, at State option; (2) Sections of Part 228 (as listed below), that were issued as interim final regulations implementing Pub. L. 94-401 (1976 Amendments to Title XX of the Social Security Act) published in the FEDERAL REGISTER (41 FR

55668) on December 21, 1976, are effective October 1, 1975, with the following exceptions: Additional allotments to States (§ 228.52) are available from July 1, 1976 through September 30, 1977; State grants to child day care providers (Subpart J) may be made on or after September 7, 1976 for use through September 30, 1977; and the option to waive Federal staffing standards in out-of-home facilities with few title XX children (§ 228.42(c)(2)) is effective no earlier than September 7, 1976 and ends September 30, 1977.

The following is a list of sections which contain requirements related to State implementation of Pub. L. 94-401:

SUBPART C

§ 228.24(e) and (f)
§ 228.26(a)
§ 228.29(d)
§ 228.36(d)

SUBPART D

§ 228.40(c) (1) and (2)
§ 228.41(e) (1) and (2)
§ 228.42(c) (1) and (d)
§ 228.44(e) (1) and (2)
§ 228.48

SUBPART E

§ 228.51(c)
§ 228.56(b)

SUBPART F

§ 228.60(b)(3)
§ 228.60(f)(2)(ii)
§ 228.60(f)(1)(iii)
§ 228.60(f)(2)(iv) (A) and (B)
§ 228.61(a)(3)
§ 228.61(c)(2)
§ 228.61(d)

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 13.771, Social Services for Low Income and Public Assistance Recipients.)

NOTE.—The Office of Human Development Services has determined that this document does not require preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: August 9, 1977.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: November 17, 1977.

HALE CHAMPION,
Acting Secretary.

[FR Doc.77-34625 Filed 12-1-77;8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Rev. Service Order No. 1237; Amdt. No. 1]

PART 1033—CAR SERVICE

Regulations for Return of Hopper Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Second Revised Service Order No. 1237).

SUMMARY: Second Revised Service Order No. 1237 requires return to owners of hopper cars owned by Baltimore and Ohio, Bessemer and Lake Erie, Chesapeake and Ohio Consolidated Rail Corporation, Louisville and Nashville, Norfolk and Western, Pittsburgh and Lake Erie and Western Maryland Railroads. Amendment No. 1 extends this order until December 15, 1977, by which time it is expected that the heavy demands on these carriers for hopper cars will have subsided.

DATES: Effective 11:59 p.m., November 30, 1977. Expires 11:59 p.m., December 15, 1977.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order (amendment) is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of November, 1977.

Upon further consideration of Second Revised Service Order No. 1237 (42 FR 28888), and good cause appearing therefor:

It is ordered, That: § 1033.1237 Second Revised Service Order No. 1237 Regulations for return of hopper cars is amended by substituting the following paragraph (g) thereof:

(g) Expiration date. The provisions of this order shall expire at 11:59 p.m., December 15, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., November 30, 1977.

(49 U.S.C. 1 (12), (15), (16), and (17)(2).)

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association; and that notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-34585 Filed 12-1-77;8:45 am]

[7035-01]

[Amendment No. 4 to Third Revised Service Order No. 1171]

PART 1033—CAR SERVICE

Regulations for Return of Hopper Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 4 to Third Revised Service Order No. 1171).

SUMMARY: Third Revised Service Order No. 1171 requires return to owners of hopper cars owned by the Illinois Central Gulf, St. Louis-San Francisco and Southern Railway because of shortages of cars on these lines. Amendment No. 4 extends this order until December 15, 1977, by which date it is expected that the heavy demands on these carriers for hopper cars will have subsided.

DATES: Effective 11:59 p.m., November 30, 1977. Expires 11:59 p.m., December 15, 1977.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order (amendment) is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held at its office in Washington, D.C., on the 28th day of November, 1977.

Upon further consideration of Third Revised Order No. 1171 (41 FR 3091, 21642, 52695; and 42 FR 28542), and good cause appearing therefor:

It is ordered, That

§ 1033.1171 Regulation for return of hopper cars.

Third Revised Service Order No. 1171 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., December 15, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., November 30, 1977.

(49 U.S.C. 1(12), (15), (16) and 17(2).)

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-34587 Filed 12-1-77;8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 20—MIGRATORY BIRD HUNTING

Canada Goose Season Extension in Swan Lake Zone, Mo.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This document supplements final rulemaking published in the FEDERAL REGISTER on September 29, 1977, and extends the season for taking Canada geese in the Swan Lake Zone of Missouri. This amendment, requested by the Missouri Department of Conservation, is based on findings that the allotted quota of 25,000 Canada geese will not be harvested prior to December 8, 1977, when the season is presently scheduled to end. Also, there is substantial threat of goose depredations on crops which have not been harvested because of flooding. The season will now terminate at sunset on January 2, 1978, or whenever the quota is reached, whichever occurs first.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 202-343-8827.

SUPPLEMENTARY INFORMATION: Dr. John P. Rogers is also the principal author of this document. Regulations allowing the hunting of Canada geese in the Swan Lake Zone of Missouri were published in the FEDERAL REGISTER dated September 29, 1977 (42 FR 51587), and took effect immediately. All hunting of migratory game birds is prohibited unless open seasons are specifically provided. That FEDERAL REGISTER established a harvest quota of 25,000 Canada geese in the Swan Lake Zone, and a hunting season extending from October 25, 1977, to December 8, 1977, if the allotted quota had not been reached. Progress in reaching the harvest quota is calculated periodically. At the end of three weeks of hunting during the 45-day season, the harvest had reached 32 percent of the quota, compared to 76 percent of the quota in 1975, and 57 percent of the qouta in 1976. The quota was not attained in 1976. A projection of the current rate of harvest indicates that only about 60 percent of the quota will be attained when the present season ends on December 8, 1977. Also, because of severe flooding conditions during the fall, farmers in the area will be unable to harvest all their crops until winter. An estimated 50 percent of the corn and milo, and over 60 percent of the soybeans are still unharvested.

The large numbers of geese in the area pose a depredations threat to these crops. The post-season population goal of Eastern Prairie Population Canada geese, the birds which frequent Swan Lake, is 200,000. The population goal is based on the carrying capacity of the winter range and tolerance of landowners to the geese. The Service believes that this goal will again be exceeded unless the season is extended. Therefore, the Service has decided to extend the season so that it will end at sunset on January 2, 1978, or until the allotted quota has been achieved, if this occurs earlier. Such regulations must be promulgated quickly in order to extend the season presently ending December 8, 1977, without a break. Thus, the Service finds that publication of a proposed rule and the solicitation of comments thereon are impracticable and contrary to the public interest and provide good cause for these regulations to take effect upon publication pursuant to 5 U.S.C. 553 (b) and (d).

ENVIRONMENTAL REVIEW

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the FEDERAL REGISTER on June 13, 1975 (40 FR 25241). The Director, U.S. Fish and Wildlife Service, has determined that the action to extend the Canada goose season in the Swan Lake Zone of Missouri is not a major federal action which would significantly affect the quality of the human environment within the meaning of Section 102 (2)(C) of the National Environmental Policy Act of 1969. NEPA requirements were considered when the original harvest quota of 25,000 Canada geese was established in the FEDERAL REGISTER dated September 29, 1977 (42 FR 51587). This rulemaking merely extends the period of time within which the harvest may be taken.

REGULATIONS PROMULGATION

Accordingly, section 50 CFR 20.105(d) published in the FEDERAL REGISTER dated September 29, 1977 (42 FR 51587) is amended as shown below.

In the Mississippi Flyway table on page 51595, the closing date for the Swan Lake Zone in Missouri, shown as December 8, 1977, is changed to January 2, 1978.

ECONOMIC IMPACT REVIEW: The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: November 29, 1977.

ROBERT S. COOK,
Acting Director, United States Fish and Wildlife Service.

[FR Doc.77-34568 Filed 12-1-77;8:45 am]

[3510-12]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 258—FISHERMEN'S PROTECTIVE ACT PROCEDURES

SUBCHAPTER F—AID TO FISHERIES

Provision for Fees

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Amendment of regulations.

SUMMARY: Section 7 of the Fishermen's Protective Act, authorizes, among other things, the Secretary of Commerce to establish by regulation fees which shall be paid by the owners of vessels entering into Guarantee Agreements under Section 7 of the Act. These fees established annually are credited to the Fishermen's Guarantee Fund and used to carry out the provisions of Section 7 of the Act. This amendment establishes fees for the agreement year October 1, 1977, through September 30, 1978.

EFFECTIVE DATE: October 1, 1977.

ADDRESS: Financial Assistance Division, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

Michael L. Grable, Chief, Financial Assistance Division, National Marine Fisheries Service, Washington, D.C. 20235, 202-634-7496.

SUPPLEMENTARY INFORMATION: Section 7 of the Act guarantees to the owners of vessels entering into Guarantee Agreements payment of certain costs and losses resulting from (1) the seizure of a vessel of the United States by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States or (2) if recognized by the United States, (a) are unrelated to fishery conservation and management, (b) fail to consider traditional fishing practices of U.S. vessels, (c) are more onerous than those which the United States applies to foreign fishing vessels in U.S. fishery conservation zone, (d) fail to allow U.S. fishing vessels equitable access to such country's fishery conservation zone.

Regulations governing administration of Section 7 of the Act, Fishermen's Protective Act Procedures (50 CFR Part 258), have annually established fees based on anticipated claims and prior experience. The purpose of the following amendment to § 258.5 of Fishermen's Protective Act Procedures is to establish fees for the agreement year October 1, 1977, through September 30, 1978. This amendment is needed to meet the requirements of Section 7 of the Act (22 U.S.C. 1971-1977), which will terminate on September 30, 1978, unless further extended by legislation.

These regulations also provide for a credit of fees paid by agreement holders for the 3 month period ending Septem-

ber 30, 1977, as required by previous regulations.

All parties holding Guarantee Agreements for the period July 1, 1977, through September 30, 1977 who wish them extended through September 30, 1978, by amendment to such Agreement, rather than entering into an entirely new Agreement, must submit their fees in accordance with § 258.5(b) of the following amendment. Failure to do so will result in the loss of the credit and the termination of those Agreements.

This amendment relates to matters which are exempt from the rulemaking requirements of the Administrative Procedures Act (5 U.S.C. 553). In addition the amendment makes no substantive change in the program's conduct.

Section 258.5 of Fishermen's Protective Act procedures (50 CFR Part 258) is hereby revised as follows:

§ 258.5 Fees.

(a) The fees are established to provide for payment of the administrative costs and a minimum of at least 25 percent of the estimated claims to be paid from the fund. They are set on the basis of anticipated losses and prior experience. In order to meet the requirements of the Act, the fees may be adjusted from time-to-time by amendment to this part at any time, after appropriate notice, to become consistent with claims greater or lesser than estimated or in the event the Fishermen's Guarantee Fund is reimbursed under Section 5 of the Act.

(b)(1) Fees to be paid by an applicant for Guarantee Agreements for the agreement year October 1, 1977, through September 30, 1978, shall be as follows: for vessels 500 gross tons or under, $60 plus $1.25 per gross ton; for vessels over 500 gross tons, $60 plus $1.625 per gross ton. All tonnage shall be listed on each vessel's document. Fractions of a ton shall not be included.

(2) Holders of a Guarantee Agreement for the period from July 1, 1977, to September 30, 1977, who wish the agreement extended are entitled to a credit equal to the fees paid for that agreement. Accordingly, the fee for extending an agreement, after considering the credit, shall be as follows: for vessels 500 gross tons or under, $0.80 per gross ton; for vessels over 500 gross tons, $1.00 per gross ton. All tonnage shall be listed on each vessel's document. Fractions of a ton are not included.

(3) Although fees are due on October 1, 1977, all parties holding Guarantee Agreements for the period terminating September 30, 1977, shall have until January 1, 1978 (midnight local time), to obtain the credit and extend the agreement by paying the balance of the fee established herein. Failure to do so will result in the loss of the credit and in the necessity of entering into another Guarantee Agreement which will be effective only from the date actually executed.

(c) No return of a fee or portion of a fee will be made after a Guarantee Agreement is executed by the Secretary. Failure to pay increased fees within 30 days of adjustment shall constitute a basis for termination of the Guarantee Agreement.

(d) A Guarantee Agreement may, with the consent of the Secretary, be assigned to a new owner of a vessel if the ownership of the vessel is transferred during the period in which the agreement is in force.

By order of the Acting Assistant Administrator for Fisheries.

Dated: November 25, 1977.

DAVID H. WALLACE,
Acting Assistant Administrator for Fisheries.

[FR Doc.77-34603 Filed 12-1-77;8:45 am]

[3128-01]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1977 PRICE AND ALLOCATION INTERPRETATIONS

AGENCY: Department of Energy.

ACTION: Notice of interpretations.

SUMMARY: Attached are the Interpretations issued by the Department of Energy under 10 CFR Part 205, Subpart F, during the period October 1 through November 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Kathleen Williams, Department of Energy, 12th & Pennsylvania Avenue, NW., Room 7132, Washington, D.C. 20461, 202-566-2454.

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)). In addition, Interpretations are subject to appeal. The Interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the Notice first cited above.

Issued in Washington, D.C., November 29, 1977.

WILLIAM S. HEFFELFINGER,
Director of Administration.

APPENDIX

No.	To	Date	Category
1977-39	Kellermyer's, Inc.	Oct. 14	Allocation.
1977-40	Charles W. McNair.	Oct. 21	Do.
1977-41	Nelson Oil Co	do	Do.
1977-42	Texaco, Inc	Nov. 4	Allocation/price.
1977-43	Standard Oil Co	do	Price.
1977-44	Gulf Oil Corp	do	Allocation/price.

INTERPRETATION 1977-39

To: Kellermyer's, Inc.
Date: October 14, 1977.
Rules Interpreted: § 211.51, Ruling 1975-8.
Code: GCW-AI—Definition of Wholesale Purchaser-Reseller.

FACTS

On October 1, 1974, Dave Kellermyer,[1] a sole proprietorship, entered into a "distributor agreement" with Blue Flame Gas Corporation ("Blue Flame"), a subsidiary of Tenneco Oil. In that agreement, Blue Flame agreed to supply liquified petroleum gas (propane), an allocated product for the purposes of 10 CFR Part 211, Subpart D, to Kellermyer's on consignment. Kellermyer's as the consignee agreed to sell and deliver the propane to retail purchasers. Under this consignment arrangement, the title to the propane remains with Blue Flame until its sale to ultimate end users. The agreement further provides that Blue Flame is responsible for hauling and servicing bulk deliveries of propane to storage tanks which it leases to Dave Kellermyer. Kellermyer's receives the commissions specified in a Blue Flame commission schedule and additional funds to cover the painting and lettering of the bulk delivery trucks.

The October 1, 1974 agreement also requires Kellermyer's to use its best efforts to promote the sale of Blue Flame products in and around the City of Defiance, Ohio; to furnish all necessary labor and tank trucks for delivery of propane in bulk to customers; and to pay all operating expenses for delivery (including truck maintenance and depreciation, comprehensive automobile liability, fuel, licenses, workmen's compensation, unemployment taxes, payrolls, and other related costs.) However, Blue Flame is required to pay the taxes and insurance on the real property and storage tanks which it owns and leases to Kellermyer's and retains the right to establish credit terms for the propane customers.

Pursuant to the October 1, 1974 agreement, Kellermyer's has over the last three years solicited new customers in an effort to promote the sale of Blue Flame propane in and around Defiance, Ohio, subject to Blue Flame's approval of the contractual arrangements pertaining to these new propane customers.

Subject to certain stated conditions, the terms of the agreement between Blue Flame and Kellermyer's provide for an automatic extension on a year-to-year basis, unless terminated by either party through a written

[1] During the base period, S. E. Knisely operated the business which Kellermyer subsequently purchased on October 1, 1974. However, the business name was changed from "Knisely's Gas and Appliance" to "Kellermyer's." On June 1, 1977, Dave Kellermyer incorporated his business and changed its name to "Kellermyer's, Inc.," and continued to operate the business of selling and delivering propane as president and manager of Kellermyer's, Inc.

notice given sixty days prior to the annual renewal date. Effective October 1, 1977, Blue Flame delivered a timely notice of termination to Kellermyer.

ISSUE

Whether Kellermyer's, Inc., as the successor to the business of Dave Kellermyer, is a wholesale purchaser-reseller as defined in 10 CFR 211.51.

INTERPRETATION

It has been concluded that Kellermyer's, Inc., to the extent that it sells and distributes allocated products under the circumstances set forth above, qualifies as a wholesale purchaser-reseller as defined in 10 CFR 211.51 of the Mandatory Petroleum Allocation Regulations, as clarified by Ruling 1975-8.

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.

The use of the term "as by consignment" in the definition of wholesale purchaser-reseller was interpreted in Ruling 1975-8. 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 the conduct of their business of transfer and sale of 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 and are subject to the same benefits and obligations of the allocation program which apply to jobbers, who normally take title to allocated products obtained for resale.

According to the Ruling, a consignee that qualifies 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 product solely to customers designated by the supplier. However, the Ruling further found that it was not essential for the consignee to have all four of these characteristics to qualify as a wholesale purchaser-reseller for the purposes of 10 CFR 211.51.

On behalf of its subsidiary Blue Flame, Tenneco argues that Kellermyer's does not qualify as a wholesale purchaser-reseller pursuant to the guidelines set forth in Ruling 1975-8. Tenneco specifically contends that Kellermyer's does not have the appropriate facilities and equipment for the conduct of its business or independent control over the disposition of the propane.

Tenneco's assertions ignore the basic premise of Ruling 1975-8. As stated previously, it is not essential for a wholesale purchaser-reseller to exhibit each and every one of the four characteristics set forth in Ruling 1975-8. The facts discussed above reveal that Kellermyer's is responsible for its own internal and financial management and is further responsible to its supplier and others for all expenses and liabilities arising from the sale of the propane to the retail customers.

In addition, Kellermyer's has appropriate facilities for the operation of the business and also exercises some degree of independent control over the disposition of the propane. As Tenneco has pointed out, Kellermyer's leases the equipment and facilities necessary for the operation of the business. Moreover, Kellermyer's also maintains some "independent control over the disposition of the allocated product" which Blue Flame supplies since Kellermyer's is obligated by the terms of the "Distributor Agreement" to "build up" the business of the supplier within a designated territory. Dave Kellermyer has complied with this particular provision of the agreement and has solicited new customers through his own efforts. Furthermore, Kellermyer's can, when good cause exists, unilaterally terminate existing business with customers. Kellermyer's therefore maintains independent control over the disposition of the propane and may deliver products to customers other than those selected solely by Blue Flame.

Thus, Kellermyer's retains a substantial measure of functional autonomy in distributing and selling Blue Flame Gas Corporation products under the terms of the "Distributor Agreement." Although it must account fully to Blue Flame for all products and sales revenues received, and must sell the product at prices authorized by Blue Flame, Kellermyer's is fully responsible for all aspects of conducting its business and is expected to exercise independent judgment and discretion in its operation. Moreover, although Blue Flame requires Kellermyer's to sell the products under Blue Flame's brands and trademarks, it bears no expenses under the "Distributor Agreement" for the costs of labor, employee benefits, or necessary insurance, and implicitly recognizes the distributorship as an independent business. Accordingly, it must be concluded that Dave Kellermyer is a wholesale purchaser-reseller as defined in 10 CFR 211.51, and as clarified in Ruling 1975-8.

Aside from the issue concerning Dave Kellermyer's status, Tenneco has raised a further point dealing with the contractual standing of the parties involved. It is Tenneco's position that Kellermyer's, Inc. is a separate and distinct entity from Dave Kellermyer and therefore lacks standing to assert the existence of a contractual relationship with Blue Flame. As set forth in 10 CFR 211.9, each supplier of an allocated product is required to supply those wholesale purchaser-resellers which purchased or obtained that product from that supplier during the base period. Accordingly, a wholesale purchaser-reseller which incorporates while continuing to maintain an on-going business retains its right to an allocation. See, *Chevron Oil Company*, 2 FEA ¶ 80,531 (February 21, 1975). The right to receive such an allocation is treated as an integral part of the on-going business of the wholesale purchaser and thus is only deemed to be transferred when the entire business is transferred to a successor firm. 10 CFR 211.11(d). Such allocation can be terminated only in accordance with the provisions of 10 CFR 211.9(a)(2)(i). Although, as stated previously, during the base period the business was operated by S. E. Knisely, the transfer of the business to Dave Kellermyer resulted in a transfer of the allocation entitlement. Thus, Dave Kellermyer's incorporation to Kellermyer's, Inc. constitutes only a further change in the form of the business and not a termination of the business operation since Kellermyer continues to operate the business as president and manager of Kellermyer's, Inc. Consequently, Kellermyer's, Inc. as the successor to Kellermyer's, maintains the right to receive the base period allocation of propane as set forth in 10 CFR 211.9.

Kellermyer's also requested a determination concerning the appropriate price at which Blue Flame may sell the propane to the firm at such time as the contract between the two parties is terminated. The Mandatory Petroleum Price Regulations as set forth in 10 CFR Part 212 apply only to the sale or purchase of covered products. Since there is no actual sale of product by Blue Flame to Kellermyer's, Inc., there is no established product price between these parties for purposes of the price regulations. The price regulations in this case simply establish the maximum lawful prices the seller may charge in sales made through the distributor to the ultimate purchaser. See, *Rotary Gasoline Dealers*, Interpretation 1975-48, 42 FR 23751 (May 10, 1977). However, if Blue Flame, after the termination of the consignment agreement, provides propane to Kellermyer's on a sales basis, Blue Flame must place Kellermyer's in the proper class of purchaser, in accordance with Ruling 1975-2.

INTERPRETATION 1977-40

To: Charles W. McNair.
Date: October 21, 1977.
Rules Interpreted: § 211.51.
Code: GCW-AI—Wholesale Purchaser-Reseller.

FACTS

From August 13, 1956 until July 1, 1974, Charles W. McNair ("McNair") of Fayetteville, Arkansas, served as a consignee agent and distributor of petroleum products allocated under the Mandatory Petroleum Allocation Regulations for Sun Oil Company ("Sun") in parts of Washington County, Arkansas pursuant to a "Bulk Station Contract," Form DX-421-X and DX-421-Y (the "Contract"). Under the Contract, Sun delivered its petroleum products, including motor gasoline, to McNair on consignment at the Sun-owned Bulk Station No. 223 in Fayetteville which McNair operated at his own expense, except for the cost of power and fuel used in unloading tank cars and transport trucks that delivered products to the bulk station. After delivery of the products, although title remained with Sun, McNair was responsible for their storage and delivery to purchasers at prices and on terms fixed by Sun.

According to McNair, Sun reserved the right to approve credit terms for particular purchasers other than those for purchasers for whom McNair guaranteed payments to Sun. McNair remitted all money collected for such purchases to Sun and received monthly commissions from Sun on the sales according to a fixed schedule, which was periodically revised.

The Contract further required McNair to keep records of all sales and deliveries, inventory and receipts, which were subject to audit by Sun. At his own expense, McNair provided, maintained and insured trucks and pumping equipment necessary for the delivery of the petroleum products, paying all taxes and other fees imposed on these vehicles. McNair was also the sole employer of all personnel necessary for the execution of his duties under the Contract, and paid not only their salaries but also any incidents thereto, such as unemployment compensation and social security taxes. The Contract explicitly provided that McNair was at all times free of supervision, direction and control by Sun.

In his submission, McNair has stated that he solicited new business at his discretion

and supplied new customers without the prior approval of Sun (subject to Sun's approval of the extension of credit). Petroleum products were purchased from Sun at McNair's discretion and billed on his invoice. However, McNair also stated that effective July 1, 1974 and without the approval of the Federal Energy Administration, predecessor of the Department of Energy, Sun terminated its Bulk Station Contract with him, although the written notice required by the Contract was not given. At Sun's request, McNair signed an "Employee Agreement". This agreement was drafted by Sun, and at the time of presentment Sun informed McNair that signing the agreement was a precondition of his continuing to operate the bulk plant and receiving petroleum supplies from Sun. The agreement was skeletal in form, merely stipulating that McNair would henceforth be an employee of Sun and omitting any description of his specific duties and responsibilities in operating the bulk plant and in distributing Sun petroleum products to purchasers. McNair has indicated that his relationship under the Employee Agreement is generally the same as his arrangement with Sun under the Bulk Station Contract as described above, except that Sun now pays employee withholding taxes for McNair (but not for his employees) and grants him vacation benefits and a Christmas bonus. He is entitled to participate at his own cost in Sun's medical plan and to purchase additional term life insurance through the company.

McNair maintains that he was a wholesale purchaser-reseller prior to 1974 and remains one, notwithstanding the "Employee Agreement" he signed with Sun Oil. A copy of McNair's request for interpretation was served on Sun Oil. Sun has not submitted a response to McNair's request for interpretation.

ISSUE

Does McNair, a consignee agent and distributor operating pursuant to the Bulk Station Contract during the base period and, subsequent to the Contract's termination, pursuant to the Employee Agreement, qualify as a wholesale purchaser-reseller as defined in 10 CFR 211.51?

INTERPRETATION

For the reasons discussed below, it has been concluded that McNair, a consignee agent and distributor operating pursuant to the Bulk Station Contract described hereinabove during the base period and subsequent to the Contract's termination pursuant to the Employee Agreement, qualifies as a wholesale purchaser-reseller as defined in 10 CFR 211.51 in reference to the allocated petroleum products he sells.

A 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."

In Federal Energy Administration Ruling 1975–8, 40 FR 30037 (July 17, 1975), it was explained that the phrase "as by consignment" is included in the definition of a wholesale purchaser-reseller to make it clear that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition solely on the ground that they fail to take legal title to the product. Consignment relationships, under which consignees perform essentially the same functions as jobbers, have long existed in the petroleum industry, and such consignees are treated under the allocation regulations in the same manner as jobbers. Consignees that have a substantial degree of operational independence in the conduct of their business of the transfer and sale of 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) must be treated as wholesale purchaser-resellers and are provided with the same benefits and obligations under the Mandatory Petroleum Allocation Program as are jobbers.

Ruling 1975–8 notes that there are a number of different situations in the petroleum industry in which firms take possession of allocated products without taking title to the product. Only in those situations where a firm receives product through consignment and is engaged in marketing that product to the firm's customers, acting generally like a jobber, will the firm qualify as a wholesale purchaser-reseller. The ruling states:

A consignee which operates in the same manner as an independent jobber, and thereby qualifies as a wholesale purchaser-resellers, 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 operation; (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 solely being restricted to distributing product to customers designated by the supplier.

According to the terms of the Contract, McNair had a substantial measure of autonomy in distributing and selling Sun's petroleum products. Although he did not take title to the petroleum products, McNair functioned like an independent jobber, and his relationship with Sun had most of the characteristics outlined in Ruling 1975–8 during the base period. McNair had the "appropriate facilities and equipment for the conduct of the business" since he was responsible for the proper operation of the Sun-owned bulk station facility. In addition, as noted above, McNair supplied at his own expense trucks and pumping equipment needed for the distribution of the products. He was responsible for the internal financial management and physical and administrative operation of his business, free of supervision by Sun and subject only to certain specific conditions, such as the company's right to establish the selling price of his products and to audit his records. McNair was obligated to pay most of the expenses involved in operating his business, with compensation fixed only on a commission rate according to sales levels for particular products. He chose, paid and directed his own employees, and exercised considerable control over the disposition of Sun's products, including selecting purchasers and directing deliveries to them.

The changes that occurred in 1974 regarding McNair's relationship with Sun did not alter his status as a wholesale purchaser-reseller under the Bulk Station Contract for two reasons. First, 10 CFR 211.9(a)(2)(i) expressly provides:

Unless otherwise provided in this part or directed by FEO, the supplier/wholesale purchaser-reseller relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Petroleum Allocation Program and may not be waived or otherwise terminated without the express written approval of FEO.

Since the Mandatory Petroleum Allocation Program was in effect in 1974 and remains in effect, Sun could not terminate McNair's status as a wholesale purchaser-reseller without the "express written approval" of FEA, which was not obtained in this case.

Second, only the form, not the substance, of McNair's relationship with Sun changed on July 1, 1974. Since the signing of this agreement, McNair has continued to function as a distributor in substantially the same independent manner as he functioned before that date, in accordance with the basic terms of the supposedly terminated Bulk Station Contract described above. McNair's responsibilities and duties to Sun with regard to the disposition of the allocated products were not altered in any manner after the execution of the employee agreement.

INTERPRETATION 1977–41

To: Nelson Oil Company.
Date: October 21, 1977.
Rule Interpreted: 10 CFR 211.10(g).
Code: GCW–AI—Surplus Product, Purchase of.

FACTS

Nelson Oil Company (Nelson) is a "jobber" (a wholesale purchaser-reseller under the Mandatory Petroleum Allocation Regulations) located in Banning, California. Under a contract with Shell Oil Company (Shell), Nelson sells branded products to independent retail motor gasoline outlets in Southern California and qualifies as a branded independent marketer as that term is defined in Section 3(1) of the Emergency Petroleum Allocation Act of 1973, as amended (EPAA). Shell is the base period supplier of motor gasoline to Nelson, as contemplated by 10 CFR Part 211, having supplied Nelson with motor gasoline in each month of 1972. Over the period from September 1975 to December 1976, Shell has offered Nelson the opportunity to purchase surplus motor gasoline (as defined under the Mandatory Petroleum Allocation Regulations) in varying amounts. Nelson alleges that Shell has offered branded independent retail outlets a larger share of available surplus product relative to base period volumes than Shell is making available to branded independent jobbers.

ISSUE

Whether surplus product should be distributed pursuant to 10 CFR 211.10(g)(5) to all of the members of the category of branded and non-branded independent marketers?

INTERPRETATION

For the reasons set forth below, it has been concluded that a supplier is required by 10 CFR 211.10(g)(5) to offer surplus motor gasoline for purchase to all members of the category of branded and non-branded independent marketers.

The current procedures for the distribution of surplus product set forth in 10 CFR 211.10 (f) and (g) require that a supplier, after determining that its allocation fraction will exceed one (1.0) or that its available supply is greater than its purchasers' requirements, file a surplus product report with Department of Energy (DOE) within five days of making such determination. If the Department does not redirect the surplus product within ten days of receipt of the report, the supplier distributes the surplus product in accordance with 10 CFR 211.10(g)(5), which provides in relevant part as follows:

[the supplier] may distribute its surplus product at its discretion except that (i) the supplier shall supply, *in the aggregate, to all*

purchasers in the category of (A) wholesale purchaser-resellers which are entitled to receive an allocation from that supplier and which are branded independent marketers, to the extent that such category of purchaser is willing to accept it, at least the same proportion of the supplier's surplus product as the total base period volumes (prior to any adjustments) of branded independent marketers which are entitled to receive an allocation from that supplier bear to the total base period volumes (prior to any adjustments) of all purchasers, including those assigned by FEA, which are entitled to receive an allocation from that supplier * * * (Emphasis added.)

10 CFR 211.10(g)(5) contains an identical provision with respect to distribution of surplus product to non-branded independent marketers.

The language "in the aggregate, to all purchasers" means that the supplier is required to offer to each category (both branded and non-branded) the volume specified in 10 CFR 211.10(g)(5) and that each member of the two categories is entitled to a share of the available surplus product provided that it lifted all of its allocation entitlement in the period corresponding to the base period.

The amount to be offered to each category as a whole is determined by the supplier with reference to each category's percentage of purchases from that supplier during the relevant base period. Thus, for example, if each of the categories of marketers purchased one-third of a supplier's available product in the relevant base period, then the supplier must offer each of these groups one-third of any surplus product available.

With respect to distribution of surplus product to the members of the two categories, prior to March 1, 1975, 10 CFR 211.10(g)(5) provided that a supplier should distribute surplus product "in the aggregate, to any and all purchasers." This section was modified effective March 1, 1975 (40 FR 10165, March 5, 1975) to read "in the aggregate, to all purchasers" to make clear that each member of the designated categories was entitled to a share of available surplus product. The preamble states in relevant part as follows:

* * * § 211.10(g)(5) has been revised to make it clear that a supplier must make its surplus product available to *all* wholesale purchaser-resellers within the class of branded independent marketers and the class of non-branded independent marketers which are entitled to receive an allocation from that supplier. A supplier may not satisfy the requirement that surplus product must be supplied to its wholesale purchaser-resellers which are independent marketers by offering it to only some of its purchasers in those two classes. (Id. at 10166, emphasis in original.)

10 CFR 211.10(g)(5) does not explicitly state what volume of surplus product should be made available by the supplier to individual purchasers in the classes of branded and non-branded independent marketers. However, contrary to Shell's contentions, in comments submitted in response to Nelson's request for interpretation pursuant to 10 CFR 205.84, a supplier must offer *each* wholesale purchaser-reseller within the class of branded and non-branded marketers surplus product on a non-discriminatory basis in accordance with 10 CFR 210.62(b).

10 CFR 210.62(b) provides general guidance on the intent of the allocation regulations and bars preferential practices in the distribution of allocated products. That section provides:

(b) No supplier shall engage in any form of discrimination among purchasers of any allocated product. For purposes of this paragraph, "discrimination" means extending any preference or sales treatment which has the effect of frustrating or impairing the objectives, purposes and intent of this chapter or of the Act, and includes, but is not limited to, refusal by a retail marketer of motor gasoline or diesel fuel to furnish or sell any allocated product due to the absence of a prior selling relationship with the purchaser, or establishment of new volume purchase arrangements where customers of retailers agree in advance to purchase in excess of normal amounts of motor gasoline or diesel fuel and thereby receive preferential treatment.

On the basis of the foregoing, therefore, it has been concluded that it is the intent of 10 CFR 211.10(g)(5) that a supplier distribute surplus product in a manner which insures that each purchaser within the categories of branded and non-branded independent marketers (which categories include both jobbers and retail outlets which have lifted their entire allocation entitlement in the period corresponding to the base period for which surplus product is available) is offered a share of the surplus available to each class in a non-discriminatory manner. A supplier is not required to make more than one offering of surplus product in any period corresponding to the base period to the purchasers within the specified categories.

INTERPRETATION 1977–42

To: Texaco, Inc.
Date: November 4, 1977.
Rules Interpreted: §§ 211.63 and 212.72.
Code: GCW–PI, AI—Definition of Property, New and Released Crude Oil; December 1 Rule.

FACTS

Texaco, Inc. ("Texaco") is a refiner subject to the petroleum price rules of 10 CFR Part 212, Subpart E, and the allocation rules of 10 CFR Part 211, Subpart C.

Under contracts in effect on December 1, 1973, and until August 1, 1974, Texaco purchased crude oil from Mobil Oil Corporation ("Mobil").

In July, 1974, Texaco received notice that, effective August 1, 1974, Mobil's lease would terminate under its own terms and that Travelers Oil Company ("Travelers"), having entered into an agreement with the lessor of the oil-producing property concerned, would become the new lessee upon that date.

Travelers took the position that, as the new lessee-producer, it was entitled under 10 CFR Part 212, Subpart D, to sell all production from the property concerned as "new" crude oil, regardless of the level of production for the property concerned in the 1972 base period.

Under the "December 1 rule" of 10 CFR 211.63, as in effect in 1974,[1] domestic crude oil supplier/purchaser relationships in effect under sales, purchase and exchange contracts on December 1, 1973, were required to remain in effect for the duration of the petroleum allocation program. The requirement did not apply, however, to the first sale of "new" and "released" crude petroleum from a property from which no "new and "released" crude petroleum was produced and sold in December, 1973.[2] Travelers therefore took the further position that it was not required under the petroleum allocation regulations to continue to supply Texaco with any crude oil from the property concerned.

After July 31, 1974, Texaco was no longer supplied by any party with respect to its supply rights as previously associated with crude oil supply by Mobil from the property concerned. Texaco did not consent to termination of these supply rights.

ISSUE

Texaco asks in its interpretation request whether, solely by virtue of the substitution of a new lessee-producer for the previous lessee-producer whose lease had expired, the production of the property concerned qualifies to be priced as "new" crude oil under §§ 212.72 and 212.74.

Texaco also asks whether the supplier/purchaser relationship established as of December 1, 1973, with respect to crude oil produced from the property concerned, survives the change in the identity of the lessee of the property, so as to bind the new lessee-producer, Travelers, to supply Texaco.

INTERPRETATION

"New crude oil" is defined, for purposes of crude oil allocation in § 211.63 as well as the price regulations applicable to producers of crude oil in 10 CFR Part 212, Subpart D, as

* * * the total number of barrels of domestic crude oil produced and sold [from the property concerned] in a specific month, less (A) the property's base production control level for that month and less (B) the current cumulative deficiency. * * *[3]

Under this definition, "new" crude oil is, for most properties, the *incremental production* (if any) above the property's historic base production control level (BPCL), less any current cumulative deficiency. With respect to recently-developed properties (basically those which began producing crude oil after 1972), the definition of "new crude oil" results in "new" crude oil status for *all production* because for such properties the BPCL is zero and there can be no current cumulative deficiency in such circumstances.[4]

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[1] Effective February 12, 1976 (41 FR 7386, February 18, 1976) the December 1 rule was amended to relate to supplier/purchaser relationships in effect under contracts in existence on January 1, 1976. In view of the extension of price controls to "new," "released" and stripper well crude oil effective February 1, 1976, pursuant to the Energy Policy and Conservation Act, a more current base date for supplier/purchaser relationships under § 211.63 was deemed desirable. The amended rule (still generally refered to as the "December 1 rule") did not, however, impair any purchaser's rights under § 211.63 as in effect prior to February 1, 1976. See § 211.63(b)(3)(ii).

[2] Section 211.63(b), as in effect prior to February 12, 1976. Under current regulations, the "new" crude oil exception to the December 1 rule is restricted to the first sale of crude oil flowing from a property which first began production and sale after December 31, 1975. 10 CFR 211.63(a)(4).

[3] 10 CFR 212.72. "New crude petroleum" was formerly defined in § 211.62, for purposes of 10 CFR Part 211, Subpart C, as "new crude petroleum as defined in § 212.72." The current version of § 211.63 does not use the term "new crude petroleum" or "new crude oil."

[4] The definitions of "base production control level" and "current cumulative deficiency," which are found in § 212.72, are not directly at issue in this Interpretation and thus are not restated here.

The definition of "new crude oil" is significant, of course, chiefly because "new" crude oil is permitted to be sold in first sales at the substantially higher "upper tier" ceiling price compared with the "lower tier" ceiling price available with respect to first sales of "old" crude oil. The purpose of this two-tier pricing system has often been explained. The "upper tier" price is extended as an incentive to encourage additional production, where possible, from older properties (the incremental production is permitted to be sold at the higher upper tier price) and to stimulate exploration and development of new producing properties (total production in such cases is permited to be sold at the higher price).

As indicated above, the unit to which the price rules pertaining to qualification for "new" crude oil apply is the "property." "Property" is defined as "the right to produce domestic crude oil, which arises from a lease or from a fee interest. * * *"[5] In Ruling 1977-1[6] FEA reviewed in detail the meaning of the terms "property" and "lease" and concluded that—

"Property," as defined by FEA, is generally to be understood as synonymous with the physical "tract" or "premises" as to which a working interest is established by an oil and gas lease, or by a fee interest.

In other words, FEA has interpreted the "property" for price control purposes, in those cases involving an oil and gas lease, as the right to produce crude oil relating to specific leased premises as described in the lease and not to that right only as vested in a particular lessee.

While it is true that the meaning of "lease" is broad enough in ordinary usage to include the instrument of conveyance itself as well as the piece of land or other property leased, it would be wholly irrational, in the context of the definition of "property" in § 212.72, to interpret "lease" as a reference to a particular lessee's rights under a particular lease. If a "new" property (and thus "new" crude oil) could be created merely through the execution of new leasehold agreements between the same lessor and lessee, or through the substitution of a new lessee, the purpose of the two-tier crude oil pricing system as a production incentive would be quickly circumvented and defeated. The price regulations applicable to producers of crude oil require for their effectiveness a concept of "property" which provides a constant frame of reference for measurement of crude oil production between the base level and the current level. As stated in Ruling 1975-15 (40 FR 40832, September 4, 1975), "the need to compare like quantities, today and in 1972, in order to ensure a meaningful application of the new and released provisions," requires that the "property" be defined by reference to the "property" as it existed in 1972. Thus, the definition of "property" was not made dependent upon the continued effectiveness of a specific lease agreement or upon the rights accruing to any specific lessee.[7]

This provision, in virtually identical form, was among the initial Phase IV petroleum price regulations effective August 19, 1973 (6 CFR 150.361(c)(2)).

The foregoing disposition of the pricing question also disposes of the allocation question, insofar as it concerns the "new" crude oil exception to the general supply obligation imposed by 10 CFR 211.63. Since Travelers at no time produced "new" crude oil under 10 CFR Part 212, Subpart D, by virtue of having become the successor lessee with respect to the property concerned, the rule excepting the first sale of "new" crude oil from the general supply obligation under § 211.63 did not apply on that basis to first sales of crude oil from the property concerned beginning August 1, 1974.

Beyond this, however, Texaco seeks an affirmative interpretation that Travelers is bound to continue to supply Texaco under the general supply obligations of § 211.63,[8] which generally requires that, except as otherwise provided, "all supplier/purchaser relationships" in effect under sales contracts on December 1, 1973, "shall remain in effect for the duration of this program."[9]

The rule as previously embodied in § 211.63(a) provided that the December 1, 1973, supply relationships to which the rule applied could be terminated only by (1) mutual consent of both the supplier and the purchaser, or (2) as to "new" and "released" crude oil, refusal of the purchaser to meet an offer of a higher lawful price tendered by another purchaser.[10]

It is clear from the foregoing discussion that case (2) is not applicable to the supplier/purchaser relationship between Mobil and Texaco. With regard to case (1), the facts indicate that Texaco did not at any time consent to termination of its December 1, 1973, relationship with Mobil. It follows that the unilateral withdrawal by Mobil did not terminate the supplier/purchaser relationship and that Texaco retains the right to insist upon fulfillment of the supply obligation.

The next question is whether the supply obligation remains with the former supplier-lessee (i.e., Mobil), requiring it to provide the purchaser with crude oil from alternate sources, or whether the supply obligation in effect runs with the property concerned, so that the successor supplier-lessee (i.e., Travelers) succeeds to Mobil's supply obligation. Our conclusion under the facts in this case is that the successor supplier-lessee succeeds to the former supplier-lessee's obligations to Texaco.

On June 11, 1976, FEA issued a number of amendments to the crude oil supplier/purchaser rule in § 211.63. Among these amendments was a new § 211.63(c)(4), which provided (and today continues to provide) as follows:

In the event that a *property* which produces crude oil subject to this section is transferred to a new *owner*, the obligation to supply * * * purchasers of *that property's* crude oil production shall attach to the new *owner* and new supplier/purchaser relationships subject to this section shall be established on that basis [emphasis added].

The term "owner," while often used to refer to the owner of the fee interest in land, is not necessarily restricted to this meaning and has been construed in particular contexts to extend to lessees and other owners of possessory interests.[11] Moreover, the term "property," also used in § 211.63(c)(4), is specifically defined for price purposes to include production rights arising from a fee interest or a lease.[12] In addition, the FEA described § 211.63(c)(4), both at the time it was proposed and upon its adoption, as applying to "the ownership of or rights to the production of a property. * * *"[13] For these reasons, plus the considerations noted below, we construe § 211.63(c)(4) as applying to the transfer of the rights of the owner of the working interest (lessee-producer) as well as to the rights of the owner of the royalty interest (lessor).

As noted above, § 211.63(c)(4) was one of a number of amendments to the crude oil supplier/purchaser rule issued on June 11, 1976. These amendments were made effective "immediately," as a group, without discussion of the timing of effectiveness or consideration of different effective dates for individual amendments. This treatment evidently resulted from the fact that most of the amendments represented true substantive modifications which would normally be issued on a prospective basis only. Moreover, the rulemaking which gave rise to the amendments concerned grew out of an initial rulemaking proceeding earlier in 1976 which was designed primarily to reflect changes in the domestic crude oil pricing structure mandated by the Energy Policy and Conservation Act, enacted December 22, 1975.[14] Thus, there was additional reason for viewing the package of amendments which included the rule at issue as generally consisting of evolutionary changes in the crude oil supplier/purchaser rule.

However, in the absence of any discussion in the preamble to the final rulemaking effective June 11, 1976, explaining why § 211.63(c)(4) in particular was made effective "immediately," we do not believe that the inclusion of § 211.63(c)(4) in that rulemaking is conclusive evidence that FEA viewed the rule in § 211.63(c)(4), as applied to the transfer of lessee interests, to be such as to preclude its application to transfers of such interests which occurred prior to June 11, 1976, through an interpretation of the pre-existing crude oil supplier/purchaser rules in § 211.63 generally. We believe that the reasons set forth below for applying the substance of the rule in § 211.63(c)(4) to the present case substantially outweigh any presumption against such application arising from promulgation of § 211.63(c)(4) effective June 11, 1976.

Before passing to general considerations supporting application of the rule in § 211.63(c)(4) to the period prior to June 11, 1976, we note that at least one of the firms participating in the public hearings on May

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[5] 10 CFR 212.72. Changes in the definition of "property," effective September 1, 1976, are not relevant to the matters at issue in this Interpretation.

[6] 42 FR 3628, January 19, 1977; originally published in other form at 41 FR 36172, August 26, 1976.

[7] The position taken in this Interpretation is further confirmed by the inclusion in the "acquisitions" provisions of the "new item and new market rule" of 10 CFR 212.111 of the following provision (§ 212.111(c)(2)):

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

[8] Formerly § 211.63(a); currently § 211.63(b)(1).

[9] See ftn. 1, above, concerning the amendment to the December 1 rule effective February 12, 1976, providing a more current base date for this purpose, and the effect thereof.

[10] These bases for termination of supplier/purchaser relationships, among others not applicable to the case at issue, survive under current regulations in § 211.63(d).

[11] See discussion of "owner" and cases cited, Blacks Law Dictionary.

[12] 10 CFR 212.72.

[13] 41 FR 16662, April 21, 1976; 41 FR 24338, June 16, 1976.

[14] 41 FR 2830, January 20, 1976; 41 FR 7386, February 18, 1976.

6, 1976, concerning the group of proposed amendments eventually issued in final form on June 11, 1976, interpreted the then-proposed § 211.63(c)(4) as a clarifying amendment rather than a substantive change. This firm's testimony in support of § 211.63(c)(4) included the comment that "[t]he new proposed rules which facilitate transfers of ownership of producing properties * * * and imposing the existing supply obligations on the successor-owner is, in our minds, only a clarification of the present regulatory intent." [15]

At the time the working interest (lessee-producer) rights of Mobil were transferred to Travelers on August 1, 1974, the general supplier/purchaser rule in § 211.63 provided that all "supplier/purchaser relationships" in effect under contracts for sales, purchases, and exchanges of domestic crude oil on December 1, 1973, shall remain in effect for the duration of the petroleum allocation program. Such relationships could, however, be terminated by the mutual consent of both parties to the relationship.

It is not clear from the language of § 211.63 whether, when the supplier of crude oil is a producer, the obligation to supply for the duration of the program is a "personal" obligation which continues to attach to the producer if for whatever reason he lost his production rights to the property concerned prior to June 11, 1976, or whether this obligation in effect runs with the property and thus attaches to the new holder of the production rights. Although "supplier" is defined in § 211.51 as a "firm" rather than a "property," there is no general supply obligation affirmatively imposed on individual suppliers of crude oil in § 211.63. All that the general rule of § 211.63 requires is the maintenance of supply relationships. The term "supplier/purchaser relationships" is not defined in the petroleum allocation regulations.

It is pertinent to note that the general allocation provisions in 10 CFR Part 211, Subpart A, do affirmately impose an obligation on "[e]ach supplier of an allocated product" to continue to supply that product to the base period purchaser (§ 211.9(a)). However, the definition of "allocated product" in § 211.51 includes only "residual fuel and refined petroleum products" and thus excludes crude oil. Therefore, 10 CFR Part 211, Subpart A, cannot be interpreted as imposing a "personal" supply obligation on the December 1, 1973, supplier of crude oil in the circumstances addressed by this Interpretation.

When the language of specific regulations under consideration does not itself provide a sufficient basis for resolving an interpretive question arising under those regulations, it is usually necessary to consider the underlying purposes of the regulations in order to resolve the question at issue. The purposes intended to be served by adoption of the crude oil supplier/purchaser rule in § 211.63 were: (1) to preserve the nation's crude oil distribution system from disintegration during periods of embargo or other shortage, (2) to establish a supply floor upon which supply estimates could be furnished in order to implement the buy-sell program to allocate crude oil at the refinery level, and (3) to preserve access by small and independent refiners to lower-priced domestic crude oil.[16]

It can be seen from the foregoing that the crude oil supplier/purchaser rule was intended, in particular, to maintain the sources of supply of crude oil purchasers (especially small and independent refiners), and through this and other means began to preserve the crude oil distribution system in general. One means of doing this was to provide in § 211.63 for the maintenance of "supplier/purchaser relationships" and termination thereof only by mutual consent of both parties. When the facts in the present case are reviewed in light of the foregoing purposes, it is evident that (1) attainment of both the general objective of preservation of the crude oil distribution system and the more specific objective of preservation of crude oil purchasers' sources of supply were impaired when Texaco was cut off from the particular supply of crude oil under discussion without its consent, and (2) attainment of these objectives in this case depends, in the last analysis, upon selection of the alternative which will best preserve Texaco's supply rights.

(F) *equitable distribution* of crude oil * * * *at equitable prices* among all * * * sectors of the petroleum industry * * *

The approach taken in this Interpretation would appear better to assure equitable distribution of suitable grades of crude oil at equitable prices to refiner-purchasers. The preferability of this approach was echoed in comments received by FEA in support of § 211.63(c)(4) prior to its adoption, indicating that the proposed amendment "serves to maintain established lines of supply to a particular facility (i.e., refinery) regardless of the identity of the titleholder." [17]

In Interpretation 1977–15, FEA took a somewhat different approach with respect to the question of maintenance of supplier/purchaser relationships between a producer and a reseller of crude oil, on the one hand, and the same resellers and a refiner, on the other. There, the reseller terminated its supply relationship with the producer by mutual consent without, however, obtaining the approval of the refiner. Interpretation 1977–15 notes that this had the indirect effect of terminating the corresponding relationship between the reseller and the refiner without the latter's consent, the "very result which 10 CFR 211.63 was designed to prevent."

As requested by the refiner, FEA ruled in Interpretation 1977–15 that the reseller could not terminate its supply relationship with the producer without obtaining the refiner's consent. The reseller was therefore required to re-enter the supply chain and resume its supply obligation to the refiner.

We believe that the supply guarantee afforded to the refiner by § 211.63 is better preserved and implemented by assuring continued access by the refiner to the same crude oil through the successor supplier-lessee. The former supplier-lessee in a given case may not have any alternative sources available with which to supply the purchaser, or if such crude oil is available to the former supplier-lessee it may not have physical characteristics suitable for processing by the refinery served under the supply contract. In addition, the price of crude oil from alternative sources may well be higher pursuant to the stripper well lease exemption, the rules permitting "new" crude oil to be priced at upper tier price levels, or because of price variations within the same price tier.

In addition to being more consistent with the purpose of § 211.63, we believe the foregoing approach is more consistent with relevant goals of the Emergency Petroleum Allocation Act of 1973, as amended, which include, in section 4(b)(1) thereof (emphasis added):

(E) The allocation of *suitable types, grades and quality* of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

Interpretation 1977–15 and the present Interpretation are similar in that they both seek to preserve the purchaser-refiner's supply rights. The fact that they achieve this through somewhat different approaches can be explained by the fact that (1) the refiner's supplier in Interpretation 1977–15 was a reseller, and somewhat different allocation rules apply to crude oil resellers, whereas the supplier here is a lessee-producer; and (2) unlike the present case, no substitute supplier at the same level of supply was present in Interpretation 1977–15 (the producer there sell crude oil from the property concerned directly to another refiner after the withdrawal of the reseller). Under these circumstances, it was necessary and appropriate to call upon the reseller to resume supply in order to preserve the original refiner's supply rights. In the present Interpretation, it is not necessary to recall Mobil to supply Texaco from other sources or to interfere with present lease ownership because Travelers is in position as current lessee-producer to restore the original "lines of supply." It is less appropriate to require Mobil to supply Texaco from other sources than to require Travelers to supply from the original production source primarily because of actual or potential crude oil price and quality variations from alternative sources as discussed above.

INTERPRETATION 1977–43

To: Standard Oil Company (Indiana)
Date: November 4, 1977.
Rules Interpreted: § 212.31, Ruling 1977–1.
Code: GCW .1—Posted price, def., Field

FACTS

Standard Oil Company (Indiana) (Amoco) is a major integrated petroleum company engaged in the production, transportation, refining and marketing of crude oil and refined petroleum products. As a part of its operations, Amoco purchases crude oil produced in southeastern Kansas. On May 1, 1973, the Mid-America Refining Co., Inc., ("Mid-America") issued a crude oil price bulletin which was publicly circulated in the southeast Kansas counties of Allen, Bourbon, Coffee, Crawford, Greenwood, Neosho, Wilson and Woodson. This price bulletin, which indicated all posted prices were subject to applicable gathering charges, listed the prices which Mid-America would pay for crude oil with gravities ranging from 17 A.P.I to 40 A.P.I. and above. The Mid-America price bulletin did not specify a grade of crude oil or a field to which it applied. As a purchaser of crude oil produced within the State of Kansas, Amoco questions the validity and applicability of the price bulletin issued by Mid-America which remained in effect on May 15, 1973.

ISSUE

Does the Mid-America price bulletin constitute a "posted price" as defined in 10 CFR 212.31 which may be used to determine the lower tier ceiling price of domestic crude oil pursuant to 10 CFR 212.73 in specified counties in Kansas?

INTERPRETATION

For the reasons set forth below, it has been concluded that the Mid-America price bulletin constitutes a "posted price" as that term is used in § 212.31 which posting was in effect on May 15, 1973 and may therefore be used to determine the lower tier ceiling price for domestic crude oil produced in the eight

[15] Transcript of public hearings, May 6, 1976, pp. 1–96.

[16] *Condor Operating Co. v. Sawhill*, 514 F. 2d. 351, 358–9 (1975); 41 FR 2830 (January 20, 1976).

[17] Written comment submitted by Skelly Oil Co., May 6, 1976, p. 1.

southeastern Kansas counties in which the price bulletin was publicly circulated.

Section 212.73(b) provides in part that: The lower tier ceiling price for a particular grade of domestic crude oil in a particular field . . . is the sum of: (1) The highest posted price at 6 a.m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) $1.35 per barrel (as adjusted by the provisions of § 212.77, not here relevant).

The definition of "posted price" set forth in § 212.31 states: "Posted price" means a written statement of crude oil prices circulated publicly among sellers and buyers of crude oil in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field.

That definition was elucidated in Ruling 1977–1. In that Ruling the history and meaning of the term "posted price" was fully explanned. Ruling 1977–1 states in part:

The general practice among principal purchasers has been periodically to issue price bulletins, which are widely circulated to the public, announcing the price that that particular purchaser would pay for a particular grade crude oil in a particular location.

It was in this context that CLC (Cost of Living Council) adopted the two tier pricing system in August 1973. In the Notice of Proposed Rulemaking issued on July 19, 1973, CLC indicated that the ceiling price for crude oil was to be the price posted on May 15, 1973 for each grade of petroleum from each particular field.

Thus, pursuant to the Ruling, the DOE requires that a price bulletin which may be utilized to establish a posted price be a publicly circulated written offer to purchase. The Ruling further provides:

Accordingly, other than the published price bulletins of the type traditionally issued by major oil companies, FEA will only recognize as a "posted price" written offers to purchase only so long as they were bona fide public offers of general applicability to crude oil purchasers in the field.

Since no explanatory language appears in the definition of posted price which relates to the meaning of the term "field" and, because the term has been given various meanings in different producing areas, this issue was also addressed in Ruling 1977–1 which states that:

* * * for purposes of posting crude oil prices, crude oil producers and purchasers have generally understood the term "field" to signify a general area underlain by one or more reservoirs. For example, while some price bulletins refer specifically to named fields in which the particular price prevails, other types of bulletins specify a price for a particular grade of crude oil, which is produced over a large geographical area—perhaps even over an area of one or more states.

It is therefore acceptable for purchasers to interpret the term "field" in the manner customary in the producing area because they are most familiar with the producing patterns prevalent in the area. For instance, when a price bulletin is issued on an area-wide basis, that is, with no particular field specified to which it applies, such a bulletin is presumed by the purchasers to be effective only with respect to the area in which it is publicly circulated. In addition, if a price bulletin does not specify a grade of crude oil (e.g., "West Texas Sour") in a field for which an offered purchase price applies, it is presumed that the bulletin applies to all grades of crude oil produced in the area in which the price bulletin is publicly circulated where that purchase price is determined to offer the highest posted price.

Based upon the facts provided by Amoco, the Mid-America price bulletin in effect on May 15, 1973 constitutes a valid posted price and is the proper reference, in conjunction with other price bulletins, for determining the highest posted price for lower tier crude oil in the producing area in southeastern Kansas which received the bulletin. As indicated in the facts, the Mid-America price bulletin of Chanute, Kansas, was issued to producers in southeastern Kansas only. Thus, the areas to which the price bulletin was issued and, hence, those areas subject to the Mid-America posted price are the counties of Allen, Bourbon, Coffee, Crawford, Greenwood, Neosho, Wilson and Woodson. Therefore, the Mid-America price bulletin is a publicly circulated written offer to purchase which was in effect on May 15, 1973. Consequently, insofar as the price offered represents the highest posted price in the area in accordance with § 212.31 it may form the basis for the computation of the lower tier ceiling price for crude oil pursuant to § 212.73 for the named counties.

INTERPRETATION 1977–44

To: Gulf Oil Corp.
Date: November 4, 1977.
Rules Interpreted: §§ 211.67(d)(2); 212.53(a).
Code: GCW–AI, PI–Export Sales Deduction, Export Sales Exemption.

FACTS

Gulf Oil Corp ("Gulf") is a refiner subject to the crude oil allocation ("entitlements") program set forth in 10 CFR 211.67. Among its various business activities, Gulf operates a refinery in Puerto Rico.

Gulf ships residual fuel oils and refined petroleum products from Puerto Rico to the Panama Canal Company ("Canal Company") in the Panama Canal Zone. The Canal Company is an agency of the United States Government.

Delivery is made pursuant to two contracts. The first contract calls for Gulf to deliver "Bunker C" fuel oil to the Canal Company's shore tanks for use in electric power generation at Miraflores Locks. The second contract involves the fueling of the Canal Company's dredging and other operation/maintenance equipment with various fuels from Gulf's storage tanks in the Canal Zone.

ISSUE

The issue presented is whether shipments of residual fuel oils or refined petroleum products from Puerto Rico to the Canal Company in the Panama Canal Zone are "export sales," within the meaning of 10 CFR 212.53(a), and therefore subject to the export sales exclusion from the volume of a refiner's crude oil runs to stills under 10 CFR 211.67(d)(2) for purposes of the crude oil entitlements program.

INTERPRETATION

For the reasons set forth below, it has been concluded that the volume of residual fuel oils and refined petroleum products delivered to the Canal Company under the facts presented are not "export sales" within the meaning of 10 CFR 212.53(a). These volumes are therefore not required to be deducted from Gulf's volume of crude oil runs to stills under 10 CFR 211.67(d)(2).

10 CFR 211.67(d)(2) sets forth the "exports exclusion" from crude oil runs to stills under the domestic crude oil allocation program (the "entitlements program"). It provides that:

The volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio shall be reduced by that refiner's volume of export sales under § 212.53 of Part 212 of this chapter in that month of refined petroleum products * * * and residual fuel oil, including sales to a domestic purchaser which certifies the product is for export. * * *

10 CFR 212.53(a) exempts "export sales" from the petroleum price regulations but does not define the term "export sales."

Antecedent export exemption provisions, virtually identical to the current export exemption in 10 CFR 212.53(a), were adopted by the Cost of Living Council in Phase II (6 CFR 101.34(d)(1)), Phase III (6 CFR 130.33(d)(1)), and Phase IV (6 CFR 150.54(d)(1)) of the Economic Stabilization Program. The Council twice formally interpreted its export exemption provision as not applying either to products purchased by an agency of the U.S. for sale in military commissaries and base exchanges in foreign countries or to products transferred to foreign countries under a grant aid program. The reasoning behind these rulings was principally that neither type of transaction will produce any revenue from foreign sources, and—

* * * The purpose of the (export) exemption is to allow sales of exports which will produce revenues from foreign sources to be made at the highest price. Transactions which will not produce such revenues shall, therefore, not be considered exports for the purpose of exemption from the regulations under the Economic Stabilization Program.[18]

In Interpretations 1977–16 (42 FR 31151, June 20, 1977), and 1977–36 (42 FR 54270, October 5, 1977) FEA adopted for purposes of 10 CFR 212.53(a) the Council's view of the purpose of the export exemption—i.e., that sales which do not produce revenues from foreign sources will not be considered export sales for purposes of 10 CFR 212.53(a). In Interpretation 1977–16, involving the sale of aviation fuel to the Department of Defense for use at military bases in foreign countries, the FEA also noted that this view of § 212.53(a) is consonant with the purposes behind the provision for entitlements loss to the extent of export sales under § 211.67(d)(2). The purpose of the "exports exclusion" from the volume of crude oil runs to stills under § 211.67(d)(2), it was noted, is to assure that crude oil cost equalization benefits under the entitlements program are not granted to a refiner for the sale of refinery products into the world market at uncontrolled prices and that the benefits of the entitlements program and domestic price controls are retained in the U.S. economy. There was no reason, therefore, in the Interpretation cited, why the long-standing interpretation of the price exemption applicable to exports should not apply to that exemption as invoked in the context of allocation regulations in § 211.67(d)(2).

The same rationale applies here. The purchaser in this case, like the purchaser in Interpretation 1977–16, is an agency and instrumentality of the United States.[19] The products purchased from Gulf under the facts here presented are used essentially to operate and maintain the Panama Canal, a U.S. facility (subject to treaty requirements) analogous for purposes of this Interpretation to

[18] CLC Phase III Ruling 1973–3, June 28, 1973, IRS Stabilization Program Guidelines III, ¶ 31,207.15. See also CLC Phase IV Price Ruling 1974–3 (39 FR 10152, March 18, 1974).

[19] 35 CFR 9.2(a).

the case of U.S. military bases overseas. It is therefore not possible to view the sales concerned as "exports which produce revenues from foreign sources." The sales in this case are essentially domestic commercial transactions.

The fact that the regulations provide that petroleum price and allocation controls do not apply in the Panama Canal Zone [20] does not alter our conclusion in this matter. The geographical scope or transactional coverage of the substantive regulations—i.e., the reach of controls beyond the United States proper to include some or all of the territories and possessions of the U.S.—has varied from time to time [21] and is not necessarily co-extensive with the geographical definition of the United States for purposes of the exports exemption. The exclusion from crude runs to stills under § 211.67(d)(2) applies only to the volume of "export sales under § 212.53" and does not include domestic sales which may be exempt or otherwise excluded from price controls by virtue of regulatory provisions other than § 212.53.

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[20] The petroleum price and allocation regulations apply to the sale and distribution of all covered products refined or produced in or imported into "the United States." §§ 210.1, 211.1(a), 212.2. "United States" is defined as "the several States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States other than the Panama Canal Zone." § 210.21. See also conforming language excluding Panama Canal Zone from the definition of "State and local governments" in § 212.31.

[21] Compare coverage explained in fn. 3, above, with less extensive coverage under Phase IV of the Economic Stabilization Program as set forth in 6 CFR 150.1(g).

[FR Doc.77-34630 Filed 12-1-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410–15]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Proposed Revision of REA Specification PE–29 for Two-Wire Voice Frequency Repeater Equipment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletin 345–69 to announce the revision of REA Specification PE–29 for Two-Wire Voice Frequency Repeater Equipment. This revision is needed to provide for improved performance characteristics of voice frequency repeaters consistent with present day technology. The effect of this action will be to achieve improved repeater performance while minimizing cost. On issuance of REA Bulletin 345–69, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than January 3, 1978.

ADDRESS: Persons interested in the revision of REA Specification PE–29 may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony H. Flores, Chief, Transmission Branch, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1367, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202–447–3917.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.), REA proposes to revise REA Bulletin 345–69. A copy of the proposed revised REA Specification PE–29 may be secured in person or by written request from the Director, Telephone Operations and Standards Division. The text of the revised REA Bulletin 345–69 announcing the issuance of revised REA Specification PE–29 is as follows:

REA BULLETIN 345–69

Subject: REA Specification for Two-Wire Voice Frequency Repeater Equipment.

I. *Purpose:* To announce a revision of REA Specification PE–29 for Two-Wire Voice Frequency Repeater Equipment.

II. *General:* This specification covers reqirements for voice frequency repeaters used for the amplification of speech and other voice frequency signals transmitted over two-conductor physical circuits in telephone systems. The major changes included in this revision are as follows:

A. Added requirements for Automatic Gain Control (ACC) repeaters.

B. Added requirements for repeaters used with H88 loading.

C. Added requirement for output power capability.

D. Reduced humidity requirements for environmental tests.

E. Set limits for return loss requirements.

F. Tightened the requirement for longitudinal balance.

G. Changed the method for measuring crosstalk and reduced somewhat the crosstalk requirement.

H. Added requirement for harmonic distortion.

I. Added requirement for insulation resistance.

J. Added requirement for initial failure rate.

The revised specification becomes effective on May 1, 1978. All voice frequency repeater equipment manufactured after May 1, 1978, must comply with the revised REA Specification PE–29 dated January 1978. This does not preclude adoption of the revised specification by manufacturers prior to the effective date.

III. *Availability of specification:* Copies of the revised PE–29 will be furnished by REA upon request. Questions concerning the revised specification may be referred to the Chief, Transmission Branch, Telephone Operations and Standards Division, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202–447–3917.

Dated: November 22, 1977.

C. R. BALLARD,
Assistant Administrator,
Telephone.

[FR Doc.77–34309 Filed 12–1–77;8:45 am]

[3410–37]

Food Safety and Quality Service

[9 CFR Parts 317 and 381]

MEAT OR POULTRY PRODUCTS

Proposed Net Weight Labeling

AGENCY: Department of Agriculture, Food Safety and Quality Service, Meat and Poultry Inspection.

ACTION: Proposed rule.

SUMMARY: This proposal provides uniform labeling requirements and prescribes uniform procedures for determining compliance with label statements of net contents of containers of meat products or poultry products. The proposal is intended to provide for more specific reasonable variations with respect to the statement of quantity of contents on labeling of meat and poultry products.

DATES: Comments must be received on or before March 2, 1978.

ADDRESSES: Written Comments to: Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. Oral Comments concerning the proposed amendments to the poultry products inspection regulations to: Dr. W. H. Dubbert, 202–447–3840. For additional information on comments, see supplementary information.

FOR FURTHER INFORMATION CONTACT:

Dr. W. H. Dubbert, Chief Staff Officer, Systems Development and Sanitation Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 202–477–3840.

SUPPLEMENTARY INFORMATION:

COMMENTS

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Hearing Clerk. Comments should bear a reference to the date and page number of this issue of the FEDERAL REGISTER. Any person desiring opportunity for oral presentation of views concerning the proposed amendments to the poultry products inspection regulations must make such request to Dr. Dubbert so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this notice will be made avail-

able for public inspection in the Office of the Hearing Clerk during regular hours of business.

BACKGROUND

Prior to enactment of the Wholesome Meat Act in 1967 and the Wholesome Poultry Products Act in 1968, USDA had very limited responsibility for taking action against misbranded and adulterated meat products and poultry products after the products were removed from an official establishment.

These Acts, however, extended the Department's authority over products after they left the official establishment.

In the recent case of "The Rath Packing Company v. M. H. Becker, et al.," the U.S. District Court for the Central District of California held that California and its political subdivisions were precluded by the Federal Meat Inspection Act (section 408, 21 U.S.C. 678) from imposing additional or different State net weight labeling requirements on federally inspected meat products, and that provisions of the Act regarding mislabeling or misbranding were applicable to such products at an official establishment and at any level of distribution including the retail store. However, the District Court held that § 317.2(h)(2) of the Federal meat inspection regulations (9 CFR 317.2(h)(2)) concerning net weight labeling was void for vagueness, and that no "reasonable variations" with respect to net weight labeling had been promulgated by the Secretary under the Act. Following the District Court decision, the Department published in December 1973 proposed regulations in response to the court's decision that current regulations concerning net weight labeling variations were vague (see 38 FR 33308–33313). The proposal offered procedures for determining allowable net weight variations both at the producing plant and at the time of sale. The proposal also stated that a mandatory quality control program would be required of each meat and poultry establishment for products in consumer packages.

During 1974, the Department held four public hearings throughout the United States explaining the new proposal to all interested parties. More than 1,600 written comments were recorded. Consumers generally opposed purchasing meat and poultry products that averaged and stated weight, even though historically most consumer items offered for sale by mass are sold in this manner. Reasonable variations in net content were spelled out in the proposal which would have resulted in packers targeting their production above the stated weight. Industry generally opposed the variation limits, contending they were to restrictive; however, no data was offered that would support limits other than those proposed.

The proposal also stated that recoverable liquids that drain from meat and poultry products after packaging would still be considered as part of the net weight at the time of sale. Consumers and State weights and measure officials opposed this provision.

In October 1975, the Court of Appeals for the Ninth Circuit reversed the District Court in holding that the Federal meat inspection regulations were not void for vagueness, but affirmed the District Court in holding that section 408 of the Federal Meat Inspection Act preempted any State statutes or regulations regarding weight labeling requirements, "in addition to, or different than," the Federal standards.

The issue with respect to preemption was appealed to the United States Supreme Court, and on March 29, 1977, the Court held that various provisions of California law regarding net weight labeling were preempted by section 408 of the Federal Meat Inspection Act.

Although the decisions of the appellate courts generally supported the Department's current net weight labeling policies, it appears that more definitive regulations concerning reasonable variations from net weight labeling requirements would be in the public interest.

NEED FOR PROPOSED CONTROLS

Weights and measures officials of most States and municipalities are generally authorized by their respective jurisdictions to take action against handlers whose food products in their States or municipalities fail to meet the labeled statement of net contents. This authority, however, is constitutionally limited when federally inspected meat products or poultry products are involved. The States are precluded from imposing additional or different requirements than those made under the Federal Meat Inspection Act as amended (21 U.S.C. 601 et seq.), or the Poultry Products Inspection Act as amended (21 U.S.C. 451 et seq.) with respect to marking or labeling of the quantity of contents of containers of federally inspected product.

The proposal prescribes variations from net weight label statements which would be reasonable when determined by prescribed procedures. They are based on survey data concerning reasonable manufacturing practice. (These data are available from Dr. Dubbert.) The allowable variations are according to container size and the character of the product.

Although consumer comments on the original proposal did not support this concept in determining net content, the Department is proposing the procedure again after considerable dialogue and council with the Interagency Net Weight Committee. This group is represented by officials from the Food and Drug Administration (FDA), Federal Trade Commission (FTC), National Bureau of Standards, and USDA. State and local government agencies would have concurrent jurisdiction pursuant to section 408 of the Federal Meat Inspection Act and section 23 of the Poultry Products Inspection Act to enforce State or local provisions, that are not different from or in addition to these provisions, with respect to federally inspected products outside official establishments.

Reasonable variations are differences in net contents that are characteristic of the product or the container, or the method or process, or combinations of these factors. Traditionally, the Department and other regulatory agencies (such as FDA) have considered net content declaration as correct if the container, on the average, contains the amount declared. Compliance with the averaging concept has been determined by small sample methods, since it is not economically feasible to employ sufficient personnel to weigh or measure every container produced. The average concept makes it necessary to place limitations on individual container variations from the declared label weight. The proposed variations are according to container size and nature of product. Homogeneous products, for example, soup, are not allowed the same variations as products made up of units, such as frankfurters, due to the inherent ease of packaging a desired mass of soup.

The undefined phrase "reasonable variation caused by gain or loss of moisture" would be removed from the regulations. To eliminate handling variables which are not controllable, it would be the responsibility of the official establishment to package and market its products so that declared contents are maintained throughout their disposition. Therefore, truthful net weight declaration would be required at any point of distribution and not only "at time of pack" or "at time of shipment from the official establishment."

Heretofore, the inspector observed the processing and packaging operation and checked several finished lots per week at the official establishment. This proposal requires official establishments to have an acceptable plant-operated quality control procedure for product to be sold to household consumers, in keeping with the establishment's responsibility under the Acts. Samples of all lots of such product would be examined by the establishment's employees. The inspector would evaluate (monitor) the plant's procedure for effectiveness, and make sufficient lot inspections based on prescribed procedures to determine whether or not the plant's procedures are meeting the standard of the procedures in the regulations.

The proposed lot inspection procedures would be designed to evaluate specific lots of product both at the official establishments and other distribution points. The lot would be considered as meeting the label weight, if the average net weight of the sample units representing the lot meets the label weight, and if there are no unreasonable shortages in individual sample units. To attain a high degree of confidence that products would meet such requirements at all distribution levels, a packer would be required to package, on the average, more product per container than the labeled weights. The exact overage would vary with products, container sizes, packers, and would

depend to a large extent upon the packer's ability to limit the net weight variability.

Immediate containers of bulk shipments of product intended for further processing, packaging, or for retail sale at which time a net weight statement is applied, and shipping containers holding small packages for sale at retail intact would not be required to be covered by an approved plant quality control program for net weight. However, the official establishment would be responsible for assuring that the net weight statement on such immediate or shipping containers is accurate at all points as determined by the procedure outlined in the proposal. The quality control program is not considered to be necessary, since such containers would not be sold to consumers.

In response to consumer comments made to the original proposal, the Department is now proposing that all juices and liquids that drain from meat and poultry after packaging and before sale will not be considered as part of the net weight. Since both raw and processed meat and poultry products tend to drain to some degree, it will be necessary for processors marking net weight at the producing plant to have knowledge of the amount of liquid, meat juices, brine, etc., that will drain from the time of preparation to the time of sale, so that net weight marking will be accurate.

The proposal also contains other changes in net weight labeling of bacon. Certain cartons of shingle packed sliced bacon are exempt, under the current regulations, from the general requirements concerning the declaration of net weight in both ounces and pounds and the position of the net weight statement on the package. The reason for such exemptions is that bacon has historically been labeled in such a manner. However, it appears that the consumers interest in meaningful labeling would be served better if such packages were to conform to the net weight labeling requirements applicable to the vast majority of meat food products. Therefore, these exemptions would be terminated by this proposal.

Under the proposal, small packages (less than ½ ounce net weight) would be exempt from bearing statements of net weight or measure, provided that their shipping containers bore net weight statements that were in accord with the regulations. Such exemption is permitted under the Acts and is currently in the meat inspection regulations. However, changes have been made in the proposed regulations to clarify this exemption. For consistency, this exemption has also been extended to poultry products. Additionally, it is proposed that if an establishment wishes to place a net weight statement on a small package, such statement would be exempt from the normal type size, dual declaration, and placement requirements. This exemption is based upon the lack of labeling space inherent on such small packages.

Accordingly, the proposed changes to the Federal meat inspection regulations (9 CFR Part 317) and the poultry products inspection regulations (9 CFR Part 381) are as set forth below.

1. Section 317.2(h) of the Federal meat inspection regulations would be amended by revising subparagraphs (1) and (2), amending the first sentence in subparagraph (4), adding a new sentence to the end of subparagraph (5), amending subparagraph (9)(ii), deleting subparagraph (9)(iv), adding a new sentence to the end of subparagraph (11), revising subparagraph (13), and by adding a new subparagraph (14) to read as follows:

§ 317.2 Labels: Definitions; required features.

* * * * *

(h)(1)(i) The label shall bear a statement of the quantity of contents in terms of net weight or measure as provided in subparagraph (4) of this paragraph (h). However, packages for sale at retail intact need not bear a statement of the net weight, if such packages are "small packages," as described in § 317.2(h)(9)(i) and the total net weight of the contents of the shipping container is marked on such container.

(ii) The statement of net quantity of contents shall appear, except as otherwise permitted under this paragraph (h), on the principal display panel of all containers to be sold at retail intact, in conspicuous and easily legible boldface print or type, in distinct contrast to other matter on the container, and shall be declared in accordance with the provisions of this paragraph (h).

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container, exclusive of tare as defined in § 317.18; and variations from the net weight stated on the label, as defined in § 317.18, are hereby found to be reasonable and are allowable.

* * * * *

(4) Except as provided in § 317.7 or in subparagraph (1) of this paragraph (h), the statement shall be expressed in terms of net avoirdupois weight or liquid measure. * * *

(5) * * * Subparagraph (9) of this paragraph (h) permits certain exceptions from the provisions of this subparagraph (5) for small packages, and subparagraph (12) of this paragraph (h) permits certain exceptions from the provisions of this subparagraph (5) for multi-unit packages.

* * * * *

(9) * * *

(ii) Labels for small packages exempt from the requirement for a net weight statement under subparagraph (1) of this paragraph (h) shall also be exempt from the type size, dual declaration and placement requirements of this paragraph (h).

* * * * *

(11) * * * All other packages are "standard weight packages."

* * * * *

(13) Shingle-packed sliced bacon cartons containing product weighing other than 8 ounces, 1 pound, or 2 pounds shall have the statement of the net weight shown with the same prominence as the most conspicuous feature on the label and printed in a color of ink contrasting sharply with the background.

(14)(i) To provide maximum assurance that product in immediate containers bearing net weight statements conforms with the statement of net weight on the labels of the products, the operator of the official establishment packaging the product shall install a quality control system which must receive prior approval of the Administrator. As a minimum, the application for approval of the system shall include a written description of the sampling procedures, including the number of sample units to be drawn at any one time, the frequency of sampling, the minimum number of sample units upon which determination of compliance would be based, and limits for individual sample units, sample groups, and averages of all sample units representing a production run which if exceeded would result in retention of product. The limits for individual sample units may not exceed those defined in Table II of § 317.18 and the average of all sample units must equal at least the labeled net weight of the immediate container. The methods of establishing tare weights must be described if they are used. Testing procedures employed to check the accuracy of filling equipment and scales shall be described, and systematic records must be maintained of all determinations and corrective actions, and must be made available to the Program inspector. Acceptance is based on the ability of the system to provide the controls and information necessary to assure that the product will meet the labeling claims of net weight, when determined by the procedures prescribed in § 317.18 of this subchapter; that variations within packages will remain within the limits prescribed in § 317.18; and that product found out of compliance will be held for proper disposition in accordance with the regulations in this subchapter; and that the system will permit proper monitoring for effectiveness by plant personnel and Program inspectors.

(ii) Approval of a system under this subparagraph (14) does not relieve the operator of the official establishment from assuring that the net weight statement as determined by the procedure prescribed in § 317.18 is accurate at all points. However, such a system is not required with respect to immediate containers of bulk shipments of unlabeled products intended for further preparation, packaging, or for retail sale at which time a net weight statement is applied, and shiping containers holding small packages for sale at retail intact. However, the official establishment shall be responsible for assuring that the net weight statement on such immediate or shipping container is accurate at all points as determined by the procedure

prescribed in § 317.18. The Program inspector shall monitor the plant's system for proper application and effectiveness to determine whether it is resulting in labeling which meets the requirements of this paragraph and § 317.18, including conducting such samplings and weighings of products as are necessary to enable the Program inspector to determine that the products prepared at the official establishment are not misbranded. Plant systems which do not result in the labeling of products in accordance with this paragraph must be revised to conform to Program standards.

2. The Table of Contents is amended to reflect the following change, and a new § 317.18 is added to read as follows:

§ 317.18 Quantity of contents labeling; reasonable variations when determined by prescribed procedures.

(a) Labels on immediate containers of products shall show an accurate statement of the quantity of contents in terms of weight, measure or numerical count, subject to reasonable variations and the small package exemption established by regulations in this subchapter.

(b) (1) The product variations from net weight label statements found in Table II of this paragraph are found to be reasonable when determined by the prescribed procedures, including defined sampling plans. Variations determined by such procedures shall be used by the Program inspector for monitoring all products at the producing establishment; and by anyone conducting net weight compliance evaluation for all products outside the official establishment.

(2) The following procedures shall be used:

(i) Select the group to which the product belongs as defined in Table I.

TABLE I [1]

	Group definitions for immediate containers of—	
	Homogeneous products that are fluid when filled	All other products
Group:		
1	Less than 3 oz.	Less than 3 oz.
2	3 to 16 oz.	
3	Over 16 oz.	3 to 7 oz.
4		Over 7 to 48 oz.
5		Over 48 to 160 oz.
6		Over 160 oz.

[1] Sample units from any lot of random weight packages may fall into more than 1 group.

(ii) Randomly select 10 packages (sample units) from: (*a*) Any lot containing 250 packages or less of any product in one or more of Groups 1, 2, 3, 4, or 5, or (*b*) any size lot of any product in Group 6. Randomly select 30 packages from all other lots. These randomly selected packages constitute the sample for the purposes of this section. A "lot" for purposes of this section shall be one type and style of product, produced by one establishment and bearing identical labels and available for inspection at one place at one time; except that random weight packages otherwise conforming to this definition may have differing statements of net weight.

(iii) Determine the net weight of each package in the sample. The net weight of all products shall be the gross weight of the immediate container and its contents minus the tare weight. (*a*) The tare weight, except for frozen products, shall be: (*1*) For those products where the entire contents are to be consumed, the weight of the dry container; (*2*) for those products where the entire contents are not to be consumed, the weight of the container, packaging material containing adhering or absorbed juices or absorbed fats or solids, and free juices within the container or within the packaging. The tare weight shall be determined by measuring the gross weight of the immediate container and its contents and subtracting the weight of the drained product. Drained product is obtained by placing the product on a U.S. Standard No. 8 mesh screen, 8 inches in diameter for product less than 3 pounds and 12 inches in diameter for product 3 pounds and over, and allowing it to drain for 2 minutes. Weight of the drained product is obtained by determining the weight of the drained product and the screen, minus the weight of the dry screen. (*b*) The tare weight for frozen products shall be the weight of the container and any adhering ice crystals. (*c*) A tare weight may be printed on the immediate container or shipping container as provided for in § 317.2(h). (*d*) For random weight packages the tare weight is calculated individually for each container. (*e*) For standard weight packages, the tare weight is calculated at locations other than the producing establishment by averaging the tare weights of three randomly selected packages. At the producing establishment, the tare weight for standard weight packages is calculated by averaging the tare weights of the total number of packages sampled. The total number of packages to be sampled is calculated by initially randomly selecting three packages and applying the following table:

Tare weight—Standard weight packages—at producing establishments

If, the difference (ounces) in the weight between the heaviest and lightest of the 3 containers is—	Then, the total number of packages to be sampled is—
0 to 1/8	3
3/16	6
1/4	9
5/16	[1] 12
3/8 or more	[1] 15

[1] Only 10 packages must be sampled if only 10 packages are required to be sampled for net weight purposes under § 317.18(b)(2)(ii).

(iv) For standard weight packages, determine the average net weight of the sample units by totaling all net weights in the sample and dividing by the number of packages in the sample. For random weight packages, determine the difference between the average of the actual net weights of the packages and the average of their declared net weights.

(v) For standard weight packages, if the average net weight of the sample units is less than the labeled weight or, in a sample of random weight packages if the difference between the average actual net weight and the average declared net weight is a minus number, the lot represented by the sample fails.

(vi) For standard weight packages, if the average net weight of the sample units equals at least the labeled net weight, compare the largest minus variation of any package in the sample with the limits defined for the applicable group in Table II of this paragraph, and if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails. In a sample of random weight packages, if the difference betwen the average net weight and the average declared net weight is zero or a plus number, compare the largest minus variation of any package in the sample with the limits defined for the smallest numbered group represented in the sample; if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails.

TABLE II.—*Limits for immediate containers for groups 1 through 6* [1] [2]

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
10 pct of label weight	4.15 gm	8.31 gm	20.77 gm	41.53 gm	(4)
	0.15 oz	0.29 oz	0.73 oz	1.47 oz	(4)
	9/32 oz	9/32 oz	23/32 oz	1 15/32 oz	(4)
	5/16 oz	5/16 oz	1 1/16 oz	1 7/16 oz	(4)
	1/10 oz	2/10 oz	7/10 oz	1 3/10 oz	(4)
	1/8 oz	3/8 oz	5/8 oz	1 3/8 oz	(4)
	(3)	1/4 oz	3/4 oz	1 1/4 oz	(4)
	0.01 lb	0.02 lb	0.04 lb	0.09 lb	(4)

[1] Use the limits recorded in terms of calibrations of the scale being used. E.g. If the scale is in 16ths, use limits in 16th; if in grams, use gram limits. Do not convert.

[2] If a sample of packages marked with random weights spans two or more groups, the limits for the smallest numbered group represented shall apply to all packages in the sample.

[3] The limit is the labeled net weight when the sensitivity of the scales being used does not permit calibrations as precise as those recorded above.

[4] The limit for Group 6 shall be 4 oz.

(vii) Any lot which fails under this paragraph (b) must be repacked and resampled for compliance with the regulations in this part.

The poultry products inspection regulations in Part 381 would be amended as set forth below.

3. Section 381.121 would be amended by revising paragraph (a), by deleting the first sentence of paragraph (b), by adding a new sentence to the end of paragraph (c)(5), by revising paragraphs (c) (6) and (9), and by adding new subparagraphs (10) and (11) to read as follows:

§ 381.121 Quantity of contents.

(a) The label shall bear a statement of the quantity of contents in terms of net weight or measure as provided in paragraph (c)(5) of this section. However, packages for sale at retail intact need not bear a statement of the net weight, if such packages are "small packages" as described in paragraph (c)(9)(i) of this section, and the total net weight of the contents of the shipping container is marked on such container.

* * * * *

(c) * * *

(5) * * * Subparagraph (8) of this paragraph (c) permits certain exceptions from the provisions of this subparagraph (5) for multi-unit packages, and subparagraph (9) of this paragraph (c) permits certain exceptions from the provisions of this subparagraph (5) for small packages.

(6) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container, exclusive of tare as defined in § 381.121a; and variations from the net weight stated on the label, as defined in § 381.121a are hereby found to be reasonable and are allowable. The statement shall not include any term qualifying a unit of weight, measure or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum" or words of similar import, except as provided in paragraph (b) of this section.

* * * * *

(9) The following exemptions from the requirements contained in this section are hereby established:

(i) Individually wrapped and labeled packages of less than ½-ounce net weight which are in a shipping container, need not bear a statement of net quality of contents as specified in this section when the statement of net quantity of contents on the shipping container meets the requirements of this section.

(ii) Labels for small packages exempt from the requirement for a net weight statement under paragraph (a) of this section shall also be exempt from the type size, dual declaration and placement requirements of this section.

(10) For the purpose of this Subpart N, a "random weight package" is one of a lot, shipment, or delivery of packages of the same product, with varying weights and with no fixed weight pattern. All other packages are "standard weight packages."

(11)(i) To provide maximum assurance that poultry product in immediate containers bearing net weight statements conforms with the statement of net weight on the labels of the product, the operator of the official establishment packaging the product shall install a quality control system which must receive prior approval of the Administrator. As a minimum, the application for approval of the system shall include a written description of the sampling procedures including the number of sample units drawn at any one time, the frequency of sampling, the minimum number of sample units upon which determination of compliance would be based, and limits for individual sample units, sample groups, and averages of all sample units representing a production run which if exceeded would result in retention of product. The limits for individual sample units may not exceed those defined in Table II of § 381.121a and the average of all sample units must equal at least the labeled net weight of the immediate container. The method of establishing tare weights must be described if they are used. Testing procedures employed to check the accuracy of filling equipment and scales shall be described, and systematic records must be maintained of all determinations and corrective actions, and must be made available to the Inspection Service employee. Acceptance is based on the ability of the system to provide the controls and information necessary to assure that the product will meet the labeling claims of net weight when determined by the procedures prescribed in § 381.121a; that variations within packages will remain within the limits prescribed in § 381.121a; and that product found out of compliance will be held for proper disposition in accordance with the regulations in this part; and that the system will permit proper monitoring for effectiveness by plant personnel and Inspection Service inspectors.

(ii) Approval of a system under this subparagraph (11) does not relieve the operator of the official establishment from assuring that the net weight statement as determined by the procedure prescribed in § 381.121a is accurate at all points. However, such a system is not required with respect to immediate containers of bulk shipments of unlabeled product intended for further processing, packaging, or for retail sale at which time a net weight statement is applied, and shipping containers holding small packages for sale at retail intact. However, the official establishment shall be responsible for assuring that the net weight statement on such immediate or shipping container is accurate at all points as determined by the procedure prescribed in § 381.121a. The Inspection Service inspector shall monitor the plant's system for proper application and effectiveness to determine whether it is resulting in labeling which meets the requirements of this paragraph and § 381.121a, including conducting such samplings and weighings of poultry products as are necessary to enable the Inspection Service inspector to determine that the poultry products prepared at the official establishment are not misbranded. Plant systems which do not result in the labeling of poultry products in accordance with this paragraph must be revised to conform to Program standards.

4. The Table of Contents is amended to reflect the following change, and a new § 381.121a is added to read as follows:

§ 381.121a Quantity of contents labeling; reasonable variations when determined by prescribed procedures.

(a) Labels on immediate containers of products shall show an accurate statement of the quantity of contents in terms of weight, measure or numerical count, subject to reasonable variations and small package exemption established by regulations in this Part 381.

(b)(1) The product variations from net weight label statements found in Table II of this paragraph are found to be reasonable when determined by the prescribed compliance procedures, including defined sampling plans. Variations determined by such procedures shall be used by the Inspection Service inspector for monitoring all products at the producing establishment; and by anyone conducting net weight compliance evaluation for all products outside the official establishment.

(2) The following procedures shall be used:

(i) Select the group to which the product belongs as defined in Table 1.

TABLE I [1]

Group	Group definitions for immediate containers of—	
	Homogeneous products that are fluid when filled	All other products
Group:		
1	Less than 3 oz.	Less than 3 oz.
2	3 to 16 oz.	
3	Over 16 oz.	3 to 7 oz.
4		Over 7 to 48 oz.
5		Over 48 to 160 oz.
6		Over 160 oz.

[1] Sample units from any lot of random weight packages may fall into more than 1 group.

(ii) Randomly select 10 packages (sample units) from: (*a*) any lot containing 250 packages or less of any product in one or more of Groups 1, 2, 3, 4, or 5, or (*b*) any size lot of any product in Group 6. Randomly select 30 packages from all other lots. These randomly selected packages constitute the sample for the purposes of this section. A "lot" for purposes of this section shall be one type and style of product, produced by one establishment and bearing identical labels and available for inspection at one place at one time; except that random weight packages otherwise conforming to this definition may have differing statements of net weight.

(iii) Determine the net weight of each package in the sample. The net weight of all products shall be the gross weight of the immediate container and its contents minus the tare weight. (*a*) The tare weight, except for frozen products, shall be: (*1*) For those products where the entire contents are to be consumed, the weight of the dry container; (*2*) for those products where the entire contents are not to be consumed, the weight of the container, packaging material containing adhering or absorbed juices or absorbed fats or solids, and free juices within the container or within the packaging. The tare weight shall be determined by measuring the gross weight of the immediate container and its contents and subtracting the weight of the drained product. Drained product is obtained by placing the product on a U.S. Standard No. 8 mesh screen, 8 inches in diameter for product less than 3 pounds and 12 inches in diameter for product 3 pounds and over, and allowing it to drain for 2 minutes. Weight of the drained product is obtained by determining the weight of the drained product and the screen, minus the weight of the dry screen. (*b*) The tare weight for frozen products shall be the weight of the container and any adhering ice crystals. (*c*) A tare weight may be printed on the immediate container or shipping container as provided for in § 381.121 (a). (*d*) For random weight packages the tare weight is calculated individually for each container. (*e*) For standard weight packages, the tare weight is calculated at locations other than the producing establishment by averaging the tare weights of three randomly selected packages. At the producing establishment, the tare weight for standard weight packages is calculated by averaging the tare weights of the total number of packages sampled. The total number of packages to be sampled is calculater by initially randomly selecting three packages and applying the following table:

Tare weight—Standard weight packages—at producing establishments

If, the difference (ounces) in the weight between the heaviest and lightest of the 3 containers is—	*Then, the total number of packages to be sampled is—*
0 to ⅛	3
3/16	6
¼	9
5/16	[1] 12
⅜ or more	[1] 15

[1] Only 10 packages must be sampled if only 10 packages are required to be sampled for net weight purposes under § 381.121a(b)(2)(ii).

(iv) For standard weight packages, determine the average net weight of the sample units by totaling all net weights in the sample and dividing by the number of packages in the sample. For random weight packages, determine the difference between the average of the actual net weights of the package and the average of their declared net weights.

(v) For standard weight packages, if the average net weight of the sample unit is less than the labeled weight or, in a sample of random weight packages, if the difference between the average actual net weights and the average declared net weights is a minus number, the lot represented by the sample fails.

(vi) For standard weight packages, if the average net weight of the sample units equals at least the labeled net weight, compare the largest minus variation of any package in the sample with the limits defined for the applicable group in Table II of this paragraph, and if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails. In a sample of random weight packages, if the difference between the average net weights and the declared net weights is zero or a plus number, compare the largest minus variation of any package in the sample with the limits defined for the smallest numbered group represented in the sample; if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails.

TABLE II.—*Limits for immediate containers for groups 1 through 6* [1] [2]

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
10 pct of label weight	4.15 gm	8.31 gm	20.77 gm	41.53 gm	[4]
	0.15 oz.	0.29 oz.	0.73 oz.	1.47 oz.	[4]
	1/32 oz.	2/32 oz.	23/32 oz.	1 15/32 oz.	[4]
	3/16 oz.	1/16 oz.	1 1/16 oz.	1 7/16 oz.	[4]
	1/10 oz.	2/10 oz.	7/10 oz.	1 5/10 oz.	[4]
	1/8 oz.	2/8 oz.	6/8 oz.	1 3/8 oz.	[4]
	[3]	¼ oz.	¾ oz.	1¼ oz.	[4]
	0.01 lb.	0.02 lb.	0.04 lb.	0.09 lb.	[4]

[1] Use the limits recorded in terms of calibrations of the scale being used. E.g. If the scale is in 16ths, use limits in 16th; if in grams, use gram limits. Do not convert.

[2] If a sample of packages marked with random weights spans two or more groups, the limits for the smallest numbered group represented shall apply to all packages in the sample.

[3] The limit is the labeled net weight when the sensitivity of the scales being used does not permit calibrations as precise as those recorded above.

[4] The limit for Group 6 shall be 4 oz.

(vii) Any lot which fails under this paragraph (b) must be repacked and resampled for compliance with the regulations in this Subpart.

* * * * *

NOTE.—The Food Safety and Quality Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., on November 17, 1977.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

[FR Doc.77-34601 Filed 12-1-77;8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 107]

SMALL BUSINESS INVESTMENT COMPANIES

Retention of Investments

AGENCY: Small Business Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The proposed rule would amend § 107.806 which deals with a Licensee's retention of its investment in a

concern which qualified as small at the time of initial Financing, but subsequently becomes large. The proposed change makes it clear that when such Financing includes options or other rights to acquire an equity position, it may exercise such options or rights after the portfolio concern becomes large. This will enable the Licensee to share more fully in the benefits resulting from the growth of its portfolio concerns. A cross reference to § 107.806 would be added to § 107.303 (Stock options and conversion rights).

DATE: Comments must be received on or before January 3, 1978, in triplicate:

ADDRESS: Associate Administrator for Finance and Investment, Small Business Administration, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Peter F. McNeish, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. 202–653–6584.

Notice is hereby given that pursuant to the authority contained in Section 308 of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 661, et seq., it is proposed to amend, as set forth below, §§ 107.303 and 107.806 of Part 107, Chapter I of Title 13 of the Code of Federal Regulations.

Section 107.303 *Stock options and conversions rights* would be amended by adding at the end thereof the following new sentence:

§ 107.303 Stock options and conversion rights.

* * * * *

For exercise of options after portfolio concern becomes large, see § 107.806.

2. Section 107.806 *Retention of investments* would be revised to read as follows:

§ 107.806 Retention of investments.

A Licensee may retain its investment in a concern which qualified as small at the time of initial Financing, but which subsequently became large. Securities received in connection with a Portfolio Concern's merger, consolidation, or affiliation with a large business may be retained until Licensee has recovered its original investment plus a reasonable return thereon, and thereafter, so long as continued ownership does not interfere with the Financing of Small Concerns. Subject to § 107.301(d), additional Financing may be provided only to the extent necessary (a) to honor a commitment made while the concern was small, or (b) to protect Licensee's original investment, or (c) to exercise stock options or other rights to purchase equity securities pursuant to such options or rights acquired as part of the initial Financing.

(Catalog of Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: September 16, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-34570 Filed 12-1-77;8:45 a.m.]

[1505–01]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 16, 52, 71, 170, 171, 310, 312, 314, 320, 330, 430, 431, 510, 511, 514, 570, 571, 601, 630, 701, and 1010]

[Docket No. 77N-0195]

OBLIGATIONS OF SPONSORS AND MONITORS OF CLINICAL INVESTIGATIONS

Proposed Establishment of Regulations

Correction

In FR Doc. 27962 appearing at page 49612 in the issue for Tuesday, September 27, 1977, make the following corrections:

(1) On page 49623, in § 52.15, paragraph (a)(2), in the eighth line, "§ 314.-11" should be changed to read "§ 314.111".

(2) On page 49629, in the middle column, immediately above the heading of § 601.25, insert the following amendatory language:

"b. In § 601.25 by revising paragraph (h)(1) to read as follows:"

[4110–03]

[21 CFR Part 101]

[Docket No. 77N-0404]

PROTEIN SUPPLEMENTS

Warning Labeling

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would establish label warning requirements for protein supplements that may be used in weight reduction or weight maintenance programs. The Food and Drug Administration is proposing these requirements on the basis of evidence that, without proper medical supervision, very low calorie diets consisting primarily of protein may cause serious medical problems, including death. The purposes of this proposal are to ensure that consumers are alerted to the potential health hazards associated with consumption of protein supplements for purposes of weight control and to inform consumers that the advice of a physician should be sought before using these products for weight control.

The agency is asking for the submission of any additional data relating to the safety of these products, and is also inviting comment with respect to whether the agency should take any other action concerning these products, including removing them from the market.

DATES: Written comments by January 3, 1978; the proposed effective date of a final rule based on this proposal is 30 days after publication of the final rule in the FEDERAL REGISTER.

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

FOR FURTHER INFORMATION CONTACT:

Victor P. Frattali, Bureau of Foods (HFF–200), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–245–1561.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs is concerned about potential hazards for consumers who use certain protein formulations for weight reduction, particularly those who do so without close medical supervision. There are readily available to consumers a number of protein supplements which are being promoted for use in weight reduction programs. Many of these do not bear adequate statements advising that there are conditions under which use of the products is contraindicated and that strict medical supervision is required for their safe use. Other protein products are not expressly promoted for use in weight reduction programs, but nevertheless are used by some consumers for that purpose. The protein supplements currently available appear to be derived from whole protein sources or are hydrolysates of proteins, most of which are of low nutritional value, such as collagen or gelatin. Some of the products are fortified with various essential amino acids, vitamins, and minerals, but many do not supply a complete spectrum of nutrients necessary for sustaining normal body functions during extended periods of usage. The products are marketed as aqueous, "liquid protein" solutions or as powders with instructions for mixing with a liquid. Although frequently labeled as "supplements," the protein products are commonly used to replace whole meals and are often promoted as the sole source of nourishment.

The Commissioner believes that large quantities of these products are being sold nationwide and that a significant number of consumers are using these products for weight control or maintenance. Diets consisting primarily of protein have been, and continue to be, widely promoted. One such diet is the subject of a best-selling book.

An ad hoc advisory group consisting of five clinicians internationally recognized for their studies on obesity and weight control measures met with FDA representatives on October 20, 1977 to review the safety for consumer use of the various liquid and dry preparations composed primarily of protein or protein hydrolysates. A copy of a memorandum of the meeting has been placed on file with the Hearing Clerk, FDA.

The advisory group reviewed and discussed several cases of illnesses and deaths which involved individuals who were apparently utilizing these protein products as their primary sources of nourishment. The side effects described in accounts of the illnesses include nausea, vomiting, diarrhea (particularly with "predigested" or partially hydrolyzed liquid preparations), constipation (particularly with whole protein preparations), cold intolerance, fatigue, irri-

tability, euphoria, postural hypotension, faintness, muscle weakness, gout recurrence, hypokalemia, cardiac arrhythmias, and dehydration. Since it is known that diets that consist primarily of protein can elicit these dysfunctions, it is absolutely critical that persons receive adequate medical conseling from professionals knowledgeable in nutrition and the physiology of weight control, and aware of the symptoms associated with these dysfunctions, before using the protein supplements in a very low calorie diet regimen.

Members of the advisory group expressed concern that promotion of these protein products did not adequately inform consumers of potential health hazards associated with protein diets, and they concluded that these protein products should not be used without careful supervision by specially trained medical personnel. The advisory group pointed out that use of very low calorie protein diets is particularly hazardous for individuals who are taking diuretics, antihypertensive drugs, oral hypoglycemic agents, insulin, adrenergic medications, corticosteroids, thyroid preparations, digitalis, or other prescribed medications and that very low calorie protein diets should not ordinarily be used with significant renal, hepatic, or cerebrovascular disease; by patients with cardiovascular disorders; by psychiatric patients with suicidal tendencies; or by infants, children, or pregnant or lactating women.

The Commissioner has considered the evidence discussed by the advisory group and is concerned that many individuals are using these protein products for weight control without any awareness of the possible consequences. The Commissioner, therefore, believes that consumers should be alterted to the potential health hazards associated with use of these products and should be informed of the need to consult a physican for advice on the appropriateness of this type of strenuous diet. To ensure that consumers are provided this information, the Commissioner proposes to require that labeling for protein supplements intended for weight control bear the following warning statement:

WARNING.—Very low calorie protein diets may cause serious illness or death. DO NOT USE FOR WEIGHT REDUCTION OR MAINTENANCE WITHOUT MEDICAL SUPERVISION. Do not use for any purpose without medical advice if you are taking medication. Not for use by infants, children, or pregnant or nursing women.

The Commissioner recognizes that this proposed warning differs from the one FDA asked manufacturers to use voluntarily. The changes in the language of the warning are necessary, however, to ensure that consumers are adequately aprised of the hazards associated with the use of these protein supplements. The Commissioner advises that manufacturers who have already taken action to adopt the warning suggested at the Commissioner's November 9, 1977 press conference or who adopt the proposed warning above, will be given a reasonable period of time after a final rule is issued, to adopt the language of the warning in the final rule.

It appears that many protein supplements which are not labeled for use in weight control are nevertheless used for this purpose by consumers who have heard of the diet. For example, the current labeling of one product that has been associated with a death does not mention weight control. A copy of this label is on file with the Hearing Clerk, FDA. To protect such consumers the Commissioner proposes to require the following warning on protein supplements not intended for use in weight control:

WARNING.—Very low calorie protein diets may cause serious illness or death. DO NOT USE FOR WEIGHT REDUCTION OR MAINTENANCE.

The Commissioner requests that any person who has data or information that might be useful in assessing the safety of protein supplements for weight control submit such data or information to the Hearing Clerk for consideration by the Commissioner in this proceeding. In addition, the Commissioner asks that any reports of illness or death associated with the use of these products be made promptly by telephone or by writing to Richard Swanson, Epidemiological Investigation Section (HFO–120), Rm. 13–62, Food and Drug Administation, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4667.

The Commissioner is also considering whether the risk to human health presented by these products is so great that he should seek to remove some or all of them from the market, instead of requiring warnings. The Commissioner invites comments on this subject including scientific comment on the need to remove the products from the market.

The Commissioner also invites the legal community to comment on the most appropriate statutory basis for a partial or total ban. Would it be appropriate, for example, to deem all protein products intended for use in weight control or maintenance regimens to be "unfiit for food" and thus adulterated within the meaning of section 402(a)(3) of the Fedeal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(3))? Should the protein components of such products be deemed unapproved food additives, pursuant to sections 201(s), 402(a)(2)(C), and 409 of the act (21 U.S.C. 321(s), 342(a)(2)(C), and 348), making such use illegal? Additionally, would it be appropriate to deem all protein supplements intended for use in weight control or maintenance regimens to be new drugs within the meanng of section 505 of the act (21 U.S.C. 355)?

The Commissioner advises that, instead of the warnings proposed below, he may decide to remove the products from the market, if he concludes that they present a substantial risk to public health that cannot adequately be controlled by the use of warnings. After a final rule prescribing a warning is issued, protein supplements would be misbranded under sections 403(a) and 201(n) of the Federal Food, Drug, and Cosmetic Act if the label and labeling do not bear one of the prescribed warning statements.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the Environmental Impact Analysis Report has been filed with the Hearing Clerk.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 402(a), 403(a), 505, 701(a), 52 Stat. 1041 as amended, 1046–1047 as amended, 1052–1053 as amended, 1055 (21 U.S.C. 321(n), 342(a), 343(a), 355, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes to amend Chapter I of Title 21 of the Code of Federal Regulations in Part 101 by adding new paragraph (d) to § 101.17 to read as follows:

§ 101.17 Food labeling warning statements.

* * * * *

(d) *Protein supplements.* (1) The label and labeling of any product composed essentially of protein or protein hydrolysates which is intended for use in a weight reduction or maintenance dietary regimen shall bear the following warning:

WARNING.—Very low calorie protein diets may cause serious illness or death. DO NOT USE FOR WEIGHT REDUCTION OR MAINTENANCE WITHOUT MEDICAL SUPERVISION. Do not use for any purpose without medical advice if you are taking medication. Not for use by infants, children, or pregnant or nursing women.

(2) Special dietary food products which are composed essentially of protein or protein hydrolysates, or which use the word "protein" in their statement of identity, or otherwise emphasize the word "protein" in their label or labeling, shall bear the following warning if they are not intended for use in a weight reduction or maintenance dietary regimen:

WARNING.—Very low calorie protein diets may cause serious illness or death. DO NOT USE FOR WEIGHT REDUCTION OR MAINTENANCE.

(3) The warning statement required by paragraph (d)(1) or (2) of this section shall appear prominently and conspicuosly on the principal display panel of the package label and on any other labeling. The warning shall be printed in bold letters and shall be enclosed by lines forming a rectangle in an area separated from other written, printed, or graphic matter. The capitalized sentences in paragraph (d)(1) and (2) of this section shall be so capitalized on all labels and labeling. The height of the

printed letters comprising the warning statement shall not be less than one half of the height of the largest type appearing on the label of the product. In no case shall the warning statement be printed in letters less than 1/16 of an inch.

Interested persons may, on or before January 3, 1978 submit to the Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 500 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 (as amended by Executive Order 11949) and OMB Circular A–107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: November 30, 1977.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc.77–34694 Filed 12–1–77;8:45 am]

[21 CFR Parts 207, 607, 807]

[Docket No. 77N–0255]

MEDICAL DEVICES

Device Listing Procedures

Correction

In FR Doc. 77–28575 apeparing at page 52808 in the issue for Friday, September 30, 1977, make the following corrections:

(1) On page 52808, in the third column, in the first full paragraph, in the 8th line, the first "of" should be "or".

(2) On page 52809, in the third column, in the paragraph under the center heading "Additional Information", in the 4th line, "liberal" should read "literal".

(3) On page 52812, in the third column, in the first paragraph following the text of § 807.40, the first sentence now reading, "Interested persons may, on or before November 21, 1977 * * *", should read, "Interested persons may, on or before November 29, 1977".

[6560–01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Chapter I]

[FRL 803–1]

PUBLIC PARTICIPATION IN THE REGULATORY PROCESS

Invitation to Participate in the Development of Major EPA Environmental Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Pursuant to the Clean Air Act Amendments of 1977 (Pub. L. 95–95), the Environmental Protection Agency is required to promulgate a number of rules and regulations. The purpose of this notice is to identify those major regulatory actions either called for directly by the Act Amendments or are under consideration by the Agency for implementing provisions contained in the Act Amendments, and to invite interested parties to contribute to the decision-making process.

FOR FURTHER INFORMATION CONTACT:

D. Kent Berry, Director, Policy Analysis Staff, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, N.C. 27711, area code 919–541–5343.

SUPPLEMENTARY INFORMATION: Pursuant to the Clean Air Act Amendments of 1977 (Pub. L. 95–95), the Environmental Protection Agency is required to promulgate a number of rules and regulations. The regulations will be developed by the EPA staff and will be subjected to as much public review prior to final approval and promulgation as possible within the time constraints allotted by the Act Amendments. In addition to the formal opportunities for public comment provided by FEDERAL REGISTER notices and public hearings, EPA encourages informal public participation through direct contacts between Agency staff personnel and interested members of the public.

The following list provides a description of the above regulatory actions, the section of the Amendments requiring the action, the expected publication date, and a point of contact within the Agency.

Regulatory Action	CAA Amendment Section	Expected Publication Date	Contact Person and Address
(Proposal) National Ambient Air Quality Standard for exposure to NO_2 for 3 hours or less.	109	February, 1978	Joseph Padgett, MD-12, Environmental Protection Agency, Research Triangle Park, N.C. 27711 919-541-5204
(Proposal) Establish New Source Performance Standards for all major source categories.	109	Source listing - May, 1978 25% NSPS by May, 1980 75% NSPS by May, 1981 100% NSPS by May, 1982	Don R. Goodwin, MD-13, Environmental Protection Agency, Research Triangle Park, N.C. 27711 919-541-5271
(Proposal) Revise NSPS for Steam Generators to reflect emission limitation and percentage emission reduction.	109	January, 1978	Do
Establish conditions for extending compliance orders beyond attainment date for NAAQS.	112	March, 1978 (May issue guidance document in lieu of regulatory action)	Edward E. Reich, EN-341, Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460 202-755-2523
(Proposal) Establish non-compliance penalty for stationary sources	118	November, 1977	Do
(Proposal) Requirement for States to consult with various local government and Federal and managers in SIP development	119	November, 1977	John Hidinger, AW-445, Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460 "202-755-0603)
Proposal) Use of tall stacks	121	November, 1977	
Prevention of Significant Deterioration	127		Richard G. Rhoads, MD-15, Environmental Protection Agency, Research Triangle Park, N.C. 27711 919-541-5251
(Final) Revise existing regulations to be consistent with immediately effective provisions of Act Amendments		November, 1977	Do
2 (Proposal) Regulations covering other provisions of Act Amendments for TSP and SO_2.		November, 1977	Do
3 (Proposal) Regulations for other pollutants (HC CO NO2, lead).		October, 1978	Do

Continued page 2

Regulatory Action	CAA Amendment Section	Expected Publication Date	Contact Person and Address
(Proposal) SIP requirements for non-attainment areas.	129	November, 1977	Richard G. Rhoades, MD-15, Envrionmental Protection Agency, Research Triangle Park, N.C. 27711 919-541-5251
(Proposal) Regulations requiring regional consistency.	305	February, 1978	Paul De Falco, RA 5th floor, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105 415-556-2320 FREMONT In
(Proposal) Regulations providing for the protection of visibility.	128	February, 1979	Joseph Padgett, MD-12, Environmental Protection Agency, Research Triangle Park, N.C. 27711 919-541-5204
(Proposal) Listing of unregulated pollutants which should be controlled.	120		
1. Non-radioactive (POM, arsenic, cadmium)		Listing - August, 1978 Proposal 4-12 months later	Do
2. Radioactive		Listing - August, 1979	William D. Rowe, AW-458, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-557-9710
Protection of stratospheric ozone.	126	Report to Congress by 1-1-78 Regulations will be proposed as study results indicate a need.	Delbert Barth, RD-683, Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460 202-755-0820
CO Waiver for 1981 and 1982 model year vehicles.	201	Fall 1978	Michael J. Scibinico, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-755-0297
(Final) Requirement to build demonstration cars meeting 0.4 gram/mile NO_x standard.	202	February, 1978	Paula Machlin, AW-464, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-755-9125

Continued page 3

Regulatory Action	CAA Amendment Section	Expected Publication Date	Contact Person and Address
(Proposal) Emission Performance Warranty	209	January, 1978	Do
(Proposal) Aftermarket Parts Certification	209	April, 1978	Do
(Proposal) High altitude emission standards for mobile sources.	213		David A. Finley, AW-455, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-755-0596
1. 1981-1983 model years.		November, 1978	
2. 1984 and subsequent model years.		October, 1979	Do
3. High altitude maintenance instructions.		February, 1978	Do
(Proposal) Standards for automotive fill pipes.	215	September, 1979	Do
(Proposal) Use on non-board technology to control evaporative emissions.	216	September, 1979 (Regulations required if technology more cost-effective than vapor recovery.)	Ernest S. Rosenberg, AW-455, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-755-0596
(Proposal) Establish test procedures for measuring evaporative emissions	217	June, 1978	Robert W. Smith, AW-455, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-426-2514
(Proposal) Fuel additive regulations.	222	April, 1978	Robert A. Papetti, RD-682, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-426-2415
(Proposal) Emission standards for heavy duty vehicles and other vehicles.	224		Robert W. Smith, AW-455, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-426-2514
1. HC and CO 1983 and subsequent model years.		June, 1979	Do
2. NO_X 1985 and subsequent model years.		June, 1979	Do
3. Particulate standards for HDV's.		February, 1979	Do

Continued page 4

Regulatory Action	CAA Amendment Section	Expected Publication Date	Contact Person and Address
(Proposal) Assembly-line testing of Heavy-Duty Engines.	224	February, 1978	Frank Slaveter, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 202-755-1572
(Proposal) Non-conformity penalties for HDV's.	224	March, 1978	Do
(Proposal) Issuance of Air Quality Monitoring Regulations.	305	December, 1977	Robert Neligan, MD-14, Research Triangle Park, N.C. 27711 919-541-5447

Interested parties are encouraged to contact these individuals to provide comments and information about regulations with which they are concerned. Participation may include such alternatives as informal meetings, review of draft documents, and provision of data and information to EPA.

Date: November 21, 1977.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc.77-34537 Filed 12-1-77;8:45 am]

[6560-01]

[40 CFR Part 211]

[FRL 824-3]

NOISE LABELING STANDARDS HEARING PROTECTORS

Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: By this notice the Environmental Protection Agency (EPA) announces that it will hold a meeting on December 13, 1977, in Arlington, Va., to discuss issues associated with its proposed regulatory provisions for the labeling of hearing protectors. The EPA, under section 8 of the Noise Control Act of 1972, proposed on June 22, 1977, 42 FR 31730, that manufacturers of all hearing protectors sold in the United States be required to label such products as to their effectiveness in reducing noise. Written comments received from hearing protector manufacturers during the public comment period have indicated that it would be useful for the EPA in the development of the final regulation to discuss with members of the hearing protector industry and any other interested persons or organizations, technical questions concerning the proposed labeling and enforcement provisions. Areas of concern relate to the label size and placement requirements, the specified test methodology, testing and record keeping requirements, and the feasibility of objective test methods for compliance pur-

poses. A transcript of this meeting will be made a part of the public record for this rule making.

DATES: The meeting will be held on December 13, 1977 in Arlington, Va., at the following time and location: Time: 9:00 A.M. to 5:00 P.M. Location: U.S. Environmental Protection Agency, Office of Noise Abatement & Control, Crystal Mall, Bldg. No. 2, Room 1112, 1921 Jefferson Davis Hwy., Arlington, Va. 22202.

ADDRESSES: Any written communication regarding the meeting should be addressed to: Director, Standards & Regulations Division (AW-471), Office of Noise Abatement and Control, Attn. Hearing Protector Meeting, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Ted Ricci, Office of Noise Abatement and Control (AW-471), U.S. Environmental Protection Agency, Washington, D.C. 20460, 703-557-2710.

Dated: November 28, 1977.

DAVID G. HAWKINS,
Assistant Administrator for Air and Waste Management.

[FR Doc.77-34633 Filed 12-1-77;8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21358; RM-2661]

TELEVISION BROADCAST STATION IN OGDEN, UTAH

Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding which proposes removing the reservation of television Channel *9 at Ogden, Utah, for noncommercial educational use only. Petitioner, Public Broadcasting System, states that the additional time is needed so that it can file an adequate response to issues raised in comments.

DATES: Reply comments must be received on or before December 15, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mlidred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

ORDER EXTENDING TIME FOR FILING REPLY COMMENTS

Adopted: November 21, 1977.

Released: November 28, 1977.

In the matter of amendment of § 73.606 (b), Table of Assignments, Television Broadcast Stations, (Ogden, Utah), Docket No. 21358,[1] RM-2661.

1. On August 10, 1977, the Commission released a Notice of Proposed Rule Making, 42 FR 41302, in this proceeding. The Notice proposes removing the reservation of television Channel *9 at Ogden, Utah, for noncommercial educational use only. The date for filing comments has expired and the date for filing reply comments is November 21, 1977.

2. On November 18, 1977, the Public Broadcasting System ("PBS"), which filed comments in opposition to the proposal, requested that the time for filing reply comments be extended to and including December 15, 1977. PBS notes that comments filed in support of the proposal raise a variety of issues which call for a response. It states that due to the press of other business, the intervening convention of the National Association of Educational Broadcasters and the need for consultation between the PBS staff and its counsel, additional time is needed in order to complete preparation of its reply.

3. Although we are persuaded that the extension is warranted, we point out the fact that § 1.46 of the rules states that such extension requests are to be filed seven days in advance. The exception which permits late-filed requests to be considered in case of last minute emergencies does not seem to apply. Rather, PBS should have anticipated that a longer period of time would be needed in order to respond to the various issues raised in the comments. However, since the Commission feels it would be in the public interest to have all material available to it in arriving at a decision in this matter, and in view of the consent of counsel for the other parties in this proceeding, we are granting PBS's request.

4. *Accordingly, it is ordered,* That the date for filing comments in Docket 21358 is extended to and including December 15, 1977.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-34626 Filed 12-1-77;8:45 a.m.]

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Endangered Listing and Critical Habitat Determination for the Virginia and Ozark Big-eared Bats

AGENCY: Fish and Wildlife Service. Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Virginia big-eared bat (*Plecotus townsendii virginianus*) and the Ozark big-eared bat (*Plecotus townsendii ingens*) to be Endangered species, and identify Critical Habitat for the Virginia big-eared bat. This action is taken because these bats have declined seriously in recent years, mainly because of human disturbance of their caves. This rule would provide additional protection needed for these species.

DATES: Comments from the public must be received by January 31, 1978. Comments from the Governors of States involved with this action must be received by March 2, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washintgon, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director for Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 15, 1976, the Director was petitioned by Dr. John S. Hall (Professor of Biology, Albright College, Reading, Pa. 19603) and Dr. Michael J. Harvey (Professor of Biology, Ecological Research Center, Memphis State University, Memphis, Tenn. 38152), to list the Virginia and Ozark big-eared bats as Endangered. On the basis of this petition and information subsequently received from the petitioners, Regional Offices of the Service, and other sources, the Director considers that this proposed rulemaking is warranted.

SUMMARY OF FACTORS AFFECTING THE SPECIES

Section 4(a) of the Act states that the Secretary of the Interior may determine a species to be Endangered or Threatened because of any of five factors. These factors, and their application to the Virginia and Ozark big-eared bats, are listed below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Both of these bats long have been restricted to relatively small areas, and are dependent on a few specific kinds of caves for hibernation and reproductive activity. Both are highly intolerant of human presence, and will readily abandon their roosts when disturbed.

The Virginia big-eared bat still is found in three separate populations, centered in eastern Kentucky, southwestern Virginia, and eastern West Virginia, but many caves within this region have

[1] See 42 FR 47569, September 21, 1977.

been abandoned. In the last 15 years at least five wintering colonies have disappeared in West Virginia. Only three nursery colony caves are known to remain in this State, and numbers therein have declined considerably because of repeated disturbance by spelunkers and vandals. There are still about 2,500 to 3,000 bats in West Virginia, but their dependence on the few remaining nursery caves makes the entire population subject to rapid extermination under the wrong conditions. A serious decline also has occurred in the single known nursery colony in Kentucky, which now contains fewer than 500 bats. In the Virginia population not more than a few hundred individuals survive.

The Ozark big-eared bat is in an even worse situation. It is now found in only a few caves in northwestern Arkansas, southwestern Missouri, and eastern Oklahoma. Recent estimates indicate that the total surviving population numbers only about 100 to 200 individuals.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Some of these bats have been killed for fun. Even well-meaning biologists and spelunkers, observing the bats for scientific or educational purposes, have caused disturbances and subsequent population reductions.

3. *Disease or predation.* Not known to be applicable.

4. *The inadequacy of existing regulatory mechanisms.* These bats and their habitat are not currently under direct protection by Federal regulations.

5. *Other natural or manmade factors affecting its continued existence.* None in addition to those discussed above.

Critical Habitat

Section 7 of the Act requires Federal agencies, and only Federal agencies, to insure that actions authorized, funded, or carried out by them do not adversely affect the Critical Habitat of Endangered or Threatened species. The petitioners have recommended that five caves in West Virginia and one cave in Kentucky be designated as Critical Habitat for the Virginia big-eared bat. These caves include the three nursery colonies that serve most of the remaining population, and three wintering colonies that are known to shelter a substantial number of bats. The Service considers that these areas qualify for proposal as Critical Habitat, pursuant to Section 7.

Effects of the Rulemaking

All prohibitions of 50 CFR 17.21 would apply to the Virginia and Ozark big-eared bats. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce these species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies. Permits for scientific purposes or for the enhancement of propagation or survival would be available in accordance with 50 CFR 17.22. Economic hardship permits would be available under 50 CFR 17.23.

The effects of Critical Habitat determination involve primarily Federal agencies. In accordance with Section 7 of the Act, such agencies, and only such agencies, are required to insure that actions authorized, funded, or carried out by them do not adversely affect the Critical Habitat of Endangered or Threatened species. The proposed designation of Critical Habitat for the Virginia big-eared bat, as delineated below, points out areas where this responsibility would apply. This proposal would not automatically prohibit any particular action, and it is likely that many kinds of Federal actions involving the areas in question would not be expected to be detrimental to the bat.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C. 20240, and may be examined during regular business hours or can be obtained by mail. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Public Comments Solicited

The Director intends that the rules finally adopted be as effective as possible in the conservation of the Virginia and Ozark big-eared bats. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party, on these proposed rules. Final promulgation of regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this proposal.

The primary author of this document is Ronald M. Nowak, Office of Endangered Species, 202–343–7814.

Authority

These amendments are issued under the authority of Sections 4 and 7 of the Endangered Species Act of 1973 (16 U.S.C. 1533, 1536).

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subparts B and I, Title 50 of the Code of Federal Regulations as set forth below:

1. It is proposed to amend Section 17.11 by adding, in alphabetical order, the following to the List of Endangered and Threatened Wildlife and Plants:

§ 17.11 Endangered and threatened wildlife.

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
Mammals:							
Bat, Ozark big-eared	*Plecotus townsendii ingens*	N/A	U.S.A. (Arkansas, Missouri, Oklahoma).	Entire	E		N/A
Bat, Virginia big-eared	*Plecotus townsendii virginianus*	N/A	U.S.A. (Illinois, Indiana, Kentucky, Maryland, Ohio, Virginia, West Virginia).	do	E		N/A

2. It is proposed to amend Section 17.95 by adding the following Critical Habitat description after the Critical Habitat description for the Indiana bat.

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Virginia Big-eared Bat

(Plecotus townsendii virginianus)

Kentucky. Stillhouse Cave, Lee County.

West Virginia. Cave Mountain Cave, Hellhole Cave, Hoffman School Cave, and Sinnit Cave, each in Pendleton County; Cave Hollow Cave, Tucker County.

NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A–107.

Dated: November 18, 1977.

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

[FR Doc.77–34465 Filed 12–1–77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-15]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

MEDINA ELECTRIC COOPERATIVE, INC. HONDO, TEX.

Proposed Loan Guarantee

Under authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $2,945,000 to Medina Electric Cooperative, Inc., of Hondo, Tex. These loan funds will be used to finance a project consisting of approximately 46 miles of 138 kV transmission line and related facilities.

Legally organized lending agencies capable of making, holding, and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. L. E. Gross, Jr., Manager, Medina Electric Cooperative, Inc., 2308 18th Street, Hondo, Tex. 78861.

In order to be considered, proposals must be submitted, on or before January 3, 1978, to Mr. Gross. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as Medina and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 23rd day of November 1977.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc. 77-34436 Filed 12-1-77; 8:45 am]

[3410-15]

Rural Electrification Administration

BASIN ELECTRIC POWER COOPERATIVE

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a Draft Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with an anticipated request for a loan guarantee commitment for Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, N. Dak. 58501, to provide certain new transmission facilities.

The proposed transmission facilities are a joint venture between Basin Electric Power Cooperative (Basin) and Montana Dakota Utilities (MDU). The ownership split is unknown at this time. The facilities are proposed to consist of two segments of 230 kV transmission line. The first segment is expected to be approximately 90 miles long and will proceed from Basin's Logan Substation (presently under construction), located approximately 8 miles southeast of Minot, N. Dak., in Ward County, to MDU's existing Tioga Substation, located approximately ½ mile northeast of Tioga, N. Dak., in Williams County. The Tioga Substation will require expansion and modification in order to accommodate the 230 kV connection. The second segment is expected to proceed from the Tioga Substation to a point on the Canadian border approximately 45 miles due north of Tioga. At the border, Saskatchewan Power Corp. will construct approximately 6 miles of transmission line to connect with its Estevan, Saskatchewan electric generating station. The proposed 135 miles of 230 kV transmission line in the United States will traverse Ward, Mountrail, Williams, Burke, and Divide Counties, all in the State of North Dakota.

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

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

Dated at Washington, D.C., this 25th day of November 1977.

RICHARD F. RICHTER,
Acting Administrator.

[FR Doc.77-34571 Filed 12-1-77; 8:45 am]

[3410-16]

Soil Conservation Service

CHILTIPIN-SAN FERNANDO CREEK WATERSHED, TEX.

Intent To Not Prepare an Environment Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the remaining project measures in the Chiltipin-San Fernando Creek Watershed, Duval, Jim Wells, Nueces, and Kleberg Counties, Tex.

The environmental impact appraisal of this Federal action indicates that implementation of the remaining project measures consisting of the installation of one floodwater retarding structure will not create significant adverse local, regional, or national impacts on the environment and no significant controversy is associated with the project. As a result of these findings, Mr. George C. Marks, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The completed project concerns the application of land treatment measures contributing directly to watershed protection and flood prevention and the installation of structural measures to supplement the land treatment measures to achieve reduction of approximately 80 percent in average annual flood damages. All land treat-

ment measures have been applied and all structural measures except one floodwater retarding structure have been installed. This notice concerns the remaining floodwater retarding structure No. 5.

The notice of intent to not prepare an environmental impact statement has been forwarded to the Council on Environmental Quality. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, W. R. Poage Federal Building, 101 South Main Street, Temple, Tex. 76501. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests.

No administrative action on implementation of the proposed actions will be taken until January 3, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: November 23, 1977.

JAMES W. MITCHELL,
Director, Watersheds Division, Soil Conservation Service, USDA.

[FR Doc. 77-34586 Filed 12-1-77; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket No. 30332; Agreements CAB 27009, R-1 and R-2, 27022, R-1 through R-3; Order 77-11-132]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

NOVEMBER 25, 1977.

Issued under delegated authority.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreements name five specific commodity rates under existing commodity descriptions as set forth below, reflecting reductions from general cargo rates; and were adopted pursuant to unprotested notice to the carriers and promulgated in IATA letters dated November 18, 1977.

Agreement CAB 27009:	Specific commodity Item No.	Description and rate
R-1	0007	Fruit and/or Vegetables. 136 cents per kg., minimum weight 1,000 kgs. From Los Angeles to Nandi.
R-2	2094	Natural Wool Yarn, Spun and Cut to Length. 95 cents per kg.,[1] minimum weight 2,000 kgs. From Christchurch to Los Angeles.
R-1	2865	Carpets and Rugs. 220 cents per kg., minimum weight 1,000 kgs. From Calcutta to Los Angeles. 200 cents per kg., minimum weight 1,000 kgs. From Calcutta to New York.
R-2	7119	Books. 214 cents per kg., minimum weight 500 kgs. From Delhi to New York.
R-3	8001	Scientific and Precision Instruments—Excluding Watches and Clocks. 336 cents per kg., minimum weight 500 kgs. From Bombay to Los Angeles.

[1] Expires December 31, 1978.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the agreements are adverse to the public interest or in violation of the Act: *Provided*, That approval is subject to the conditions ordered.

Accordingly, it is ordered, That: Agreements CAB 27009, R-1 and R-2, and CAB 27022, R-1 through R-3, are approved: *Provided*, That (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 77-34607 Filed 12-1-77; 8:45 am]

[6320-01]

[Docket Nos. 29123, Agreement CAB 27016; 30332, Agreement CAB 27021; Order 77-11-133]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger Fares and General Cargo Rates

Issued under delegated authority November 25, 1977.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). Agreement CAB 27016 was adopted at the Composite Passenger Traffic Conference held in Cannes, France during October 1977; Agreement CAB 27021 was adopted by mail vote.

Agreement CAB 27016 would permit sales of reduced fares to IATA cargo agents for supersonic transportation on the South Atlantic; and Agreement CAB 27021 would establish general cargo rates between Dar Es Salaam, on the one hand, and Moroni and Seychelles, on the other, to reflect the commencement of direct services between these points. Insofar as the agreements involve fares and rates which are combinable with fares and rates to/from U.S. points, the agreements have indirect application in air transportation, and we will approve them.

Pursuant to authority duly delegated by the Board's regulations, 14 CFR 385.14, it is not found that the agreements, which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That: Agreements CAB 27016 and CAB 27021 be approved.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 34608 Filed 12-1-77; 8:45 am]

[6320-01]

[Docket Nos. 31003, 31004; Order 77-11-108]

NATIONAL AIRLINES, INC.

Order Regarding Deletion and Temporary Suspension of Service at Newport News, Hampton, Williamsburg, and Yorktown, Va.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of November 1977.

On June 17, 1977, National Airlines filed an application, under Part 205 of the Board's Economic Regulations and section 401(j) of the Act, for authority to suspend service temporarily at Newport News, Hampton, Williamsburg, and Yorktown, Va. (Newport News), effective on September 1, 1977, until 90 days after final decision on its application filed the same day in Docket 31003 for deletion of the point from its certificate.

In support of its suspension and deletion applications, National states that it has provided service between Newport News and Washington/New York for more than 20 years, resulting in a severe drain on its resources and profitability; losses at the point during 1976 amounted to $756,000; there are alternative air services at Newport News provided by Allegheny Airlines, Piedmont Aviation and United Air Lines; there are extensive trunk and local carrier services on a much more frequent basis at neighboring Norfolk International Airport; continuation of parallel services by National at both airports is wasteful, uneconomic and not required by the public interest; and elimination of service at Newport News is consistent with National's efforts to reduce system costs.

Answers to National's suspension application have been filed by numerous civic parties,[1] civic interests,[2] and government agencies.[3] In general, these parties oppose the suspension because National provides the only direct service to New York, one of the major Newport News' markets, as well as needed service to Washington. Loss of this service, it is alleged, would cause an undue hardship on the community and would adversely affect the economy and growth of the area. The parties also contend that Norfolk is not convenient as an alternate airport to Newport News.[4]

National filed a consolidated reply to the answers.

We have decided to defer action on National's deletion application, and, on an expeditious basis, consider whether any other carrier(s) should be granted authority to operate in the Newport News-Washington/New York markets.[5] We are, therefore, inviting certificate applications for this authority. We intend to process such applications, along with National's deletion application, by show cause procedures.[6]

The Newport News-Washington/New York markets are the primary ones affected by National's deletion request. In the New York market, National is the only carrier with unrestricted authority. The market generated 40,000 O&D plus connecting passengers during fiscal year 1976; National carried 87 percent of the single-carrier traffic. The Washington market is even larger, with 69,000 passengers in fiscal year 1976. Even though there are two other carriers providing nonstop service between Newport News and Washington, National has participated in a substantial portion of the traffic—41 percent of the single-carrier traffic in fiscal year 1976.

Before September 1, National provided four one-stop flights daily southbound in the Newport News-New York market, and one nonstop and one one-stop flight daily northbound. Between Newport News and Washington, National provided three nonstop flights daily southbound and two nonstop and one one-stop flight daily northbound; this latter service was complemented by three daily nonstop one-way flights by United and one daily nonstop round trip by Piedmont. Effective September 1, National completely eliminated direct service between Newport News and New York, and reduced service to Washington to one one-stop flight in one direction. National's service pattern at Newport News is now limited to one round trip 5 days per week to and from Norfolk.

We are thus faced with two large markets which are capable of supporting nonstop service, and an authorized carrier that appears to be no longer willing to provide the service. However, although National does not find the Newport News-Washington/New York markets attractive, we believe that other carriers might be interested in serving them. Accordingly, we will invite applications for the required certificate authority. We will carefully evaluate the needs of the Newport News markets, and then, by an order to show cause, act upon any applications filed in response to this order along with National's deletion request.

We have decided to deny National's application for suspension at Newport News. There is substantial civic opposition, and inasmuch as we intend to move expeditiously in considering National's deletion application (assuming one or more carriers indicate a desire to serve the Newport News-Washington/New York markets), we believe the public interest would be best served by maintaining the status quo in the interim.[7]

We will allow 60 days for the filing of applications for Newport News-Washington/New York authority. Since we intend to process those applications by show-cause procedures, applicants should file with their applications exhibits demonstrating why they should be granted the authority. Opportunity to answer such exhibits will be afforded all interested persons. In addition, each application should be accompanied by an environmental evaluation, as provided for by § 312.12 of the Board's Procedural Regulations.

Accordingly, it is ordered, That: 1. Applications for Newport News-Washington/New York authority, and exhibits demonstrating why such applications should be granted, shall be

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[1] The Peninsula Airport Commission (including supplement); the Peninsula Chamber of Commerce (including supplement); the City Managers of Hampton and Newport News; the Mayors of Newport News, Hampton, and Williamsburg; the Williamsburg Area Chamber of Commerce; the Hampton Department of Development; and the James City County Board of Supervisors. The Norfolk Port and Industrial Authority filed a petition for leave to intervene in both dockets.

[2] Congressman Paul S. Trible, Jr.; the Peninsula Planning District Commission; the College of William and Mary; Anheuser-Busch, Inc.; Bendix; The Colonial Williamsburg Foundation; the Virginia Peninsula Industrial Council; the Hampton Coliseum; the Regional Redevelopment and Housing Authority for Hampton and Newport News; Newport News Shipbuilding; the Progress Committee for Newport News; Commonwealth Wood Preservers, Inc.; and the Williamsburg Hotal/Motel Association.

[3] General Services Administration; Veterans Administration Center at Hampton; and the U.S. Coast Guard. The Secretary of the Army filed a consolidated answer to both applications.

[4] The distance between the two airports is 29 road miles.

[5] In issue would be nonstop authority in both markets and one-stop authority in the Newport News-New York market via Washington. Washington-New York authority would be subject to a long-haul restriction requiring all flights to serve Newport News.

[6] Any party objecting to the use of show-cause procedures will have the opportunity to demonstrate, in its answer to our order to show cause, what facts or other matters would be established through a hearing that cannot be established in written pleadings.

[7] We are concerned by the fact that National has already drastically reduced its service at Newport News. We would hope that in light of this order, National might reconsider and reinstate its previous service pattern pending a final decision on its deletion application.

filed within 60 days from the date of this order, and answers shall be filed 30 days later;

2. Consideration of the application of National Airlines in Docket 31003 be deferred pending consideration of the applications to be filed pursuant to paragraph 1;

3. The application of National Airlines in Docket 31004 be denied; and

4. Copies of this order shall be served on National Airlines, Inc.; Allegheny Airlines, Inc.; American Airlines, Inc.; Braniff Airways, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Northwest Airlines, Inc.; Ozark Air Lines, Inc.; Piedmont Aviation, Inc.; Southern Airways, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; the City Managers of Hampton and Newport News; the Mayors of Newport News, Hampton and Williamsburg; the Williamsburg Area Chamber of Commerce; the Peninsula Chamber of Commerce; the Peninsula Airport Commission; the Hampton Department of Development; the James City County Board of Supervisors; the Norfolk Port and Industrial Authority; the General Services Administration; the Veterans Administration Center at Hampton; the Secretary of the Army; the U.S. Coast Guard; and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,*
Secretary.

[FR Doc. 77-34606 Filed 12-1-77; 8:45 am]

[3510-12]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DR. LOUIS M. HERMAN

Issuance of Permit To Take Marine Mammals

On August 4, 1977, notice was published in the FEDERAL REGISTER (42 FR 39419), that an application had been filed with the National Marine Fisheries Service by Dr. Louis M. Herman, Kewalo Basin Dolphin Research Laboratory, Hawaii Institute of Marine Biology, University of Hawaii, 1129 Ala Moana, Honolulu, Hawaii 96814, for a Permit to take four (4) Atlantic bottlenosed dolphins (*Tursiops truncatus*), for the purpose of scientific research.

Notice is hereby given that on November 25, 1977, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407); the National Marine Fisheries Service issued a Permit authorizing the above taking to Dr. Louis Herman subject to certain conditions set forth therein. The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard, Duval Building, St. Petersburg, Fla. 33702.

Dated: November 25, 1977.

WINFRED H. MEIBOHM,
Associated Director, National Marine Fisheries Service.

[FR Doc. 77-34593 Filed 12-1-77; 8:45 am]

[3510-12]

National Oceanic and Atmospheric Administration

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL AND ITS SCIENTIFIC AND STATISTICAL COMMITTEE

Public Meeting

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 at the Holiday Inn, 92 West Beach Boulevard, Biloxi, Miss. The meeting starts at 1:30 p.m. on January 10, and adjourns at 12 noon on January 12, 1978.

Proposed Agenda: (1) Management plans; (2) personnel and administrative matters; (3) review of foreign fishing applications, if any; and (4) other fishery management business.

The Gulf of Mexico Fishery Management Council's Scientific and Statistical Committee will meet separately January 10-11, 1978, at the Holiday Inn, 92 West Beach Boulevard, Biloxi, Miss. This meeting starts at 8 a.m. on January 10, and adjourns about 5 p.m. on January 11, 1978.

Proposed Agenda: (1) Orientation; and (2) management plan development.

Both of these meetings are open to the public. For more information on seating, changes to the agenda, or written comments, contact Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, suite 881, 5401 West Kennedy Boulevard, Tampa, Fla., 33607, telephone 813-228-2815.

Dated: November 28, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 77-34549 Filed 12-1-77; 8:45 am]

[3510-12]

SEA LIFE, INC.

Modification of a Permit

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 2 issued to Sea Life, Inc., Makapuu Point, Waimanalo, Hawaii 96795, on February 8, 1974, as modified on March 3, 1975 (40 FR 8846), and October 18, 1977 (42 FR 55631), is further modified in the following manner:

The period of the authorized taking and importing has been extended to December 31, 1979, from December 31, 1977.

This modification is effective on December 2, 1977.

The Permit, as modified, and documentation pertaining to the modification, is available for review in the Office of the Acting Deputy Assistant Administrtor for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235; and the Office of the Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 11, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 77-34594 Filed 12-1-77; 8:45 am]

[3510-12]

National Oceanic and Atmospheric Administration

TRANSFER OF A FISHING VESSEL TO A COMPANY UNDER FOREIGN OWNERSHIP

Receipt of Application for Approval

Notice is hereby given that on November 1, 1977, the Maritime Administration of the Department of Commerce received an application from Louis M. Zuvich, 3410, 25th Avenue West, Seattle, Wash. 98199, for approval of the sale of the 49.6' registered length vessel *Confidence*, O.N. 210212 to Whitney-Fidalgo Seafoods, Inc., 2360 Commodore Way, P.O. Box 99008, Seattle, Wash. 98199. Such approval is required by sections 9 and 37 of the Shipping Act, 1916, as amended (46 U.S.C. 808, 835) because 98 percent of the stock of Whitney-Fidalgo Seafoods, Inc., a U.S. corporation, is owned by Kyokuyo Co., Ltd., a Japanese corporation, and the contemplated transfer would subject the vessel to foreign control. The *Confidence* now operates off Puget Sound and other areas of Washington in the purse seine and trawl fisheries for salmon and bot-

*All Members concurred except Vice Chairman O'Melia who was not present.

tomfish. Whitney-Fidalgo proposes to engage the vessel for salmon and bottomfish in the Northeast Pacific off the coasts of Washington and Alaska, and to operate her out of the ports of Seattle and Juneau.

The Maritime Administration is the Federal Agency responsible for the approval or disapproval of applications submitted pursuant to sections 9 and 37 of the Shipping Act. However, the Maritime Administration customarily solicits the views of the National Marine Fisheries Service before deciding on an application relating to a fishing vessel, and has sought the views of the Service with regard to this application. Before responding, the Service is soliciting the written comments of interested persons in regard to this application. Such comments should be addressed to the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235, and received no later than January 3, 1978. All communications received by such date will be considered before action is taken with respect to this application. No public hearing is contemplated at this time.

WINFRED H. MEIBOHM,
Associate Director.

NOVEMBER 28, 1977.

[FR Doc. 77-34588 Filed 12-1-77; 8:45 am]

[3510-12]

TRANSFER OF A FISHING VESSEL TO A COMPANY UNDER FOREIGN OWNERSHIP

Receipt of Application for Approval

Notice is hereby given that on October 14, 1977, the Maritime Administration of the Department of Commerce received an application from Ted Nakagawa, 1399 9th Avenue, San Diego, Calif. 92101, for approval of the sale of the 34'6' registered length vessel *Miyoko*, O.N. 573678 to Maywa Food Corp., 1313 West 8th Street, suite 113, Los Angeles, Calif. 90017. Such approval is required by sections 9 and 37 of the Shipping Act, 1916, as amended (46 U.S.C. 808, 835) because 80 percent of company is owned by three stockholders who are Japanese citizens, and the contemplated transfer would subject the vessel to foreign control. The prospective purchaser plans to operate the vessel out of San Diego, Calif., for rockfish, sea bass, and perch.

The Maritime Administration is the Federal agency responsible for the approval or disapproval of applications submitted pursuant to sections 9 and 37 of the Shipping Act. However, the Maritime Administration customarily solicits the views of the National Marine Fisheries Service before deciding on an application relating to a fishing vessel, and has sought the views of the Service with regard to this application.

Before responding, the service is soliciting the written comments of interested persons in regard to this application. Such comments should be addressed to the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235, and received no later than January 3, 1978. All communications received by such date will be considered before action is taken with respect to this application. No public hearing is contemplated at this time.

WINFRED H. MEIBOHM,
Associate Director.

NOVEMBER 28, 1977.

[FR Doc. 77-34589 Filed 12-1-77; 8:45 am]

[3510-17]

Office of the Secretary

SEMICONDUCTOR MANUFACTURING AND TEST EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Termination

Pursuant to Section 14 of the Federal Advisory Committee Act (5 U.S.C. Appendix 1, (Supp. V, 1975)), notice is hereby given that the Semiconductor Manufacturing and Test Equipment Technical Advisory Committee of the Department of Commerce is terminated upon publication of this notice in the FEDERAL REGISTER.

This Committee was established in 1973 to advise the Secretary of Commerce with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to semiconductor manufacturing and test equipment, including technical data related thereto, and including those which are subject to multilateral (COCOM) export controls.

The decision to terminate this Committee was based on an Office of Management and Budget recommendation that its functions be merged with those of the Semiconductor Technical Advisory Committee, whose charter is being revised to include the functions of the former. Members of the Semiconductor Manufacturing and Test Equipment Technical Advisory Committee will become members of the Semiconductor Technical Advisory Committee. Thus the Department is assured that it will continue to receive advice of the same scope and expertise with respect to semiconductor manufacturing and test equipment as it has in the past, but with a smaller expenditure of resources.

Dated: November 23, 1977.

ELSA A. PORTER,
Assistant Secretary of Commerce for Administration.

[FR Doc. 77-34573 Filed 12-1-77; 8:45 am]

[6820-33]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978; PROPOSED ADDITIONS

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1978 commodities to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 5, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1978, November 14, 1977 (42 FR 59015):

Class 1005

Sling, Padded, Adjustable, 1005-00-312-7177.

Class 6630

Micro-Bleeder, 6630-01-NIB-0002.

C. W. FLETCHER,
Executive Director.

[FR Doc. 77-34584 Filed 12-1-77; 8:45 am]

[3515-01]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Availability

The following is a list of environmental impact statements received by the Council on Environmental Quality from November 21 through November 25, 1977. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the minimum period for public review

and comment on draft environmental impact statements is forty-five (45) days from this FEDERAL REGISTER notice of availability. (January 16, 1977.) The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Errett Deck, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 307A, Washington, D.C. 20250, 202-447-6827.

FOREST SERVICE

Draft

Elsin Unit Plan, Umatilla National Forest, Union, Umatilla, and Wallowa Counties, Oreg., November 22: Proposed is the implementation of a comprehensive land management plan for the 326,760 acres of Forest Service land within the Elgin Planning Unit, Umatilla National Forest, Oreg. There are an additional 26,348 acres of land in other ownership within the boundaries of the Planning Unit. Eight alternatives are analyzed; each alternative offers a different combination of management activities allocated to the land which yield wood, water forage, wildlife habitat, and outdoor recreation opportunities. (ELR Order No. 71424.)

SOIL CONSERVATION SERVICE

Draft

Middle Fork-Obion River Watershed, Henry and Weakley Counties, Tenn., November 22: Proposed is a project to reduce floodwater damages to farmland and flood plain within the Middle Fork-Obion River Watershed, Henry and Weakley Counties, Tenn. Planned project measures remaining to be installed include conservation land treatment measures, three single-purpose flood water retarding structures, and about 29 miles of channel work. Adverse impacts include the loss of 295 acres of Type 1 wetlands, and 255 acres of Types 3, 6, and 7 wetlands; reduction or elimination of riparian vegetation, shade cover, and fishery resources; and loss of 178 acres of agricultural land. (ELR Order No. 71425.)

Sabanna River Watershed, Callahan, Comanche, and Eastland Counties, Tex., November 21: Proposed is a plan for watershed protection and flood prevention for Sabanna River Watershed, Tex. Project objectives are the proper use, treatment, and management of soil and water resources in the watershed; obtaining a 70% flood damage reduction; and stimulation of the economic development of the area. The proposed plan calls for the installation of 15 floodwater retarding structures over an eight year period. Adverse effects include the acquisition of 3, 4 acres of land and the alteration of wildlife habitat. (ELR Order No. 71432.)

Final

Middle Creek Watershed Project, Linn and Miami Counties, Kans., November 21: Proposed is a project for watershed protection, flood prevention, water supply, and public recreation in Linn and Miami Counties, Kans. Plans include conservation land treatment, log jam removal, and construction of floodwater retarding dams and a multipurpose structure for floodwater retardation. Provisions will be made for water supply and public recreation. Average annual flood damage will be reduced 63 percent in the watershed. Adverse impacts include the loss of 531 acres at floodwater retarding dams, 36 acres at detention dams and 236 acres of agricultural land, and loss of wildlife habitat. Comments made by: DOD, DOI, HEW, USDA, EPA, and one state agency. (ELR Order No. 71431.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Final

Marine Mammals Incidental to Yellowfin Tuna Purse, November 25: Proposed is the promulgation of amendments to the existing marine mammal regulations which would authorize the issuance of a general permit to allow the take of marine mammals incidental to yellowfin tuna purse seine fishing for a 3-year period (1978-1980). Individual porpoise species and stock quotas would be established for U.S. vessels in the regulations for 1978, 1979, and 1980 at progressively decreasing levels. An enforcement policy regarding accidental takings of prohibited species is also proposed in the regulations. Comments made by: DOI. (ELR Order No. 71429.)

Supplement

Sablefish Fishery, Bering Sea, and Northeast Pacific (S-1), November 23: This statement supplements a final EIS filed with CEQ in February 1977, and proposes changes to amend and implement a supplemental preliminary fishery management plan for the sablefish. These changes include: (a) in the Bering Sea Sub-area reduce OY from 5,000 to 3,000 mt, reserve 600 mt of the OY for later allocation between foreign and domestic fishermen, and reduce TALFF from 5,000 to 2,400 mt; (b) in the Atlantic Sub-area reduce OY and TALFF from 2,400 to 1,500 mt; (c) in the Gulf of Alaska reduce OY to 15,000 mt, reserve 3,000 mt for later allocation, and increase U.S. capacity to 4,000 mt. (ELR Order No. 71441.)

Squid Fisheries, Northwest Atlantic (S-1), November 23: This statement supplements a final EIS filed with CEQ in February 1977, and proposes changes in the subject preliminary fishery management plan for the 1978 foreign fishing season. The changes are as follows: (a) the areas and seasons where foreign nationals can conduct directed squid fishery operations are modified; and, (b) the United States will assess and reconsider its projected capacity for 1978 and specify any reallocation after June 15, 1978. (ELR Order No. 71442.)

Hake Fisheries, Northwest Atlantic (S-1), November 23: This statement supplements a final EIS filed with CEQ in February 1977. Proposed are changes in the subject preliminary fishery management plan for the 1978 foreign fishing season. These include: (a) increase the estimate of U.S. capacity to take silver hake from the Georges Bank Stock from 15,000 mt to 26,000 mt and from the Southern New England stocks from 14,500 mt to 20,600 mt; (b) decrease optimum yield (OY) for silver hake on Georges Bank and Southern New England to 58,800 mt and 33,200 mt respectively and, (c) decrease OY for red hake on Southern New England to 20,500 mt. (ELR Order No. 71443.)

Foreign Trawl Fisheries, Northwest Atlantic (S-1), November 23: This statement supplements a Final EIS filed with CEQ in February 1977. Proposed are changes in the subject preliminary fishery management plan for 1978. They are: (a) reduce the total allowable level of foreign fishing for butterfish to 4,000 metric tons from 5,500 metric tons and increase the U.S. capacity for butterfish to 14,000 metric tons up from 12,500 metric tons; and, (b) reduce the allowable level of incidental catch by foreign nationals of the species aggregation "all other finfish" to 46,800 metric tons, and increase the U.S. capacity for "all other finfish" to 200,200 metric tons. (ELR Order No. 71444.)

Mackerel Fishery, Northwest Atlantic (S-1), November 23: This statement supplements a final EIS filed with CEQ in October 1977, and proposes changes in the subject preliminary fishery management plan for the 1978 foreign fishing season. These changes reflect the following: (a) reduction in OY for Subarea 5 and Statistical Area 6 from 88,000 metric tons to 15,500 metric tons; (b) reduction of TALFF from 69,000 metric tons to 1,200 metric tons; and, (c) reduction of the estimated U.S. capacity from 19,000 to 14,300 metric tons. (ELR Order No. 71445.)

Trawl and Herring Gillnet, Bering and Northeast Pacific (S-1), November 23: This statement supplements a final EIS filed with CEQ in February 1977, and proposes changes in the subject preliminary fishery management plan for the 1978 foreign fishing season. These changes include: (a) reduction of the Aleutian Island sablefish setline/trap OY from 2,400 mt to 1,500 mt and TALFF from 2,400 mt to 1,500 mt; (b) reduction of herring OY from 21,000 mt to 18,670 mt, and increase of U.S. capacity on herring from 1,000 mt to 10,000 mt; and, (c) establishment of an Atka mackerel OY and TALFF of 24,800 mt. (ELR Order No. 71446.)

Atlantic Herring, Northwest Atlantic (S-1), November 23: This statement supplements a final EIS filed with CEQ in February 1977, and proposes changes in the subject preliminary fishery management plan for the 1978 foreign fishing season. These changes are: (a) reduction of 5Z and SA6 optimum yield to 0 from 33,000 mt; (b) redefinition of U.S. capacity for 5Z and SA6; (c) reduction of TALFF to 0 from 21,000 mt in area 5Z and SA6; and (d) change of the estimated U.S. capacity for 5Y to 7,000 mt up from 6,000 mt and reduce the TALFF to 0 from 1,000 mt. (ELR Order No. 71447.)

Trawl Fishery, Gulf of Alaska (S-1), Alaska, November 23: This statement supplements a final EIS filed with CEQ in February 1977. Changes are proposed for the 1978 foreign fishing season as follows: establish 20 percent of all optimum yields (OYs) for all species except Atka Mackerel as a reserve for later allocation between foreign and domestic fisherman; and alter the OY, U.S. capacity, and TALFF for Pollock, Pacific Other Rockfishes, Flounder Sablefish for the Gulf of Alaska portion of the plan, Atka Mackerel, and Pacific Cod. (ELR Order No. 71440.)

Trawl Fisheries, WAS/ORE/CAL (S-1), Washington, Oregon, and California, No-

vember 23: This statement supplements a final EIS filed with CEQ in February 1977, and describes changes made in the subject preliminary fishery management plan for the 1978 foreign fishing season. Under this amendment, the total allowable catch (TAC) for Pacific Hake will be 130,000 metric tons, and the TAC for jack mackerel will be 55,000 metric tons. The amendment also calls for the review by the Department of Commerce of U.S. capacity and TALFF contained in this PMP by July 31, 1978, or as soon thereafter as feasible. (ELR Order No. 71439.)

DEPARTMENT OF DEFENSE, ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

El Paso Local Protection Project, Tex., November 22: Proposed is the enlargement of two existing dam complexes; the construction of new detention dams; a diversion channel-dike combination; and related work, in order to protect the Northwest Area of El Paso. There will be some loss of land and vegetation to project structures. (Albuquerque District.) (99 pages.) Comments made by: DOI, EPA, USDA, HUD, HEW, FPC, and one State agency. (ELR Order No. 71428.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Peter Cook, Acting Director, Office of Federal Activities, room WSMW 537, 401 M Street SW., Washington, D.C. 20460, 202-755-0777.

Draft

Eastern Marin-Southern Sonoma Wastewater Management, Marin and Sonoma Counties, Calif., November 25: The proposed project is to upgrade municipal wastewater facilities of the East Marin-South Sonoma Counties area to meet the water quality standards required for discharges to the San Francisco Bay and its tributaries. This project has essentially evolved into 4 subregional study areas where treatment plant improvements and consolidated discharges are the suggested solutions. The 4 areas are: Southern Marin, Central Marin, North Marin, and Southern Sonoma; each region will publish its own separate final EIS, addressing the problems in that particular region. (Region IX.) (ELR Order No. 71448.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-566-0405.

Draft

Fort Kent Border Station, Aroostook County, Maine, November 23: The proposed project involves the construction by the General Services Administration, Public Buildings Service, of a new border station facility in Fort Kent, Aroostook County, Maine, to replace the existing inadequate and outmoded wooden station leased from the State of Maine. The proposed site will encompass a minimum area of approximately 45,000 square feet and will consist of three buildings. Adverse impacts are those related to construction. (ELR Order No. 71346.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

City of Aurora Housing Developments, Arapahoe County, Colo., November 23: Proposed is the approval of FHA mortgage insurance for five housing developments in Arapahoe County, Colo. The developments requesting assistance are: Tollgate Village (4,903 units), Aurora Highlands (3,790 units), Willow Park (596 units), Summer Valley Ranch (2,307 units) and Smoky Hill 400 (3,173 units). All are located within the city of Aurora with the exception of Smoky Hill 400 which is in unincorporated Arapahoe County. Adverse impacts include a conversion from agricultural to urban land use; increased water use; construction-related pollution; and increased water, noise, and air pollution. (ELR Order No. 71435.)

Residencial Conadonga Development, P.R., November 23: Proposed is the development of 171 dwelling units in a tract of land of 20.3 cuerdas (19.7 acres), located in Ward Candelaria of the town of Toa Baja, P.R. These are the fourth and fifth sections of a project that consists of 671 single-family units in 105 cuerdas (102 acres). The project provides 5.6 acres of Community Facilities. Adverse impacts include permanent change in topography; increased air, water, and noise pollution; and construction-related pollution. (ELR Order No. 1433.)

Final

Ranch Country Subdivision, Harris County, Tex., November 22: Proposed is the development of 399 acres into a planned community, to be known as Ranch Country Subdivision. The project will be composed of single family homes, and commercial reserves, and will provide housing for approximately 5,000 people. The development will result in increased loading of solid waste disposal sites, increased groundwater consumption, and increased demand for fossil fuels through heavy dependence upon the automobile for transportaton. Comments made by: EPA, COE, AHP, DOT, DOI, USDA, State, and local agencies. (ELR Order No. 71426.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, P-518, Washington, D.C. 20555, 301-492-8446.

Final

Lucky Mc Gas Hills Uranium Mill, Fremont County, Wyo., November 23: The proposed action is the continuation of Iowa Material License SUA-672 (with amendment), issued to Utah International Inc., for the operation of the Lucky Mc Uranium Mill in the Gas Hills region of Fremont county, Wyo. The application for amendment proposes to increase the mill capacity to 2,000 tons (1,820 MT), of ore per day and increase the storage capacity of the tailings ponds to permit the continuation of present production rates of U308 through 1987 using lower-grade ores. Adverse effects include alteration of 200 acres of sagebrush-grassland, and construction-related impacts. Comments made by: DOT, COE, USDA, FEA, FPC, HEW, ERDA, EPA, AHP, state agencies, and concerned groups. (ELR Order No. 71438.)

Supplement

Donald C. Cook Nuclear Plant, Units 1 & 2 (S-1), Berrien County, Mich., November 23: This statement supplements a final EIS filed with CEQ in August of 1973, concerning the Donald C. Cook Nuclear Plant in Berrien County, Mich. Construction of Unit No. 2 was suspended due to financial considerations, but was resumed on a limited basis on August 1, 1975. This supplement represents an updated assessment of the environmental impact associated with the proposed operation of this plant. Socio-economic impacts and the environmental impacts of the uranium fuel cycle are also discussed. (ELR Order No. 71437.)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Peter Krenkel, Director of Environmental Planning, Tennessee Valley Authority, 720 Edney Building, Chattanooga, Tenn. 37401, 615-755-3161, FTS 854-3161.

Draft

Dalton Pass Uranium Mine, McKinley County, N. Mex., November 22: Proposed is the approval by the Department of the Interior of a mine and reclamation plan for the construction and operation of the Dalton Pass Uranium Mine by the United Nuclear Corporation (UNC), in McKinley County, N. Mex. Also proposed is TVA's participation with UNC in the construction and operation of this mine. Adverse effects include the depression of groundwater levels, alteration of specific topographic features near the shaft sites; disruption of the natural habitat; and temporary minor degradation of air quality. (ELR Order No. 71430.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

New Jersey Route 152, Bay Ave. to JFK Bridge, Atlantic County, N.J., November 23: Proposed is the reconstruction of New Jersey Route 152 in Atlantic County from Bay Ave. in the City of Somers Point easterly for a distance of 3.2 miles to the western end of the John F. Kennedy Bridge over Beach Thorofare in Egg Harbor Township. Six new structures will replace nine deteriorated timber bridges and the roadway level will be raised by 3 to 5 feet to overcome flooding. Adverse impacts include construction-related pollution and the acquisition of between 13.3 and 22.2 acres of wet-lands. (Region 1.) (ELR Order No. 71434.)

Final

Taylor Highway, Alaska, November 22: The proposed project involves the reconstruction of the existing Taylor highway from Tetlin Junction to the Eagle turnoff and the spur road from the turnoff to the Canadian Border. The facility will be a two-lane, unpaved road designed to meet present and future recreation and commercial development over a 20-year period. The length of the proposed project is approximately 107 miles. Adverse impacts are those normally associated with construction. Comments made by: USDA, EPA, DOI, State, and local agencies. (ELR Order No. 71422.)

Freeway 518, Black Hawk and Bremer Counties, Iowa, November 22: The statement refers to the construction of 18.6 miles of new highway, from Cedar Falls to Iowa

Highway 3. Three spans of the Cedar River will be constructed. Adverse effects include the acquisition of approximately 650 acres of cropland; alteration of wildlife habitat; the displacement of approximately 25 farm families and 65 families in the city of Cedar Falls; increased air and noise pollution; and the acquisition of portions of four parks or recreation areas. (Region 7.) Comments made by: DOI, USDA, EPA, State, and local agencies. (ELR Order No. 71423.)

S.R. 41, Willard to Estancia, N. Mex., Torrance County, N. Mex., November 22: The proposed action consists of relocating 11.5 miles of New Mexico State Route 41 from its present alignment to the former AT&SF railroad right-of-way between Willard and Estancia, N. Mex. The project calls for constuction of a two lane rural with a four lane urban section through Estancia. Provisions are also included for improved drainage for fifth Street in Estancia. Some noise and air pollution will result from construction activity. (Region 6.) Comments made by: EPA, DOI, USDA, FEA, State, and local agencies. (ELR Order No. 71427.)

NICHOLAS C. YOST,
Acting General Counsel.

[FR Doc. 77-34582 Filed 12-1-77; 8:45 am]

[3125-01]

COUNCIL ON ENVIRONMENTAL QUALITY

TRANSFER OF ENVIRONMENTAL IMPACT STATEMENT RECEIPT AND FILING FROM CEQ TO EPA

OCTOBER 28, 1977.

The receipt and filing of Environmental Impact Statements (EISs) will be transferred from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA) next month, under the President's reorganization plan for the Executive Office of the President (Reorganization Plan No. 1 of 1977, July 15, 1977). Effective Monday, December 5, 1977, federal agencies should no longer send EISs to CEQ. Instead agencies should deliver five (5) copies of all draft, final or supplemental EISs filed pursuant to Section 102(2)(C) of the National Environmental Policy Act directly to:

Environmental Protection Agency, Room 537, West Tower, 401 M Street SW., Washington, D.C. 20460.

Mailed copies should be sent to Mail Code A-104 at the same address.

Beginning on December 16, 1977, EPA will publish the regular weekly FEDERAL REGISTER notices indicating receipt of EISs and the relevant comment periods. EPA will also publish the 102 Monitor beginning in January.

CEQ will continue its NEPA oversight and policy guidance to agencies. However, general information and specific questions from agencies and the public about technical compliance with environmental impact statement requirements and CEQ Guidelines should be directed to EPA after December 2.

Please inform all regional and branch offices of these changes. Any questions should be directed to Sally Mallison at CEQ 202-633-7077 or Thomas Sheckells at EPA, 202-755-0790.

CHARLES WARREN,
Chairman.

[FR Doc. 77-34581 Filed 12-1-77; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DEFENSE SCIENCE BOARD TASK FORCE ON CRUISE MISSILES

Advisory Committee Meeting

The Defense Science Board Task Force on Cruise Missiles will meet in closed session on February 14 and 15, 1978, at the Defense Nuclear Agency Conference Facility, Marina Del Rey, Calif.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will provide an analysis of the major issues concerning strategic cruise missile employment, theater cruise missile employment, and potential defense to the U.S. deployment of cruise missile systems.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552b(c) of Title 5 of the United States Code specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

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

NOVEMBER 29, 1977.

[FR Doc. 77-34602 Filed 12-1-77; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. I-410]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

NOVEMBER 28, 1977.

By the Chief, Common Carrier Bureau.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's rules, regulations and its policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Acting Secretary.

SATELLITE COMMUNICATIONS SERVICES

TN 106-DSE-P/L-78 North Gibon County CATV, Inc., Dyer, Tenn. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 36°06'29" N., Long. 88°59'48" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a meter antenna.

TN 107-DSE-P/L-78 LaFollette-Livingston Cable TV, Inc., LaFollette, Tenn. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 36°22'48" N., Long. 84°05'06" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

TN 108-DES-P/L-78 FNI Communications Co., Paris, Tenn. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 36°15'43" N., Long. 88°19'46" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

TN 109-DSE-P/L-78 FNI Communications Co., Tullahoma, Tenn. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°24'32" N., Long. 86°10'26" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

ID 110-DSE-P/L-78 CDA Cable, Inc., Coeur d'Alene, Idaho. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 47°43'40" N., Long. 116°46'00" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 4.5 meter antenna.

MD 111-DSE-P-78 RCA American Communications, Inc. (WB74), Greenbelt, Md. Authority to construct a second antenna at this location. Lat. 38°59'54" N., Long. 76°50'22" W. Rec. freq: 3700-4200 MHz. Trans. freq: 5925-6425 MHz. Particularly 6165-6183 and 6187-6223 MHz. Emission 1600F9Y. With a 10 meter antenna.

PA 112-DSE-P/L-78 American Cablevision of Carolina, Inc., Reading, Pa. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 40°21'16" N., Long. 75°53'52" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

AZ 113-DSE-P/L-78 American Cable Television, Inc., Smith Peak, Ariz. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 34°03'53" N., Long. 113°21'18" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

AZ 114-DSE-P/L-78 Cobre Valley Cablevision, Globe, Ariz. Authority to construct,

own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 33°25'04" N., Long. 110°49'06" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

AR 116-DSE-P/L-78 Texas Community Antenna, Inc., Springdale, Ark. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 36°10'43" N., Long. 94°07'38" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

OK 117-DSE-ML-78 Sammons Communications, Inc. (KF46), Clinton, Okla. Modification of license to permit the reception of signals from station WYAH-TV, Channel 27, Portsmouth, Va.

MI 118-DSE-ML-78 Liberty TV Cable, Inc. (WE61), Adrian, Mich. Modification of license to permit the reception of signals from station WTCG-TV, Channel 17, Atlanta, Ga.

TX 119-DSE-ML-78 Athena Cablevision of Corpus Christi, Inc., Corpus Christi, Tex. (KF36). Modification of license to permit the receiption of signals from the Madison Square Garden events.

VA 120-DES-P/L-78 Rocky Mount Cable TV, Inc., Rocky Mount, Va. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 37°01'24" N., Long. 79°43'39" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

AL 121-DSE-P/L-78 Alabama Television Transmission, Inc., d.b.a. Pinebelt Cablevision, Atmore, Ala. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 31°00'01" N., Long. 87°30'46" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

AL 122-DSE-P/L-78 Birmingham Cable Communications, Inc., Birmingham, Ala. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 33°32'46" N., Long. 86°44'26" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

123-DSE-TC-78 Telesis Corp. (KB71 and WB55), Grand Island, Nebr., and West Lafayette, Ind. Transfer of control from: Telesis Corp., owner of the Added Attractions Inc., earth stations listed above to: The Equitable Life Assurance Society of the United States.

MI 124-DSE-P/L-78 Booneville Broadcasting Co., d.b.a. New Albany Cable TV, Booneville, Mich. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 34°29'12" N., Long. 89°02'00" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

MI 125-DSE-P/L-78 Booneville Broadcasting Co., d.b.a. Booneville Video Co., Booneville, Mich. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 34°38'15" N., Long. 88°34'45" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

FL 126-DSE-P/L-78 Coral Television Corp., Miami, Fla. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 25°54'44" N., Long. 80°11'28" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

IL 127-DSE-P/L-78 General Electric Cablevision Corp., Peoria, Ill. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 40°44'47" N., Long. 89°36'07" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

1-DSS-MP-78, 2-DSS-MP-78, 3-DSS-MP-78 Satellite Business Systems (KS 36, 36, 38). Modification of construction permits in order to change the satellite design due to the change of the launch vehicle from the Delta 3914 vehicle to the Space Transportation System (Space Shuttle) vehicle.

[FR Doc. 77-34591 Filed 12-1-77; 8:45 am]

[6712-01]

COMMON CARRIER SERVICES INFORMATION

[Report No. 886]

Applications Accepted for Filing

NOVEMBER 28, 1977.

By the Chief, Common Carrier Bureau:

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See § 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and Section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See §§ 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Acting Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20284-CD-P-78 Northern Illinois Radio Phone and Paging Systems, Inc. (KSB590) C.P. to relocate facilities operating on 152.09 MHz at Loc. No. 1 to be located at 1701 South First Avenue, Maywood, Ill.

20285-CD-AL-78 Bald Knob Telephone Co., consent to assignment of license from Bald Knob Telephone Co., Assignor to Continental Telephone Co., of Arkansas Assignee. Station: KLB700, Bald Knob, Ariz.

20286-CD-AL-(2)-78 Lincoln-Desha Telephone Co., Inc., consent to assignment of license from Lincoln-Desha Telephone Co., Inc., assignor to Continental Telephone Co., of Arkansas Assignee. Stations: KLB709, Dumas, KFL950, Star City, Ariz.

20287-CD-P-(2)-78 The Pacific Telephone and Telegraph Co. (KWU207) C.P. for additional facilities to operate on 152.84 MHz at a new site described as Loc. No. 9, to be located at Boucher Hill, near Palomar Mountain; 152.84 MHz at a new site described as Loc. No. 10 to be located 3.5 miles NE of San Marcos, Calif.

20288-CD-MP-(2)-78 Commercial communications Co., David L. Costello d.b.a. (KWU526) Mod permit for additional facilities to operate on 72.20 MHz (control) at a new site described as Loc. No. 2, to be located at 900 Central Avenue Anderson; 75.80 MHz (repeater) at a new site described at Loc. No. 3: 0.92 mile north of Tipton, Ind.

20289-CD-P-(2)-78 Communication Specialists Co., Inc., consent to transfer of control from Glen M. Freeman, Transferor to Donald G. & Joanne L. Smith, Transferee. Stations: KOP322, Tillamook, KWT877, Portland, Oreg.

20290-CD-P-78 Northwest Telephone Cooperative Association of Havelock, Iowa, (New) C.P. for a new 2-way station to operate on 152.63 MHz: Wood Street, Havelock, Iowa.

20291-CD-P-78 Phone Depots, Inc. d.b.a. Mobilfone Radio System (KEA254) C.P. for additional facilities to operate on 152.21 MHz a new site described as Loc. No. 11 to be located at 6 Marcia Street, Sayreville, N.J.

20291-CD-P-78 Phone Depots, Inc. d.b.a. Mobilfone Radio System, (KEA254) C.P. for additional facilities to operate on 152.21 MHz a new site described as Loc. No. 11 to be located at 6 Marcia Street, Sayreville, N.J.

20292-CD-P-78 Beep Communication Systems, Inc. (KEK287) C.P. for additional facilities to operate on 454.225 MHz at a new site described as Loc. No. 4 to be located at 901 Ocean Avenue, Asbury Park, N.J.

20294-CD-P-(5)-78 Wayne Alan Bird d.b.a. Wyoming Mobilephone (New) C.P. for a

new 2-way station to operate on 454.200 MHz (base) 75.86 MHz (Repeater) at Loc. No. 1: 18 miles to SE from Thermopolis, Wyoming on Copper Mountain; 72.12 MHz (Control) at Loc. No. 2, 821 West Main Street, Riverton; 72.12 MHz (Control) at Loc. No. 3, 144 West North Street, Powell; 72.12 MHz at Loc. No. 4, 337 North 6th, Thermopolis Wyo.

20295-CD-P-78 City of Brooking (KAL878) C.P. for additional facilities to operate on 152.57 MHz at a new site described as Loc. No. 2: Water tank at Eastern Limit of city, Brookings, S. Dak.

20296-CD-P-78 Digital Paging System of Pittsburgh, Inc. (KGA252) C.P. to relocate facilities operating on 152.09 MHz at Loc. No. 3 to be located at 229 Grandview Avenue, Pittsburgh, Pa.

CORRECTION

20216-CD-TC-(5)-78 Telephone Communications, Inc., Correct entry to read, consent to transfer of control from Telephone Communications, Inc., Transferor to Telephone Communications Service Corp., Transferee. All other particulars to remain as reported on PN No. 884 Dated November 14, 1977.

20257-CD-P-(2)-78 Tel-Page Corp. (KEC941) Correct file number to read 20257-CD-P-(3)-78 and correct entry to read: C.P. to relocate facilities operating on 454.075 454.200 and 152.09 MHz at Loc. No. 3 to be located at One Lincoln First Square, Rochester, N.Y. As reported on PN No. 885 dated November 21, 1977.

20258-CD-P-78 Tel-Page Corp. (KEJ894) Correct file number to read 20258-CD-P-(2)-78 and add 454.150 MHz, all other particulars to remain as reported on PN No. 885, dated November 21, 1977.

20259-CD-P-78 Contact of Farmington, Inc. (New) Correct file number to read 20250-CD-P-78. All other particulars remain as reported on PN No. 855 dated November 21, 1977.

MAJOR AMENDMENT

21832-CD-P-77 (New) Harold Telephone Co., Inc., amend to change base frequency from 152.06 MHz to 152.66 MHz. All other particulars remain as reported on PN No. 870 dated August 8, 1977.

22229-CD-P-77 Jerry Church d.b.a. Church's Telephone Answering Service, Franklin, Ky. (New). Amend base frequency 454.325 MHz to read 454.050 MHz; change antenna system. All other particulars are to remain as reported on PN No. 879 dated October 11, 1977.

INFORMATIVE

Assignment of Licenses for DPLMRS station KSU988 and KTS232, Eau Claire, Wis., from William J. Curtin d.b.a. Curtin Call Communications, Assignor to WEAU Inc., Assignee File No. 20167-CD-AL-(2)-78, PN, November 7, 1977 amended to read from William J. Curtin d.b.a. Curtin Call Communications, Assignor to First Reserve Corp. Both WEAU Inc. and First Reserve Corp. are wholly owned subsidiaries of Post Corp.

60035-CR-P/L-78 New England Telephone and Telegraph Co. (New). C.P. for a new Rural Subscriber station to operate on 157.83 MHz at Fish Bladder Island, 3.2 miles north east of South Hero, Vt.

60036-CD-P/L-78 Puerto Rico Connunications Authority (New). C.P. and License for a new Rural Subscriber station to operate on 459.375, 459.400, 459.425, 459.450, 459.475, 459.500, 459.525 and 459.550 MHz to be located at Bo Altosano, Carr. 407 Km. 2.9, Las Marias, P.R.

60037-CR-P/L-78 Same as above to be located at Bo. Anones, Carr. 406 Km. 4.3, Las Marias, P.R.

60038-CR-P/L-78 Same as above to be located at Bo. Espino, Carr. 124 Km. 16.5, Lares, P.R.

60039-CR-P/L-78 Same as above to be located at Bo. Las Torres, Carr. 129 Km. 10.4, Lares, P.R.

60040-CR-P/L-78 Same as above to be located at Bo. Buenos Aires, Carr. 129 Km. 6.5, Lares, P.R.

60041-CR-P/L-78 Same as above to be located at Bo. Piletas Arce, Carr. 4453 Km. 5.0, Lares, P.R.

60042-CR-P/L-78 Same as above to be located at Bo. Callejones, Carr. 454 Km. 2.2, Lares, P.R.

60043-CR-P/L-78 Same as above to be located at Bo. Pezuelas, Carr. 431 Km. 6.0, Lares, P.R.

60044-CR-P/L-78 Same as above to be located at Bo. Indiera, Carr. 426 Km. 3.4, Maricao, P.R.

60045-CR-P/L-78 Same as above to be located at Bo. Indiera, Carr. 128 Km. 29.0, Maricao, P.R.

60046-CR-P/L-78 Same as above to be located at Bo. Cerrote, Carr. 124 Km. 13.4, Las Marias, P.R.

60047-CR-P/L-78 Same as above to be located at Bo. Cerrote Carr. 498 Km. 2.2, Las Marias, P.R.

60048-CR-P/L-78 Same as above to be located at Bo. Buena Vista, Carr. 124 Km. 3.5, Las Marias, P.R.

60049-CR-P/L-78 Same as above to be located at Bo. Bucarabones, Carr. 409 Km. 4.0, Las Marias, P.R.

60050-CR-P/L-78 Same as above to be located at Bo. Furnias, Carr. 119 Km. 21.5, Las Marias, P.R.

60051-CR-P/L-78 Same as above to be located at Bo. Anones, Carr. 108 Km. 16.3, Las Marias, P.R.

60052-CR-P/L-78 Same as above to be located at Bo. Buenos Aires, Carr. 129 Km. 9.7, Lares, P.R.

60053-CR-P/L-78 Same as above to be located at Bo. Mirasol, Carr. 128 Km. 54, Lares, P.R.

60054-CR-P/L-78 Same as above to be located at Bo. Bartolo, Carr. 128 Km. 36.8, Lares, P.R.

60055-CR-P/L-78 Same as above to be located at Bo. Buenos Aires, Carr. 128 Km. 44.4, Lares, P.R.

60056-CR-P/L-78 Same as above to be located at Bo. Rio Prieto, Carr. 431 Km. 8.1, Lares, P.R.

60057-CR-P/L-78 Same as above to be located at Bo. Cerrillo, Carr. 311 Km. 1.8, Cabo Rojo, P.R.

60058-CR-P/L-78 Same as above to be located at Bo. Rubias, Carr. 128 Km. 24.8, Maricao, P.R.

60059-CR-P/L-78 Same as above to be located at Area Recreativa Monte del Estado, Carr. 120 Km. 14.0, Maricao, P.R.

60060-CR-P/L-78 Same as above to be located at Bo. Buena Vista, Carr. 408 Km. 1.6, Las Marias, P.R.

60061-CR-P/L-78 Same as above to be located at Bo. Naranjales, Carr. 106 Km. 19.1, Las Marias, P.R.

60062-CR-P/L-78 Same as above to be located at Bo. Indiera Baja, Carr. 105 Km. 43.3, Maricao, P.R.

60063-CR-P/L-78 The Mountain States Telephone and Telegraph Co. (New). C.P. for a new Rural Subscriber to operate on 157.77 MHz: 7.4 miles south of Bitter Creek, Wyo.

POINT-TO-POINT MICROWAVE RADIO SERVICE

NY—408-CF-P-78 Eastern Microwave, Inc. (WBO 48). Mt. Pritchard, 1.9 miles North of Mechanicsville, N.Y. (Lat. 44°22'11" N., Long. 73°06'19" W.). Construction permit to change location of existing receive station, 10735V MHz toward Plattsburgh, N.Y., on azimuth 323.1 degrees.

GA—410-CF-P-78 The Western Union Telegraph Co. (WBO 84). Bank of Georgia Building (Lat. 33°45'18" N., Long. 84°23'23" W.). Construction permit to add 11525H and 11285H MHz toward Oakdale, Ga., on azimuth 306.0 degrees.

GA—411-CF-P-78 The Western Union Telegraph Co. (new). Oakdale, 4 miles East of Mableton, Ga. (Lat. 33°49'05" N., Long. 84°29'38" W.). Construction permit for new station, 10875 and 11115H MHz toward Atlanta, Ga., on azimuth 125.9 degrees.

KY—435-CF-P-78 Tower Communication Systems Corp (new). Two miles West of Route 5 on Indian Run Road, Ashland, Ky. (Lat. 38°28'11" N., Long. 82°44'32" W.). Construction permit for new station, 11175H MHz toward Ironton, Ohio, on azimuth 32.1 degrees.

OH—436-CF-P-78 Tower Communication Systems Corp. (WQR 58). 0.9 mile North of Ironton, Ohio (Lat. 38°32'51", Long. 82°40'48" W.). Construction permit to change polarization to Horizontal, 11385H MHz toward Kenova, W. Va., via power split, on azimuth 154.3 degrees and to add 11625V and 11305V MHz toward Huntington, Va., via power split, on azimuth 136.5 degrees.

OR—452-CF-P-78 Teleprompter Transmission of Oregon, Inc. (KPC 72). Baldy Butte, 7 miles Northwest of North Bend, Oreg. (Lat. 43°28'42" N., Long. 124°06'24" W.). Construction permit to add 6264.V MHz toward Rink Hill, Oreg., via power split, on azimuth 138.2 degrees.

NC—464-CF-P-78 American Television & Communications Corp. (WBA 759). Ellis Road, Durham, N.C. (Lat. 35°57'43" N., Long. 78°52'17" W.). Modification of construction permit (2459-CF-P-77), to change nature of service to Specialized. (See W-P-C-1581.)

NC—465-CF-P-78 American Television & Communications Corp. (WBA 760). 1609 Old Louisburg Road, Raleigh, N.C. (Lat. 35°48'12" N., Long. 78°37'27" W.). Modification of construction permit to change nature of service to Specialized. (See W-P-C-1581.)

GA—388-CF-P-78 Southern Bell Telephone & Telegraph Co. (KJH68). 1.7 miles northwest of Andersonville, (Sumter), Ga., Lat. 32°12'51" N., Long. 84°09'26" W. C.P. to change frequencies on 6315.9V to 6225.9H MHz toward Piney Grove, Ga., change 6345.5H to 6197.2V MHz toward Ft. Valley, Ga., and replace transmitters.

GA—389-CF-P-78 Same (KJH69). 3.6 miles northwest of Fort Valley (Crawford), Ga., Lat. 32°35'56" N., Long. 83°55'15"W. C.P. to change frequencies 6063.8H to 5974.8V MHz toward Andersonville, Ga., change 6093.5V to 5945.2H MHz toward Macon, Ga., and replace transmitters.

GA—390-CF-P-78 Same (KJG91), 787 Cherry St. Macon (Bibb), Ga., Lat. 32°50'19"N., Long. 83°37'54"W. C.P. to change frequency 6315.9V to 6226.9H MHz toward Ft. Valley and replace transmitters.

IA—393-CF-P-78 Northwestern Bell Telephone Co. (WDD42). 0.1 mile North of Iowa (Johnson), Iowa, Lat. 41°41'10" N. Long. 91°30'47"W. M.P. of 4504-CF-P-76 to change polarization from V to H on 3710 MHz, Azimuth 339.4 degrees toward Cedar Rapids, Iowa, and H to V on 3870 MHz, azimuth 126.7 degrees toward Muscatine, Iowa.

IA—394-CF-P-78 Same (KBC79). 0.2 miles West of northwest Corner Muscatine (Muscatine), Iowa, Lat. 41°26'41" N. Long. 91°05'00" W. M.P. of 4505-CF-P-76 to change polarization from H to V on 3750 MHz, on azimuth 306.9 degrees toward Iowa City, Iowa, and V to H on 3770 MHz, on azimuth 78.7 degrees toward Blue Grass, Iowa.

IA—395-CF-P-78 Same (WDD42). 0.1 mile North of Iowa City (Johnson), Iowa. Lat. 41°41'10" N. Long. 91°30'47" W. C.P. to change polarization from H to V on 3710 MHz and 3790 MHz on azimuth 126.7 degrees toward Muscatine, Iowa.

IA—396-CF-P-78 Same (KBC79). 0.2 miles West of northwest Corner Muscatine (Muscatine), Iowa. Lat. 41°26'41" N. Long. 91°05'00" W. CP. to change polarization from H to V on 3990 and 4070 MHz on azimuth 44.8 degrees toward Iowa City, Iowa.

NJ—397-CF-P-78 New Jersey Bell Telephone Co. (KEL55). 701 Federal St. Camden (Camden), N.J. Lat. 39°56'39" N. Long. 75°07'05" W. CP. to add frequencies 11425V, 11505V & 11665V MHz toward Gibbsboro, N.J., and add transmitters.

NJ—398-CF-P-78 Same (WBB236). Rt. 561 northwest of Lucas Blvd. Gibbsboro (Camden), N.J. Lat. 39°50'36" N. Long. 74°58'02" W. C.P. to add frequencies 10735V, 10815V, 10975V MHz toward Camden, N.J. and 10735H, 10815H, 10975H MHz toward Cedar Brook, N.J. and add transmitters.

NJ—399-CF-P-78 New Jersey Bell Telephone Co. (WBB237). 1.9 miles northwest of Cedar Brook (Camden), N.J. Lat. 39°44'38" N., Long. 74°54'44' W. C.P. to add frequencies on 11425H, 11505H, 11665H MHz toward Gibbsboro, N.J. and 11425V, 11505V, 11665V MHz toward Folsom, N.J. and add transmitters.

NJ—400-CF-P-78 Same (WBB238). Buena Vista RD&RT. 322 Folsom (Atlantic), N.J. Lat. 39°35'29" N., Long. 74°51'15" W. C.P. to add frequencies 10735V, 10815V, 10975V MHz toward Cedar Brook, N.J. and 10735H, 10815H, 10975H MHz toward Mays Landing, N.J. and add transmitters.

NJ—401-CF-P-78 Same (WBB239). Cedar St. 0.5 miles of Rt. 50 Mays Landing (Atlantic), N.J. Lat. 39°28'45" N., Long. 74°41'55" W. C.P. to add frequencies 11425H, 11505H, 11665H MHz toward Folsom, N.J. and 11425V, 11505V, 11665V MHz toward Pleasantville, N.J. and add transmitters.

NJ—402-CF-P-78 Same (WBB240). 423 Washington Ave., Pleasantville (Atlantic), N.J. Lat. 39°23'38" N., Long. 74°31'45' W. C.P. to add frequencies 10735V, 10815V, and 10975V MHz toward Mays Landing, N.J. and add transmitters.

CA—404-CF-P-78 Mobile Radio System of San Jose, Inc. (new). 777 North First St., San Jose (Santa Clara), Calif. Lat. 37°21'01" N., Long. 121°54'02" W. C.P. for a new station on frequencies 2129V MHz toward Loma Prieta, Calif., on azimuth 169.21 degrees and 2117.2H MHz on azimuth 181.47 degrees toward Mt. Umunhum, Calif.

CA—405-CF-P-78 Same (new). Loma Prieta 16.8 miles South of San Jose (Santa Clara), Calif. Lat. 37°06'39" N., Long. 121°50'37" W. C.P. for a new station on frequency 2170V MHz on azimuth 349.25 degrees toward San Jose, Calif.

CA—406-CF-P-78 Same (new. Mt. Umunhum 13.1 miles south of San Jose (Santa Clara), Calif. Lat. 37°09'37" N., Long. 121°54'24" W. C.P. for a new station on frequency 2167.2H MHz on azimuth 1.473 degrees toward San Jose, Calif.

WI—416-CF-MP-78 Wisconsin Telephone Co. (KSO85). 221 West Washington St., Appleton (Outagamie), Wis. Lat. 44°15'45" N., Long. 88°24'30" W. M.P. of 2279-CF-P-77 to change polarization from V to H on 11385 MHz on azimuth 9.1 degrees toward Osborn, Wis.

WI—417-CF-MP-78 Same (KSO86). Osborn 3.7 miles southwest of Seymour (Seymour), Wis. Lat. 44°27'58" N., Long. 88°21'47" W. M.P. of 2280-CF-P-77 to change polarization from V to H on 10775 MHz on azimuth 189.1 degrees toward Appleton, Wis., and change V to H on 10775 MHz on azimuth 69.0 degrees toward Oneida, Wis.

WI—418-CF-MP-78 Wisconsin Telephone Co. (WCT923). 1.1 miles west of Onedia (Outagamie), Wis. Lat. 44°30'28" N., Long. 88°12'40" W. M.P. of 2281-CF-P-77 to change polarization from V to H on 11505 MHz on azimuth 249.1 degrees toward Osborn, Wis.

WI—419-CF-MP-78 Same (WCT911). 0.5 miles east southeast of South Chase (Oconto), Wis. Lat. 44°41'17" N., Long. 88°08'30" W. M.P. of 2282-CF-77 to change polarization from V to H on 10815 MHz on azimuth 195.4 degrees toward Oneida, Wis., and V to H on 10815 MHz on azimuth 19.7 degrees toward Stiles Junction, Wis.

WI—420-CF-MP-78 Same (WCT912). 0.2 mile east of Stiles Junction (Oconto), Wis. Lat. 44°53'06" N., Long. 88°02'32" W. M.P. of 2283-CF-P-77 to change polarization from V to H on 11385 MHz on azimuth 199.8 degrees and from V to H on 11385 MHz on azimuth 50.9 degrees toward Peshtigo, Wis.

WI—421-CF-MP-78 Same (WCG979). 7.5 miles southwest of Peshtigo (Marinette), Wis. Lat. 44°59'27" N., Long. 87°51'30" W. M.P. of 2284-CF-P-77 to change polarization from V to H on 10775 MHz on azimuth 231.1 degrees toward Stiles Junction, Wis., and V to H on 10775 MHz on azimuth 56.6 degrees toward Marinette, Wis.

WI—422-CF-MP-78 Same (WCT981). 1727 Stephenson, Marinette (Marinette), Wis. Lat. 45°05'50" N., Long. 87°37'49" W. M.P. of 2285-CF-P-77 to change polarization from V to H on 11505 MHz on azimuth 236.7 degrees toward Peshtigo, Wis.

NJ—302-CF-P-78 New Jersey Bell Telephone Co. Hamilton Sq. 2 miles southwest of Hamilton (Mercer), N.J. Lat. 40°12'32" N., Long. 74°41'12" W. C.P. to add new point of communication on frequencies 10735V, 11055V, 10895V, and 10815V MHz on azimuth 97.7 degrees toward Stone Tav., N.J. This application was inadvertently omitted from Public Notice dated November 21, 1977.

MAJOR AMENDMENT

3687-CF-P-77 Microwave Communications, Inc. (WAX65). Downers Grove, Ill. Amend application for C.P. to correct coordinates to read: Lat. 41°46'22" N., Long. 87°59'50" W. (Rest remains same as reported on Public Notice dated September 26, 1977.)

[FR Doc. 77-34622 Filed 12-1-77; 8:45 am]

1979 WORLD ADMINISTRATIVE RADIO CONFERENCE (WARC) PREPARATORY ADVISORY COMMITTEES

Joint Meeting of the Radio Astronomy Service Working Group (WARC Advisory Committee for Radio Astronomy) and the Broadcast Satellite Service Working Group (WARC Advisory Committee for Broadcasting Satellite Service)

NOVEMBER 30, 1977.

The November 30, 1977 FEDERAL REGISTER contained notice of a joint advisory committee meeting of the Radio Astronomy Service Working Group and the Broadcast Satellite Service Working Group to be held on December 15, 1977. The purpose of the meeting was to discuss mutual problems and possibilities of shared allocations in the 2670-2700 MHz band.

The Commission has rescheduled this meeting for Friday, December 16, 1977. The time and place of the meeting remain the same, 1 p.m., in Room 8210 of the Commission's offices at 2025 M Street NW., Washington, D.C.

The change in the date of the meeting is necessary in order to permit Dr. Hein Hvatum of the National Radio Astronomy Observatory in Greenbank, W. Va. to attend. The presence of Dr. Hvatum, an authority on measurements and computations regarding ATS-6 (application technology satellite), is considered essential to deliberations on the 2670-2700 MHz band.

The November 30, 1977 FEDERAL REGISTER also contained notice of a meeting of the Broadcast Satellite Service Working Group to be held on the morning of December 15. This meeting has likewise been changed to December 16 to facilitate attendance at the joint meeting in the afternoon. The meeting will take place at 9:30 a.m., in Room 8210 at 2025 M Street. The agenda for this meeting will be the same as previously announced:

1. Call to order by the chairman and announcements.
2. Approval of minutes.
3. Report on CCIR Final Study Group meetings (Block A).
4. Report on bilateral United States-Canadian discussions re 1982 WARC.
5. Current status of 1979 WARC preparation.
6. Reports from task groups.
7. Further discussion.
8. Next meeting date and adjournment.

Both meetings to be held on December 16, 1977 are open to members of the public. Written comments may be presented to the committees either before or after the meetings.

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Acting Secretary.

[FR Doc. 77-34621 Filed 12-1-77; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

INDEPENDENT OCEAN FREIGHT FORWARDER LICENSE

Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841b).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Alf Halbig, 5 West Saddle River Road, Waldwick, N.J. 07463.

European Research and Supply Co., 16 Reith Street, Copiague, N.Y. 11726. Officers: Vincent J. Boyle, President; Angela B. McStine, Operations Mgr.; Stephen M. Murdock, Sales & Mktg. Mgr.; Rita Gallipani, Traffic Mgr.

International Export Consultants, Inc., 42-50 21st Street, Long Island City, N.Y. 11101. Officers: Robert Robotti, President; John Trimarchi, Vice President.

Transgo Forwarding, Inc., 7239 Northwest 33rd Street, Miami, Fla. 333148. Officers: Jose A. Godoy, Director/V. Pres./Asst. Secretary; Armando Godoy, Director/V. Pres./Asst. Treasurer; Gustavo J. Godoy, President/Secretary; Rodolfo Suarez, Director/Asst. Secretary; Oscar Ros, Director/ Exec. Vice Pres./Treasurer.

Dennis R. Jacobson, 430 Pacific Avenue, San Francisco, Calif. 94133.

International Forwarders, Inc., 230 East 17th Street, Suite 228, Costa Mesa, Calif. 92627. Officers: Carl F. Weber, Chairman; Carl F. Weber, Jr., President; Robert W. Mockward, Secretary; John E. Peters, Treasurer.

Fuller's Earth Forwarders Inc., 1874 Southwest 12th Street, Miami, Fla. 33135. Officers: Jerome C. Fuller, President; Jennie Fuller, Secretary/Treasurer; Gerhard J. Gruen, Vice President.

Ned Shipping Co., Inc., 1700 K Street NW., Suite 603, Washington, D.C. 20006. Officers: Nadeem Ikramullah, President/Director; Maimunah Ikramullah, Secretary/ Director; Anjum Smith, Director.

The Growing Houston Investment Co., Inc. d.b.a. Anthony Transportation Service, 423 Cotton Exchange Building, 1300 Prairie Street, Houston, Tex. 77002.

Ultramar Express (Carmen Juste, d.b.a.), 2007 Southwest 17th Avenue, Miami, Fla. 33145.

Pan Ocean Inc., 715 West Anaheim Street, Long Beach, Calif. Officers: Francis R. Rinearson, Pres./Treas.; Egil Andersen, Vice President; Richard A. Rattray, Secretary; Pritam L. Metha, Asst. Secretary; Robert B. Johns, Asst. Treasurer.

William Russell, 150 Lombard Street, San Francisco, Calif. 94117.

By the Federal Maritime Commission.

Dated: November 29, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 77-34590 Filed 12-1-77; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

COMMERCE BANCSHARES, INC.

Acquisition of Bank

Commerce Bancshares, Inc., Kansas City, Mo., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)), to acquire 100 percent (less directors' qualifying shares), of the voting shares of Commerce Bank of Clay County, N.A., Kansas City, Mo., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of 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 not later than December 22, 1977.

Board of Governors of the Federal Reserve System, November 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-34595 Filed 12-1-77; 8:45 am]

[6210-01]

ELLIS BANKING CORP.

Acquisition of Bank

Ellis Banking Corp., Bradenton, Fla., 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 51 percent or more of the voting shares of First Gulf Beach Bank and Trust Co., St. Petersburg Beach, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 26, 1977.

Board of Governors of the Federal Reserve System, November 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-34596 Filed 12-1-77; 8:45 am]

[6210-01]

ELLIS BANKING CORP.

Acquisition of Bank

Ellis Banking Corp., Bradenton, Fla., 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 51 percent or more of the voting shares of Madeira Beach Bank, Maderia Beach, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 26, 1977.

Board of Governors of the Federal Reserve System, November 28, 1977

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-34597 Filed 12-1-77; 8:45 am]

[6210-01]

FIRST UNITED BANCORPORATION, INC.

Acquisition of Bank

First United Bancorporation, Inc., Fort Worth, Tex., 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 17,993 of the voting shares of Seminary State Bank, Fort Worth, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 23, 1977.

Board of Governors of the Federal Reserve System, November 25, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-34598 Filed 12-1-77; 8:45 am]

[6210-01]

WEST TEXAS BANCSHARES, INC.

Formation of Bank Holding Company

West Texas Bancshares, Inc., Muleshoe, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C.

section 1842(a)(1), to become a bank holding company by acquiring 81 percent or more of the voting shares of Muleshoe State Bank, Muleshoe, 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. section 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 December 21, 1977.

Board of Governors of the Federal Reserve System, November 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-34599 Filed 12-1-77; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on November 23, 1977 (NRC), and November 25, 1977 (CAB). 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 receipts.

The notice includes the title of each 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 and CAB requests 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 requests, comments (in triplicate), must be received on or before December 20, 1977, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5033, 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 an extension without change clearance of the application and reporting requirements contained in 70.22 and 70.59 of NRC regulation 10 CFR Part 70, Special Nuclear Material. Section 70.22 specifies the information that each type of application for a license or amendment thereof pertaining to Part 70 must contain. Section 70.59 requires each licensee authorized to possess and use special nuclear material for processing and fuel fabrication, scrap recovery, or conversion of uranium hexafluoride to report 60 days after January 1 and July 1 of each year, the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents during the previous 6 months of operation and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The NRC estimates that approximately 840 respondents are subject to these requirements and that the application and reporting time for all respondents will total approximately 156,360 hours annually.

CIVIL AERONAUTICS BOARD

The CAB requests clearance of revisions to Form 244, Financial and Operating Report for Air Freight Forwarders and International Air Freight Forwarders. This form is filed by air freight forwarders pursuant to Part 244 of the Board's Economic Regulations and is mandatory under Section 407 of the Federal Aviation Act of 1958, as amended. Regulation ER-945, effective January 1, 1976, changed the requirement to maintain a uniform system of accounts by air freight forwarders with revenues of $3 million, to air freight forwarders with revenues of $10 million; eliminated Schedules B-3, B-4, B-5, P-3, T-2b, T-3a, and T-3b; made changes to other schedules in the form; and divided air freight forwarders into 3 levels. Schedules T4, T5, and T6 were eliminated by CAB Regulation ER-1019, effective August 25, 1977. The CAB states that the revisions reduced frequency of reporting from quarterly to annually, eliminated some forms entirely, and reduced reporting for small forwarders to a single schedule and a certification of insurance. The CAB states that these revisions will reduce reporting burden for air freight forwarders by 75 percent. The CAB estimates respondents to number approximately 387 and annual reporting time to average 22.5 hours for Level 1 respondents, 8 hours for Level 2, and 30 minutes for Level 3.

JOHN M. LOVELADY,
Assistant Director,
Regulatory Reports Review.

[FR Doc. 77-34631 Filed 12-1-77; 8:45 am]

[1610-01]

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 22, 1977. 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 each 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 ICC 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 requests, comments (in triplicate), must be received on or before December 20, 1977, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, room 5033, 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.

INTERSTATE COMMERCE COMMISSION

The ICC requests clearance of a new Annual Report Supplement—Corporate Disclosure, in accordance with the order of the ICC in Docket No. 36141, Corporate Disclosure Regulations, decided May 13, 1977. The disclosure of corporate structure information will be filed by carriers with annual operating revenues of $20 million or more, subject to sections 20, 220, 313, and 412 of the Interstate Commerce Act. Included are railroads, motor carriers (property and passenger), pipeline carriers, inland and coastal waterway carriers, maritime carriers, private car lines, refrigerator car lines, and freight forwarders. ICC states that the supplemental report will enable it to effectively help identify possible conflicts of interest, misuse of insider information, exertion of undue influence facilitated by concentration of control, and other possible problems contrary to the public interest. The reporting will be mandatory and available for use by the public. The ICC estimates respondents to number approximately 330 and reporting time to average 166 hours annually.

Although the reporting deadline for the report is March 31, 1978, the ICC expects the reporting companies to apply the new corporate disclosure regulations to the entire year ending December 31, 1977. However, this reporting deadline and the effective date for the reporting requirements in these new regulations are contingent upon ICC's compliance with 44 U.S.C. 3512 which precludes the collection of

information from 10 or more persons until the Comptroller General has had the opportunity to advise that the information is not presently available from other Federal sources and that the proposed reporting requirements are consistent with the provisions of section 3512. This notice represents the beginning of the GAO review.

JOHN M. LOVELADY,
Assistant Director,
Regulatory Reports Review.

[FR Doc. 77-34632 Filed 12-1-77; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77N-0242; DESI 5509]

CERTAIN ANTICOAGULANT DRUGS

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice offers an opportunity for a hearing on certain indications previously classified as lacking substantial evidence of effectiveness for certain anticoagulant drugs. It announces the conditions for marketing the drug products for the indications for which they continue to be regarded as effective, and allows for the submission of abbreviated new drug applications, requiring them to provide in vitro dissolution testing for solid oral dosage forms.

DATES: Hearing requests due on or before January 3, 1978. Supplement due on or before January 31, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 5509, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements (identify with NDA number): Division of Cardio-Renal Drug Products (HFD-110), Rm 16B-30, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC-20), Rm. 4-65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC-18), Rm 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Inquiries regarding dissolution testing: Division of Biopharmaceutics (HFD-520), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

William R. Durbin, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 5509), published in the FEDERAL REGISTER of September 23, 1970 (35 FR 14797), the Food and Drug Administration announced its conclusions that the drug products described below are: (1) Effective anticoagulants for the prophylaxis and treatment of venous thrombosis and its extension, the treatment of atrial fibrillation with embolization, and the prophylaxis and treatment of pulmonary embolism; (2) probably effective for use as an adjunct in the treatment of coronary occlusion; (3) lacking substantial evidence of effectiveness for use in the treatment of cerebral thrombosis; and (4) possibly effective for their other labeled indications.

A followup notice published in the FEDERAL REGISTER of February 11, 1972 (37 FR 3077), reclassified the probably effective indication to effective and the possibly effective indications to lacking substantial evidence of effectiveness. No opportunity for a hearing was offered at that time for the indications lacking substantial evidence of effectiveness.

The notice that follows does not pertain to the indication stated in the September 23, 1970, notice to lack substantial evidence of effectiveness. Because an opportunity for hearing was given in that notice for the indication and a hearing was not requested, it is no longer allowable in labeling. Any such product labeled for that indication is subject to regulatory action.

1. NDA 9-218; Coumadin Injection and;

2. NDA 9-218; Coumadin Tablets both containing sodium warfarin; Endo Laboratories, Inc., 1000 Stewart Ave., Garden City, N.Y. 11533.

3. NDA 11-771; Athrombin Tablets containing sodium warfarin; and

4. NDA 11-771; Athrombin-K Tablets containing potassium warfarin; The Purdue Frederick Co., 50 Washington St., Norwalk, Conn. 06856.

5. NDA 9-751; Dipaxin Tablets containing diphenadione; The Upjohn Co., 7171 Portage Rd., Kalamazoo, Mich. 49002.

6. NDA 11-228; Liquamar Tablets containing phenprocoumon; Organon, Inc., 375 Mount Pleasant Ave., West Orange, N.J. 07052.

7. NDA 8-767; Hedulin Tablets containing phenindione; Merrell-National Laboratories, Division of Richardson-Merrell Inc., 110 E. Amity Rd., Cincinnati, Ohio 45215.

8. NDA 8-700; Danilone Tablets containing phenindione; Schieffelin and Co., Box 8, Apex, N.C. 27502.

9. NDA 5-545; Dicumarol Tablets containing bishydroxycoumarin; Abbott Laboratories, Inc., 14th and Sheridan Rd., North Chicago, Ill. 60064.

10. NDA 5-509; Dicumarol Pulvules containing bishydroxycoumarin; Eli Lilly and Co., Box 618, Indianapolis, Ind. 46206.

11. NDA 10-909; Miradon Tablets containing anisindione; Schering Corp., Galloping Hill Rd., Kenilworth, N.J. 07003.

12. NDA 7-542; Tromexan Tablets containing ethyl biscoumacetate; Geigy Pharmaceuticals, Division of Ciba-Geigy Corp., Summit, N.J. 07901.

13. NDA 10-759; Sintron Tablets containing acenocoumarol; Geigy Pharmaceuticals.

The following new drug application was not included in the initial notice, but is affected by this notice.

NDA 17-020; Panwarfin Tablets containing sodium warfarin; Abbott Laboratories.

Accordingly, the September 23, 1970 notice is amended to read as follows:

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and con-

cludes that the drugs are effective for the indications in the labeling conditions below and lack substantial evidence of effectiveness for other indications, as previously stated in the notice of February 11, 1972.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug products are in tablet or capsule form suitable for oral administration. Sodium warfarin may also be in sterile form suitable for parenteral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits despensing without prescription."

b. The drug products are labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

For the prophylaxis and treatment of venous thrombosis and its extension, the treatment of atrial fibrillation with embolization, and the prophylaxis and treatment of pulmonary embolism, and for use as an adjunct in the treatment of coronary occlusion.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before January 31, 1978, the holder of the application submits, if he has not previously done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls), of new drug application form FD-356H (21 CFR 314.1(c)), to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)), must be obtained prior to marketing such drug products. Such abbreviated new drug application is required to contain evidence from in vivo studies demonstrating bioequivalence to an appropriate reference standard. Such studies shall consist of single- and multiple-dose blood level studies comparing the drug product to an appropriate reference standard. The single-dose studies should compare the drug product with a reference standard and a solution of the active ingredient of the drug product. The requirements for the multiple-dose studies will depend on the information obtained from the single-dose studies. Because of the inherent risk of hemorrhage associated with any therapeutic dose of these drugs, any person planning to conduct such in vivo bioequivalence studies must do so under a Notice of Claimed Investigational Exemption for a New Drug (IND).

The application is also required to contain data from in vitro dissolution testing for solid oral dosage forms to assure batch-to-batch uniformity in accordance with 21 CFR 320.56. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before January 3, 1978, a written notice of appearance and request for hearing, and (2) on or before January 31, 1978, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 3141.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing

that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: November 11, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 77-34370 Filed 12-1-77; 8:45 am]

[4110-03]

[Docket No. 77D-0351]

GUIDELINES FOR LEUKOCYTE TYPING SERUM

Notice of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the availability of guidelines for the production, testing, and lot release of Leukocyte Typing Sera for histocompatibility testing. The guidelines supersede those guidelines provided on December 14, 1973 in a memorandum from the Director, Bureau of Biologics, to manufacturers of Leukocyte Typing Sera.

EFFECTIVE DATE: December 2, 1977.

ADDRESS: Written comments (preferably in quadruplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) and requests for copies of the guidelines may be addressed to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Joe K. Holloway or Al Rothschild, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-1920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that guidelines for the production, testing, and lot release of Leukocyte Typing Sera for histocompatibility testing are on public display and are available upon request at the office of the Hearing Clerk, Food and Drug Administration.

Leukocyte Typing Sera consist of preparations of sera derived from blood obtained aseptically from humans or animals and contain an antibody or antibodies for identification of leukoycte antigens. The product is especially useful for identifying suitable donors for organ transplants and for use in platelet transfusions.

On December 14, 1973, the Bureau of Biologics issued guidelines to manufacturers from the production, testing, and lot release of Leukocyte Typing Sera. On November 11, 1976, the Bureau held an open Histocompatibility Testing Workshop, as announced in the FEDERAL REGISTER of October 19, 1976 (41 FR 46038), to reassess the 1973 guidelines. Approximately 60 attendants, consisting of scientists and industry and government representatives, attended the workshop. As a result of data and information presented at the workshop, updated guidlines have been prepared to replace the 1973 guidelines.

Copies of the guidelines are available upon request from the office of the Hearing Clerk.

Dated: November 21, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 77-34371 Filed 12-1-77; 8:45 am]

[1505-01]

Food and Drug Administration

[Docket No. 77N-0165]

NYLMERATE JELLY

Final Order on Objections and Requests for Hearing Regarding Withdrawal of Approval of New Drug Application

Correction

In FR Doc. 77-27968, appearing at page 49521 in the issue for Tuesday, September 27, 1977, make the following corrections:

(1) On page 49522, second column, under the heading "III Data Submitted * * *", in paragraph a, in the first line, after the phrase "Phenyl Mercury Nitrate—" insert the word "Its".

(2) On page 49523, first column, paragraph c, in the 13th line, "§ 314.11(a)" should be changed to read "§ 314.111(a)".

(3) On page 49523, in the second column, in the second full paragraph, the last line, now reading "(*ii*))", should be changed to read "(*i*))".

[4110-03]

[Docket No. 77N-0343; DESI 5554]

POVIDONE INJECTION AND GELATIN INJECTION

Opportunity for Hearing on Proposal to Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice proposes to withdraw approval of the new drug applications for povidone injection and gelatin injection of the basis that the drugs are not shown to be safe for use as plasma expanders in the emergency treatment of shock. The products are not being marketed.

DATES: Hearing requests due on or before January 3, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 5554, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Request for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC-20), Rm. 4-65.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of August 19, 1971 (36 FR 16125), the Food and Drug Administration announced its conclusion that the products described below are effective as plasma volume expanders in the emergency treatment of shock.

NDA 9-564; Polyvinylpyrrolidone in Normal Saline containing 3.5 percent providone in sodium chloride injection; McGaw Laboratories, 1015 Grandview Ave., Glendale, CA 91201.

NDA 5-554; Knox Special Gelatine Solution Intravenous-6 percent containing 6 percent in sodium chloride injection; Knox Gelatine, Inc., 13 Knox Ave., Johnstown, N.Y. 12095.

The Director of the Bureau of Drugs now proposes to withdraw approval of the new drug applications for these drugs on the ground that new evidence, not contained in the applications or not available to the Food and Drug Administration until after the applications were approved, evaluated together with the evidence available when the applications were approved, shows that the drug products are not shown to be safe for use under the conditions for use upon the basis of which the applications were approved. Specifically, the Director refers to the following adverse effects which give an unfavorable benefit-to-risk ratio to these drugs and the fact that equally effective alternative drug products having less potential for risk are readily available.

Povidone Injection

A. Accumulates in the body and may cause storage disease with the formation of granulomas resembling sarcoid and metastatic tumors.

B. Interferes with blood coagulation, hemostasis, blood typing, and cross matching and may cause liver damage.

C. Interferes with the determination of protein and sugar in the urine.

Gelatin Injection

A. Lacks major requirements of a plasma expander, e.g., an osmotic pressure comparable to that of plasma, a viscosity suitable for infusion over a reasonable temperature range, a lack of antigenicity, and a lack of interference with blood typing and cross matching. (The drug has not been used clinically in this country for many years.)

B. Increases blood viscosity, which may cause blood sludging and thus induce intravascular coagulation.

C. Reduces platelet adhesiveness and prolongs bleeding time, which may cause hemorrhages.

References

1. Alexander, B., et al., "Coagulation, Hemostasis, and Plasma Expanders: A Quarter Century Enigma," Federation Proceedings 34(6):1429-1440, 1975.

2. Bergmann, M., et al., "Thesaurosis Due to Inhalation of Hair Spray," The New England Journal of Medicine 266:750-755, 1962.

3. Bojsen-Moller, M., et al., "The PVP Storage Disease," Ugeskrift for Laeger 138(17):1017-1020, 1976.

4. Bubis, J.J., et al., "Storage of Polyvinylpyrrolidone Mimicking A Congenital Mucolipid Storage Disease in a Patient with Munchausen's Syndrome", Israel Journal of Medical science 11(10):999-1004, 1975.

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7. Evans, E. I. and H. S. Rafal, "Studies on Traumatic Shock: V- The Treatment of Clinical Shock with Gelatin," Annals of Surgery 121:478-494, 1945.

8. Gaudiano, A., et al., Bollettino della Societa Italiana di biologica Sperimentale 44:844, 1968.

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10. Goodman, L. S. and A. Gilman, The Pharmacological Basis of Therapeutics, 4th edition, 1970, p. 785-789.

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12. Karsner, H. T. and P. J. Hanzlik, "Hemagglutination in Vitro by Agents which Produce Anaphylactoid Symptoms," The Journal of Pharmaceutical and Experimental therapeutics 14(6):479-492, 1920.

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15. Lund, N., "Anaphylactic Reaction Induced by Infusion of Haemaccel," British Journal of Anesthesia (correspondence) 45:929, 1973.

16. Ravin, H. A., et al., "Polyvinyl Pyrrolidone as a Plasma Expander," New England Journal of Medicine 247(24):921-929, 1952.

17. Ricketts, C. R., "Blood Substitutes," British Journal of Anesthesia 45:959-962, 1973.

18. Rudowski, W. and E. Kostrzewska, "Blood Substitutes," Annals of the Royal College of Surgeons of England 58:115-125, 1976.

19. Schmidt, H. and H. Pfluger, "Nebenwirkungen bei Volumensubstitution mit Gelatinepraparaten," Medizinische Welt 22 (26):1073-1077, 1971.

20. Schneider, J. A., et al., "Comparison of the Effects of Various Blood Plasma Expanders on Platelet Adhesiveness," Thrombosis et Diathesis Haemorrhagica 24:185-190, 1970.

21. Werner, F. M., "Destranen of Gelatines?" Ned. Tijdschr. Geneesk. 118(29):1121-1131, 1974.

22. Wessel, W., et al., "Polyvinylpyrrolidone (PVP), Its Diagnostic, therapeutic and Technical Application and Consequences Thereof," Arzneimittel-Forschung 21 (10):1468-1482, 1971.

23. Wisborg, K., "Anaphylactic reactions Induced by Infusion of Polygeline (Haemaccel)," British Journal of Anesthesia (correspondence) 47:1116-1117, 1975.

Copies of these references are available for public examination in the office of the Hearing Clerk, and may be seen during working hours Monday through Friday.

Therefore, notice is given to the holder(s) of the new drug application(s) and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows that such drugs are not shown to be safe for use under the conditions of use on the basis of which the applications were approved.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product he manufacturers or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufacturers or distributes that may be identical, elated, or similar to a drug product named in this notice by writing to the Division of Drug Labeling Compliance (address given above).

In addition to the gound(s) for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption from products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons subject to this notice pursuant to 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related, or similar drug products.

If an applicant or any other person subject to this notice pursuant 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before January 3, 1977, a

written notice of appearance and request for hearing, and (2) on or before January 31, 1978, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with resepct to such drug product and a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate. Submissions pursuant to this notice, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, maybe seen in the office of the Hearing Clerk between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: November 18, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 77-34267 Filed 12-1-77; 8:45 am]

[4110-03]

[Docket No. 77N-0257; DESI 9309]

PROPYLIODONE OILY AND AQUEOUS SUSPENSIONS

Drugs for Human Use; Drug Efficacy Study Implementation; Announcement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces the conclusions of an efficacy review and sets forth the conditions for marketing propyliodone oily and aqueous suspensions for the indication for which they are regarded as effective. The drug products are effective for use as diagnostic agents for radiographic visualization of the lungs.

DATE: Supplements to approved NDA's due on or before January 31, 1978.

ADDRESS: Communications forwarded in response to this notice should be identified with the reference number DESI 9309, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements (identify with NDA number): Division of Oncology and Radiopharmaceutical Drug Products (HFD-150), Room 17B-34.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Herbert Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice in the FEDERAL REGISTER of July 9, 1966 (31 FR 9426), each holder of a new drug application that became effective prior to October 10, 1962, was requested to submit to the Food and Drug Administration reports containing the best data available in support of the effectiveness of each such product for the claimed indications. That information was needed to facilitate a determination by the Food and Drug Administration, with the assistance of the National Academy of Sciences-National Research Council (NAS-NRC), whether each claim in the labeling is supported by substantial evidence of effectiveness as required by the Drug Amendments of 1962. Picker Corp., the sponsor of the following drug products, did not submit such information and therefore the drugs were not reviewed by NAS-NRC.

NDA 9-309; Dionosil Oily Suspension and Dionosil Aqueous Suspension, each containing propyliodone; Picker Corp., 595 Miner Road, Cleveland, Ohio 44143.

Another notice published in the FEDERAL REGISTER of November 19, 1975 (40 FR 53609), reinvited Picker Corp., among other firms, to submit data on or before January 19, 1976. On March 17, 1976, Picker Corp. submitted data, which have been reviewed in conjunction with previously submitted information and determined to contain substantial evidence of effectiveness. This notice announces that conclusion and sets forth the conditions under which such drug products may be marketed.

Such drugs regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug products are effective as described in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug product is in oily or aqueous suspension form suitable for intratracheal administration.

2. *Labeling conditions.* (a) The label bears the statement, "Caution: Feder-

al law prohibits dispensing without prescription."

(b) The drug product is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

For radiographic visualization of the bronchial tree.

3. *Marketing status.* (a) Marketing of such drug product which is now subject of an approved or effective new drug application may be continued provided that, on or before January 31, 1978, the holder of the application submits, if he has not already done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide full updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)).

(b) Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such products. The applications shall contain full information with respect to items 6 (components), 7 (composition) and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)). Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: November 11, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 77-34268 Filed 12-1-77; 8:45 am]

[4110-03]

[Docket No. 76N-0451; DESI 2245]

SODIUM LIOTHYRONINE

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice sets forth the conditions for marketing sodium liothyronine tablets for the indications for which it continues to be regarded as effective and offers an opportunity for a hearing concerning indications reclassified to lacking substantial evidence of effectiveness. This drug is used for certin conditions of inadequate endogenous thyroid production.

DATES: Hearing requests due on or before January 3, 1978. Supplements due on or before January 31, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with reference number DESI 2245, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements (identify with NDA number): Division of Metabolism and Endocrine Drug Products (HFD-130), Room 14B-04, Bureau of Drugs.

Abbreviated new drug applications and notices of claimed investigational exemption for a new drug (IND) (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC-20), Room 4-65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Documents Center (HFC-18) Room 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

John H. Hazard, Jr., Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, (301-443-3650).

SUPPLEMENTARY INFORMATION: In a notice (DESI 2245) published in the FEDERAL REGISTER of September 25, 1969 (34 FR 14775), the Food and Drug Administration announced its conclusions that the drug product described below is (1) effective for certain conditions resulting from inadequate endogenous thyroid production, and (2) possibly effective for gynecological disorders associated with hypothyroidism. In addition, that notice should have stated that the drug product is effective for use in the T_3 suppression test to differentiate suspected hyperthyroidism from euthyroidism. No data in support of the less-than-effective indication were submitted, and it is now reclassified to lacking substantial evidence of effectiveness. This notice offers an opportunity for a hearing concerning that indication and sets forth the conditions for marketing the drug product for the indications for which it is regarded as effective. The other drug (thyroglobulin) included in the September 25, 1969, notice is not affected by this notice.

NDA 10-379; Cytomel Tablets containing sodium liothyronine; Smith Kline & French Laboratories, Division of SmithKline Corp., 1500 Spring Garden St., Philadelphia, Pa. 19101.

Such drugs are regarded as new drugs (21 U.S.C 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder of the new drug application specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to the drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to the drug product named in this notice by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications stated in the labeling conditions below. The drug now lacks substantial evidence of effectiveness for the indication evaluated as possibly effective in the September 25, 1969, notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet form suitable for oral administration.

2. *Labeling conditions.* (a) The label bears the statement, "Caution: Federal law prohibits dispensing without prescription." (b) The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

(1) Thyroid replacement in patients with inadequate endogenous thyroid hormone production. These include mild hypofunction, cretinism, and myxedema. Replacement therapy will be effective only in manifestations of hypothyroidism.

(2) Simple (nontoxic) goiter. The drug may be used therapeutically in

an attempt to reduce the size of such a goiter.

(3) For use in the T_3 suppression test to differentiate suspected hyperthyroidism from euthyroidism.

3. *Marketing status of approved products.* Marketing of such drugs products that are now the subject of an approved or effective new drug application may be continued provided that, on or before January 31, 1978, the holder of the application submits the following if he has not previously done so: (i) a supplemental for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

4. *Marketing status of all other products.* Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such drug products. The abbreviated new drug application is required to contain evidence from in vivo studies demonstrating bioequivalence to an appropriate reference standard. Such bioavailability studies shall consist of either single- and/or multiple-dose blood level studies or comparison of acute pharmacological activity to an appropriate reference material. Multiple-dose studies will require prior submission of a Notice of Claimed Investigational Exemption for a New Drug (IND) including a protocol for such studies. Because of inherent toxicological side effects associated with this drug, it is advisable that firms submit a protocol with the ANDA prior to undertaking a single-dose study in human subjects. Abbreviated new drug applications and notices of claimed investigational exemption for a new drug (IND) (identify as such) should be directed to the Division of Generic Drug Monographs (HFD-530), Bureau of Drugs (address given above). Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness. (In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally reognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reson.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before January 3, 1978, a written notice of appearance and request for hearing, and (2) on or before January 31, 1978, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiates appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegation or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between the hourse of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: November 21, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 77-34373 Filed 12-1-77; 8:45 am]

[4110-03]

[Docket No. 76N-0450; DESI 2245]

THYROGLOBULIN TABLETS

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice sets forth the conditions for marketing thyroglobulin tablets for the indications for which it continues to be regarded as effective and offers an opportunity for a hearing concerning indications previously stated to lack substantial evidence of effectiveness. The drug is used for certain conditions of inadequate endogenous thyroid production.

DATES: Hearing requests due on or before January 3, 1978. Supplements due on or before January 31, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with reference No. DESI 2245, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements (identify with NDA number): Division of Metabolism and Endocrine Drug Products (HFD-130), room 14B-04, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto and notices of claimed investigational exemption for a new drug (IND) (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for hearing (identify with Docket number appearing in the heading of this notice); Hearing Clerk, Food and Drug Administration (HFC-20), room 4-65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC-18), room 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

John H. Hazard, Jr., Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857; 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 2245) published in the FEDERAL REGISTER of September 25, 1969 (34 FR 14775), the Food and Drug Administration announced its conclusions that the drug product described below is effective and lacking substantial evidence of effectiveness for its various labeled indications. No opportunity for a hearing was offered at that time for the indications lacking substantial evidence of effectiveness. The holder of the new drug application has deleted all indications lacking substantial evidence of effectiveness from the labeling of the drug.

NDA 2-245; Proloid Tablets containing thyroglobulin; Warner-Chilcott, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, N.J. 07950.

The other drug (sodium liothyronine) included in the above notice is not affected by this notice.

Accordingly, insofar as it pertains to thyroglobulin tablets, the notice of September 25, 1969, is amended to read as follows:

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to the drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to the drug product named in this notice by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications stated in the labeling conditions below. The drug product lacks substantial evidence of effectiveness for all other labeled indications.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indications are as follows:

For conditions of inadequate endogenous thyroid production: e.g., replacement therapy in cretinism and myxedema. Replacement therapy will be effective only in manifestations of hypothyroidism.

In simple (nontoxic) goiter, the drug may be tried therapeutically, in nonemergency situations, in an attempt to reduce the size of such goiters.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before January 31, 1978, the holder of the application submits, if he has not previously done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356h (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such drug products. The abbreviated new drug application is required to contain evidence from in vivo studies demonstrating bioequivalence to an appropriate reference standard. Such bioavailability studies shall consist of either a single-dose study in normal subjects and/or multiple-dose blood level study in patients, or comparison of acute pharmacological activity to an appropriate reference material. Multiple-dose studies will require prior submission of a Notice of Claimed Investigational Exemption for a New Drug (IND), including a protocol for such studies. Because of inherent toxicological side effects associated with this drug, it is advisable that firms submit a protocol with the ANDA prior to undertaking a single-dose study in human subjects. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

c. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the director of the Bureau of Drugs is unaware of any adequate and well-controlled clini-

cal investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder of the new drug application, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(3)), withdrawing approval of the new drug application and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product, evaluated together with the evidence available to him at the time of approval of the application, shows there is a lack of substantial evidence that the drug product will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before January 3, 1978, a written notice of appearance and request for hearing, and (2) on or before January 31, 1978, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate. Such submissions, except for data and information prohibited from the public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: November 11, 1977.

J. RICHARD CROUT,
Director,
Bureau of Drugs.

[FR Doc. 77-34372 Filed 12-1-77; 8:45 am]

[4110-83]

Health Resources Administration

ADVISORY COMMITTEES

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to assemble during the month of December 1977:

NAME: National Council on Health Planning and Development.

DATE AND TIME: December 21, 1977, 8:30 a.m.

PLACE: First Floor Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

Open for entire meeting.

PURPOSE: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Public Law 93-641, (2) the implementation and administration of Titles XV and XVI of Public Law 93-641, and (3) an evaluation of the implications of new medical technology for the organization, delivery, and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

AGENDA: To consider recommendations to the Secretary on the National

Guidelines for Health Planning proposed in the FEDERAL REGISTER on September 23, 1977.

Anyone wishing to participate, obtain a roster of members, minutes of meetings, or other relevant information should contact Mr. Daniel I. Zwick, Office of Planning, Evaluation, and Legislation, room 10-22, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7270.

Agenda items are subject to change as priorities dictate.

Dated: November 22, 1977.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 77-34443 Filed 12-1-77; 8:45 am]

[4110-08]

National Institutes of Health

ADVISORY COMMITTEES

Open Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be entirely open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

NAME OF COMMITTEE: Subcommittee on Community Activities of the Cancer Control and Rehabilitation Advisory Committee.

DATES: January 12, 1978; 8:30 a.m. to adjournment.

PLACE: Blair Building, room 110, 8300 Colesville Road, Silver Spring, Md. 20910.

TIMES: Open for the entire meeting.

AGENDA: To consider strategies for the Division of Cancer Control and Rehabilitation coordination and integration of current control efforts into more effective community-based cancer control.

EXECUTIVE SECRETARY: Dr. Veronica L. Conley, Room 7A07, Blair Building, National Institutes of Health, 301-427-7941.

NAME OF COMMITTEE: Data Evaluation/Risk Assessment Subgroup of the Clearinghouse on Environmental Carcinogens.

DATES: January 18, 1978; 8:30 a.m. to adjournment.

PLACE: Building 31C, Conference Room 6, National Institutes of Health.

TIMES: Open for the entire meeting.

AGENDA: To review available bioassay reports and other matters relevant to data evaluation and risk assessment.

EXECUTIVE SECRETARY: Dr. James M. Sontag, Building 31, Room 3A16, National Institutes of Health, 301-496-5108.

NAME OF COMMITTEE: Executive Subgroup of the Clearinghouse on Environmental Carcinogens.

DATES: January 19, 1978; 8:30 a.m. to adjournment.

PLACE: Building 31C, Conference Room 6, National Institutes of Health.

TIMES: Open for the entire meeting.

AGENDA: To review the activities of the Clearinghouse bioassay program and other relevant matters.

EXECUTIVE SECRETARY: Dr. James M. Sontag, Building 31, room 3A16, National Institutes of Health, 301-496-5718.

NAME OF COMMITTEE: Cancer Control Community Activities Review Committee.

DATES: January 19-20, 1977; 8:30 a.m. to adjournment.

PLACE: Building 31C, Conference room 10, National Institutes of Health.

TIMES: Open for the entire meeting.

AGENDA: T0 review ongoing contracts.

EXECUTIVE SECRETARY: Dr. Robert Browning, Blair Building, Room 7A07, National Institutes of Health, 301-427-7943.

Dated: November 23, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 77-34440 Filed 12-1-77; 8:45 am]

[4110-08]

National Institutes of Health

CANCER IMMUNODIAGNOSIS COMMITTEE

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Committee on Cancer Immunodiagnosis, National Cancer Institute, National Institutes of Health, December 12, 1977, which was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 58204). This meeting is cancelled because no contract proposals are scheduled for review at this time.

Dated: November 23, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 77-34439 Filed 12-1-77; 8:45 am]

[4110-08]

CARDIOLOGY ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 26, 1978, National Institutes of Health, Building 31, Conference Room 7.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, room 5A03, National Institutes of Health, Bethesda, Md. 20014, phone 301-496-4236, will provide summaries of the meeting and rosters of the Committee members.

Peter L. Frommer, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Federal Building, room 320, Bethesda, Md. 20014, phone 301-496-5421, will furnish substantive program information.

Dated: November 23, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, *National Institutes of Health.*

[FR Doc. 77-34441 Filed 12-1-77; 8:45 am]

NOTE.—This document originally appeared in the FEDERAL REGISTER for Wednesday, November 30, 1977. It is reprinted in this issue to meet the assigned day-of-the-week publication schedule.

[4110-08]

HEALTH AND ECOLOGICAL EFFECTS OF INCREASED COAL UTILIZATION COMMITTEE

Amended Notice of Meetings

Notice is hereby given of a change in the agenda and the room number for the Committee on Health and Ecological Effects of Increased Coal Utilization, December 6-7, 1977, New Executive Office Building, room 2010, Seventeenth and Pennsylvania Avenue NW., Washington, D.C. 20503, which was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 58205).

The agenda intended for this meeting was to finalize the Committee's report, but it has been changed to "drafting of its report". Also, the meeting room was to have been 2008, but has been changed to 2010.

In addition there will be a meeting of the Committee on Health and Ecological Effects of Increased Coal Utilization on December 15, 1977, New Executive Office Building, room 2010, Seventeenth and Pennsylvania Avenue NW., Washington, D.C. 20503, to prepare the final report.

The entire session of each meeting will be open to the public from 9 a.m. to adjournment. Attendance by the public will be limited to space available.

The deadline for receipt of written comments on matters being considered by the Committee has been extended from November 29, 1977, to 5 p.m., December 2, 1977. These comments should be addressed to Mr. Al Fry, Executive Secretary of the Committee, Energy Resources Co., Inc., 1701 K Street NW., suite 605, Washington, D.C. 20006, 202-452-9222.

Dated: November 23, 1977.

SUZANNE L. FREMEAU,
Committee Management Office,
National Institutes of Health.

[FR Doc. 77-34378 Filed 12-1-77; 8:45 am]

[4110-08]

National Institutes of Health

NATIONAL DIABETES ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the Ad Hoc Insulin Study Committee, National Diabetes Advisory Board, on December 20-21, 1977, and January 16-17, 1978, in Washington, D.C. The meeting on December 20, 1977, from 1-5 p.m. and December 21, 1977, from 8:30 a.m. to 5 p.m., will be held at the Twin Bridges Marriott, U.S. 1 and I-95. The time and meeting location of the January 16-17, 1978, meetings may be obtained by contacting Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Md. 20014, 301-496-6045.

The meetings, which will be open to the public, are being held to review and evaluate the status of insulin supplies for diabetic patients in the United States. Attendance by the public will be limited to space available.

Mr. Raymond M. Kuehne, Executive Director of the Board, will provide summaries of the meeting and a roster of the committee members.

Dated: November 29, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.847, National Institutes of Health.)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 77-34674 Filed 12-1-77; 8:45 am]

[4110-08]

NATIONAL ARTHRITIS ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis Advisory Board at the Key Bridge Marriott Hotel, Rosslyn, Va., on January 18, 1978 from 8 p.m. to 12 midnight, and on January 19, from 9 a.m. to 5 p.m. Notice of the meeting room will be posted in the Hotel Lobby.

The entire meeting, which will be open to the public both days, is being held to discuss the Board's activities, and to continue its evaluation of the implementation of the long-range plan to combat arthritis, formulated by the National Commission on Arthritis and Related Musculoskeletal Diseases. Attendance by the public will be limited to space available.

Messrs. James N. Fordham or Leo E. Treacy, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, room 9A04, Bethesda, Md. 20014, 301-496-3583, will provide summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.846, National Institutes of Health.)

Dated: November 22, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 77-34442 Filed 12-1-77; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF PHOTODIELDRIN FOR POSSIBLE CARCINOGENICITY

Availability

Photodieldrin has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of dieldrin-free photodieldrin (synthesized by Gulf South Research Institute) for possible carcinogenicity was conducted by administering the test material in feed to Osborne-Mendel rats and B6C3F1 mice.

Groups of 50 rats of each sex were initially administered photodieldrin at one of two doses, either 5 or 10 ppm. Because of neurotoxic signs, doses in the females were reduced after 30 weeks. Total periods of treatment for low- and high-dose males and low-dose females were 80 weeks followed by periods of 31 or 32 weeks of additional observation; the total period of treatment for the high-dose females was 59 weeks, followed by a period of additional observation of 53 weeks. The time-weighted average doses for the females were 3.4 or 7.5 ppm. Matched controls consisted of 10 untreated rats of each sex; pooled controls, used for statistical evaluation, consisted of the matched controls combined with 65 untreated male and 65 untreated female rats from similarly performed bioassays of six other test chemicals. All surviving rats were killed at 111-112 weeks.

Groups of 50 mice of each sex were administered photodieldrin at one of two doses, either 0.32 or 0.64 ppm, for 80 weeks, then observed for an additional 13 weeks. Matched controls consisted of groups of 10 untreated mice of each sex at each dose; pooled controls, used for statistical evaluation, consisted of the matched controls combined with 60 untreated male and 60 untreated female mice from similarly performed bioassays of six other test chemicals. All surviving mice were killed at 93 weeks.

Mean body weights attained by low- and high-dose male and female rats and mice were essentially unaffected by photodieldrin. Convulsions and hyperactivity were noted in treated male and female rats and in male mice. Mortality rates of either sex or either species were not affected by treatment.

In rats, benign tumors (adenoma and fibroadenoma) of the mammary gland in females showed a dose-related trend ($P=0.039$) compared with matched, but not pooled, controls (8/72 pooled controls, 0/9 matched controls, 5/50 low-dose, 10/49 high-dose). Adenocarcinoma of the mammary gland occurred in two additional low-dose females. The incidences of these tumors in either of the treated groups were not significantly higher than those in the control groups using either matched or pooled controls. Three papillary and follicular-cell adenomas and one papillary adenocarcinoma of the thyroid occurred in the low-dose females, giving a statistically significant increase over the pooled controls ($P=0.022$), but these thyroid tumors did not occur in the high-dose animals. The dose-related trend was not statistically significant using either pooled or matched controls, and the incidence in the low-dose group is not greater than that in the historical controls. In male rats, the incidence of hemangiomas showed a statistically significant dose-related trend ($P=0.021$) using pooled controls, but the direct comparison of the three hemangiomas in the high-dose group with the pooled-control group was not statistically significant. Furthermore, three hemangiomas is a small number, and the tumors occurred in more than one anatomic site (two in the spleen, one in subcutaneous tissue). The occurrence of these tumors cannot clearly be associated with treatment.

In mice, there were no tumors that were statistically significant in treated groups of either sex.

It is concluded that under the conditions of this bioassay, photodieldrin was not carcinogenic for Osborne-Mendel rats or B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, room 10A21, National Institutes of Health, Bethesda, Md. 20014

(Catalog of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research.)

Dated: November 23, 1977

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 77-34437 Filed 12-1-77; 8:45 am]

[4110-08]

Public Health Service

NATIONAL INSTITUTES OF HEALTH

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) formerly Part 8, Chapter 8 (41 FR 52724, December 1, 1976) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (40 FR 22859, May 27, 1975, as amended most recently at 42 FR 38019, July 26, 1977), is amended to reflect: (1) Change in titles of the Extramural and Collaborative Program (HN-X3) in the National Institute on Aging, and the Office of Prevention, Control, and Education (HNH14) in the National Heart, Lung, and Blood Institute; (2) revision of the functional statements for the Division of Financial Management (HNA72) and Division of Contracts and Grants (HNA76) in the Office of the Director, National Institutes of Health, and the Division of Cancer Treatment (HNC6), and the Cancer Therapy Evaluation Program (HNC66) in the National Cancer Institute; (3) change in title and functional statement for the Division of Equal Employment Opportunity (HNA12) in the Office of the Director, NIH. These actions correct titles and update functional statements; however, there are no changes to the organizational structure.

Section HN-B, Organization and Functions, is amended as follows:

(1) Under the heading National Institute on Aging (HN-X), delete the title Extramural and Collaborative Program (HN-X3), and insert the title, Extramural and Collaborative Research Program (HN-X3).

(2) Under the heading National Heart, Lung, and Blood Institute (HNH), delete the title Office of Prevention, Control, and Education (HNH14), and insert the title Office of Prevention, Education, and Control (HNH14).

(3) Under the heading Office of the Director (HNA), make the following changes:

Delete the title Division of Equal Employment Opportunity (HNA12), and insert the title Division of Equal Opportunity (HNA12). Amend item (2) of the functional statement by inserting a comma and the following phrase "* * * including the Federal Women's Program and the Spanish Speaking Program" after the last word of the sentence. Insert as a new item (3) "coordinates efforts to implement the NIH Civil Rights Program as it relates to research contractors and grantees, and reports to the Deputy Director, NIH, on the status of the Program," and renumber items (3), (4), (5), (6), (7), to read (4), (5), (6), (7), (8), respectively.

Division of Financial Managment (HNA72). Delete item (8) from functional statement and renumber item (9) to read item (8).

Division of Contracts and Grants (HNA76). Add the following as the last sentence of the text: "(8) conducts and monitors NIH-wide programs in Small and Minority Businesses and overall contract and grant compliance in accordance with applicable Small Business and Civil Rights legislation."

(4) Under the heading National Cancer Institute (HNC), make the following changes:

Division of cancer Treatment (HNC6). Delete item (1) and substitute the following "(1) Plans, directs and coordinates an integrated program of cancer treatment activities with the objectives of curing or controlling cancer in man by utilizing combination modalities, including chemical, surgical, radiological and certain immunological techniques, through intramural laboratory and clinical studies, research contracts and grants, and research conducted in cooperation with other Federal agencies."

Cancer Therapy Evaluation Program (HNC66). Amend item (1) of the functional statement by deleting the word "contract" after the word "clinical." Delete item (3) and substitute the following "(3) through intramural, contract and grant activities, administers studies in anti-cancer drugs, therapeutic methods, and maintains liaison with the Food and Drug Administration."

Dated: November 15, 1977.

CHARLES MILLER,
Assistant Secretary for
Management and Budget.

[FR Doc. 77-34315 Filed 12-1-77; 8:45 am]

[4110-85]

Public Health Service

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH, PUBLIC HEALTH SERVICE (PHS) REGIONAL OFFICES, HEALTH RESOURCES ADMINISTRATION, AND HEALTH SERVICES ADMINISTRATION

Statement of Orgnization, Functions, and Delegations of Authority

This FEDERAL REGISTER notice establishes a new Part H. Chapter H (Public Health Service), and amends Part H, Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare.

The new Part H, Chapter H (Public Health Service) includes mission, organization, functions, and order of succession statements.

Part H, Chapter HA (Office of the Assistant Secretary for Health) of the Statement of organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare (38 FR 18571, July 12, 1973, as amended most recently at 42 FR 38020, July 26, 1977) is amended to reflect the reorganization of the Office of the Assistant Secretary for Health (Surgeon General of the U.S. Public Health Service). The objective of this reorganization is to strengthen the Public Health Service and the leadership role of the Assistant Secretary for Health (Surgeon General) as the nation's chief health officer. Functional Statements for new or changed organizational elements within the Office of the Assistant Secretary for Health (OASH) are published in succeeding paragraphs.

Part H, Chapter HD (Public Health Service Regional Offices) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare (39 FR 1468, Jan. 9, 1974, as amended most recently at 42 FR 32845, June 28, 1977) is amended to reflect the reorganization of the Public Health Service Regional Offices. This reorganization will result in more efficient and effective administration of health programs, with better service to State and local governments and the public.

Part H, Chapter HR (Health Resources Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education and Welfare (39 FR 1456, Jan. 9, 1974, as amended most recently at 42 FR 32845, June 28, 1977) is amended to reflect the reorganization of the Health Resources Administration (HRA). This reorganization is made necessary by legislation which has been enacted since HRA was established and by the

transfer of the National Center for Health Statistics (NCHS) and the National Center for Health Services Research (NCHSR) from HRA to the Office of Health Policy, Research and Statistics, Office of the Assistant Secretary for Health. The transfer of NCHS and NCHSR to OASH will aline health policy and research and statistics functions under a single official reporting directly to the Assistant Secretary for Health.

Part H, Chapter HS (Health Services Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (39 FR 10463, Mar. 20, 1974, as amended by 40 FR 53052, Nov. 14, 1975) is amended to reflect the transfer of the Division of Health Maintenance Organizations in its entirety from the Bureau of Medical Services, Health Services Administration, to the Office of Health Maintenance Organizations in the Office of Health Programs, Office of the Assistant Secretary for Health.

PUBLIC HEALTH SERVICE

Establish *Part H, Chapter H, Public Health Service,* and add the following statements:

Section H-00. Public Health Service—Mission. The Public Health Service (PHS) promotes the protection and advancement of the Nation's mental and physical health by: setting national health policy and planning for transition to National Health Insurance; promoting international health agreements, policies, and programs; pursuing effective intergovernmental relations with State and local governments on health policies and programs; conducting medical and biomedical research; planning health care systems and administers programs for the development of health resources, prevention and control of diseases and alcohol and drug abuse, and delivery of health care services; and enforcing laws to assure efficacious drugs and protection against impure and unsafe foods, drugs, cosmetics, medical devices, and radiation producing products.

Section H-10. Public Health Service—Organization. The Public Health Service is under the leadership and direction of the Assistant Secretary for Health (ASH), who is directly responsible to the Secretary of Health, Education, and Welfare. ASH also serves as the Surgeon General of the Public Health Service. The Public Health Service consists of the:

Office of the Assistant Secretary for Health (HA);
Center for Disease Control (HC);
Food and Drug Administration (HF);
Alcohol, Drug Abuse, and Mental Health Administration (HM);
National Institutes of Health (HN);
Health Resources Administration (HR);
Health Services Administration (HS); and
Public Health Service (PHS) Regional Offices (HD).

Section H-20. Public Health Service—Functions. The Public Health Service functions to: assess needs and promote national and international health; plan for National Health Insurance; assure effective inter-governmental relations on health matters; provide scientific and technological input for the establishment of health standards and the development of quality assurance programs; stimulate and assist States and communities with the development of local health resources and further the development of education for the health professions; assist with the development and improvement of the delivery of mental and physical health services to all Americans; conduct and support research in the medical and related sciences and disseminate health and scientific information; protect the health of the Nation against impure and unsafe foods, drugs, cosmetics, and other potential health hazards; provide national leadership for the prevention and control of communicable diseases and other preventable conditions; and, reduce and eliminate, where possible, health problems caused by the abuse of alcohol and drugs to the people of the United States.

Section H-30. Public Health Service—Order of succession. During the absence or disability of the Assistant Secretary for Health, or in the event of a vacancy in this position, the Deputy Assistant Secretary for Health Programs shall act as Assistant Secretary for Health. In the event of the absence or disability of both the Assistant Secretary for Health and the Deputy Assistant Secretary for Health Programs, a Public Health Service official designated by the Assistant Secretary for Health shall act as Assistant Secretary for Health. Should both the positions of Assistant Secretary for Health and Deputy Assistant Secretary for Health Programs be vacant, an official designated by the Secretary of Health, Education, and Welfare shall serve as acting head of the Public Health Service. Succession to the position of Surgeon General of the Public Health Service will be as designated by the Surgeon General of the Public Health Service and in accordance with commissioned corps regulations.

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

Under Part H, *Chapter HA, Office of the Assistant Secretary for Health,* delete *Sections HA-A, Mission* in its entirety and substitute the following statement:

Section HA-00 Mission. The Office of the Assistant Secretary for Health, under the direction of the Assistant Secretary for Health, is responsible for all programs administered by PHS and provides executive leadership to PHS. The Office supports the Assistant Secretary for Health in the discharge of his responsibilities for planning and directing the activities of PHS; providing leadership for health systems planning, planning for transition to National Health Insurance; conducting international health affairs; formulating health policy; conducting health statistics analyses and health services research; maintaining relationships with other Federal, State, and local governmental and private agencies concerned with health; providing policy guidance for health-related activities throughout the Department; and serving as the principal advisor and assistant to the Secretary on all policies and programs of PHS and health-related policies and activities of the Department for protecting the health of the American public.

Delete *Section HA-B Organization and Functions* and its text and delete all the functional statements in their entirety from the Office of Public Affairs (HAB) through and including the Office of Health Information and Health Promotion (HAQ) and substitute the following statements:

Section HA-10 Organization. The Office of the Assistant Secretary for Health consists of the:

1. Immediate Office of the Assistant Secretary for Health (Surgeon General of the U.S. Public Health Service) (HA).
2. Senior Advisor for External Relations (HAX).
3. Deputy Assistant Secretary for Special Health Initiatives (HAR).
4. Deputy Assistant Secretary (and Special Assistant to the Secretary) for National Health Insurance (HAY).
5. Office of Public Affairs (HAB).
6. Office of International Health (HAE).
7. Office of Health Legislation (HAJ).
8. Office of Equal Employment Opportunity (HAK).
9. Office of Health Programs (HAS).
10. Office of Health Policy, Research and Statistics (HAT).
11. Office of Management (HAU).

Section HA-20 Functions. The Immediate Office of the Assistant Secretary for Health (HA), under the supervision of the Assistant Secretary for Health (Surgeon General of the Public Health Service), is directly responsible to the Secretary of Health, Education, and Welfare for the performance of

PHS's mission, and provides national and international health policy activities, including health statistics and health services research; provides health policy for health care standards development; plans for transition to National Health Insurance; provides for: dissemination of medical and health information, health promotion and education; provides leadership for: disease prevention and control, population affairs, maternal and child health affairs, biomedical and health services, delivery of health care, and emergency medical services; provides leadership for the address of problems of public and environmental health, health problems caused by abuse of alcohol and drugs, and international health affairs; assures that medical and clinical devices are in compliance with applicable laws, drugs are efficacious, and consumers are protected against impure and unsafe foods, drugs, and cosmetics. The Assistant Secretary for Health coordinates the health and health-related functions of the Department with those of other Federal agencies and provides advice and assistance on health matters to such agencies as appropriate and requested.

Senior Advisor for External Relations (HAX). The Senior Advisor for External Relations provides advice and counsel to Assistant Secretary for Health relative to matters of mutual concern to PHS and external professional associations and organizations.

Deputy Assistant Secretary for Special Health Initiatives (HAR.) The Deputy Assistant Secretary for Special Health Initiatives will address health matters which are of particular interest to the Assistant Secretary for Health, such as the immunization and Saint Elizabeths Hospital initiatives.

Deputy Assistant Secretary (and Special Assistant to the Secretary) for National Health Insurance (HAY). The Deputy Assistant Secretary for National Health Insurance serves as principal advisor to the Assistant Secretary for Health and Special Assistant to the Secretary regarding the development of a National Health Insurance (NHI) Plan: (1) Identifies requirements for an NHI system based upon assessment of health insurance needs of general population and, especially, needs of the poor and residents in medically underserved areas; (2) serves as principal PHS staff contact with the Secretary's Advisory Committee on National Health Insurance; (3) consults with pertinent organizations relative to its examination and development of alternative approaches to organizing and administering a National Health Insurance program; (4) in coordination with the Office of Health Programs, defines criteria for maintaining improving the quality of health care under National Health Insurance; (5) in coordination with the Office of Management, identifies resource requirements (manpower, facilities, research) for various alternatives; (6) in coordination with the Office of Health Policy, Research and Statistics, develops programmatic and legislative plans for the Assistant Secretary for Health; and (7) coordinates and directs PHS activities relative to the development of Departmental and PHS policy in the area of National Health Insurance.

Office of Public Affairs (HAB). The Office of Public Affairs: (1) Advises and assists the Assistant Secretary for Health on communications with the various publics served by the Public Health Service; (2) coordinates the public affairs activities of the six health agencies with policy directives of the Assistant Secretary for Health and with the overall public affairs policies of the Department of Health, Education, and Welfare; and (3) provides a focal point for the public on freedom of information.

Office of International Health (HAE). The Office of International Health: (1) Serves as the PHS and, in consultation and cooperation with the Office of International Affairs (OIA), Departmental focal point for policy guidance and program coordination relating to international health; (2) provides staff advice to the Assistant Secretary for Health on international health policies, programs, and activities; (3) prepares, directs, and assesses the results of analyses and evaluations of selected international health policies and programs for PHS, OIA, and DHEW, the Department of State, and other Federal departments; (4) monitors activities that facilitate the development and coordination of multilateral and bilateral U.S. international health programs within PHS and among Federal agencies; (5) maintains liaison with international institutions and organizations, and other Departments and agencies on international health matters; (6) recommends and promotes policies in health and health-related areas for implementation by international organizations, especially the World Health Organization (WHO) and Pan American Health Organization (PAHO); (7) serves as the principal focal point in PHS and the Department for relationships with WHO and arranges the provision of technical consultation to the organization; (8) provides OIA with periodical reports, as needed, on the PHS agencies' program, budget and personnel commitments for international activities; (9) coordinates and is responsible for the overall management of the Scientific Activities Overseas (Special Foreign Currency) Program for the PHS agencies; and (10) arranges for procedures, in consultation with OIA, for screening and approval of proposed international travel by PHS personnel.

Office of Health Legislation (HAJ). The Office is responsible for coordinating and directing legislative matters affecting health activities of the Department and PHS, and for providing liaison services between PHS and the Assistant Secretary for Legislation. The Office: (1) Provides legislative advice, policy guidance, and staff support in the area of health legislation to the Assistant Secretary for Health and PHS; (2) advises the Assistant Secretary for Health in development of the Department's overall legislative health program and coordinates implementation of that program; (3) coordinates preparation of testimony or statements on legislative proposals for the Assistant Secretary for Health; (4) provides guidance and assistance to the health agencies in development and presentation of materials for hearings, executive sessions, and conferences on proposed legislative matters; (5) maintains liaison and develops contacts with interest groups concerned with health legislation; and (6) develops policies for agency reports requested by Congress.

Office of Equal Employment Opportunity (HAK). The Office of Equal Employment Opportunity advises on all EEO-related matters: (1) In conjunction with the PHS EEO Advisory Committee, develops and recommends for adoption PHS-wide EEO policies, goals, and priorities designed to carry out the intent of the Civil Service Commission and the Department of Health, Education, and Welfare Equal Employment Opportunity policies and requirements under Executive Order 11478; (2) provides leadership, direction, and technical guidance to PHS agency EEO Officers for the development of comprehensive EEO progress and plans, including Affirmative Action Plans; (3) develops plans, programs, and procedures designed to assure the prompt receipt, investigation, and resolution of complaints of alleged discrimination by reason of race, sex, religion, or national origin for the Office of the Assistant Secretary for Health; (4) collaborates with appropriate OASH staff office in the identification of EEO data and training needs and the development of training courses for all PHS supervisory personnel and such other organizational entities within PHS as may be required; and (5) prepares, or coordinates the preparation of, reports and analyses designed to show the status of minority employment in PHS and maintains liaison with the Department and other organizations concerned with equal employment opportunity.

Office of Health Programs (HAS). The Deputy Assistant Secretary for Health Programs serves as the principal deputy to the Assistant Secretary

for Health and as the Deputy Assistant Secretary for Population Affairs: (1) Serves as the focal point to advise the Assistant Secretary for Health on all health programs and major issues which cut across PHS agency lines, such as teenage pregnancy, population affairs, and child health affairs; (2) proposes health goals and supporting policies and objectives and coordinates, monitors, and assesses health program accomplishments; (3) provides project management, staff support, and leadership to the Assistant Secretary for Health for urgent health issues which cut across agency lines; (4) maintains liaison with other Principal Operating Components in matters related to urgent, cross-cutting health issues; (5) serves as principal advisor to the Assistant Secretary for Health concerning health standards, quality assurance, and Health Maintenance Organizations (HMOs); (6) develops national policies and objectives for the planning and initial development of HMOs; (7) assures continued compliance of HMOs with statutory and regulatory requirements of the HMO program; (8) provides direction over HMO loans/assessment functions; (9) participates with the Assistant Secretary for Health in providing broad policy guidance and scientific, professional, and technical advice to the Health Care Financing Administration (HCFA) on health standards, quality assurance, and health care financing; (10) conducts policy review of health standards and regulations developed by HCFA; (11) provides administrative support to the National Professional Standards Review Council; (12) directs the development and coordination of a comprehensive national program for physical fitness and sports; (13) serves as the PHS focal point for coordinating the synthesis and dissemination of current information on the effectiveness of medical technologies and encouraging their appropriate transfer into medical practice; and (14) provides programmatic management direction to Regional Health Administrators administering regional health programs.

Office of Child Health Affairs (HAS1). The Office: (1) Provides assistance and guidance to the Deputy Assistant Secretary for Health Programs on child health affairs within PHS; (2) reviews all regulations and policies which affect programs that impact on the health of mothers and children; (3) monitors the implementation activities of programs related to child health affairs; (4) in coordination with the Office of Health Policy Analysis and Planning and other PHS components, provides technical consultation to PHS agencies in the planning process and supports program effectiveness evaluations of child health program efforts; and (5) coordinates and maintains liaison with other Departmental Principal Operating Components in matters related to child health affairs.

President's Council on Physical Fitness and Sports (HAS2). The President's Council on Physical Fitness and Sports: (1) Develops and coordinates a comprehensive national program for physical fitness and sports; (2) advises the President, the Secretary, DHEW, the Assistant Secretary for Health and the Deputy Assistant Secretary for Health Programs on matters pertaining to the national program; (3) coordinates the activities of the Conference on Physical Fitness and Sports; (4) promotes and strengthens coordination of Federal programs and services relating to physical fitness and sports participation; (5) assists State and local governments in efforts to enhance physical fitness with school systems, civic groups, professional associations, recreation agencies, and other appropriate organizations; (6) conducts a continuing campaign of public and professional education to stimulate participation in programs of physical fitness and sports; and (7) collects and disseminates research and statistical information and stimulates research in the area of physical fitness.

Office of Population Affairs (HAS3). The Office of Population Affairs advises on programs of national importance in the fields of population dynamics, fertility, sterility, and family planning and directs population and family planning activities within the six health agencies of the Department.

Office of Health Maintenance Organizations (HAS4). The Office of Health Maintenance Organizations: (1) Implements and administers the grant, contract, and loan aspects of Title XIII, Health Maintenance Organizations (HMOs), of the Public Health Service Act and is the Department's advocate in efforts to improve the organization and delivery of health services by use of the health maintenance organization approach; (2) develops national policies and objectives for the planning and initial development of HMOs; (3) develops long- and short-range program goals and objectives; and (4) serves as the Departmental focal point in the area of HMO qualification, ongoing regulation, and employer compliance efforts.

Division of Health Maintenance Organizations Development (HAS41). (1) Promotes development of Health Maintenance Organizations; (2) through grants and contracts, provides resources to public or nonprofit private entities for the planning and initial development of HMOs; (3) makes or guarantees loans to HMOs to cover certain operating expenses; (4) develops national policies and objectives; (5) provides technical assistance to HMOs, entities seeking HMO status and others concerned with HMO aspects of the health care system; (6) interprets program policies, regulations, guidelines, standards and priorities; (7) develops long- and short-range program goals and objectives; and (8) provides leadership and direction for related legislative activities.

Division of Health Maintenance Organizations Qualification and Compliance (HAS42). (1) Determines the qualifications of entities seeking an identification as a qualified Health Maintenance Organization (HMO) (excluding any involvement in the grant and contract award process); (2) is responsible for the ongoing activities necessary to assure the continued compliance of HMOs with the statutory and regulatory requirements of the HMO program; (3) is responsible for assuring compliance with a mandatory offering of the HMO alternatives in employee health benefits plans; and (4) provides technical support to the Office of the Assistant Secretary for Health, the Office of General Counsel, and other elements of the Federal Government in the recommendation and preparation of legal action against HMOs, entities claiming to qualify as HMOs, and employers considered not to be in compliance with the statutory and regulatory requirements.

Office of Health Practices Assessment (HAS5). The Office of Health Practices Assessment: (1) Provides scientific, professional, and technical advice and serves as the principal advisor to the Assistant Secretary for Health concerning health standards and quality assurance; (2) serves as the focal point point for the Assistant Secretary for Health to review and concur in departmental regulations in these areas; (3) serves as the focal point for the Assistant Secretary for Health to provide scientific, professional, and technical advice to the Health Care Financing Administration for the establishment of health standards and the development of quality assurance programs; (4) coordinates for the Assistant Secretary for Health efforts to integrate the results of biomedical research with ongoing quality assurance activities, including efforts to evaluate the efficacy of medical practice; (5) provides staff and administrative support to the National Professional Standards Review Council; (6) disseminates current information on effective and ineffective medical techniques; (7) develops mechanisms for the assessment of health care technology and for the timely transfer of biomedical and health care technology from the health profession to the public; and (8) establishes procedures for technical consensus development.

Division of Policy Development and Review (HAS51). (1) Carries out the health standards and quality assurance responsibilities of the Office of

Health Practices Assessment; (2) develops broad policy guidelines on health standards for the certification of providers and suppliers of services, quality assurance programs and health care financing, for provision by the Assistant Secretary for Health to the Health Care Financing Administration; (3) coordinates the scientific, professional, and technical advice from the Public Health Service to be provided by the Assistant Secretary for Health to the Health Care Financing Administration on health standards and quality assurance programs for providers qualified under the Medicare and Medicaid programs; (4) coordinates Public Health Service resources required for the Assistant Secretary for Health to provide to the Health Care Financing Administration determinations regarding reimbursable (covered) services under the Department's health financing programs; (5) serves as the Executive Secretariat to the National Professional Standards Review Council and provides administrative support to the Council; (6) in collaboration with the Division of Health Maintenance Organizations Qualification and Compliance, Office of Health Maintenance Organizations, develops policy for the quality assurance activities of Health Maintenance Organizations; (7) advises the Assistant Secretary for Health in carrying out his responsibilities for Pharmaceutical Reimbursement programs; and (8) coordinates the Assistant Secretary for Health's review and concurrence or nonconcurrence on departmental regulations for health care and provider standards and quality assurance programs.

Division of Science Technology Transfer (HAS52). (1) Disseminates current information on effective and ineffective medical techniques to the medical profession; (2) develops mechanisms and relationships to assure the timely transfer of biomedical and health care technology; (3) coordinates with the National Professional Standards Review Council on the utilization of Professional Standards Review Organizations as a systematic source of information on new medical techniques, obsolete techniques and appropriate standards for currently accepted techniques; (4) establishes procedures for technical consensus development; and (5) provides the Health Care Financing Administration with current information from the scientific community on effective and ineffective medical techniques and practices.

Office of Health Policy, Research, and Statistics (HAT). The Deputy Assistant Secretary for Health Policy, Research and Statistics: (1) Serves as the principal advisor to the Assistant Secretary for Health (ASH) concerning the development of national health policy and strategy; (2) represents the Public Health Service (PHS) in all health policy analysis, policy research, and development within the Department; (3) conducts a national program of health services research, development, demonstration, and health services research training; (4) collects, analyzes, and disseminates data on vital and health statistics, health status, health resources assessment and utilization, organization and management of health services, health expenditures, and related matters; (5) directs or conducts PHS health policy analysis and evaluation, including selected research projects; (6) directs PHS participation in the Department's annual and forward plans, including policy analysis, development, and coordination of health data and statistical policy and serves as liaison with all components of PHS and other health related organizations on these matters; (7) develops policy and coordinates all matters regarding PHS health data standardization, collaborating with the Office of Management and Budget as appropriate; (8) provides policy oversight to PHS for clearance and inventorying of public-use reports; (9) provides leadership and staff support to the DHEW Health Data Advisory Committee on the identification of intermediate and long-range health data needs and in the development and modification of data policy objectives; (10) provides leadership and staff support to the U.S. National Committee on Vital and Health Statistics; (11) analyzes the effect and relevancy of current policies on health programs, recommending new approaches and initiatives; (12) analyzes developments beyond PHS which may impact on health policies; (13) directs and guides the efforts of PHS agencies in planning, evaluation, and policy analysis across the spectrum of health care delivery systems, health protection, health statistics, and health research; (14) directs the PHS review of plans and strategies for financing health care delivery and resource development; (15) cooperates and coordinates with the health related activities of the Assistant Secretary for Planning and Evaluation, Office of the Secretary, and the Health Care Financing Administration (HCFA); (16) coordinates health information, health promotion, environmental and energy issues as they relate to public health, preventive health services, and education in the use of health care within DHEW; and (17) serves as staff to the Assistant Secretary for Health's Policy Board (comprised of the heads of the PHS agencies and PHS staff offices).

Office of Health Information and Health Promotion (HAT-1). (1) Coordinates health information, health promotion, preventive health services, and education in the use of health care with DHEW; (2) coordinates the above activities with similar activities within organizations in the private sector; (3) facilitates coordination and collaboration between components of the Department, PHS, HCFA, Office of Education, and other governmental agencies, and other groups with common interests in health information and health promotion activities; (4) promotes the internal integration of health information, health promotion, and preventive health program activities at the operational level; (5) collaborates with the Office of Health Policy Analysis and Planning in the development and implementation of the PHS annual and forward plan and in analogous planning activities of Medicare, Medicaid, and other Department health programs as they relate to health information, health promotion, preventive health services and education in the appropriate use of health care; (6) prepares the report to Congress on the status of health information, health promotion, preventive health services, and education in the appropriate use of health care; and (7) provides for the operation of a national clearinghouse to assist in the analysis of issues and problems in health information, promotion, and prevention activities.

Office of Health Policy Analysis and Planning (HAT-2). The office: (1) Conducts policy analysis relating to issues in the development of health resources, and planning and delivery of health care services, financing of health care, environmental factors in health, biomedical research, ethical issues in health care, quality of and access to health care, consumer protection, and issues related to forward and annual plans, and legislative plans; (2) analyzes issues related to the development of a national health policy and strategy, represents PHS and the Assistant Secretary for Health (ASH) in all health policy analysis and development activities within the Department, develops options and alternatives based on available information and data; (3) analyzes the relevancy of current policies on health programs and recommends new approaches and analyzes developments beyond PHS which may impact on health policies and programs; (4) in cooperation with the agencies and the Office of the Assistant Secretary for Planning and Evaluation, Office of the Secretary, sets priorities for evaluation of programs under the 1% PHS Act allocation for evaluation; (5) clears proposed regulations for consistency with ASH policy; (6) guides the efforts of PHS agencies in annual and forward planning and legislative planning; (7) develops planning issues for analysis by other OASH staff offices and the agencies; (8) reviews planning issue

analyses prepared by the agencies and makes planning recommendations to ASH; (9) accomplishes issues analyses and works closely with the Office of Management on the development of the annual and forward PHS plans; and (10) reviews legislation for consistency with ASH and PHS policy; (11) initiates policy research and evaluation relating to health resources, biomedical research, planning and delivery of services, financing of health care, environmental factors in health, consumer protection, and quality of and access to health care; (12) identifies policy research questions and, with the National Center for Health Statistics and the National Center for Health Services Research, and the agencies, sets priorities for such research and assures that such policy research is undertaken, either by the agencies or this office; (13) arranges for consultation to the agencies on research methodology and design; (14) contracts for policy research as needed; (15) serves as policy liaison with all components of PHS and other health related organizations; (16) reviews and approves evaluation plans related to the impact of PHS and health care financing programs; and (17) conducts, or contracts for the conduct of, program evaluation, monitors evaluation programs, and assesses the results.

Office of Statistical Policy (HAT-3). The Office: (1) Serves as the PHS focal point for coordinating all health data and statistical policy; (2) coordinates all matters regarding PHS health data policy standardization, collaborating with the Office of Management and Budget, as appropriate; (3) provides leadership and staff support to the DHEW Health Data Advisory Committee on the identification of intermediate and long-range health data needs and in the development and modification of data policy objectives; (4) serves as statistical policy liaison with all components of PHS and other health related organizations; (5) reviews all PHS statistical and data gathering plans; (6) provides policy oversight to PHS for clearance and inventorying of public use reports; and (7) provides an Executive Secretary and staff support for the U.S. National Committee on Vital and health Statistics.

National Center for Health Services Research (HAT-1). Provides national leadership and administration of a program of research, demonstrations, and evaluations to study: (1) the accessibility, acceptability, planning, organization, distribution, technology, utilization, quality, and financing of health services and systems; (2) the supply and distribution, education and training, quality, utilization, organization, and costs of health manpower; and (3) the design, construction, utilization, organization, and cost of health facilities and equipment. In carrying out these responsibilities, the National Center engages in the following activities: (1) Supports by means of grants and contracts with public and private entities health services research, demonstration, and evaluation projects; (2) conducts research, demonstrations, and evaluations through the use of staff and facilities of the Center; (3) administers and supports health services research training programs; (4) assists public and nonprofit private entities in meeting the costs of planning, establishing, and operating centers for multidisciplinary health services research, evaluations, and demonstrations; (5) coordinates all health services research, evaluations, and demonstrations undertaken and supported through units of PHS in the Department of Health, Education, and Welfare; (6) consults with public and private organizations and individuals to identify the critical issues and problems to be addressed through the research program; (7) publishes and disseminates the findings and the data obtained in the course of research, evaluations, and demonstrations supported or undertaken by the Center and undertakes programs to develop new and improved methods for making such information available; and (8) provides technical assistance and consultation to organizations and individuals within and outside the Department engaged in or concerned with the results of health services research, evaluations, and demonstrations.

Office of the Director (HAT-11). Provides leadership for and directs the activities of the National Center for Health Services Research. Specifically: (1) Oversees and directs the formulation of program objectives and policies for the Center consistent with the law and with departmental and PHS policy; (2) plans, directs, coordinates, and evaluates the research, demonstration, and evaluation activities undertaken and supported by the Center; (3) oversees, coordinates, and evaluates national efforts to improve and expand the field of health services research; (4) oversees and directs the response to inquiries received by the Center and the clearance of documents dealing with matters of internal policy; (5) directs and coordinates Center activities in support of Equal Employment Opportunity programs; and (6) serves as scientific and technical advisor to the Office of Health Policy, Research and Statistics, Office of the Assistant Secretary for Health, and the Office of the Secretary on matters related to health services research.

Office of Program Development (HAT-112). Oversees and coordinates the development of a research plan for the Center and provides analyses to assist in the formulation of health policy. Specifically: (1) Directs and coordinates the process of formulating a plan for health services research, evaluations, and demonstrations; (2) participates in the Forward Planning process of PHS and the Department; (3) advises the Center Director on the types of projects which should be supported, the projects which should be undertaken by the staff of the Center, and the mechanism to be used for research, demonstration, and evaluation activities to be conducted outside the Center; (4) monitors the research programs and prepares periodic and special reports that describe, integrate, and assess the results of research, evaluations, and demonstrations undertaken and supported by the Center; (5) maintains liaison with other Federal agencies, with State and local government organizations, and with the research community, and organizes conferences to review and recommend modification in the research plan of the Center; (6) assists the Office of the Director in coordinating the research program of the Center with other research efforts within PHS and the Department; (7) plans and directs studies to avaluate the various programs and activities of the Center; and (8) provides analyses of research findings that have implications for health policies and health legislative initiatives.

Office of Program Support (HAT113). Within guidance and policies provided by the Office of Management, directs and conducts administrative management activities to provide services in the areas of financial management, organization and management analysis, manpower utilization, ADP management, telecommunications management, information systems, delegations of authority, paperwork management, grants and contracts processes, and other logistical operations to support the Center. Specifically, within the framework of PHS management policy: (1) Monitors, reviews, and comments on legislative and policy proposals which impact on Center authorities and operations; (2) develops and oversees the implementation of methods and procedures for controlling operations of the Center; (3) develops budget proposals, and provides financial accounting services for the Center; (4) develops annual ADP plans, and assures the timely issuance of reports; (5) conducts continuing appraisal of Center processes, organizational and functional structures, and manpower requirements and allocations to assure optimum utilization of the Center's resources; (6) implements pre-award review processes of grants and contracts proposals; and (7) maintains liaison with the OASH Office of Management on policy and operation-

al issues and matters affecting the Center.

Division of Academic and External Liaison (HAT12). Provides leadership and direction for the general academic programs of the Center, oversees the activities designed to disseminate the results of research supported by the Center, and supervises the general effort to coordinate the research program of the Center with the research programs and concerns of other governmental nonprofit private organizations and academic institutions. Specifically: (1) Assists in planning and directly oversees the health services research training programs of the Center; (2) directs and monitors the research centers program of the Center; (3) administers and sets policies for the program to publish and disseminate research reports prepared by or with the support of the Center; (4) participates with the Office of Program Development in coordinating the research programs of the Center with the research programs being conducted in other parts of PHS and the Department; (5) serves as the principal liaison with academic institutions, private foundations, and other organizations conducting or supporting health services research programs; (6) advises the Center Director on the non-Federal membership of various review and advisory groups set up to assist the Center; (7) informs the Center Director of general administrative policy and program concerns which exist in the research institutions, private foundations, the Department, and other government agencies; and (8) assists in developing policies for and oversees activities of the Center pertaining to the Regional Offices.

Division of Extramural Research (HAT13). Provides the professional expertise required by the Center to manage health services research, demonstration, and evaluation activities supported by means of grants and contracts. Specifically: (1) Determines the structure and content of research studies supported by contract which address the critical issues and research questions identified in the research plan of the Center; (2) develops and administers a program to monitor research studies supported by grant or contract; (3) provides general guidance and assistance to groups and individuals seeking support for research, demonstration, or evaluation projects; (4) provides technical support for advisory bodies responsible for reviewing grant and contract proposals for scientific merit; (5) participates in the preparation of periodic reports which describe, analyze, and integrate the results of various research, demonstration, and evaluation projects supported by the Center; (6) provides a summary of current extramural studies and informs the Office of Policy Analysis and Program Development of results that might have an impact on health policy and legislation; and (7) maintains liaison with professional and scientific organizations, foundations, and other groups engaged in health services research, demonstration, and evaluation activities.

Division of Intramural Research (HAT14). Provides professional expertise required by the Center to undertake directly health services research, demonstration, and evaluation activities. Specifically: (1) Designs and carries out research, demonstration, and evaluation projects which address the critical issues and research questions identified in the research plan of the Center and the Office of Statistical Policy; (2) provides information, analyses, and technical support to the Division of Extramural Research with regard to the structure and content of contracts awarded by the Center and the monitoring of grants; (3) provides consultation and technical assistance to the Office of Health Policy, Research and Statistics, Office of the Assistant Secretary for Health, and the Department with regard to the development, experimental design, management, and interpretation of research projects; (4) prepares and participates in the dissemination of reports which describe and analyze the findings of research, demonstration, and evaluation projects undertaken by the Center; (5) analyzes program operations to ensure responsible administration of resources allocated for intramural research; (6) provides a summary of findings of current intramural research projects and informs the Office of Program Development of results that might have an impact on health policy and legislation; and (7) maintains liaison with professional and scientific organizations, foundations, and other groups engaged in health research activities.

National Center for Health Statistics (HAT2). (1) Provides national leadership in health statistics; (2) collects, analyzes, and disseminates national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system, health economic expenditures, and changes in the health status of people; (3) administers the Cooperative Health Statistics System; (4) stimulates and conducts basic and applied research in health data systems and statistical methodology; (5) coordinates the overall health statistical activities of the program and agencies of PHS and provides technical assistance in the planning, management and evaluation of statistical programs of PHS; (6) maintains operational liaison with statistical units of other health agencies, public and private, and provides technical assistance within the limitations of staff resources; (7) fosters research, consultation and training programs in international statistical activities; (8) participates in the development of national health statistics policy with other Federal agencies; and (9) in its role as the government's principal general-purpose health statistics organization as designated by the Office of Management and Budget, provides the Assistant Secretary for Health with consultation and advice on statistical matters.

Office of the Director (HAT21). (1) Plans, directs, administers, coordinates and evaluates the total vital, health, and health related statistics programs of the Center; (2) stimulates basic and applied research and developmental activities; (3) provides national and international leadership in vital and health statistics; (4) conducts a variety of professional activities to provide assistance to government agencies, to foster international relationships, and to improve the broad fields of vital and health statics; (5) coordinates the Center's activities with public and private health statistical agencies; (6) provides advice and guidance on disease classifications and disease classification problems in the Center; coordinates activities within the Center on classification of diseases and procedures; and has responsibility for development of revision proposals and U.S. position on decennial revisions of the International Classification of Diseases; (7) directs and coordinates Center activities in support of the Department's Equal Employment Opportunity program; (8) provides management and administrative support for the Center; (9) provides program planning and development for the Center; and (10) develops and coordinates legislative activities.

Office of Program Support (HAT211). Directs and conducts administrative management activities to provide services in the areas of financial management, organization and management analysis, manpower utilization, ADP management, telecommunications management, information systems, delegations of authority, paperwork management, grants and contracts processes, and other logistical operations to support the Center. Specifically, within the framework of PHS management policy: (1) Monitors, reviews, and comments on legislative and policy proposals which impact on Center authorities and operations; (2) develops and oversees the implementation of methods and procedures for controlling operations of the Center; (3) develops budget proposals, and provides financial accounting services for the Center; (4) develops annual ADP

plans, and assures the timely issuance of reports; (5) conducts continuing appraisal of Center processes, organizational and functional structures, and manpower requirements and allocations to assure optimum utilization of the Center's resources; (6) implements pre-award review processes of grants and contracts proposals; (7) maintains liaison with the OASH Office of Management on policy and operational issues and matters affecting the Center; and (8) provides support services for the Center's conferences, advisory committees, and other advisory groups.

Office of International Statistics (HAT212). (1) Plans and conducts the National Center for Health Statistics' (NCHS) foreign research, consultation, and training programs; (2) represents the Center in international statistical activities in vital and health statistics, including demography; (3) stimulates NCHS staff to develop research programs in foreign countries; (4) develops and conducts academic and applied courses for foreign statisticians; (5) assembles data and prepares reports on comparative international health statistics; and (6) develops and conducts analytical studies in international vital and health statistics.

Office of Program Development (HAT213). (1) Provides a focus for short- and long-range program planning, coordination, and evaluation of the adequacy and completeness of new and existing programs in meeting the Center's mission; (2) serves as liaison with organizations planning or conducting new initiatives in Federal health statistics; (3) provides staff advice on the development of new health statistics programs based on assessment of emerging needs; (4) in collaboration with the Office of Health Policy Analysis and Planning, translates planning into program and budget proposals for the Center operations; (5) assists the Center Director in the assessment of program accomplishments through a program review process; (6) develops and coordinates the Center's legislative activities; (7) administers a program of project review as required by the Federal Reports Act, including official bureau clearance officer responsibilities; (8) serves as the Center coordinator for interdisciplinary and interprogram activities; and (9) provides liaison with counterparts at higher levels.

Office of Statistical Research (HAT214). (1) Provides general direction to and coordinates the Center's statistical research program; (2) plans and budgets Center-wide research activities; (3) stimulates research in the Center, and maintains close communication with research statisticians in universities and in private and governmental organizations; (4) conducts a program of basic measurement research and long-range applied research in statistical methodology; (5) promotes the publication and dissemination of statistical research findings; and (6) provides technical assistance to the Center Director in methodological matters.

Office of Data Systems (HAT215). (1) Plans and coordinates Data Systems programs of the National Center for Health Statistics; (2) provides operating liaison with statistical programs of other public and private health agencies; (3) participates in the development of policy for national health statistics within the Public Health Service and with other Federal agencies; (4) provides technical leadership, monitoring, and statistical evaluation of Federal-State-local cooperative data collection and processing systems; (5) determines the need for new data systems or capabilities in present systems to provide needed health statistics; (6) provides statistical consultation and technical assistance to other producers and users of health statistics; and (7) conducts statistical methods research and develops technical and technological methods.

Division of Analysis (HAT22). (1) Plans, directs, and conducts a program of in-depth analysis of health status, health services, and demographic data; (2) stimulates the development of concepts and statistical data programs throughout the Center; (3) conducts economic analyses of health, including health status, resources, and utilization of services; (4) proposes a general schedule of data to be collected by the Center for submission to and approval by the Center Director; (5) prepares an overall plan for the analysis and presentation of data on Center programs; (6) develops and applies actuarial methodology in a wide range of vital events and health phenomena; (7) conducts a program of research related to the health statistics activities, including analytic methodology, techniques, and procedures; and (8) augments the policy analysis activities of the Offic of Health Policy Analysis and Planning.

Division of Cooperative Health Statistics System (HAT23). (1) Serves as the Director's principal advisor on field relations with Federal, State, and local agencies; (2) coordinates all NCHS activities related to the development and implementation of the Cooperative Health Statistics System; (3) supports and stimulates research and development activities aimed at the integration, development, and improvement in the Cooperative Health Statistics System; (4) plans, organizes, and directs the Applied Statistics Training Institute; (5) assists users of Cooperative System's data in the utilization of statistical data and methodology through the operation of the Data Use Laboratory; (6) administers a grants and contracts program for the implementation of the Cooperative Health Statistics System; and (7) monitors and evaluates the Center's programs in meeting State and local health statistical needs.

Division of Health Interview Statistics (HAT24). (1) Plans and administers statistical programs based on a systematic nation-wide health interview survey; (2) produces statistical data in tabular and machine-readable form; (3) conducts a research program on survey methodology, data quality and reliability; (4) prepares statistical reports for publication; and (5) collects and evaluates economic data as it relates to individual medical care costs.

Division of Health Manpower and Facilities Statistics (HAT25). (1) Plans and administers statistical programs based on systematic nationwide surveys and inventories of health manpower and facilities; (2) produces statistical data in tabular and machine-readable form; (3) conducts a research program on survey methodology, data quality and reliability; (4) prepares statistical reports for publications; and (5) plans, supports, and conducts special projects on health manpower and facilities.

Division of Health Resources Utilization Statistics (HAT26). (1) Plans and administers statistical programs based on a systematic nationwide collection of data on the utilization of health resources; (2) produces statistical data in tabular and machine-readable form; (3) conducts a research program on survey methodology, data quality and reliability; (4) prepares statistical reports for publication; and (5) plans, supports, and conducts special projects on health resources utilization.

Division of Health Examination Statistics (HAT27). (1) Plans and administers statistical programs based on systematic nationwide health examination surveys of individuals; (2) produces statistical data in tabular and machine-readable form; (3) conducts a research program on survey methodology, data quality and reliability; (4) prepares statistical reports for publication; and (5) plans, supports, and conducts special projects on the health examination of individuals.

Division of Vital Statistics (HAT28). (1) Plans and administers statistical programs serving demographic and public health needs of vital statistics, and provides for the analysis and release of data on vital events; (2) promotes utilization of data through expansion of the U.S. vital registration systems and through conduct of sampling surveys to provide demographic and health information; (3) conducts methodological research on evaluating and presenting vital statistics data; (4) develops standards for data collection,

data reduction, and tabulation including quality control measures as the basis for a national cooperative vital statistics system at Federal, State, and local levels; (5) prepares and releases for publication summary and descriptive analysis of data from the vital statistics system; (6) serves as the focal point in the Federal government for liaison with the registration areas on matters of legal and statistical concern regarding the registration system; (7) monitors and evaluates the vital statistics process to ensure the timeliness of the Center's annual vital statistics series; and (8) publishes life tables and special analysis of life tables phenomena.

Division of Operations (HAT29). (1) Plans, directs, coordinates, and evaluates technical support and data collection operations for all of the Center's programs; (2) conducts data reduction and data preparation services in support of data collection and analysis programs; (3) manages the computer operations and provides system programming services; (4) conducts a research program to improve the computer processing technology and methodology; and (5) provides technical information, data dissemination, and technical publication services for all Center programs.

Delete the functional statement for the *Office of Administrative Management (HAU)* and substitute the following statement:

Office of Management (HAU). The Office of Management: (1) Directs and coordinates all management activities of PHS, nationwide, under the leadership of the PHS Executive Officer and Deputy Executive Officer; (2) advises and assists the Assistant Secretary for Health on PHS and internal management priorities and policies; (3) develops PHS policy and provides leadership and coordination of health agency activities in the areas of financial management, contracts and grants management, manpower management, systems and studies, administrative services, ADP management and facilities management, and Executive Secretariat functions; (4) participates in program and legislative planning and analyzes program operations, in collaboration with the Assistant Secretary for Health staff and heath agencies, to identify management implications and to ensure responsible management planning and effectiveness; (5) provides leadership and review of agency management activities for the purpose of assuring compliance with laws, regulations, departmental and PHS management policies, procedures, goals and plans; (6) furnishes selected supporting and staff services in finacial management, personnel management, management analysis, and administrative services; (7) provides selected centralized common services, including service provided on a fee-for-service basis as authorized by law; (8) serves as the principal liaison between the Office of the Secretary and health agencies, and other government agencies on management activities and, as appropriate, represents the Assistant Secretary for Health; (9) provides oversight to assure PHS compliance with civil rights policies and requirements; and (10) serves as functional manager for management over PHS regional offices.

Insert the following statement after the *Office of Management (HAU): PHS Regional Liaison Staff (HAU-1).* The PHS Regional Liaison Staff: (1) Insures that the views of the Regional Health Administrators are made known in the Office of Management concerning the development of legislation, program guideines, priorities, project criteria, and project technical assistance activities; (2) assists the Regional Health Administrators in identifying issues and resolving problems involving the regional offices on interagency and interdepartmental matters; (3) provides staff support to the Office of Management by: (a) facilitating the flow of correspondence betwen the regional offices and OASH; (b) establishing meetings and conferences between regional offices and various other offices and establishing agendas for such meetings and conferences to include topics and participants pertinent to regional matters; (c) handling special projects such as assembling and directing task forces relating to regional matters; (d) assisting in resolving central regional office problems; (e) assisting the Office of Management in its function as the principal intergovernmental office in OASH by: 1) serving as a liaison with the Regional Health Administrators, obtaining from these officials indications of State and local attitudes, trends and issues affecting PHS programs and assisting the Office of Management to resolve specific issues and problems of State and local governments regarding PHS programs; 2) insuring through its liaison with the regional offices that State and local officials and Congressional field offices are provided with ongoing information about emerging PHS programs, policies and organizations, particularly those administered by the regional offices; 3) working with the Regional Health Administrators to develop and maintain processes for identifying and resolving major PHS/State issues of a regional nature, whether single agency or cross-cutting, which State and local officials identify as problems not being resolved in timely fashion by PHS; 4) bringing to the attention of the Office of Management those issues identified by the Regional Health Administrators which State and local officials view as most important in setting priorities for assessment; and 5) as a result of its liaison activities with the Regional Health Administrators, assuring that data regarding regional health program monitoring, performance or assessment is referred to the Deputy Assistant Secretary for Health Programs for comment, review, or other appropriate action.

The functional statements for the *Administrative Services Center (HAU1)* and its division structure (HAU11) through (HAU14) remain unchanged.

Under the *Office of Organization and Mangement Systems (HAU2)*, make the following change:

In the first paragraph of the functional statement, change the period to a comma and add the word "nationwide." The remainder of the functional statement is unchanged. Current functional statements for the divisions of the Office of Organization and Management Systems remain unchanged.

Under the *Office of Personnel Management (HAU3)*, make the following change:

In the first sentence of the functional statement, change the period to a comma and add the word "nationwide." The remainder of the functional statement is unchanged. Current functional statements for the divisions of the Office of Personnel Management remain unchanged.

Under the *Office of Resource Management (HAU4)*, make the following change:

In the first phrase, after the words "Public Health Service," delete the semicolon, add a comma, and insert the word "nationwide." Insert a semicolon after the word "nationwide." The remainder of the functional statement is unchanged. Current functional statements for the divisions of the Office of Resource Management remain unchanged.

PHS Executive Secretariat (HAU5). The PHS Executive Secretariat: (1) Monitors and acts on correspondence and selected activities of interest to the Assistant Secretary for Health and correspondence and activities of the Office of the Assistant Secretary for Health (OASH), in coordination with OASH staff offices, PHS agencies and regional offices; (2) reports on meetings of the Assistant Secretary for Health and controls action items that result from these meetings; (3) provides substantive reviews of correspondence and action documents involving the Assistant Secretary for Health, Deputy Assistant Secretaries for Health, the Executive Officer, PHS, and OASH Special Staff Offices to assure consistency with program plans and established policies; (4) assigns, monitors, and controls incoming communications including memoranda, reports, staff papers, and priority corre-

spondence; (5) provides a focal point for the public on veterans affairs, the Privacy Act of 1974, and programs for the handicapped; (6) coordinates committee management activities for PHS; (7) manages the Federal regulations process for PHS, including the corrdination and review leading toward the approval of new and revised regulations; (8) clears and controls the preparation of congressional reports; (9) directs the Major Initiatives Tracking System and the Legislative Planning Implementation System to assure the accomplishment of selected health objectives and legislative commitments; and (10) insures that heads of PHS staff offices and agencies are informed of, and given an opportunity to comment on, proposed actions or decisions affecting their organizations or responsibilities..

Correspondence Control and Files Staff (HAU5-1). (1) Provides correspondence control for the Office of the Assistant Secretary for Health, including document receipt and assignments and status of pending correspondence; (2) maintains a complete update and tracking system for correspondence monitoring and control; (3) provides guidance to PHS in correspondence practices; (4) generates and maintains records and reports on PHS correspondence and is responsible for maintaining the official files of the Assistant Secretary for Health; (5) assists in the development of procedures and guidelines for the preparation of correspondence; and (6) provides clerical support to the entire Executive Secretariat, as required.

Associate Executive Secretariat for Policy (HAU51). The Associate Executive Secretariat for Policy: (1) Provides substantive reviews of correspondence and action documents involving the Assistant Secretary for Health, the Deputy Assistant Secretary for Health Policy, Research and Statistics, and the Deputy Assistant Secretary for National Health Insurance, to assure timeliness, adequacy of coordination and clearances, clearness and conciseness of presentation, and conformance with established PHS policies; (2) coordinates the review of correspondence impacting on PHS policy and legislative plans in the area of National Health Insurance; (3) provides a focal point for the public on the Privacy Act of 1974; (4) clears and controls the preparation of congressional reports; (5) provides advice and assistance on the preparation of documents relating to health policy; (6) coordinates the preparation of agenda and briefing materials for meetings of the Assistant Secretary for Health; and (7) modifies replies prepared in PHS to conform with established policies.

Associate Executive Secretariat for Management (HAU52). The Associate Executive Secretariat for Management: (1) Provides substantive reviews of correspondence and action documents involving the Assistant Secretary for Health and the Executive Officer, PHS to assure timeliness, adequacy of coordination and clearances, clearness and conciseness of presentation, and conformance with PHS management policy; (2) coordinates the preparation of agenda and briefing materials for meetings of the Assistant Secretary for Health; (3) prepares replies to correspondence when appropriate; and (4) modifies replies prepared in PHS to conform with established management policies.

Associate Executive Secretariat for Programs (HAU53). The Associate Executive Secretariat for Programs: (1) Provides substantive views of correspondence and action documents, involving the Assistant Secretary for Health, the Deputy Assistant Secretary for Health Programs, the Deputy Assistant Secretary for Special Health Initiatives, the Senior Advisor for External Relations, the Director of International Health, and other special staff offices of OASH, to assure timeliness, adequacy of coordination and clearances, clearness and conciseness of presentations, and consistency with program plans and objectives; (2) directs the Major Initiatives Tracking System (MITS) for PHS, including recommending objectives for tracking by the office of the Secretary and the Office of the Assistant Secretary for Health, (3) provides guidance in implementing new health programs and special initiatives and monitors the results; (4) administers the Legislative Planning and Implementation System (LPIS) to assure the effective implementation and tracking of legislative initiatives; (5) assures adequate analysis of new laws and the development of plans to implement these new laws; (6) provides a PHS focal point in the areas of veterans affairs and programs for the handicapped; (7) provides advice and assistance in the preparation of documents relating to health program plans and objectives; (8) coordinates the preparation of agenda and briefing materials for meetings of the Assistant Secretary for Health; (9) prepares replies to correspondence when appropriate; and (10) modifies replies prepared in PHS to achieve consistency with program plans and objectives.

Associate Executive Secretariat for Regulations (HAU54). (1) Directs the Federal regulations process for PHS, including the coordination and review leading toward the approval of new and revised regulations; (2) participates in the drafting and clearance of new or revised regulations; (3) distributes and insures review of notices of proposed rulemaking and final regulation policy, impacting general notices; (4) provides assistance in the development and implementation of new and revised regulations; (5) provides advise and guidance on the development of FEDERAL REGISTER notices; and (6) participates in the drafting and clearance of FEDERAL REGISTER notices.

Associate Executive Secretariat for Public Inquiries (HAU55). (1) Provides a central PHS control for correspondence referred by the White House and the Department as well as public inquiries addressed directly to the Assistant Secretary for Health and other PHS officials; (2) prepares or coordinates the preparation of replies to such inquiries; (3) coordinates with PHS agencies and OASH staff offices the development of source material necessary to respond to public inquiries; (4) monitors and advises OM management on the responsiveness of PHS components to public inquiries; and (5) carries out a program of quality control in PHS correspondence, assuring that all correspondence meets required standards.

Delete the functional statements for the *Office of Policy Development and Planning (HAV through HAV-4)* in their entirety.

Delete the functional statements for the Office of Regional Operations (HAW through HAW2) in their entirety.

Delete *Section 11-C.—Order of Succession,* in its entirety.

Change the title of *Section 11-D.—Delegations of Authority,* to read *Section HA-30.—Delegations of Authority.*

Delete *Section 11-E.—Reservation of Authority,* in its entirety.

Delete the title, *"Section 11F.—Redelegation of Authority."* Henceforth, all delegations and redelegations of authority will be published in Section *HA-30, Delegations of Authority.*

Office of the Assistant Secretary for Health officials shall continue to exercise, pending further redelegation, all the authorities delegated to them by the Assistant Secretary for Health. All other delegations and redelegations of authority to Office of the Assistant Secretary for Health officials, which were in effect immediately prior to the effective date hereof, have been continued in effect in them or their successors, pending further redelegation.

PUBLIC HEALTH SERVICE (PHS) REGIONAL OFFICES

Under Part H, *Chapter HD, Public Health Service (PHS) Regional Offices,* delete *Sections HD-A, Mission,* and *HD-B, Organization and Functions,* in their entirety and substitute the following statements:

Section HD-00 Mission. The Public Health Service (PHS) Regional Offices support the PHS mission of improving the health of the Nation's populations by administering regional health programs and activities to assure a coordinated regional effort in support of na-

tional health policies and State and local needs within each region including: assessing regional health requirements, accomplishing health planning, assuring integration of health programs, and addressing cross-cutting program issues and initiatives to achieve program goals and meet overall regional health needs; providing a PHS focal point for responding to the needs of State and local governments, community agencies, and others involved in the planning or provision of general health and mental health services; providing a PHS focal point for emergency preparedness and emergency medical services in the regions; supporting the Department of Health, Education, and Welfare intergovernmental relations activities and responding to health issues emanating from State and local concerns; and, assuring that health activities and programs administered provide for the prevention of health problems, continual increased capacity for providing health care, and assurance of access to general health and mental health services to improve regional health by preventing or controlling diseases, drug abuse, and alcoholism.

Section HD-10 Organization. The Public Health Service Regional Offices (HD1-HDX)[1] consist of:

Office of the Regional Health Administrator (HD1-HDX).
Office of Regional Health Planning (HD*H).
Office of Grants Management (HD*J).
Division of Health Care Systems (HD*N).
Division of Alcoholism, Drug Abuse, and Mental Health Programs (HD*T).
Division of Preventive Health Services (HD*U).
Division of Health Services Delivery (HD*V).

Section HD-20 Functions. The Public Health Service (PHS) Regional Offices (HD1-HDX) are headed by a Regional Health Administrator (RHA) who serves as the chief Federal health planner in the region and is responsible for integrating health and medical expertise with regional program efforts. The RHA and principal staff comprise the immediate Office of the Regional Health Administrator which: (1) Directs PHS Regional Office programs and activities in order to assure a coordinated regional effort in accordance with national policies and State and local needs within the region; (2) establishes regional priorities, consistent with the Assistant Secretary for Health and agency guidance, for the development of a coordinted regional work program; (3) assures program integration in accordance with national priorities, and monitors and evaluates program performance; (4) provides regional input into the formulation and analysis of national policies and program priorities and plans; (5) directs the accomplishment of health planning for the region and the development of regional operational plans; (6) coordinates regional input into the PHS budget and staffing allocation process, allocates personnel and funds within the region, and directs systems for controlling the use of regional resources; (7) awards decentralized health grants in accord with national policies and guidelines and State and local needs; (8) serves as the regional focal point for liaison with State, local, and regional professional organizations and provides expertise and leadership to regional program efforts as the principal medical representative of PHS in the region; (9) serves as the focal point for regional emergency services; (10) provides administrative services necessary to support PHS regional programs and assure proper accountability for resources, in concert with administrative staff of the Principal Regional Official; (11) serves as the principal contact for health-related intergovernmental concerns providing, in concert with the Office of the Principal Regional Official, assistance to State, local, and private organizations as required to facilitate access to and receipt of services from PHS regional programs; (12) cooperates with the Principal Regional Official, in coordinating health programs with other Department of Health, Education, and Welfare programs and with programs of other agencies impacting on the health needs of the regions; (13) cooperates with the Principal Regional Official to assure effective Equal Employment Opportunity and Affirmative Action Programs; and (14) as required, coordinates PHS regional programs and authorities with those separately administered by the Food and Drug Administration as delegated from the Assistant Secretary for Health to the Commissioner of Food and Drugs.

*Office of Regional Health Planning (HD*H).* The Office of Regional Health Planning: (1) Directs and coordinates regional implementation of Pub. L. 93-641; (2) conducts PHS Regional Office planning in support of national health strategies and assures effective program integration with such strategies; (3) directs and coordinates programs and activities designed to increase the capacity and capability of the health care system in the region; (4) provides assessment of regional health program goals and objectives in relation to national priorities and local needs, recommends corrective action and assists in implementation; (5) assesses needs and resources of each State and local area within the region's jurisdiction and establishes and maintains regional and individual geographic profiles of regional health needs and resource shortage areas; (6) develops recommendations for consideration by the Assistant Secretary for Health proposing changes in national health policy as a result of regional program implementation; (7) provides assistance and support for State and local health planning activities, including the development and implementation of needs assessment activities; (8) provides or arranges for consultation and technical assistance to State and local health agencies and grantees, including interpretation and explanation of national policies and guidelines with respect to health planning, health statistics systems, health facilities construction, certificate of need, capital expenditure reviews, and the application of research findings; (9) analyzes trends and projections with respect to health status, resources, program impact, and costs; (10) conducts evaluations and special studies on the impact of PHS health programs in specific geographic areas or among specific population groups and cooperates with PHS agencies in conducting evaluation feasibility studies prior to national implementation; (11) coordinates cross-division program special initiatives as outlined by the Secretary, Assistant Secretary for Health (ASH) or ASH staff offices, and makes recommendation to ASH on resource needs, organizational placement, and/or specific problems; (12) develops and recommends to ASH regional objectives responsive to national priorities and objectives, including assignment of resources, coordination with other regional staff, and monitoring activities to insure accomplishment of the objectives; (13) cooperates with the health agencies in the dissemination of research findings and the development and testing of new approaches to improve health care delivery and monitors and assesses results of regional health delivery innovations in relationship to both local and national objectives; (14) assists States through the Cooperative Health Statistics System in developing an increased capacity to establish a data base for resource and health system analysis and evaluation; (15) coordinates with PHS agencies and State and local governments in planning the integration of services and minimizing duplication and overlap; (16) provides for development, implementation, and monitoring the annual Regional Health Administrator's regional work program in assigned program areas, including setting objectives responsive to national and regional priorities and assignment; (17) provides advice and assistance to the State in developing health plans and approves State Health plans; and (18)

[1] PHS Codes for the individual Regional Offices are as follows: HD1—Boston. HD2—New York. HD3—Philadeophia. HD4—Atlanta. HD5—Chicago. HD6—Dallas. HD7—Kansas City. HD8—Denver. HD9—San Francisco. HDX—Seattle.

monitors planning and development of grants under Pub. L. 93-641 and contracts for compliance with applicable laws, regulations, policies, and guidelines.

*Office of Grants Management (HD*J).* The Office of Grants Management: (1) Serves as the focus for grants, contracts, and loan management activities in the PHS Regional Office; (2) receives and refers grant, contract, and loan applications to the appropriate program; (3) maintains a control record of review process; (4) reviews grant, contract, and loan applications from a management point of view for conformity to laws, regulations, and policies; (5) identifies problem areas and collaborates with other staff in their resolution; (6) maintains central contract grant, and loan files for the PHS Regional Office; (7) serves as contract and loan authority for the PHS Regional Office; (8) consults with program staff in developing request for contract proposals; (9) advertises and evaluates bids and proposals; (10) issues grant and contract awards; negotiates, computes, prepares, and signs award notices; (11) secures necessary clearances and distributes grant and contract award statements; (12) provides continuing surveillance of financial and administrative aspects of grant supported activities through site visits to assure compliance with appropriate DHEW and PHS policies; (13) gives technical assistance, where indicated, to improve the management of grant, contract, and loan supported activities; (14) developes, implements, and manages regional grants, contracts, and loan management procedures and policies; (15) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants, contracts, and loans; (16) provides for development, implementation, and monitoring of the annual Regional Health Administrator's regional work program including setting objectives responsive to national and regional priorities and assignment of office resources required to attain these objectives; (17) conducts studies and provides assistance to improve the operation of grantee management systems and grant review procedures; (18) responds to requests for grants, contracts, and loan management information from headquarters and regional staffs and from the public; (19) develops business management methods to improve cost effectiveness and financial systems of PHS regional project grants; (20) implements business management aspects of Health Services Funding regulations and financial plans in all appropriate projects; and (21) performs regional loan management officer functions as specified in the PHS Loan Administration Manual.

*Division of Health Care Systems (HD*N).* (1) Directs and coordinates programs and activities for containing health care costs, increasing and improving resources for providing health care and emergency medical services and improving the present structure of health care organization; (2) provides information, liaison and consultative services to regional institutions and agencies in support of health manpower monitoring and related grant and contract management activities conducted at the national level; (3) designs, implements, and monitors plans for the development and expansion of prepaid alternative health delivery systems and emergency medical systems; (4) monitors, evaluates, and assists the development of federally-assisted and privately-funded prepaid delivery systems to maximize the number of such organizations which apply for and receive qualification as Health Maintenance Organizations; (5) maintains effective relationships with State, local, and other regional organizations to improve the legal, economic, and social environment for the development and growth of prepaid delivery systems; (6) provides professional consultation and technical assistance in assigned program areas, including interpretation of national policies and guidelines to contractors and applicants for Federal assistance; (7) provides for the development, implementation, and monitoring of the annual Regional Health Administrator's regional work program related to assigned program areas, including setting objectives responsive to national and regional priorities and assignment of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) analyzes programmatic data, reviews and recommends action on grant and loan applications and contract proposals and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; and (10) serves as source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with headquarters on programmatic areas.

*Division of Alcoholism, Drug Abuse, and Mental Health (HD*T).* (1) Directs and coordinates programs and activities to improve access and availability of community and State mental health programs; (2) promotes the planning, development, and delivery of quality mental health, drug abuse, and alcohol services throughout the region; (3) assists in mental health program development at State and local levels through the provision of professional consultation, guidance, and technical assistance, including interpretation of national policies and guidelines to grantees, prospective grantees, State and local officials, and nonprofit organizations; (4) serves as the regional focal point for promoting and directing efforts to integrate and coordinate mental health and related programs and activities with programs and activities in other areas of health and in the fields of social welfare, education, rehabilitation, and adult and juvenile corrections; (5) coordinates with the Office of Regional Health Planning to assure the integration of mental health and health systems agency planning efforts under Pub. L. 93-641; (6) provides for the development, implementation, and monitoring of the annual Regional Health Administrator's regional work program related to assigned program areas, including setting objectives responsive to national and regional priorities and assignment of division resources required to attain these objectives; (7) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (8) analyzes programmatic data, reviews and recommends action on grant applications and contract proposals and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (9) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional liaison with headquarters on programmatic areas; and (10) administers the regional Public Health Employees Assistance Program, including the orientation of supervisors and the provision of counseling and referral services to employees.

*Division of Preventive Health Services (HD*U).* (1) Directs and coordinates programs and activities designed to improve health by preventing or controlling diseases, including environmentally induced health problems; (2) provides liaison with special national impact programs, such as childhood immunization and venereal disease control, and assures access to headquarters epidemiologic and laboratory specialists and other specialized assistance; (3) provides professional consultation, guidance, and technical assistance to State and local health departments and agencies, communities and industries on disease prevention, preventive health services, health education, environmental and occupational health services; (4) serves as regional focal point for providing continuity and leadership to other regional office divisions in the interpretation of national priorities in preventive health and coordinates activities with the other divisions; (5) analyzes programmatic data, reviews and recommends action on grant and loan applications

and contract proposals and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (6) supervises Center for Disease Control personnel assigned to State and local health departments; (7) provides for development, implementation, and monitoring of the annual Regional Health Administrator's regional work plan related to assigned program areas, including setting objectives responsive to regional and national priorities and assignment of division resources to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; and (9) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with headquarters on programmatic areas.

*Division of Health Services Delivery (HD*V).* (1) Directs and coordinates programs and activities designed to promote and provide quality health services within the region; (2) promotes and directs activities designed to increase health care capacity and to increase access to quality health services for the underserved; (3) serves as regional focal point for promoting and directing efforts to integrate service delivery projects in a more comprehensive manner to maximize services available in health scarcity areas; (4) provides professional consultation and technical assistance in assigned program areas, including interpretation of national policies and guidelines to contractors and applicants for Federal assistance; (5) provides for development, implementation, and monitoring the annual Regional Health Administrator's regional work program related to assigned program areas, including setting objectives responsive to national and regional priorities and assignment of division resources required to attain these objectives; (6) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (7) analyzes programmatic data, reviews and recommends action on grant and loan applications and contract proposals and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; and (8) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with headquarters on programmatic areas.

Section HD-30 Delegations of Authority. The Regional Health Administrators shall continue to exercise, pending further redelegation, all the authorities delegated to them by the Assistant Secretary for Health and other Public Health Service officials. All other delegations and redelegations of authority to officers and employees of the Public Health Service Regional Offices, which were in effect immediately prior to the effective date hereof, have been continued in effect in them or their successors pending further redelegation.

HEALTH RESOURCES ADMINISTRATION

Under Part H, *Chapter HR, Health Resources Administration,* delete the current statements in their entirety and substitute the following statements:

Section HR-A Mission. The mission of the Health Resources Administration is to identify health care resource problems and maintain or strengthen the distribution, supply, utilization, quality, and cost effectiveness of these resources to improve the health care system and individual health status.

Major thrusts include the development of a national health planning capability geared to promoting equal access to quality health care at a reasonable cost, and the promotion of innovative strategies and targeted development of manpower, facilities, and other resources required for an effective health care system.

Sec. HR-B Organization and Functions. The Health Resources Administration is directed by an Administrator who is responsible to the Assistant Secretary for Health. The Administration consists of the following major components, with functions indicated:

OFFICE OF THE ADMINISTRATOR (HRA)

Provides leadership and direction to the programs and activities of the Health Resources Administration.

Immediate Office of the Administrator (HRA1). (1) Provides leadership for the execution of Administration responsibilities related to the development of a national policy with respect to the identification, deployment, and utilization of physical, financial, and personnel resources in the achievement of optimal health services for the people of the United States; (2) manages and directs the activities of the Administration; (3) supports and stimulates programs designed to encourage the training and full utilization of minority and disadvantaged persons both within the Administration and, for the health professions, on a Nationwide basis; (4) directs the coordination of the Administration's activities, both internally and with other components of the Department of Health, Education, and Welfare, to assure adequate resources for a comprehensive health-service system; (5) provides liaison with major health systems and organizations, both governmental and private, national and international, to promote collaboration and interchange of information in support of national health goals; and (6) provides the HRA focal point and leadership for international health policies, programs, and activities.

Office of Health Resources Opportunity (HRA11). Provides the HRA focal point and leadership for assuring equity in access to health services and health careers for the disadvantaged. Specifically: (1) Provides technical assistance to groups that represent and seek to improve the health status of the disadvantaged, and facilitates the access of such groups to HRA and other Federal programs and resources; (2) provides leadership and direction for the development and implementation of HRA objectives as they relate to the disadvantaged; (3) develops and recommends health resources and health career opportunities for the disadvantaged; (4) initiates, stimulates, supports, coordinates, and evaluates HRA manpower and planning programs for improving the availability and accessibility of health services and health careers for the disadvantaged; (5) initiates, stimulates, supports, coordinates, and evaluates, in conjunction with other HRA units, comprehensive data systems and analyses on requirements, resources, accessibility, and accountability of the health delivery system for the disadvantaged; (6) conducts extramural programs, including the use of grants and contracts, specifically designed to promote equity in access to health services and health careers; (7) assures contract compliance and implementation of the PHS Policy Statement on Civil Rights in HRA; (8) provides leadership for and assures the implementation of Native American program initiatives through coordination with HRA Bureaus and in collaboration with other appropriate DHEW entities; (9) conducts and coordinates HRA programs in health services and health careers for women; (10) provides HRA leadership to develop and coordinate HRA program support to student health organizations and major youth-serving organizations; and (11) provides advice and consultation to the Office of the Assistant Secretary for Health and PHS agencies on policy and other matters related to assuring equity in access to health services and health careers for the disadvantaged.

Office of Equal Employment Opportunity (HRA12). (1) Plans, directs, and coordinates Equal Employment Opportunity (EEO) programs covering headquarters and field employees; (2) provides staff advice to the Administrator and to other key official throughout the Health Resources Administration with respect to policies, plans, procedures, regulations, and reports pertaining to the general equal employment opportunity policy of the Federal Government and the Department's programs established under

Executive Order 11478; (3) plans and develops programs and procedures designed to eliminate discriminatory employment practices; (4) receives and provides for the investigation of complaints of alleged discrimination; and (5) maintains liaison with the Office of the Assistant Secretary for Health, the Civil Service Commission, and other organizations outside the HRA concerned with equal employment opportunity.

Office of Communications (HRA4). (1) Directs, formulates policy for, conducts, and coordinates communications activities of the Health Resources Administration; (2) provides communications expertise and staff advice to the Administrator in support of program and policy formulation and execution; (3) establishes and maintains productive relationships with the communications media; (4) establishes and implements policies for review, processing, quality control, and dissemination of HRA program communications materials; (5) provides central communications and graphic arts services to all HRA programs; and (6) serves as focal point for coordination of HRA communications activities with those of other health agencies within HEW and with regional, State, local, voluntary, and professional organizations.

Office of Operations and Management (HRA5). (1) Serves as the Administrator's principal staff for providing Administration-wide leadership in all phases of management and for direct conduct or general supervision of Administration-wide operational functions; (2) directs and coordinates the Administration's activities in the areas of management policy, operational planning, systems management, financial management, procurement and materiel management, grants management, and personnel management; (3) advises the Administrator on management implications of Administration plans and programs; (4) provides staff support and facilities for advisory councils, conferences, and meetings; (5) collaborates with the Office of Planning, Evaluation, and Legislation in the development and implementation of the five-year program and financial plan for the Administration; (6) provides facility and space management services for Administration field elements and directs the Agency's safety management program; (7) coordinates Agency programs with PHS Regional Office functions by providing liaison to the Office of the Assistant Secretary for Health; and (8) directs data systems management and the Administration's management information support systems.

Division of Management Policy (HRA51). (1) Develops, recommends, and provides advice and assistance on policies, methods, and procedures for the management of HRA programs; (2) provides analysis, recommendations, and guidance related to the establishment or modification of organizational structures and functions; (3) conducts and coordinates HRA-wide management improvement programs, including manpower utilization and productivity measurement; (4) participates in program and legislative planning and implementation from the standpoint of assuring recognition of management problems; (5) coordinates the preparation of proposed rules and regulations relating to HRA programs, and coordinates HRA review and comment on other HEW regulations that may affect HRA programs; (6) initiates or reviews proposed program and administrative delegations of authority; (7) conducts and coordinates the HRA issuance management system; (8) conducts and coordinates the HRA records, reports, and forms management programs; (9) coordinates HRA and, as required, PHS responses to GAO and HEW program audit reports; (10) oversees and coordinates HRA implementation of legislation and directives relating to the privacy of records; (11) prepares and maintains the HRA Index of Policy Documents required to implement Freedom of Information legislation and directives; (12) conducts management studies and surveys; and (13) negotiates solutions to intra- and interagency problems and issues in such areas as organization, functions, delegations, and procedures.

Division of Financial Management (HRA52). (1) Collaborates with the Office of Planning, Evaluation, and Legislation in the development and implementation of the five-year program and financial plan; (2) develops policies and instructions for and coordinates the implementation of an Administration-wide budget system; (3) prepares budget submissions; (4) directs the Administration's accounting activities; (5) develops and manages a system for allocating funds within the Health Resources Administration and maintaining accounting records and controls; (6) participates in the development of policies and procedures concerning financial aspects of grants and negotiated research and development contracts; and (7) maintains liaison with the Office of the Assistant Secretary for Health, and the Office of the Secretary.

Division of Management Services (HRA53). (1) Plans, directs, and coordinates administrative management activities of the Office of the Administrator; (2) provides a full range of administrative support services for the Office of the Administrator, including personnel, materiel procurement and control, and space allocations; (3) develops and implements management policies, procedures, systems, and practices for the conduct of Office of the Administrator affairs; (4) serves as the focal point for liaison with the Office of the Assistant Secretary for Health and the Office of the Secretary on personnel, procurement, supply, space, and other management concerns of the Office of the Administrator; (5) organizes and manages the committee management system of the Administration; (6) plans, organizes, and directs the Executive Secretariat of the Administration, with primary responsibility for the control of written communications to and from the Administrator; and (7) provides centralized building and administrative support services for HRA components.

Division of Grants and Procurement Management (HRA54). (1) Provides leadership in the planning, development, and implementation of policies and procedures for grants and contracts; (2) exercises the sole responsibility within HRA for the management and award of contracts; (3) provides advice and consultation on interpretation and application of PHS and Departmental policies and procedures affecting contracts and grants management; (4) develops and issues policy and procedural materials for the Administration's contract and grant programs; (5) establishes standards and guides for and evaluates contracts and grants management operations through the Administration; (6) coordinates Administration positions and actions with respect to the audit of grants and contracts; (7) provides professional accounting advice relative to the management of contracts and grants; (8) maintains liaison, directly or through the Regional Health Administrators, with grantee institutions and organizations and with the Office of the Assistant Secretary for Health and other components of the Department; and (9) advises on and coordinates Administration-wide policies and procedures required to implement GSA and Departmental regulations governing materiel management, including transportation, motor vehicles, and utilization and disposal of personal property.

Division of Personnel Management (HRA55). (1) Provides personnel management advice and assistance to the Administrator and to managers and supervisors within its servicing area; (2) participates in the development of HRA goals and operating plans related to personnel management; (3) within its servicing area, provides personnel management and personnel administration services, including manpower planning and utilization, employment, recruitment, compensation and classification, executive and career development, upward mobility, labor relations, employee relations, and occupational health; (4) prepares staff studies and recommendations to HRA management on personnel needs and

problems; (5) identifies the need for personnel policies and programs to PHS and collaborates with PHS, as appropriate, in the development of such policies and programs; (6) develops and implements operating procedures and interprets policies to the extent necessary to meet the special needs of the Health Resources Administration in the application of PHS, DHEW, CSC, and other Government agency regulations; and (7) represents the Health Resources Administration in personnel management matters with PHS, DHEW, CSC, other Government agencies, professional societies, and colleges and universities.

Division of Operations (HRA56). (1) Develops and conducts an HRA operational workplan system, with emphasis on integrating HRA-wide and Bureau goals, objectives, and priorities, and coordinating and overseeing the development of program specifications and plans for the implementation of new or revised legislation; (2) coordinates the development of HRA's annual zero base budget (ZBB) submission; (3) serves as the focal point for HRA on the Department's operational planning system (OPS), with responsibility for managing the OPS for HRA, issuing instructions, coordinating and recommending objectives for tracking by the Administrator, the Office of the Assistant Secretary for Health (OASH), and the Office of the Secretary, advising the Administrator and HRA Bureau staff in the area of the OPS and on the management of specific objectives established for tracking under the system, and communicating with OASH on reports, accomplishments, and variances; (4) in coordination with OASH, serves as the principal HRA-wide focal point for interacting with the PHS Regional Offices, with responsibility for coordinating and monitoring Bureau activities in the regions, advising and making recommendations to the Administrator on policy, program planning, and resource allocations among the Regional Offices, and serving as liaison between the Administrator and the Regional Health Administrators; (5) in conjunction with the Office of Planning, Evaluation and Legislation, HRA, provides a focal point for liaison with other organizations and agencies with which HRA has program relationships, with particular reference to ensuring compatibility in policy formulation and program development and providing a formal channel to the Administrator for the resolution of interagency policy issues; (6) provides an HRA focus for ADP and information systems analysis, design, programming, and data maintenance to support HRA components in data use operations, the application of operations research methodology, and the development, implementation, and continued improvement of an HRA-wide management information system; (7) directs and participates in the formulation of HRA policies, standards, methods, and procedures for ADP and information system activities; and (8) provides liaison between HRA and OASH on ADP and information system matters.

Office of Planning, Evaluation, and Legislation (HRA6). Serves as the Administrator's principal advisor on long- and short-range goals for meeting the health resource needs of the Nation. Develops plans, establishes evaluative requirements, and designs legislative proposals to support Departmental goals. Specifically: (1) Assumes leadership in planning for the most effective use of HRA resources; (2) promotes evaluative and monitoring activities which will provide objective measurements of program performance and the total effectiveness of HRA efforts; (3) contributes to legislative analyses to assure the fullest possible consideration of programmatic requirements in meeting established Departmental and PHS goals; (4) as determined by the Administator, HRA, and in collaboration with the Division of Operations, Office of Operations and Management, maintains liaison, directly or through the Regional Health Administrators, with State or local health officials and with the private health sector to achieve common understanding and effective coordination; and (5) maintains surveillance of HRA data collection, research and development and other intelligence which contributes to policy analysis within the Office of the Assistant Secretary for Health and anticipates issues which may require Federal intervention.

Division of Evaluation (HRA61). (1) Develops and oversees the implementation of a system for the disciplined evaluation of HRA programs; (2) promotes throughout HRA an appreciation of the need for objective measurements of the results of all programs supported by grants and contracts; (3) works closely with relevant data and information gathering activities to enchance the quantification of evaluation studies; (4) reviews plans for evaluations of programs and projects with specific attention to the study design and appropriateness of HRA objectives; and (5) coordinates HRA's public-use reports clearance.

Division of Planning (HRA62). (1) Directs and coordinates HRA contributions to the Forward Planning document and its adaptation to budgetary processes; (2) reviews Bureau work plans and their impact on current or future planning and monitors their implementation; (3) coordinates interrelated Bureau activities which may influence programmatic planning; and (4) maintains surveillance over long-term analytic and research activities.

Division of Legislation (HRA63). (1) Maintains continuous review of legislation which affects the ativities of HRA; (2) prepares materials for testimony before Congressional committees; (3) assists in the interpretation of legislation; (4) coordinates HRA responses to Departmental and PHS legislative needs; (5) keeps HRA programs informed on legislative matters and provides analyses of pending bills and new laws; (6) promotes a rational approach to health legislation, identifying conflicts, gaps, or other barriers to the achievement of Departmental goals; (7) maintains current data on major changes in State laws which influence health resources, with particular attention to conflicts between Federal and State laws; (8) anticipates the need for data and analyses which may be demanded by Congressional or Departmental legislative interests; and (9) serves as liaison between HRA and the Office of the Assistant Secretary for Health on legislative matters.

BUREAU OF HEALTH MANPOWER (HRM)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health manpower. Specifically: (1) Assesses the Nation's health manpower supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization strategies; (2) collects and analyzes data and disseminates information on the characteristics and capacities of the Nation's health manpower production systems; (3) proposes new or modifications of existing Departmental legislation, policies, and programs related to health manpower development and utilization; (4) develops, tests, and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health education programs; (6) administers Federal programs for targeted manpower development and utilization; (7) provides technical assistance, consultation, and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health manpower; (8) provides linkage between Bureau headquarters and PHS Regional Office activities related to manpower education and utilization by providing training, technical assistance, and consultation to Regional Office Staff; (9) coordinates with the programs of other agencies within PHS, the Department, and in other Federal Departments and agencies concerned with health manpower development and health care services; (10) provides liaison and co-

ordinates with non-Federal organizations and agencies concened with health manpower development and utilizaton; and (11) in coordination with the Office of the Administrator, HRA, serves a focus for technical assistance activities in the international aspects of health manpower development, including the conduct of special international projects relevant to domestic health manpower problems.

Office of the Director (HRM1). (1) Directs and provides leadership to the national health manpower educational and development programs and activities; (2) provides policy guidance and staff direction to the Bureau; (3) maintains liaison with other Federal and non-Federal organizations and agencies with health manpower development interests and responsibilities; and (4) directs and coordinates Bureau programs in support of Equal Employment Opportunity.

Office of Program Support (HRM13). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities. Specifically: (1) Provides or acts as liaison for providing specialized services and consultation to the Bureau in the areas of administrative services, organization and management analysis, and correspondence control and records management; (2) directs, conducts, and coordinates the manpower management activities; (3) advises the Bureau Director on the allocation of the Bureau's personnel resources; (4) develops policies and procedures for internal Bureau requirements; (5) interprets and implements agency management policies, procedures and systems; (6) serves as the liaison with the financial management and personnel offices servicing the Bureau; (7) maintains liaison with the Office of the Administrator, HRA, on Bureau management and administrative support matters; and (8) provides administrative support services to the Office of the Bureau Director and staff Offices.

Office of Program Development (HRM14). Serves as the Bureau focal point for program planning, evaluation, legislation, health manpower analysis and program mangement information activities, including the development of program objectives, alternatives, and policy positions. Specifically: (1) Stimulates, guides, and coordinates planning, reporting, and evaluation activities of the Division and staff offices; (2) maintains liaison with Bureau staff and Office of the Administrator, HRA, counterparts in the planning, evaluation, and legislation areas; (3) provides staff services to the Bureau Director in Bureau planning activities; (4) conducts health manpower analysis and planning activities for the Bureau and the Health Resources Administration; (5) identifies and designates health manpower shortage areas and conducts research on the geographic distribution and maldistribution of health manpower; (6) provides staff services and coordinates activities pertaining to legislative policy development, interpretation, and implementation, including the development of legislative proposals, the analysis of pending legislation, liaison with other agencies, and distribution of legislative materials; (7) directs and assists Bureau-wide and individual Division efforts in the design and operation of program management information systems; (8) produces program management information and progress reports; and (9) provides direction to the development of professional education learning resources and conducts learning resources development activities.

Office of Program Operations (HRM15). Serves as the Bureau focal point for grants management, interpretation of grant and contract policy, and grant program operation, and for technical program management liaison with PHS Regional Offices on health manpower programs. Specifically: (1) Directs the implementation of health professions education legislation, including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (2) facilitates and coordinates communications, technical assistance, training, and consultation between regional and central office operations; (3) serves as liaison between Bureau programs and the Office of the Administrator, Health Resources Administration, and the Office of the Assistant Secretary for Health, with regard to PHS Regional Office interests; (4) conducts all business management aspects associated with the review, negotiation, award, and administration of bureau grant programs; (5) coordinates health professions contracts operations; (6) provides technical and administrative support for the National Advisory Council on Health Professions Education; (7) provides operations, management, and coordinative services for the health research and teaching facilities construction grants program and the construction loan guarantee and interest subsidy program; and (8) administers the District of Columbia Medical Manpower Act.

Division of Associated Health Professions (HRM2). Serves as a principal focus with regard to health manpower in the fields of optometry, pharmacy, podiatry, veterinary medicine, public health and allied health professions and occupations. Specifically: (1) Provides professional direction and leadership for planning, coordinating, evaluating, and supporting the development and utilization of health manpower resources in these fields; (2) supports and conducts programs with respect to the need, quality, development, utilization, credentialing, and distribution of such personnel; (3) supports and conducts programs of institutional support, student assistance, statistical studies, surveys, and evaluation studies, concerning the education and utilization of associated health professionals; (4) supports and conducts studies and demonstrations concerned with multidisciplinary and interdisciplinary health manpower development activities; (5) maintains liaison with Federal, State, local and other agencies, institutions and groups, and (6) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including other Federal agencies and the PHS Regional Offices.

Division of Dentistry (HRM3). Serves as a principal focus for dentistry with regard to dental education, practice, and manpower and service research. Specifically: (1) Provides the professional dental expertise and leadership required by the Bureau in carrying out its responsibilities for planning, coordinating, evaluating, and supporting development and utilization of the Nation's health manpower resources; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of dental personnel, including dentists, dental hygienists, expanded function auxiliaries, dental assistants, and dental technicians; (3) conducts and supports studies designed to improve the organization, financing, quality, environment, and capability of the Nation's dental delivery system; (4) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between individual members of the health care team, their tasks, educational requirements, and related training modalities; (5) maintains liaison with health professional groups and others, including consumers, having common interests in the Nation's capacity to deliver dental services; and (6) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including agencies of the Federal Government and PHS Regional Offices, on all aspects of dentistry relevant to the Division's functions.

Division of Medicine (HRM4). Serves as the principal focus with regard to education, practice, and research of medical manpower, with special emphasis on allopathic and osteopathic physicians, and closely associated assistants, particularly physician assistants. Specifically; (1) Provides professional expertise in the direction and leadership required by the Bureau for planning, coordinating, evaluating, and supporting development and utilization of the Nation's health manpwer for these professions; (2) supports and

conducts programs with respect to the need for and the development, use, credentialing, and distribution of such personnel; (3) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, and training modalities; (4) supports and encourages the planning, development, and operation of regionally integrated educational systems; (5) supports and conducts programs with respect to activities associated with the international migration, domestic training, and utilization of foreign medical graduates and U.S. citizens studying abroad; (6) maintains liaison with relevant health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver health services; and (7) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including PHS Regional Offices and other agencies of the Federal Government on all aspects of medical manpower relevant to the Division's functions.

Division of Nursing (HRM5). Serves as principal focus for nursing education, practice, and research. Specifically: (1) Provides the professional nursing expertise and leadership required by the Bureau in planning, coordinating, evaluating, and supporting development utilization of the Nation's health manpower resources; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of nursing personnel, including registered nurses, practical or vocational nurses, and nursing aides; (3) assists State and local areas in planning, developing, and improving nursing services and educational programs; (4) conducts and supports programs related to the provision of nursing care to advance the health status of individuals, families, and communities; (5) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between individual members of the health care team, their tasks, education requirements, and related training modalities; (6) maintains liaison with health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver nursing services; (7) fosters, supports, and conducts projects to expand the scientific base of nursing practice and role reformulation and to develop and incorporate new knowledge into practice and education; and (8) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including the PHS Regional Offices and other agencies of the Federal Government, on all aspects of nursing relevant to the Division's functions.

Division of Manpower Training Support (HRM6). Services as the Federal focal point for the Health Professions and Nursing Student Loan and Scholarship Program, the Physician Shortage Area Scholarship Program, the Public Health and National Service Corps Scholarship Training Program, Health Professions and Nurse Education Loan Repayment Program, and the Cuban Refugee Health Professions Loan Program. Specifically: (1) Directs and administers these student assistance programs; (2) develops and implements policies and operating and evaluation plans and procedures; (3) administers monitoring and evaluation activities; (4) provides guidance and technical assistance to Public Health Service staff in Regional Offices; (5) develops and conducts training activities for staff of educational institutions and Regional Offices; (6) operates financial services and maintains fiscal control; (7) maintains liaison with and provides assistance to program-related public and private professional organizations and institutions.

Bureau of Health Planning and Resources Development (HRP)

The Bureau of Health Planning and Resources Development (BHPRD), provides National leadership and administration of a program of Federal, State, and areawide health planning and health delivery systems development. To this end, the Bureau: (1) Facilities the creation and functioning of a nationwide network of local Health Systems Agencies (HSAs), responsible for preparing and implementing plans to increase the accessibility, acceptability, continuity, and quality of health services in the areas, and to restrain increases in the costs of the areas' health services; (2) provides for the designation, and supports the effective functioning, of State Health Planning and Development Agencies (SHPDAs), responsible for performing the State government's health planning, regulatory, and facilities development activities, including the provision of assistance and staff support to Statewise Health Coordinating Councils (ShCCs), which must coordinate HSA's plans and prepare State health plans; (3) administers a grant program of financial assistance for State and local health systems development activities; (4) provides technical and other nonfinancial assistance and support to the planning agencies by conducting studies and analyses of health planning, health resources, and health delivery systems development, engendering improved health planning approaches, methodologies, policies and standards, and establishing multidisciplinary centers for health planning; (5) focuses the use of resources (grants, loans, loan guarantees), for medical facilities construction on the highest priority needs and provides for the combined administration of the medical facilities construction program and health planning and health delivery systems developmental programs; (6) reviews grantee institutions to assure and enforce compliance with the requirements applicable to the receipt of assistance under the facilities construction and modernization portions of the program; (7) develops and applies performance standards, guidelines, and criteria for governing the structure, operation, and performance of the Health Systems Agencies and State agencies; and (8) coordinates Bureau activities with other components of HRA, the Office of the Assistant Secretary for Health (OASH), with the programs of PHS Agencies and other operating components within the Department and with other Federal, State, and local agencies and groups concerned with health planning, health resources, and health delivery systems development.

Office of the Director (HRP1). Provides overall executive management of the Bureau's activities. Specifically: (1) Plans, directs, administers, coordinates, and evaluates the total scope and direction of the National Health Planning and Resources Development Program in accord with the requirements of Titles XV and XVI of the Public Health Service Act as amended; (2) serves as advisor to, and coordinates the Bureau's activities with, other Administration organizational elements, other Federal organizations within and outside the Department, State and local bodies, and professional and scientific organizations, on matters pertaining to the planning and development of health delivery systems; (3) in consultation with the Office of the Adminstrator, HRA and the Office of the Assistant Secretary for Health, provides guidance to the PHS Regional Offices in the development of work plans that are responsive to the Bureau's program needs; (4) during the implementation of the agreed upon work plans, provides program assistance to the Regional Office personnel who execute the Bureau's responsibilities and conduct and assist in developing the Bureau's program; (5) coordinates technical assistance strategy and practice for the Bureau; (6) functions as the Bureau focal point for the coordination of Bureau activities with other relevant Federal health programs and organized non-Federal health interests; (7) develops, applies, and implements the Bureau's civil rights plan in accordance with guidelines established by OASH and the Department; (8) provides, through the Office of Communications, HRA, in-

formation about the Bureau's program to the general public, health professions organizations, and other interested groups; (9) directs and coordinates Bureau activities in support of Equal Employment Opportunity; (10) represents the Bureau in meeting with concerned public orgaizations, provider organizations, and consumer groups; and (11) maintains Bureau central files, and provides for timely and effective Bureau response to outside inquiries.

Office of Policy Coordination (HRP11). (1) Coordinates and oversees the development and clearance of Bureau policies and procedures, and coordinates the preparation, dissemination, and control of formal Bureau policy issuances; (2) manages the Bureau's participation in the preparation of regulations; (3) insures that Bureau program policies and operating procedures are consistent with general DHEW, PHS, HRA, and other Federal policies and requirements; (4) assures that Bureau personnel are kept informed of policies; (5) provides Bureau liaison with the Office of the General Counsel, interacting with the Office of the Adminstrator (HRA) as required; (6) maintains continual and routine contact with PHS Regional Office program staff on policy matters; and (7) establishes and maintains working relationships with various national associations such as the National Governors Conference and the National Conference of State Legislatures in order to solicit views and keep such groups informed of evolving Bureau regulations and policy.

Office of Planning, Evaluation, and Legislation (HRP12). Develops plans, establishes evaluation requirements, and drafts legislative proposals to support Administration goals. To these ends: (1) Provides leadershiip in planning for the long-range development of the Bureau's mission and programs; (2) promotes evaluation and monitoring activities which will provide objective measurements of program performance and the total effectiveness of agency efforts; and (3) analyzes Federal and State legislation to assure the fullest possible consideration of programmatic requirements in meeting established Departmental, PHS, and HRA goals.

Office of Program Support (HRP14). Plans, directs, and evaluates the adminstrative management support activities of the Bureau, and provides or acquires requisite management services and resources for the Bureau. Specifically: (1) In cooperation with the Division of Personnel Management, HRA, provides or coordinates the acquisition of personnel services for the Bureau; (2) performs the grants management functions of the Bureau in cooperation with the Division of Grants and Procurement Management, HRA; (3) plans, directs, and coordinates the Bureau's property management and procurement programs; (4) conducts organization and management surveys and develops necessary systems and controls to maintain and further the organization and management practices of the Bureau; (5) serves as the initial source within the Bureau for information regarding personnel policy and practices; (6) in cooperation with the Division of Financial Management, HRA, provides financial guidance to Bureau program managers in the operation of the Bureau's financial management system, including program policy interpretation in budget formulation and execution, and preparation of program planning and budgetary support data; (7) serves as the focal point for the formulation of Bureau ADP policy and for the planning, development, and evaluation of ADP systems; (8) develops procedures for and maintains the Bureau's forms, records, and reports management systems; (9) coordinates Bureau activities in management planning and management analysis; (10) conducts specific programs to improve Bureau management techniques, systems, and practices; (11) develops, manages, and operates the Bureau's information systems; (12) participates with the Bureau's Office of Planning, Evaluation, and Legislation in program and legislative planning to assure recognition of management and resource concerns; and (13) maintains close liaison with the Office of Operations and Managemnt, HRA, and with other governmental agencies and outside groups.

Division of Health Planning (HRP6). (1) Directs Bureau activities which support the development and maintenance of integrated health planning (including facilities planning) processes in States and health service areas; (2) facilitates the development of effective and well managed Health Systems Agencies (HSAs), State Health Planning and Development Agencies (SHPDAs), and Statewide Health Coordinating Councils (SHCCs) by providing technical assistance related to health planning responsibilities; (3) develops and oversees a program of periodic assessment of agency performance; (4) serves as a clearinghouse within DHEW, PHS, HRA, and the Bureau for the cataloging and disseminating of published and unpublished books, articles, and other writings related to health planning; (5) works in conjunction with the Division of Regulatory Activities in developing procedures for periodic review by HSAs and SHPDAs of institutional health services; (6) serves as the National focal point for the development and dissemination of planning approaches and methodologies for use by State and local agencies and concerned parties in planning and developing health delivery systems to meet the public need; (7) reviews, on a continuing basis, the appropriations of the designated health service areas; and (8) coordinates Division activities closely with: other components of the Department and especially with the OASH Office of Health Policy, Research and Statistics, and its National Center for Health Statistics (NCHS) and National Center for Health Services Research (NCHSR); and with the Bureau of Health Manpower, HRA, in the development of methodologies for plan development and data collection.

Division of Resources Development (HRP7). Serves as the Bureau focal point for PHS guidance and direction of Title VI and XVI resources development activities, including standardsetting for the construction, modernization, and conversion of medical care facilities and the use of Area Health Service Development funds. Speccifically: (1) Prepares, in concert with the Division of Health Planning, guidance and direction of the development of State Medical Facilities Plans to assure proper emphasis on the distribution of medical facilities and services in accord with need; (2) coordinates feasibility reviews and project approval requirements of Section 242 of the National Housing Act and carries comparable responsibilities for direct project programs, including loans and loan guarantees administered by DHEW; (3) maintains liaison with DHEW, PHS, and other Federal departments and agencies regarding development of health resources policies and guidelines; (4) participates in analyses, studies, and testing of data, formulae, and projections concerning the development and maintenance of health care facilities and their programs of technical and financial support; (5) develops and directs the implementation of policies, criteria, and procedures related to applications for and the allocation and utilization of Area Health Service Development Funds; (6) coordinates its activities with programs within the Bureau, HRA, PHS, DHEW, and other agencies and groups concerned with health care facilities; (7) develops initiatives for health planning involvement in such programs as rural health care, community health services, emergency medical services, long-term care, health maintenance organizations, and health manpower; (8) interacts closely with members of the banking industry, construction industry, and facility groups (AHA, FHA) in the management of the resource development program; (9) develops criteria and operating methodologies for the review and approval of projects funded under Section 1625 of P.L. 93-641; (10) conducts to completion the residual resources development activities required be-

cause of the phaseout of Regional Medical Program projects; and (11) develops and maintains regulations, guidelines, and criteria for review and enforcement of institutional compliance with required assurances applicable to receipt of assistance under Title XVI of the PHS Act, with special emphasis on compliance with the assurances of reasonable volume of free care and availability of services to the community.

Division of Regulatory Activities (HRP5). Functions as the focal point for all regulatory activities of Health Systems Agencies and State Agencies. Specifically: (1) Creates and maintains standards for Certificate of Need and Section 1122 agreements; (2) prepares or modifies criteria and guidelines for review and approval activities; (3) serves as the Bureau's consultative resource regarding review practices, standards, and utilization; (4) collaborates with the Division of Health Planning in program priority setting and suggests needed planning research by relaying trends and indicators revealed through analysis of review and approval activities; (5) develops programmatic guides for the regulatory activities of grantee agencies; (6) interprets regulatory policy for PHS Regional Office staff and grantee agencies, PHS agencies and other operating components within the Department, other Federal departments and agencies, and the public; (7) cooperates with PHS agencies and other operating components of the Department and with other Federal departments and agencies in the development and operation of enforcement mechanisms for regulation; (8) researches and assesses public and private regulatory programs outside the health field to learn of innovative and effective methodologies which might be applied to health planning and resources development; (9) prepares and revises monitoring criteria for regulatory assessment and evaluation for use by the Division of Health Planning; (10) serves as the Bureau's major liaison with the Social Security Administration/Office of Research and Statistics in regard to the provisions of Section 1526 of Pub. L. 93-641; (11) participates in executive staff considerations of policy or program changes which impact on regulatory activities; and (12) suggests State and Federal legislative actions which will further the attainment of regulatory goals.

Sec. HR-C Order of Succession. During the absence or disability of the Administrator or in the event of a vacancy in that office, the first official listed blow who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession:

(1) Deputy Administrator.

(2) Associate Administrator for Operations and Management.

(3) Director, Bureau of Health Manpower.

(4) Director, Bureau of Health Planning and Resources Development.

Change *Sec. 7-D Delegations of Authority* to read *Section HR-D, Delegations of Authority.*

The Administrator shall continue to exercise, pending further redelegation, all the authorities delegated to him by the Assistant Secretary for Health, effective July 1, 1973 (38 FR 18260, July 9, 1973) and other authorities subsequently delegated to him by the Assistant Secretary for Health and the Executive Officer, PHS, except for those authorities pertaining to the functions assigned to NCHS and NCHSR. All delegations and redelegations of authorities to officers or employees of HRA, including those assigned to NCHSR, which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors, pending further redelegation.

HEALTH SERVICES ADMINISTRATION

Under part H, chapter HS (Health Services Administration), *Sec. HS-B Organization and Functions* is amended as follows:

Under the heading entitled "Bureau of Medical Services (HSM)," delete the statement entitled "Division of Health Maintenance Organizations (HSMC)" in its entirety.

Change *Sec. 3-D Delegations of Authority* to read *Sec. HS-D, Delegations of Authority.*

The Administrator shall continue to exercise all the authorities delegated to him by the Assistant Secretary for Health, effective July 1, 1973 (38 FR 18260, July 9, 1973) and other authorities subsequently delegated to him by the Assistant Secretary for Health and the Executive Officer, Public Health Service, except for those authorities pertaining to the functions assigned to the Division of Health Maintenance Organizations, Bureau of Medical Services.

All delegations and redelegations of authorities to officers and employees of HSA, including those assigned to the Division of Health Maintenance Organizations, Bureau of Medical Services, which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors, pending further redelegation.

Dated: November 19, 1977.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 77-34612 Filed 12-1-77; 8:45 am]

[4310-70]

DEPARTMENT OF THE INTERIOR

National Park Service

FATHER MARQUETTE NATIONAL MEMORIAL, MICH.

Designation

Notice is given, pursuant to section 2 of the Act of December 20, 1975 (89 Stat. 848 16 U.S.C. 431 Note) that there has been acquired within the boundaries of the Father Marquette Unit of the Straits State Park near St. Ignace, Mich., an acreage which is efficiently administrable for the purpose of said Act, and that the Governor of Michigan and I have entered into an agreement, satisfactory to me, providing for the location, design, construction and operation by the State of Michigan of said Father Marquette Unit of the Straits State Park as the Father Marquette National Memorial. Therefore Father Marquette National Memorial is hereby designated.

Dated: November 21, 1977.

CECIL D. ANDRUS,
Secretary of the Interior.

[FR Doc. 34567 Filed 12-1-77; 8:45 am]

[4310-70]

MID-ATLANTIC REGIONAL ADVISORY COMMITTEE

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mid-Atlantic Regional Advisory Committee will be held at 10 a.m., e.s.t., on December 19-20, 1977, at Valley Forge National Historical Park, at Valley Forge, Pa.

The Committee was established pursuant to Pub. L. 91-383 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on programs and problems pertinent to the Mid-Atlantic Region of the National Park Service.

The members of the Committee are as follows:

Mr. Hyman J. Cohen
Mrs. Beverly B. Fluty
Mrs. Otto F. Haas
Dr. M. Graham Netting
Mr. Meade Palmer
Mrs. A. St. Clair Wright

The matters to be discussed at this meeting include:

Consideration and advice on two memorial proposals at Valley Forge.
Review of Statement of Management for Valley Forge, Assateague, including horse use, and Management Plan for Delaware Water Gap.
Update of legislative actions on New River, Appalachian Trail, and National Heritage proposal.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Committee a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact George A. Palmer, Special Assistant to the Regional Director, Mid-Atlantic Regional Office at 215-597-7015. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pa. 19106.

Dated: November 29, 1977.

ROBERT M. LANDAU,
Assistant for Advisory Boards and Commissions, National Park Service.

[FR Doc. 77-34566 Filed 12-1-77; 8:45 am]

[4310-70]

MUIR WOODS NATIONAL MONUMENT, CALIF.

Designation of Boundary

Section 301 and 302 of the Act of April 11, 1972 (86 Stat. 121), authorizes a revision of the boundaries of the Muir Woods National Monument in California to add approximately 49.7 acres to this area, which previously comprised 502.90 acres. The Act provided that the revision was to become effective upon publication in the FEDERAL REGISTER of a map or other description of the lands so added.

Notice is given that the boundaries of the Muir Woods National Monument, Calif., have been revised, pursuant to the above act, to include altogether, the lands (approximately 552.6 acres) depicted on boundary map numbered 112-92,000, dated April 11, 1972, consisting of 3 sheets, prepared by the Denver Service of the National Park Service. This map is on file and available for inspection in the Office of the Superintendent of the Muir Woods National Monument, Mill Valley, Calif. 94941, and in the office of the National Park Service, Department of the Interior, Washington, D.C. 20240.

Dated: November 25, 1977.

WILLIAM J. WHALEN,
Director, National Park Service.

[FR Doc. 77-34565 Filed 12-1-77; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 76-45]

IN THE MATTER OF LINCOLN ERAMO, M.D.

Permission To Retain DEA Registration

On July 27, 1977, a hearing was held before Administrative Law Judge Francis L. Young on the issues raised by an order to show cause directed to Lincoln Eramo, M.D., as to why his DEA registration AE12186456 should not be revoked.

The order to show cause was based on the conviction, on October 27, 1976, of Dr. Eramo in the Superior Court of the Commonwealth of Massachusetts for the County of Berkshire on three counts of violating sections 19 and 32 of chapter 94C, general laws of Massachusetts. These counts, all felonies, charged Dr. Eramo with prescribing controlled substances "not for legitimate medical purpose nor in the course of professional practice." It is an essential element of the violation charged that an order purporting to be a prescription must be issued "not in the usual course of professional treatment."

The Administrative Law Judge concluded as a matter of law that "there is a lawful basis for revoking Respondent's DEA registration since he was convicted of three felony violations relating to controlled substances." He also concluded as a matter of law that "the record does not show by a preponderance of the evidence nor by clear and convincing evidence that Respondent was guilty of writing prescriptions for controlled substances without having a legitimate medical purpose."

It is implicit in these two conclusions of law that in the opinion of the Administrative Law Judge, a duly constituted criminal court of the Commonwealth of Massachusetts has erred in finding Dr. Eramo guilty without proof beyond a reasonable doubt of an essential element of the offense charged. For that reason the Administrative Law Judge recommends to the Administrator that Dr. Eramo's registration not be revoked.

It was stated in *In The Matter of Rosenberg*, 40 FR 4024, Vol. 18, that "it cannot be the function of an administrative hearing to review the correctness of the verdict in a criminal case upon which an order to show cause is based. Neither an administrative law judge nor an administrator is authorized to act as an appellate tribunal." The Administrator reaffirms that holding and, therefore, must find that as to the three counts on which Dr. Eramo was convicted each element of the offenses charged has been proved beyond a reasonable doubt. The Administrative Law Judge's conclusion that the Respondent was not guilty of writing prescriptions for controlled substances without having a legitimate medical purpose cannot be accepted.

The issues raised by this matter require that the Administrator set forth his position on the functions of, and the limitations on, an administrative hearing arising out of an order to show cause predicated on a drug-related felony conviction of a practitioner.

Title 21, United States Code, section 824, provides in pertinent part that an administrator "may" suspend or revoke a practitioner's registration on a finding that the practitioner has been convicted of a drug-related felony. Since the word "may" gives an administrator the option to revoke or not, it is the principle function of a hearing to provide information sufficient for an administrator to determine the course to follow. A second function of the hearing is to assist the administrator through the recommendation of an administrative law judge as to the action deemed appropriate by the judge. This recommendation is entitled to the highest respect and fullest consideration.

The administrative hearing is not a trial de novo since, as set forth in *Rosenberg*, once the fact of a drug-related felony conviction has been established at a hearing each element of the offenses charged at trial has been proved beyond a reasonable doubt. The government sustains its burden when it established the fact of the conviction. It is not incumbent on the government to prove anew or to sustain, by expert witnesses or otherwise, any issue already decided at the trial level.

This is not to say that the government is limited to proving that there has been a conviction. The nature of the offense committed, the circumstances under which it took place, the character and past history of the respondent, the extent of the danger to the public health and safety arising from the respondent's conduct are examples of the information which the government may introduce to assist the administrator properly to exercise his discretionary authority.

The respondent in an administrative hearing based on his conviction of a drug related felony will be in one of the following three positions at the time of the hearing:

First: The respondent will have appealed his conviction to an appropriate appellate tribunal and had his conviction affirmed.

Second: The respondent will have appealed his conviction to an appropriate appellate tribunal and be awaiting the outcome of that appeal.

Third: The respondent will have decided not to appeal.

In the first two positions in which the respondent has elected to appeal, the administrator must conclude that the respondent has raised every issue of law and fact which, in the respondent's view, could convince the appellate tribunal that his conviction should be reversed. Such issues as entrapment, unlawful search and seizure, errors by the prosecutor or trial judge, or failure of the prosecution to prove an essential element of an offense must conclusively be presumed to have been presented by the respondent or deemed by him not worthy of presentation. These issues cannot be relitigated in the context of an administrative hearing.

Where the respondent has not appealed, it is conclusively presumed that he has reviewed his options and decided that an appeal was not in his best interest. The issues he might have raised must be deemed waived since they were not brought in the appellate tribunal designated and qualified to consider them. These issues cannot be litigated in the context of an administrative hearing.

A respondent at an administrative hearing based on his criminal conviction has no substantive right to a DEA registration. He must show cause why, despite his conviction, he should be permitted to handle narcotics and dangerous drugs. To that end he can argue in mitigation or set forth extenuating circumstances. He can offer evidence to demonstrate his good character, his services to the community, his prior good record, the likelihood that he will not repeat the activity for which he was previously convicted. Administrators have not in the past imposed the full range of administrative sanctions when such evidence was compelling. See *In The Matter of Rosenberg* (supra), *In The Matter of Patrick Lorey*, 39 FR 4933, *In The Matter of Amaury V. Fuentes, M.D.*, 42 FR 10349.

Evidence of this type was presented at Dr. Eramo's administrative hearing. As the Administrative Law Judge concluded as a finding of fact:

> The Respondent, Lincoln Eramo, is a duly licensed physician under the laws of the Commonwealth of Massachusetts, and as such is the holder of Drug Enforcement Administration Registration AE12186456. He has practiced medicine for 32 years, 29 of them in the Pittsfield, Mass. area. He is on the staff of Hillcrest Hospital and Berkshire Medical Center, the two hospitals in Pittsfield. He has been the Chief of General Practice at both Berkshire Medical Center and Hillcrest Hospital and the Chief of Out-Patient Clinics for Berkshire Medical Center. He is presently physician for the Berkshire County Jail and has held that position for twenty-three years. He is a busy general practitioner who treats children and adults alike at his office, together with making house calls, and performing his duties at the hospitals and the jail. His office hours are listed as being 1 to 4 but he sees people until he finishes. He does not make appointments and people are treated on a first come first serve basis.

This information, not disputed by the government, demonstrates that Dr. Eramo has in the past served the public interest as a physician. Whether, in view of his criminal conduct, he can be relied on to continue serving the public interest in the future, is the central question.

Fortunately, the Administrator has been assisted in reaching a decision by the trial judge in Dr. Eramo's criminal case. The trial judge declined to sentence Dr. Eramo to prison thus indicating his belief that the doctor did not represent an unacceptable risk to the public health and safety. More than that, the trial judge, himself, considered the issue of what limits should be placed on Dr. Eramo's authority to prescribe drugs and ruled that the doctor could not write any prescriptions for six months.

Having reviewed the entire record in this matter and having considered in particular the Administrative Law Judge's summary of Dr. Eramo's past public service and the sentence decided upon by the trial judge, the Administrator is satisfied that it would be in the future public interest to permit Dr. Eramo to retain his DEA registration.

Accordingly, under the authority vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act and redelegated to the Administrator of the Drug Enforcement Administration, it is ordered that Dr. Eramo be permitted to retain his DEA registration numbered AE12186456.

Dated: November 29, 1977.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 77-34703 Filed 12-2-77; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Notice of Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is caculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 28th day of November 1977.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING NOVEMBER 25, 1977

Name of applicant and location of enterprise	Principal product or activity
Seaboard Tractor & Equipment Corp., Bridgwater, N.J.	Sales of industrial and farm equipment.
Ward LaFrance Truck Corp., Elmira Heights, N.Y.	Manufacture of heavy firefighting equipment and special purpose vehicles.
Burton Enterprises of Pennsylvania, Inc., Paxinos, Pa.	Manufacture of doors and windows.
Historic Michie Tavern, Albemarle County, Va.	Develop tourist attraction.
Rock Hall Builders, Inc., Rock Hall, Md.	Fabrication of panels for apartments and houses.
Boyce Steel, Inc., Kingston Springs, Tenn.	Fabrication of miscellaneous steel products.
Lee-Boy Manufacturing Co., Inc., Mecklenburg County, N.C.	Manufacture of asphalt paving equipment.
Shell Patterns, Inc., Plymouth, Wis.	Point of purchase displays.
Dunbar Furniture Co., Berne, Ind.	Sales and custom making of furniture.
Sagebrush Inn, Taos, N. Mex.	Lodging restaurant and lounge.
AMCO Inc., Malden, Mo.	Manufacture of cellulose insulation.
Hil-Cres Inn, Mountain Grove, Mo.	Motel.
Mountain Grove Industrial Development Corp., Mountain Grove, Mo.	Nursing service.
Butler County Convalescent Center Inc., Poplar Bluff, Mo.	Leasing long-term medical care facilities.
Courtright Irrigation Service, Inc., La Grande, Oreg.	Sales of agricultural equipment.
Jenko Inc., Merino, Colo.	Agribusiness sales and services.
Transac Inc., Wasilla, Alaska.	Rental of commercial office space.
K2 Corp., Vashon, Wash.	Manufacture of snow skis and backpacking products.

[FR Doc. 77-34369 Filed 12-1-77; 8:45 am]

[4510-30]

Employment and Training Administration

FEDERAL COMMITTEE ON APPRENTICESHIP

Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship will conduct an open meeting on Monday, December 19, from 9 a.m.-4:30 p.m.; Tuesday, December 20, 1977, from 9 a.m. to 12 noon at the Department of Labor Building, Room N-4437 (A-D), 200 Constitution Avenue NW., Washington, D.C.

The agenda for the meeting on December 19 will include:

1. Swearing in of new members.

2. Remarks by Gerald G. Somers, Chairperson, FCA.

(a) Overview of FCA operations and objectives.

(b) Review of agenda.

3. General discussion on apprenticeship legislation.

4. Report on 29 CFR 30, equal employment in apprenticeship programs.

5. 40th anniversary of the National Apprenticeship Act (report).

6. Youth programs and their relationship to apprenticeship.

7. BAT film on "The Apprentice"—(Produced by the Employment and Training Administration TV Studio).

8. Office of National Programs, Employment, and Training Administration.

9. Report on quarterly BAT/SAC/NASTAD liaison meeting.

The agenda for the meeting on December 20 will cover:

1. Research Developments in apprenticeship.

2. Follow-up report to the Secretary on the twelfth meeting of the FCA.

3. Report on feasibility study on "One-step Supermarket" of apprenticeship programs.

Agenda is subject to change due to time constrains and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views, or arguments pertaining to the agenda may do so by furnishing it to the Executive Secretary at any time prior to the meeting. Thirty copies are needed for the members and for the inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate in a written statement, also the nature of intended presentation and amount of time needed. The Chairman will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary should be addressed as follows:

Mrs. M. M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D Street NW., Room 5434, Washington, D.C. 20213.

Signed at Washington, D.C., this 23d day of November 1977.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training Administration.

[FR Doc. 77-34648 Filed 12-1-77; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR TWO-YEAR COLLEGE SCIENCE EDUCATION NEEDS ASSESSMENT

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Advisory Committee for Two-Year College Science Education Needs Assessment is necessary, appropriate, and in the public interest in connection with the performance of the duties imposed upon the Director, National Science Foundation (NSF) by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, pursuant to the Federal Advisory Committee Act and OMB Circular No. A-63, Revised.

Name of committee: Advisory Committee for the Two-Year College Science Education Needs Assessment.

Purpose: To provide increased understanding of the unique role of the two-year colleges in science education.

Effective date of establishment and duration: The establishment of the Committee is effective upon filing the charter with the Director, NSF, and the standing committees of Congress having legislative jurisdiction of the NSF. The Committee will operate until the local and national needs assessment is completed but in any event, not to exceed two years.

Membership: Membership of the Committee shall be fairly balanced in the terms of the point of view represented and the Committee's functions. Membership will consist of approximately 10 persons chosen to ensure an appropriately balanced representation of the scientific disciplines, of the various types of two-year institutions of higher education, of the sexes, of minorities and of the geographic regions of the United States.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463); NSF policy and procedures, OMB Circular No. A-63, Revised, and other directives and instructions issued in implementation of the Act.

RICHARD C. ATKINSON,
Director.

NOVEMBER 29, 1977.

[FR Doc 77-34611 Filed 12-1-77; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON ARCHITECT/ENGINEER BALANCE OF PLANT

Meeting

The ACRS Subcommittee on Architect/Engineer Balance of Plant will

hold an open meeting on December 21, 1977 in Room 1046, 1717 H Street NW., Washington, D.C. 20555, to review the Stone and Webster Standard Safety Analysis Report, SWESSAR-P1, as it is related to the Babcock and Wilcox Standard Nuclear Steam Supply System, BSAR-205.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff.

The agenda for subject meeting shall be as follows: Wednesday, December 21, 1977, 8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, Stone and Webster Engineering Corp., and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. John C. McKinley, telephone 202-634-1371 between 8:15 a.m. and 5 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Dated: November 28, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 77-34557 Filed 12-1-77; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS (ECCS)

Meeting

The ACRS Subcommittee on Emergency Core Cooling will hold an open meeting on December 19, 1977 in room 1046, 1717 H St., NW., Washington, D.C. 20555, to discuss Standard Problem No. 7; the Status of Proposed Revisions to Appendix K, 10 CFR Part 50.46; and the ECCS Evaluation Model of Westinghouse Two-Loop Reactors.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff.

The agenda for subject meeting shall be as follows:

Monday, December 19, 1977, 8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff and their consultants pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Thomas G. McCreless, telephone 202-634-1374 between 8:15 a.m. and 5 p.m., EST.

Dated: November 28, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 77-34544 Filed 12-1-77; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS: WORKING GROUP ON ANTICIPATED TRANSIENTS WITHOUT SCRAM

Meeting

The ACRS Working Group on Anticipated Transients Without Scram will hold an open meeting on December 20, 1977 in Room 1046, 1717 H St. NW., Washington, D.C. 20555, to discuss various issues pertaining to anticipated transients during reactor operations that might take place without the occurrence of reactor scram.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and Staff.

The agenda for subject meeting shall be as follows: Tuesday, December 20, 1977, 8:30 a.m. until the conclusion of business.

The Working Group may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Working Group will hear presentations by and hold discussions with representatives of the NRC Staff and their consultants pertinent to the above topics. The Working Group may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether additional meetings of the Working Group will be required.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Thomas G. McCreless telephone 202-634-1374 between 8:15 a.m. and 5 p.m., EST.

Dated: November 28, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 77-34556 Filed 12-1-77; 8:45 am]

[8120-01]

[Docket Nos. STN 50-566 and STN 50-567]

TENNESSEE VALLEY AUTHORITY

Availability of Final Environmental Statement for the Yellow Creek Nuclear Plant, Units 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the Final Environmental Statement prepared by the Commission's Office of Nuclear Reactor Regulation, related to the proposed construction of the Yellow Creek Nuclear Plant, Units 1 and 2, to be located in Tishomingo County, Miss., is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. and in the Corinth Public Library, 1023 Fillmore Street, Corinth, Miss. The Final Environmental Statement is also being made available at the Mississippi Clearinghouse, Planning and Coordination, 503 Walter Sillers Building, 510 George Street, Jackson, Miss., and at the Northeast Mississippi Planning and Development District, P.O. Drawer 6-D, Booneville, Miss.

The notice of availability of the Draft Environmental Statement for the Yellow Creek Nuclear Plant, Units 1 and 2, and requests for comments from interested persons was published in the FEDERAL REGISTER on July 5, 1977 (42 FR 34396). The comments received from Federal, State, and local agencies and interested members of the public have been included as appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (Document No. NUREG-0365) may be purchased, at $11.75 for printed copies and $3 for microfiche, from the National Technical Information Service, Springfield, Va. 22161.

Dated at Bethesda, Md., this 28th day of November 1977.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 77-34558 Filed 12-1-77; 8:45 am]

[77-34545]

[Docket No. 50-271, etc.]

VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), ET AL.

Order

NOVEMBER 28, 1977.

The appeals taken by the New England Coalition on Nuclear Pollution (Coalition) and the Minnesota Pollution Control Agency (MPCA) from, respectively, the August 30, 1977 (*Vermont Yankee*) and August 12, 1977 (*Prairie Island*) initial decisions of Licensing Boards in these operating license amendment proceedings are hereby consolidated for purposes of oral argument.[1] The argument will be held at 9:30 a.m. on Thursday, December 15, 1977 in the Nuclear Regulatory Commission's Public Hearing Room, 5th floor, East-West Towers, 4350 East-West Highway, Bethesda, Md.

The Coalition and MPCA are allotted a total of 90 minutes for the presentation of argument, to be divided equally between them unless they should agree otherwise. The licensees in the two proceedings and the NRC staff are likewise allotted a total of 90 minutes, to be divided equally among them unless they should agree otherwise.

Each party shall notify the Secretary to this Board, by letter mailed no later than December 9, 1977, of the name of the counsel who will present argument on its behalf.

It is so ordered.

For the Atomic Safety and Licensing Appeal Board.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc. 77-34545 Filed 12-1-77; 8:45 am]

[1] The licensee in the *Prairie Island* proceeding has likewise taken an appeal. We have determined, however, that the issues presented by that appeal do not warrant oral argument.

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10027]

MONEY MARKET MANAGEMENT, INC., ET AL.

Notice and Order of Temporary Exemptions, Pursuant to Section 6(c) of the Act, From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

NOVEMBER 28, 1977.

In the matters of Money Market Management, Inc. and Trust For Short-Term U.S. Government Securities, 421 Seventh Avenue, Pittsburgh, Pa. 15219, 812-4177; Temporary Investment Fund, Inc. and Trust For Short-Term Federal Securities, 1730 Pennsylvania Avenue NW., Washington, D.C. 20006, 812-4173; Scudder Cash Investment Trust, 175 Federal Street, Boston, Mass. 02110, 812-4200; Daily Income Fund, Inc., 230 Park Avenue, New York, N.Y. 10017, 812-4217; White Weld Money Market Fund, Inc. and White Weld Government Fund, Inc., 100 Federal Street, Boston, Mass. 02110, 812-4213; Institutional Liquid Assets, Inc., 8700 Sears Tower, Chicago, Ill. 60606, 812-4208; and Fund For Government Investors, Inc., 1735 K Street NW., Washington, D.C. 20006, 812-4216.

On May 31, 1977, the Commission issued an interpretation (Investment Company Act Release No. 9786) ("Release") of section 2(a)(41) of the Investment Company Act of 1940 ("Act") and Rule 2a-4 thereunder which, among other things, stated the Commission's views that: (1) it is inconsistent generally with the provisions of section 2(a)(41) of the Act and Rule 2a-4 thereunder for "money market" funds to value their assets on an amortized cost basis, ignoring market factors; (2) it is inconsistent with the provisions of Rule 2a-4 for such funds to "round off" calculations of their net asset values per share to the nearest one cent on a share value of $1; and (3) such funds should comply with the foregoing not later than November 30, 1977.

Several "money market" funds have applied to the Commission, pursuant to section 6(c) of the Act, for exemptive orders, to the extent those orders might be necessary, either to permit them to value their assets on an amortized cost basis, or to permit them to calculate their net asset values to the nearest one cent on a $1 share.

On October 21, 1977, the Commission issued a notice of the filing of such an application by Money Market Management, Inc., et al. (Investment Company Act Release No. 9967, October 21, 1977). Subsequently, notices of other such applications were issued, pursuant to delegated authority, as follows: (1) Temporary Investment Fund, Inc., et al. (Investment Company Act Release No. 9983, November 1, 1977); (2) Scudder Cash Investment Trust (Investment Company Act Release No. 9992, November 4, 1977); (3) Daily Income Fund, Inc. (Investment Company Act Release No. 9998, November 8, 1977); (4) White Weld Money Market Fund, Inc., et al. (Investment Company Act Release No. 9999, November 8, 1977); (5) Institutional Liquid Assets, Inc. (Investment Company Act Release No. 10000, November 8, 1977); and (6) Fund for Government Investors, Inc. (Investment Company Act Release No. 10007, November 10, 1977). All of the aforemen-

tioned applications request exemptions from the provisions of section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to permit them to value their assets on an amortized cost basis, with the exception of Temporary Investment Fund, Inc., et al., which seek an exemption from Rule 2a-4 to permit them to calculate their net asset values per share to the nearest one cent. Collectively, the applicants in the matters herein, captioned above, are referred to below as "Applicants."

In each case, Applicants have agreed that the orders they request might be made subject to certain conditions set forth in their respective applications and summarized in the notices thereof.

The aforementioned notices gave interested persons an opportunity to request a hearing on the respective matters and stated, in each case, that an order disposing of that application would be issued as of course (following expiration of the various periods specified in the notices) unless the Commission should thereafter order a hearing thereon, either upon request or upon the Commission's own motion. In the case of the applications of Daily Income Fund, Inc., Institutional Liquid Assets, Inc., White Weld Money Market Fund, Inc., et al., and Fund for Government Investors, Inc., the aforementioned notice periods have not, as of the date of this notice and order, expired. Interested persons may, however, submit requests for hearing on those matters within the time periods specified in their respective notices.

Certain communications have been received by the Commission which raise questions as to whether hearings should be ordered in these matters. Pursuant to Rule 0-5 promulgated under the Act, the Commission will order a hearing on any or all of these matters, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors (1) upon the request of an interested person, or (2) upon its own motion. The Commission has under consideration the question whether to order hearings on any or all of the applications herein.

Applicants, however, have indicated that, if they are to comply with the views expressed in the Release by November 30, 1977, disruption of their operations would result. Among the reasons given by Applicants for that conclusion are that their net asset values and/or their daily yields will exhibit volatility unacceptable to many of their institutional investors. It appears to the Commission that large-scale redemptions of Applicants' shares by such investors, inter alia, may cause disruption of Applicants' operations.

Notice is hereby given that the Commission has determined that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act to issue a temporary order granting the applications herein, subject to the conditions to which Applicants have agreed in their respective applications and which are summarized in the respective notices of such applications, pending, in each case, final disposition of that matter. Accordingly,

It is ordered, Pursuant to section 6(c) of the Act, that the applications of (1) Money Market Management, Inc., et al. (812-4177); (2) Temporary Investment Fund, Inc., et al. (812-4173); (3) Scudder Cash Investment Trust (812-4200); (4) Daily Income Fund, Inc. (812-4217); (5) White Weld Money Market Fund, Inc., et al., (812-4173); (6) Institutional Liquid Assets Inc., (812-4208); and (7) Fund for Government Investors, Inc. (812-4216) are hereby granted, on a temporary basis and subject each to the conditions which the respective Applicant has agreed may be imposed upon such order, as set forth in their respective applications and summarized in the notices thereof, effective November 30, 1977;

It is further ordered, That each such temporary exemption shall continue to be in effect until there is issued an order disposing of that respective application in its entirety, including any court review of a Commission order in the matter, and shall thereafter cease to be in effect.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-34540 Filed 12-1-77; 8:45 am]

[8010-01]

[Rel. No. 20274]

OHIO POWER CO., ET AL.

Notice of Proposed Transfer of Investment in Coal Mining Development and Associated Facilities From Utility to Coal Mining Subsidiary in Exchange for Cash and Long-Term Debt Notes of Said Subsidiary; and Proposed Capital Contribution From Utility to Said Subsidiary in Connection Therewith

NOVEMBER 28, 1977.

Notice is hereby given that Ohio Power Co. ("Ohio"), an electric utility subsidiary company of American Electric Power Co., Inc. ("AEP"), a registered holding company, and Southern Ohio Coal Co. ("SOhio"), a coal mining subsidiary company of Ohio, have filed an application-declaration with this Commission, designating sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and rule 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

It is stated that SOhio is engaged in the development of coal reserves owned or controlled by Ohio. By order of this Commission (HCAR No. 17383, Dec. 2, 1971), SOhio was authorized to issue and sell, and Ohio was authorized to acquire, 4,000 shares of SOhio's common stock for a consideration of $2,500 per share ($10,000,000). Pursuant to such order, Ohio has purchased 4,000 shares of Southern Ohio's common stock. SOhio commenced the development of the Meigs Mines, located in southeastern Ohio, in 1971. It is stated that in order to further these activities Ohio itself subsequently engaged in mine development work and the construction of associated facilities both at the Meigs Mine complex and at the Martinka Mines. SOhio, however, remained and still remains, the actual operator of these mines and facilities.

It is further stated that SOhio is developing Ohio's coal resources in order to assure a reliable supply of coal for Ohio's generating facilities in general, including the Mitchell Plant at Captina, W. Va., and the Ohio Electric Co.'s General James M. Gavin Plant at Cheshire, Ohio. The Gavin Plant, which is owned by Ohio Electric Co., a wholly owned subsidiary of Ohio, consists of two 1,300,000 kilowatt coal-fired steam electric generating units and receives coal from the Meigs Mines complex. Ohio's Mitchell Plant consists of two coal-fired generation units with a combined capacity of 1,460,000 kilowatts (Unit 1 is rated at 660,000 kw and Unit 2 is rated at 800,000 kw) and receives coal from the Martinka Mines. It is further stated that the Gavin Plant's annual coal requirement is 7.5 million tons per year, while the Mitchell Plant's need is 4 million. Coal being delivered to these respective plants from the Meigs Mines complex and the Martinka Mines conforms with the Federal plan for sulfur dioxide emissions control. It is stated that a large part of the 11.5 million tons of coal required annually for these units is being supplied from coal reserves owned by Ohio so as to assure an adequate and reliable fuel supply for these plants. The major coal reserves currently being developed by SOhio are the Wellston Reserve located in Meigs, Gallia, and Vinton Counties, Ohio, and the Hillman Reserve in Marion County, W. Va. The combined reserves cover approximately 77,000 acres and have a total reserve base of 705,000,000 tons. The Wellston Reserve, currently being mined by SOhio's Meigs Division, consists of 60,229 acres with an estimated

reserve base of 545,831,000 tons of coal from the Clarion 4-A seam. The estimated recoverable clean reserve (reflecting current mining techniques and preparation plant operations) is approximately 212,874,000 tons of coal. The Hillman Reserve, currently being mined by SOhio's Martinka division, consists of 16,314 acres with an estimated reserve base of 159,149,000 tons of coal from the Lower Kittaning seam and with an estimated recoverable clean reserve of 71,090,000 tons.

It is proposed that Ohio convey its entire investment in coal mining development and associated facilities at the Meigs Mines complex and the Martinka Mines at its net book value as of the date of the transfer. As of June 30, 1977, the net book value of such investment was approximately $245,016,000. Included among the assets to be transferred are the Meigs overland conveyor connecting the Meigs Mines to the Gavin Plant, the intermine conveyor between Meigs Mine Nos. 1 and 2, preparation plants and related facilities, surface lands and mineral rights and development costs. Ohio also proposes to assign to SOhio all coal leases held in the Hillman Reserve at the Martinka Mines. Ohio shall continue to remain secondarily liable for such leases.

It is further proposed that, in exchange for the conveyance of such investment by Ohio to SOhio, SOhio issue long-term debt notes and pay cash to Ohio, the cash portion to be offset by a capital contribution in an equal amount to be made by Ohio to SOhio, so as to establish a debt-equity ratio in Southern Ohio equal to the average debt-equity ratio of Ohio during the period such investment was made (combining for such purpose preferred stock and common equity).

The price at which SOhio coal is sold to AEP system companies will not exceed the cost thereof to the seller. For this purpose, cost will include reasonable compensation for necessary capital which will be determined from Ohio's overall cost of capital by applying to the seller's capital represented by Ohio's investment being transferred to SOhio, whether debt or equity, a composite rate of return computed by applying to Ohio's average capital structure during the period 1971 to 1976, in which time investments were made, an interest rate on long-term debt equal to the weighted average of effective interest costs of Ohio's bond issues during this period (9.16 percent), a preferred dividend rate equal to the weighted average of effective dividend rates of Ohio's preferred stock issues during this period (9.70 percent) and a return on common equity not to exceed the rate of return on common equity specified by the Federal Energy Regulatory Commission (FERC) in the most recent wholesale rate proceeding involving Ohio. However, in the absence of such a determination at this time, It is proposed that the cost of common equity capital of SOhio be set at 13 percent until such time as FERC should take action specifying a rate of return in a wholesale rate proceeding involving Ohio in which case the rate then established by FERC shall then become applicable on a prospective basis to the then total common equity investment of Ohio in SOhio. Applicants-declarants cite recent retail rate decisions by two State utility commissions involving other AEP system companies in which rates of return on common equity of 13 percent-13.5 percent were approved.

It is further stated that upon completion of the transfer of such investment SOhio will require approximately $10,000,000 from the proposed date of transfer to December 31, 1980, to complete the capital improvement program presently underway at the Meigs and Martinka Mines. Authorization therefor is also being sought for Ohio to make investments in SOhio from time to time on or before December 31, 1980, in an aggregate amount of $10,000,000.

The return on such additional investment as well as the investment previously made in SOhio by Ohio will be determined from Ohio's overall cost of capital by applying to such investments, whether debt or equity, a composite rate of return computed by applying to Ohio's capital structure as of the end of the year preceeding the investment, an interest rate on long-term debt equal to the effective interest cost of Ohio's last bond issue preceeding the investment, a preferred dividend rate equal to the effective dividend rate of Ohio's last preferred stock issue preceeding the investment and a return on common equity as described above.

It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are estimated at $28,000.

Notice is further given that any interested person may, not later than December 21, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed, or as it may be amended, may be granted and permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-34541 Filed 12-1-77; 8:45 am]

[8010-01]

[Release No. 34-14206; File No. SR-NSCC-77-11]

PROPOSED RULE CHANGE BY NATIONAL SECURITIES CLEARING CORPORATION

Self-Regulatory Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 18, 1977, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

A Correspondence Delivery and Collection Service (CDCS) is currently offered as a joint venture by the SCC Division and the ASECC Divisions of National Securities Clearing Corporation (NSCC). The Facility Agreements and Participants Agreements governing CDCS have been amended. The amendments are reflected in the CDCS Facility Agreement (CDCS-III) and the CDCS Participants Agreement (CDCS-III which will replace existing agreements.

STATEMENT OF BASIS AND PURPOSE

The Basis and purpose of the foregoing proposed rule change is as follows:

The agreements have been amended for the following purposes: (1) to simplify and clarify the agreements, and (2) to eliminate provisions which were objectionable to Participants and potential Participants and which may restrict the use or expansion of the service.

The proposed rule change relates to the removal of impediments to the

perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by the elimination or clarification of provisions which may restrict the use or expansion of the service.

There have been no comments received from members, participants or others on the proposed rule change.

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Instititute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 23, 1977.

[FR Doc. 77-34543 Filed 12-1-77; 8:45 am]

[8010-01]

[Rel. No. 20268]

PUBLIC SERVICE CO. OF OKLAHOMA AND TRANSOK PIPELINE CO.

Proposed Transfer of Fuel Exploration and Development Interests From Subsidiary Pipeline Company and of Request To Extend Existing Fuel Exploration and Development Authorization

NOVEMBER 23, 1977.

Notice is hereby given that Public Service Co. of Oklahoma ("PSO"), an electric utility subsidiary of Central & South West Corp. ("CSW"), a registered holding company, and Transok Pipe Line Co. ("Transok"), a subsidiary pipeline company of PSO, have filed post-effective amendments to the application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9, 10, and 12(b) of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as further amended by said post-effective amendments, which is summarized below, for a complete statement of the proposed transactions.

PSO and Transok state that in previous orders herein (HCAR Nos. 19572 and 20035), they have been authorized to acquire various interests related to fuel exploration and development programs through December 31, 1977. The following table summarizes the interests acquired by each participant through June 30, 1977.

Oil and Gas

	Expenditures	Net acres	Estimated reserves	Cumulative production
PSO	$9,237,975	185,717	[1]523,530 [2]1,067,000	[1]31,269 [2]70,182
Transok	29,411,641	195,376	[1]1,147,097 [2]32,158,000	[1]247,754 [2]5,850,653
Total	38,649,616	381,093	[1]1,670,627 [2]33,225,000	[1]279,023 [2]5,920,835
Coal				
PSO/Ash Creek	9,009,241	6,829	[3]23,600,000	
Lignite				
PSO	1,376,865	[4]23,885		
Uranium				
PSO	2,862,083	53,253	[5]	

[1] Barrels.
[2] Thousand cubic feet.
[3] Tons.
[4] Represents PSO's 30 percent undivided interest in lignite acquired jointly by the four CSW System operating companies.
[5] Undetermined.

PSO's lignite interests are all part of projects undertaken on a joint basis by PSO and other operating utility subsidiaries of CSW. PSO is also a participant in a fuel exploration and development program with Saga Petroleum U.S.A. ("Saga") in Mississippi (HCAR No. 19090).

PSO states that it now proposes to consolidate all of its oil and gas exploration and development interests in its own name, transferring to its direct ownership those which are now held by Transok. PSO states that all future base-load generation being added by it are to be fueled by fuels other than oil and gas and that it will not initiate new petroleum exploration and development ventures in states other than those in which it is currently involved, though it does plan to continue its present programs as long as they remain promising as a supplemental source of fuel for existing generating units. PSO states that a consolidation of ownership of such interests in PSO will facilitate the financing of future oil and gas development since Transok's first mortgage indenture severely restricts Transok's financing by prohibiting it from (i) incurring long-term debt other than first mortgage bonds (which Transok lacks property additions to issue) as debt to PSO or (ii) acquiring securities (including interests in partnerships, corporations or mineral leaseholds constituting securities) except with funds loaned by PSO. This in effect puts on PSO the burden of financing Transok's fuel exploration and development, while preventing PSO from utilizing the interests acquired by Transok as collateral for such financings.

PSO states that the programs to be transferred from Transok to it include the following: (1) a substitute exploration areement for oil and gas between Transok and Ladd Petroleum Co., dated March 1, 1975, pursuant to which Transok owned, at June 30, 1977, interests in various leaseholds aggregating 30,869 net acres in the Anadarko Basin in western Oklahoma; (2) an area of interest agreement, for oil and gas exploration and development, effective January 1, 1975, between Phillips Petroleum Co. and Transok pursuant to which Transok owned leasehold interests totaling 57,510 acres as of June 30, 1977; (3) oil and gas leasehold interests aggregat-

ing 80,807 net acres in Oklahoma acquired by Transok under an agreement, now terminated, with Western Diversified Industries ("WDI"). Transok took over all the interests acquired under the agreement, except for a 5 percent overriding royalty interest in WDI and has since further acquired directly 49,475 net acres as of June 30, 1977; (4) a total of 57,522 net acres of leasehold interests acquired directly by Transok as of June 30, 1977, which are not presently subject to exploration and development agreements with other parties. It is stated that all gas produced under these or any other programs transferred to or undertaken by PSO would continue to be transported by Transok. Transok's interest would be transferred to PSO at their net cost on Transok's books, which amounted to $11,930,247 at June 30, 1977, and is expected to approximate $14,100,000 at November 1, 1977. In consideration for such transfer PSO will discharge Transok from an equivalent aggregate principal amount of Transok's indebtedness to PSO, which was $8,749,280 at June 30, 1977, and is expected to amount to approximately $8,750,000 at November 1, 1977, and, if and to the extent the cost of the interests exceeds outstanding indebtedness, will pay cash to Transok in the amount of such excess. Any such cash will be applied by Transok towards its construction program, estimated at $2,186,000 for the last three months of 1977 and $18,073,000 for 1978.

PSO states that it's 1978 fuel exploration and development budget for the projects for which authorization is requested herein is $24,204,000, including $16,983,000 for gas and oil exploration and development and $7,221,000 for the lignite, coal, and uranium activities. Of the $7,221,000, it is estimated that $2,105,000 will be spent on the Texas lignite prospects, $2,980,000 on coal exploration in prospects other than Ash Creek's and $2,135,000 for uranium exploration and development. Of the $16,983,000, it is estimated that about $7,063,000 will be spent under the Ladd Agreement, $2,873,000 under the Phillips Agreement and $7,047,000 in the programs not presently subject to exploration and development agreements with other parties. PSO states that it therefore herein requests that the authorization to acquire interests in fuel exploration and development programs previously granted to it be extended through December 31, 1978, to the extent of the additional $24,204,000 budgeted estimated expenditures. The type and form of the activities for which the extended authorization is requested are identical to those contained in the earlier orders (HCAR Nos. 19572 and 20035).

It is stated that the fees and expenses to be incurred in connection with the proposed transactions are estimated at $1,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction with respect to the proposed transactions.

Notice is further given that any interested person may, not later than December 19, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendments to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Secuities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendments or as it may be further amended, may be granted and permitted be become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-34422 Filed 12-1-77; 8:45 am]

[8010-01]

[Release No. 34-14114; File No. SR-SSE-1977-1]

SPOKANE STOCK EXCHANGE

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16, June 4, 1975, notice is hereby given that on September 30, 1977 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Constitution for the government of The Spokane Stock Exchange has been revised to eliminate outmoded provisions and to bring the Constitution into compliance with the provisions of the Securities Exchange Act of 1934, as amended. The significant changes are as follows:

(a) Article II has been revised to include a public representative on the Board of Governors as required by § 6(b) of the Securities Exchange Act of 1934 (the Act);

(b) Article XI has been amended to eliminate obsolete committees and the appeal provision of Article XIII has been eliminated entirely as it has been replaced by the provisions of new Article XV;

(c) Article XII § 1 has been revised to comply with the provision of § 6(b)(2) of the Act;

(d) Article XIII has been revised to permit the Board of Governors to determine the dues for the members of the Exchange on an annual basis without the necessity for revising the Constitution;

(e) Article XV has been revised to eliminate the previous provisions for expulsion and suspension of a member from the Exchange and to adopt discipline provisions that comply with the discipline provisions of the Act. The power to expel, suspend or discipline a member for conduct inconsistent with just and equitable principles of trade is given expressly to the Board of Governors and any wilfull violation of any provision of the Act, or any rule or regulation adopted thereunder, or any provision of the Constitution or rules, if any, of the Exchange shall be considered conduct inconsistent with just and equitable principles of trade for purposes of this provision.

(f) Article XVI has been revised to modernize the existing rules for the transaction and conduct of business; these rules deal with the trading hours, units of trading, bids and offers, cross trades, trading limitations, prohibition of pre-arranged trades, ex-dividend rights, and reporting requirements;

(g) Many other obsolete provisions of the Constutition have been stricken;

(h) Any amendments to this Constitution are subject to the approval of the Securities & Exchange Commission, as required by the Act.

STATEMENT OF BASIS AND PURPOSE

The purpose for the revisions described above are stated above. The basis for the revisions are the applicable provisions of the Act.

On or before January 6, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 23, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 28, 1977.

[FR Doc. 77-34539 Filed 12-1-77; 8:45 am]

[8010-01]

[Release No. 10028]

STRATTON GROWTH FUND, ET AL.

Notice of Application Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder for an Order Permitting Proposed Transactions and Pursuant to Section 6(c) of the Act for an Order of Exemption from Rule 22c-1 Thereunder

NOVEMBER 28, 1977.

Notice is hereby given that Stratton Growth Fund ("Stratton") and Davidge Early Bird Fund ("Davidge"), both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act") and Stratton Management Co., Inc. ("Stratton Management") and Davidge & Co. ("Davidge Management"), both registered investment advisers, (collectively "Applicants"), filed an application on October 27, 1977, and an amendment thereto on November 17, 1977 requesting an order (1) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting Stratton Management to pay for certain expenses of Stratton incurred in connection with the proposed acquisition by Stratton of substantially all the assets of Davidge and permitting Davidge Management to indemnify Davidge against certain liabilities and (2) pursuant to Section 6(c) of the Act for an exemption from the provisions of Rule 22c-1 under the Act to the extent necessary to permit Stratton to issue its securities at a price computed at the close of business on the business day preceding the proposed acquisition. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that pursuant to an Agreement and Plan of Reorganization and Liquidation ("Plan"), Stratton, a Delaware corporation, will acquire substantially all the assets of Davidge, a common law trust organized under the laws of the District of Columbia, in exchange for shares of Stratton. As of September 30, 1977 Stratton had net assets of approximately $2.7 million, beneficially owned by approximately 740 shareholders. Davidge had net assets of approximately $1.4 million, beneficially owned by approximately 1,041 shareholders. On or before a closing date Stratton will issue to Davidge shares of Stratton's voting common stock of an aggregate net asset value equal to the value of the assets of Davidge acquired by Stratton. The value of Davidge's assets will be determined by Stratton in the manner in which it determines the value of its own assets. As part of its liquidation, Davidge will distribute to its shareholders, in exchange for their shares of Davidge stock, the Stratton shares received upon the transfer of Davidge assets to Stratton. Each Davidge shareholder will be entitled to receive that portion of full and fractional Stratton shares that the number of Davidge shares owned by the shareholder bears to the number of Davidge shares outstanding on the closing date. Davidge represents that upon completion of the exchange and liquidation it will file an application pursuant to section 8(f) of the Act for an order of the Commission declaring that it has ceased to be an investment company.

The net asset value of Stratton and Davidge will not be adjusted for realized and unrealized gains and losses. At September 30, 1977, Davidge had a capital loss carryover of $3,731,964 ($2,234,880 expiring in 1981 and $1,497,084 expiring in 1982 and later); Stratton had a capital loss carryover of $1,139,300. At that date Davidge had $246,070 of net unrealized appreciation and Stratton had $209,402 of net unrealized appreciation.

Applicants state that Stratton will assume upon the closing all direct out-of-pocket expenses, incurred by Davidge in connection with the Plan, except that Stratton will not assume any fees or expenses which Davidge would be expected to pay in the ordinary course of its business. Stratton will not assume any other liabilities of Davidge. Stratton Management has agreed to reimburse Stratton in full for any such expenses paid or assumed by Stratton. The estimated amount of fees and expenses to be assumed by Stratton is approximately $14,700. In addition, Stratton estimates its own fees and expenses incurred in connection with the Plan will amount to $17,400. It is contemplated that Davidge will retain no assets after the closing date, but in the event assets are needed to meet additional expenses an amount not exceeding $20,000 will be retained for that purpose. Davidge Management has agreed to indemnify and hold harmless Davidge, Stratton and Stratton Management with respect to liabilities, if any, of Davidge which are not disclosed and paid at the closing date or which are not assumed by Stratton pursuant to the Plan.

Applicants state that consummation of the Plan is subject to certain conditions, including approval by shareholders of Davidge, satisfactory opinions of counsel, receipt of favorable tax rulings, as amended, the accuracy of representations and warranties of Davidge and Stratton upon the closing date, and approval of the Commission. The reorganization may be abandoned prior to the closing date by resolution of the Board of Directors of Stratton or Trustees of Davidge.

Applicants represent that the proposed transaction is the result of arm's length negotiations, and that there is no affiliation or relationship between the officers and directors of Stratton or Stratton Management and the officers and directors of Davidge or Davidge Management or between Stratton or Stratton Management and Davidge or Davidge Management. The application states that no applicable law affords dissenting or objecting shareholders of Davidge appraisal rights in the sale of assets.

Section 22(c) of the Act and Rule 22c-1 thereunder prohibit registerd investment companies from issuing redeemable securities except at a price based on the current net asset value of such securities which is next computed after receipt of an order to purchase.

Section 6(c) of the Act provides, in pertinent part, that the Commission may exempt any security or transaction from any provisions of the Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

Applicants state that since the plan contemplates that the assets of Stratton and Davidge will be valued as of the close of business on the business day immediately preceding the closing date the requirements of Rule 22c-1 would not be met. Accordingly, Appli-

cants request an exemption pursuant to section 6(c) from Rule 22c-1 under the Act. Stratton contends that it would be impractical to comply with Rule 22c-1 because the necessary computations must be made after the close of business. Stratton further contends that valuation of Davidge's assets on the business day preceding the closing date would be fair to the shareholders of Stratton and Davidge, and would not present any of the potential for abuse that Rule 22c-1 is designed to prohibit. Applicants assert that such exemption is appropriate in the public interest and consistent with the protection of investors.

Section 17(d) of the Act and Rule 17d-1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company, acting as principal, from effecting any transaction in which such investment company is a joint participant, unless an application regarding such transaction has been filed with the Commission and has been granted by an order entered prior to the submission of such plan to security holders for approval. In passing upon such applications, the Commission will consider whether the participation of such registered company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants.

Section 2(a)(3) of the Act defines affiliated person of an investment company to include any investment adviser thereof. Accordingly, Applicants have requested an order, pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, to the extent necessary, to permit the proposed transactions between Stratton and Stratton Management, and between Davidge and Davidge Management.

Stratton Management is obligated under the Plan to reimburse Stratton for certain expenses Stratton may incur in connection with the transaction. Applicants assert that to the extent that Stratton's participation is different from that of Stratton Management, Stratton's participation is at least as advantageous as Stratton Management's. Applicants further assert that while Stratton Management will derive additional management fees from the assets acquired from Davidge, Stratton will be relieved of certain expenses in connection with the transaction.

Davidge Management has agreed to indemnify Davidge, Stratton and Stratton Management with respect to liabilities, if any, of Davidge which are not disclosed and paid at the closing date or which are not expressly assumed by Stratton pursuant to the Plan. Applicants assert that to the extent Davidge's participation is different from Davidge Management, Davidge's participation is at least as advantageous as that of Davidge Management. Applicants further assert that while Davidge Management will be relieved of serving as investment adviser to Davidge which, due to its relatively low and decreasing assets, is becoming an insufficiently profitable relationship, Davidge will be indemnified against certain possible liabilities which it might otherwise be obligated to pay.

Notice is further given that any interested person may, not later than December 19, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-34542 Filed 12-1-77; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0191]

ALBUQUERQUE SMALL BUSINESS INVESTMENT CO.

Issuance of License To Operate as a Small Business Investment Company

On June 2, 1977, a notice was published in the FEDERAL REGISTER (42 FR 28199) stating that Albuquerque Small Business Investment Co., 501 Tijeras Avenue NW., Albuquerque, N. Mex. 87103, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the rules and regulations governing small business investment companies (13 CFR 107.102 (1977)) for a license to operate as a small business investment company (SBIC).

The public was given to the close of business June 17, 1977, to submit written comments to SBA. No comments were received.

Notice is hereby given that, having considered the application and all other information, SBA has issued license No. 06/06-0191 to Albuquerque Small Business Investment Co., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended. The license is effective as of November 16, 1977.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 23, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 77-34576 Filed 12-1-77; 8:45 am]

[8025-01]

[License No. 09/09-0209]

BUILDERS CAPITAL CORP.

Issuance of a License To Operate as a Small Business Investment Company

On September 27, 1977, a notice was published in the FEDERAL REGISTER (42 FR 49538) stating that an application had been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (SBIC's) for a license to operate as an SBIC by Builders Capital Corp., 1633 26th Street, Santa Monica, Calif. 90406.

Notice is hereby given that pursuant to the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), after having considered the application and all other pertinent information and facts in regard thereto, SBA has issued license No. 09/09-0209 on November 10, 1977, to Builders Capital Corp. to operate as an SBIC subject to guidelines which will apply to SBIC's financing small operative builders.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 2, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 77-34577 Filed 12-1-77; 8:45 am]

[8025-01]

[Delegation of Authority No. 30, Rev. 15, Amendment 15]

FIELD OFFICES

Delegation of Authority to Conduct Program Activities

Delegation of authority No. 30, revision 15, republished in the FEDERAL REGISTER on February 25, 1976 (41 FR 8240), as amended (41 FR 16234, 17829, 28049, 36702, 47610, 50883, 42 FR 56990, and 59153), is hereby further amended to delegate increased authority to SBA field offices to take final action on offers to compromise claims.

Actions taken prior to the effective date of this document are hereby ratified to the extent they would have been authorized had this delegation been in effect.

Accordingly, Delegation of authority No. 30, revision 15, Part V, is amended as set forth below.

PART V—CLAIMS REVIEW COMMITTEE

SECTION A—AUTHORITY TO COMPROMISE CLAIMS

1. *District Claims Review Committee.* This Committee shall consist of three incumbents (or those officially acting in their behalf) in the following order of position classification. The first member available in this order shall serve as chairman.

Liquidation Chief (or liquidation supervisor).
PM Chief (or PM supervisor).
District Counsel.
FD Chief (or FD Supervisor).

However the District Director may, at his option, establish an alternative committee membership consisting of the Assistant District for Finance and Investment, acting as chairman, District Counsel and the Assistant District Director for Management Assistance or those officially acting in their behalf. Authority is delegated to take final action on:

(a) Claims not in excess of $50,000 (excluding interest) upon unanimous vote of the Committee.

(b) Claims in excess of $50,000 when the amount offered represents the full principal balance due thereby forgiving only the interest upon unanimous vote of the Committee.

(c) Settlement offers on claims of any size may be declined upon majority vote of the committee.

2. *Regional Claims Review Committee.* This Committee shall consist of Assistant Regional Director for Finance and Investment (Chairman); Regional Counsel and Assistant Regional Director for Management Assistance; or those officially acting in their behalf. Authority is delegated to take final action on:

(a) Claims not in excess of $50,000 (excluding interest) upon majority vote of the Committee.

(b) Claims in excess of $50,000 but not exceeding $150,000 (excluding interest) upon unanimous vote of the Committee.

(c) Settlement offers on claims of any size may be declined upon majority vote of the Committee.

Effective date: December 2, 1977.

Dated: November 25, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 77-34579 Filed 12-1-77; 8:45 am]

[8025-01]

[License No. 06/06-0193]

FIRST BANCORP CAPITAL, INC.

Issuance of License To Operate as a Small Business Investment Company

On September 19, 1977, a notice was published in the FEDERAL REGISTER (42 FR 46967) stating that First Bancorp Capital, Inc., 100 North Main Street, Corsicana, Tex. 75110, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the rules and regulations governing small business investment companies (13 CFR 107.102 (1977)) for a license to operate as a small business investment company (SBIC).

The public was given to the close of business October 4, 1977, to submit written comments to SBA. No comments were received.

Notice is hereby given that, having considered the application and all other information, SBA has issued license No. 06/06-0193 to First Bancorp Capital, Inc., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 23, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 77-34578 Filed 12-1-77; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1407]

MICHIGAN

Declaration of Disaster Loan Area

Huron, Saginaw, Sanilac, and Tuscola Counties and adjacent Counties within the State of Michigan constitute a disaster area as a result of excessive rainfall and flooding which occurred on August 1, 1977 through October 7, 1977, which caused crop losses to the 1977 crop year. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on January 26, 1978, and for economic injury until the close of business on August 25, 1978, at:

Small Business Administration, District Office, 477 Michigan Avenue, McNamara Building, Detroit, Mich. 48226.

or other locally announced location.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 25, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 77-34574 Filed 12-1-77; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area #1406]

NEW JERSEY

Declaration of Disaster Loan Area

The counties of Bergen, Essex, Hudson, Monmouth, and Passaic and adjacent counties within the State of New Jersey, constitute a disaster area because of physical damage resulting from torrential rains and rising flood waters which occurred on November 7, 1977 through November 8, 1977. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on January 23, 1978, and for economic injury until August 22, 1978, at:

Small Business Administration, District Office, 970 Broad Street, room 1635, Newark, N.J. 07102.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 22, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 77-34575 Filed 12-1-77; 8:45 am]

[4710-01]

DEPARTMENT OF STATE

[Public Notice 581]

ANTARCTIC MARINE LIVING RESOURCES

Meeting

The Department of State will hold an open meeting on Antarctic marine living resources on Tuesday, December 20, 1977, at 2:30 p.m., in Room 1105 of the Department of State, Washington, D.C. Access to the meeting room is through the diplomatic entrance on C Street NW., between 21st and 23d Streets.

Representatives of the Department and other Government agencies will be present at that time to obtain the views of the public on a possible regime for conservation, rational utili-

zation, and management of fisheries in Antarctic waters. The possible regime will be the subject of diplomatic discussion in 1978 in accordance with Article IX of the Antarctic Treaty and Recommendation IX-2 of the Ninth Antarctic Treaty Consultative Meeting.

Questions about the meeting may be directed to Mr. Theodore Sellin, Polar Affairs Officer, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, D.C. 20520, telephone 202-632-3488.

Dated: November 28, 1977.

ROBERT C. BREWSTER,
Acting Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 77-34609 Filed 12-1-77; 8:45 am]

[4710-02]

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Amended Notice of Meeting

In 42 FR 59579, November 18, 1977, AID announced a meeting of the Board for International Food and Agricultural Development to be held on December 12, 1977. The purpose of this notice is to indicate that the date of the meeting has been changed to December 20, 1977. The time and place of the meeting remains as previously announced.

Dated: November 29, 1977.

ERVEN J. LONG,
AID Advisory Committee Representative Board for International Food and Agricultural Development.

[FR Doc. 77-34263 Filed 12-1-77; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Office of the Secretary

COLD ROLLED AND GALVANIZED CARBON STEEL SHEETS FROM BELGIUM

Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of cold rolled and galvanized carbon steel sheets from Belgium are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank Andrysiak, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 25, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of National Steel Corp. indicating a possibility that cold rolled and galvanized carbon steel sheets from Italy, Belgium, France, the Federal Republic of Germany, the Netherlands, and the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

The steel sheets under consideration include cold rolled sheets of carbon steel provided for in item number 608.87 of the Tariff Schedules of the United States and galvanized sheets of carbon steel provided for in item numbers 608.94 and 608.95 of the Tariff Schedules of the United States.

Margins of dumping are alleged which, if based on a comparison with prices in the home market, range from 46.8 percent to 58.9 percent. These margins have been computed from home market prices established under the "Davignon Plan" of the European Community or from home market list prices. To the extent the investigation to be undertaken reveals that actual sales prices in the home market have been at other than such established or list prices, the margins, if any, will be computed on the basis of such actual transactions.

In addition to the dumping alleged on the basis of price comparisons, the petitioner has also requested that a cost of production investigation be conducted under section 205(b) of the Act. In support of this request, petitioner submitted information showing that the prices of cold rolled sheet from the United Kingdom and prices of cold rolled and galvanized carbon steel sheets from the other five countries to customers in the United States were less than the cost of producing and delivering these goods to this country. However, no evidence was supplied to indicate that prices of cold rolled or galvanized steel sheets in the home market or to third countries have been made in substantial quantities over an extended period of time at prices less than the cost of production and not permitting recovery of all costs within a reasonable period. However, it is only such facts that are relevant to section 205(b) of the Act. Petitioner has claimed that the home market prices of cold rolled sheet are the minimum prices established by the Davignon Plan, while galvanized steel sheet prices are based on official European Community published price lists. These exceed the cost of production (properly calculated) even as computed by petitioner. Thus, on the basis of the present record, no cost-of-production investigation appears warranted. However, petitioner has also asserted that the listed minimum prices in the European Community do not represent actual transaction prices. If, during the course of the investigation being initiated it is found that actual home market, or if appropriate, third country transactions, have been at prices below the Davignon Plan or list prices for these products, a comparison of these lower prices will be made with the cost of production. If below cost sales have occurred in substantial quantities and over an extended period of time at prices not permitting the recovery of all costs within a reasonable period of time, then a cost of production investigation would be deemed appropriate and would be initiated. The Customs Service will, accordingly, be directed to solicit information relevant to these considerations as promptly as possible from all interested persons.

There is evidence on record concerning injury or likelihood of injury to the U.S. steel industry from the alleged less than fair value imports. This evidence includes increases in absolute imports in the first half of 1977 compared to the same period in 1976, a decrease in the market share held by domestic manufacturers from the first quarter to the second quarter of 1977 at a time when the share of the U.S. market held by imports from these six countries increased dramatically from 2.5 percent to 6.8 percent, declines in capacity utilization, declines in overall employment in the domestic steel industry and reduced profit margins for domestic firms producing cold rolled and galvanized sheets. It should, however, also be noted that domestic shipments of these products increased from 1975 through July 1977, that the market share held by imports from these six countries is now still below 1975 levels and that only a tenuous causal relationship has been established between imports from these six countries or from Belgium in particular and the injury alleged by the domestic industry.

In assessing the injury caused by the alleged sales at less than fair value from these six countries of the Euro-

pean Community, it has been considered appropriate to cumulate the shares of the market held by imports from each of the countries named. The products appear to be fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury caused by imports from one country rather than another when it is the cumulative effect of all, occurring within a discrete time frame, that creates the problem.

Section 201(c)(2) of the Act, adopted as part of the Trade Act of 1974, requires the Secretary to refer a petition to the United States International Trade Commission for a determination of whether there is "no reasonable indication that an industry is being or is likely to be injured" if he has "substantial doubt" that imports of the subject merchandise at less than fair value are the cause of present or likely injury to an existing industry. Considering the evidence presented and available regarding imports from these six countries, no "substantial doubt" has been determined to exist.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, JR.,
Acting General Counsel
of the Treasury.

NOVEMBER 25, 1977.

[FR Doc. 77-34550 Filed 12-1-77; 8:45 am]

[4810-22]

COLD ROLLED AND GALVANIZED CARBON STEEL SHEETS FROM FRANCE

Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of cold rolled and galvanized carbon steel sheets from France are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank Andrysiak, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 25, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of National Steel Corp., indicating a possibility that cold rolled and galvanized carbon steel sheets from Italy, Belgium, France, the Federal Republic of Germany, the Netherlands, and the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.).

The steel sheets under consideration include cold rolled sheets of carbon steel provided for in item No. 608.87 of the Tariff Schedules of the United States and galvanized sheets of carbon steel provided for in item Nos. 608.94 and 608.95 of the Tariff Schedules of the United States.

Margins of dumping are alleged which, if based on a comparison with prices in the home market, range from 37.8 percent to 59.8 percent. These margins have been computed from home market prices established under the "Davignon Plan" of the European Community or from home market list prices. To the extent the investigation to be undertaken reveals that actual sales prices in the home market have been at other than such established or list prices, the margins, if any, will be computed on the basis of such actual transactions.

In addition to the dumping alleged on the basis of price comparisons, the petitioner has also requested that a cost of production investigation be conducted under section 205(b) of the Act. In support of this request, petitioner submitted information showing that the prices of cold rolled sheet from the United Kingdom and prices of cold rolled and galvanized carbon steel sheets from the other five countries to customers in the United States were less than the cost of producing and delivering these goods to this country. However, no evidence was supplied to indicate that prices of cold rolled or galvanized steel sheets in the home market or to third countries have been made in the substantial quantities over an extended period of time at prices less than the cost of production and not permitting recovery of all costs within a reasonable period. However, it is only such facts that are relevant to section 205(b) of the Act. Petitioner has claimed that the home market prices of cold rolled sheet are the minimum prices established by the Davignon Plan, while galvanized steel sheet prices are based on official European Community published price lists. These exceed the cost of production (properly calculated) even as computed by petitioner. Thus, on the basis of the present record, no cost-of-production investigation appears warranted. However, petitioner has also asserted that the listed minimum prices in the European Community do not represent actual transaction prices. If, during the course of the investigation being initiated it is found that actual home market, or if appropriate, third country transactions, have been at prices below the Davignon Plan or list prices for these products, a comparison of these lower prices will be made with the cost of production. If below cost sales have occurred in substantial quantities and over an extended period of time at prices not permitting the recovery of all costs within a reasonable period of time, then a cost of production investigation would be deemed appropriate and would be initiated. The Customs Service will, accordingly, be directed to solicit information relevant to these considerations as promptly as possible from all interested persons.

There is evidence on record concerning injury or likelihood of injury to the U.S. steel industry from the alleged less than fair value imports. This evidence includes increases in absolute imports in the first half of 1977 compared to the same period in 1976, a decrease in the market share held by domestic manufacturers from the first quarter to the second quarter of 1977 at a time when the share of the U.S. market held by imports from these six countries increased dramatically from 2.5 percent to 6.8 percent, declines in capacity utilization, declines in overall employment in the domestic steel industry and reduced profit margins for domestic firms producing cold rolled and galvanized sheets. It should, however, also be noted that domestic shipments of these products increased from 1975 through July 1977, that the market share held by imports from these six countries is now still below 1975 levels and that only a tenuous causal relationship has been established between imports from these six countries or from France in particular and the injury alleged by the domestic industry.

In assessing the injury caused by the alleged sales at less than fair value from these six countries of the European Community, it has been considered appropriate to cumulate the shares of the market held by imports from each of the countries named.

The products appear to be fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury caused by imports from one country rather than another when it is the cumulative effect of all, occurring within a discrete time frame, that creates the problem.

Section 201(c)(2) of the Act, adopted as part of the Trade Act of 1974, requires the Secretary to refer a petition to the United States International Trade Commission for a determination of whether there is "no reasonable indication that an industry is being or is likely to be injured" if he has "substantial doubt" that imports of the subject merchandise at less than fair value are the cause of present or likely injury to an existing industry. Considering the evidence presented and available regarding imports from these six countries, no "substantial doubt" has been determined to exist.

Having conducted a summary investigation as required by § 153.29 of the Custom Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 28, 1977.

[FR Doc. 77-34551 Filed 12-1-77; 8:45 am]

[4810-22]

COLD ROLLED AND GALVANIZED CARBON STEEL SHEETS FROM THE FEDERAL REPUBLIC OF GERMANY

Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of cold rolled and galvanized carbon steel sheets from the Federal Republic of Germany are being, or are likely to be, sold at less than fair value within the meaning the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank Andrysiak, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 25, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of National Steel Corp., indicating a possibility that cold rolled and galvanized carbon steel sheets from Italy, Belgium, France, the Federal Republic of Germany, the Netherlands and the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.)

The steel sheets under consideration include cold rolled sheets of carbon steel provided for in item No. 608.87 of the Tariff Schedules of the United States and galvanized sheets of carbon steel provided for in item Nos. 608.94 and 608.95 of the Tariff Schedules of the United States.

Margins of dumping are alleged which, if based on a comparison with prices in the home market, range from 36.4 percent to 62.1 percent. These margins have been computed from home market prices established under the "Davignon Plan" of the European Community or from home market list prices. To the extent the investigation to be undertaken reveals that actual sales prices in the home market have been at other than such established or list prices, the margins, if any, will be computed on the basis of such actual transactions.

In addition to the dumping alleged on the basis of price comparisons, the petitioner has also requested that a cost of production investigation be conducted under section 205(b) of the Act. In support of this request, petitioner submitted information showing that the prices of cold rolled sheet from the United Kingdom and prices of cold rolled and galvanized carbon steel sheets from the other five countries to customers in the United States were less than the cost of producing and delivering these goods to this country. However, no evidence was supplied to indicate that prices of cold rolled or galvanized steel sheets in the home market or to third countries have been made in the substantial quantities over an extended period of time at prices less than the cost of production and not permitting recovery of all costs within a reasonable period. However, it is only such facts that are relevant to section 205(b) of the Act. Petitioner has claimed that the home market prices of cold rolled sheet are the minimum prices established by the Davignon Plan, while galvanized steel sheet prices are based on official European Community published price lists. These exceed the cost of production (properly calculated) even as computed by petitioner. Thus, on the basis of the present record, no cost-of-production invetigation appears warranted. However, petitioner has also asserted that the listed minimum prices in the European Community do not represent actual transaction prices. If, during the course of the investigaion being initiated it is found that actual home market, or if appropriate, third contry transactions, have been at prices below the Davignon Plan or list prices for these products, a comparison of these lower prices will be made with the cost of production. If below cost sales have occurred in substantial quantities and over an extended period of time at prices not permitting the recovery of all costs within a reasonable period of time, then a cost of production investigation would be deemed appropriate and would be initiated. The Customs Service will, accordingly, be directed to solicit information relevant to these considerations as promptly as possible from all interested persons.

There is evidence on record concerning injury or likelihood of injury to the U.S. steel industry from the alleged less than fair value imports. This evidence includes increases in absolute imports in the first half of 1977 compared to the same period in 1976, a decrease in the market share held by domestic manufacturers from the first quarter to the second quarter of 1977 at a time when the share of the U.S. market held by imports from these six countries increased dramatically from 2.5 percent to 6.8 percent, declines in capacity utilization, declines in overall employment in the domestic steel industry and reduced profit margins for domestic firms producing cold rolled and galvanized sheets. It should, however, also be noted that domestic shipments of these products increased from 1975 through July 1977, that the market share held by imports from these six countries is now still below 1975 levels and that only a tenuous causal relationship has been established between imports from these six countries or from West Germany in particular and the injury alleged by the domestic industry.

In assessing the injury caused by the alleged sales at less than fair value from these six countries of the European Community, it has been considered appropriate to cumulate the shares of the market held by imports from each of the countries named. The products appear to be fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury caused by imports

from one country rather than another when it is the cumulative effect of all, occurring within a discrete time frame, that creates the problem.

Section 201(c)(2) of the Act, adopted as part of the Trade Act of 1974, requires the Secretary to refer a petition to the United States International Trade Commission for a determination of whether there is "no reasonable indication that an industry is being or is likely to be injured" if he has "substantial doubt" that imports of the subject merchandise at less than fair value are the cause of present or likely injury to an existing industry. Considering the evidence presented and available regarding imports from these six countries, no "substantial doubt" has been determined to exist.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

NOVEMBER 25, 1977.

[FR Doc. 77-34552 Filed 12-1-77; 8:45 am]

[4810-22]

COLD ROLLED AND GALVANIZED CARBON STEEL SHEETS FROM ITALY

Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of cold rolled and galvanized carbon steel sheets from Italy are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank Andrysiak, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 25, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from Counsel on behalf of National Steel Corp. indicating a possibility that cold rolled and galvanized carbon steel sheets from Italy, Belgium, France, the Federal Republic of Germany, the Netherlands and the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

The steel sheets under consideration include cold rolled sheets of carbon steel provided for in item number 608.87 of the Tariff Schedules of the United States and galvanized sheets of carbon steel provided for in item numbers 608.94 and 608.95 of the Tariff Schedules of the United States.

Margins of dumping are alleged which, if based on a comparison with prices in the home market, range from 49.5 percent to 87.7 percent. These margins have been computed from home market prices established under the "Davignon Plan" of the European Community or from home market list prices. To the extent the investigation to be undertaken reveals that actual sales prices in the home market have been at other than such established or list prices, the margins, if any, will be computed on the basis of such actual transactions.

In addition to the dumping alleged on the basis of price comparisons, the petitioner has also requested that a cost of production investigation be conducted under section 205(b) of the Act. In support of this request, petitioner submitted information showing that the prices of cold rolled sheet from the United Kingdom and prices of cold rolled and galvanized carbon steel sheets from the other five countries to customers in the United States were less than the cost of producing and delivering these goods to this country. However, no evidence was supplied to indicate that prices of cold rolled or galvanized steel sheets in the home market or to third countries have been made in the substantial quantities over an extended period of time at prices less than the cost of production and not permitting recovery of all costs within a reasonable period. However, it is only such facts that are relevant to section 205(b) of the Act. Petitioner has claimed that the home market prices of cold rolled sheet are the minimum prices established by the Davignon Plan, while galvanized steel sheet prices are based on official European Community published price lists. These exceed the cost of production (properly calculated) even as computed by petitioner. Thus, on the basis of the present record, no cost-of-production investigation appears warranted. However, petitioner has also asserted that the listed minimum prices in the European Community do not represent actual transaction prices. If, during the course of the investigation being initiated it is found that actual home market, or if appropriate, third country transactions, have been at prices below the Davignon Plan or list prices for these products, a comparison of these lower prices will be made with the cost of production. If below cost sales have occurred in substantial quantities and over an extended period of time at prices not permitting the recovery of all costs within a reasonable period of time, then a cost of production investigation would be deemed appropriate and would be initiated. The Customs Service will, accordingly, be directed to solicit information relevant to these considerations as promptly as possible from all interested persons.

There is evidence on record concerning injury or likelihood of injury to the U.S. steel industry from the alleged less than fair value imports. This evidence includes increases in absolute imports in the first half of 1977 compared to the same period in 1976, a decrease in the market share held by domestic manufacturers from the first quarter to the second quarter of 1977 at a time when the share of the U.S. market held by imports from these six countries increased dramatically from 2.5 percent to 6.8 percent, declines in capacity utilization, declines in overall employment in the domestic steel industry and reduced profit margins for domestic firms producing cold rolled and galvanized sheets. It should, however, also be noted that domestic shipments of these products increased from 1975 through July 1977, that the market share held by imports from these six countries is now still below 1975 levels and that only a tenuous causal relationship has been established between imports from these six countries or from Italy in particular and the injury alleged by the domestic industry.

In assessing the injury caused by the alleged sales at less than fair value from these six countries of the European Community, it has been considered appropriate to cumulate the shares of the market held by imports from each of the countries named. The products appear to be fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury caused by imports from one country rather than another when it is the cumulative effect of all, occurring within a discrete time frame, that creates the problem.

Section 201(c)(2) of the Act, adopted as part of the Trade Act of 1974, requires the Secretary to refer a petition to the U.S. International Trade Commission for a determination of whether there is "no reasonable indication that an industry is being or is likely to be injured" if he has "substantial doubt" that imports of the subject merchandise at less than fair value are the cause of present or likely injury to an existing industry. Considering the evidence presented and available regarding imports from these six countries, no "substantial doubt" has been determined to exist.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
Acting General Counsel
of the Treasury.

NOVEMBER 25, 1977.

[FR Doc. 34553 Filed 12-1-77; 8:45 am]

[4810-22]

COLD ROLLED AND GALVANIZED CARBON STEEL SHEETS FROM THE NETHERLANDS

Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Initiation of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of cold rolled and galvanized carbon steel sheets from the Netherlands are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank Andrysiak, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 25, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of National Steel Corp. indicating a possibility that cold rolled and galvanized carbon steel sheets from Italy, Belgium, France, the Federal Republic of Germany, the Netherlands, and the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

The steel sheets under consideration include cold rolled sheets of carbon steel provided for in item number 608.87 of the Tariff Schedules of the United States and galvanized sheets of carbon steel provided for in item numbers 608.94 and 608.95 of the Tariff Schedules of the United States.

Margins of dumping are alleged which, if based on a comparison with prices in the home market, range from 38.1 percent to 66.9 percent. These margins have been computed from home market prices established under the "Davignon Plan" of the European Community or from home market list prices. To the extent the investigation to be undertaken reveals that actual sales prices in the home market have been at other than such established or list prices, the margins, if any, will be computed on the basis of such actual transactions.

In addition to the dumping alleged on the basis of price comparisons, the petitioner has also requested that a cost of production investigation be conducted under section 205(b) of the Act. In support of this request, petitioner submitted information showing that the prices of cold rolled sheet from the United Kingdom and prices of cold rolled and galvanized carbon steel sheets from the other five countries to customers in the United States were less than the cost of producing and delivering these goods to this country. However, no evidence was supplied to indicate that prices of cold rolled or galvanized steel sheets in the home market or to third countries have been made in the substantial quantities over an extended period of time at prices less than the cost of production and not permitting recovery of all costs within a reasonable period. However, it is only such facts that are relevant to section 205(b) of the Act. Petitioner has claimed that the home market prices of cold rolled sheet are the minimum prices established by the Davignon Plan, while galvanized steel sheet prices are based on official European Community published price lists. These exceed the cost of production (properly calculated) even as computed by petitioner. Thus, on the basis of the present record, no cost-of-production investigation appears warranted. However, petitioner has also asserted that the listed minimum prices in the European Community do not represent actual transaction prices. If, during the course of the investigation being initiated it is found that actual home market, or if appropriate, third country transactions, have been at prices below the Davignon Plan or list prices for these products, a comparison of these lower prices will be made with the cost of production. If below cost sales have occurred in substantial quantities and over an extended period of time at prices not permitting the recovery of all costs within a reasonable period of time, then a cost of production investigation would be deemed appropriate and would be initiated. The Customs Service will, accordingly, be directed to solicit information relevant to these considerations as promptly as possible from all interested persons.

There is evidence on record concerning injury or likelihood of injury to the U.S. steel industry from the alleged less than fair value imports. This evidence includes increases in absolute imports in the first half of 1977 compared to the same period in 1976, a decrease in the market share held by domestic manufacturers from the first quarter to the second quarter of 1977 at a time when the share of the U.S. market held by imports from these six countries increased dramatically from 2.5 percent to 6.8 percent, declines in capacity utilization, declines in overall employment in the domestic steel industry and reduced profit margins for domestic firms producing cold rolled and galvanized sheets. It should however, also be noted that domestic shipments of these products increased from 1975 through July 1977, that the market share held by imports from these six countries is now still below 1975 levels and that only a tenuous causal relationship has been established between imports from these six countries or from the Netherlands in particular and the injury alleged by the domestic industry.

In assessing the injury caused by the alleged sales at less than fair value from these six countries of the European Community, it has been considered appropriate to cumulate the shares of the market held by imports from each of the countries named. The products appear to be fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury caused by imports from one country rather than another when it is the cumulative effect of all, occurring within a discrete time frame, that creates the problem.

Section 201(c)(2) of the Act, adopted as part of the Trade Act of 1974, requires the Secretary to refer a petition

to the U.S. International Trade Commission for a determination of whether there is "no reasonable indication that an industry is being or is likely to be injured" if he has "substantial doubt" that imports of the subject merchandise at less than fair value are the cause of present or likely injury to an existing industry. Considering the evidence presented and available regarding imports from these six countries, no "substantial doubt" has been determined to exist.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihod of sales at less than fair value.

This notice is published pursuant to section 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
Acting General Counsel
of the Treasury.

NOVEMBER 25, 1977.

[FR Doc. 77-34554 Filed 12-1-77; 8:45 am]

[4810-22]

COLD ROLLED AND GALVANIZED CARBON STEEL SHEETS FROM THE UNITED KINGDOM

Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of cold-rolled and galvanized carbon steel sheets from the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank Andrysiak, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington DC. 20229; 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 25, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of National Steel Corp. indicating a possibility that cold-rolled and galvanized carbon steel sheets from Italy, Belgium, France, the Federal Republic of Germany, the Netherlands, and the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.)

The steel sheets under consideration include cold rolled sheets of carbon steel provided for in item number 608.87 of the Tariff Schedules of the United States and galvanized sheets of carbon steel provided for in item Nos. 608.94 and 608.95 of the Tariff Schedules of the United States.

The margin of dumping alleged which, if based on a comparison with prices in the home market, was approximately 53.3 percent. This margin has been computed from home market prices established under the "Davignon Plan" of the European community. To the extent the investigation to be undertaken reveals that actual sales prices in the home market have been at other than such established prices, the margins, if any, will be computed on the basis of such actual transactions.

In addition to the dumping alleged on the basis of price comparisons, the petitioner has also requested that a cost of production investigation be conducted under section 205(b) of the Act. In support of this request, petitioner submitted information showing that the prices of cold rolled carbon steel sheets in the United States were less than the cost of producing and delivering these goods to the country. Petitioner did not submit information with respect to galvanized carbon steel sheets from the United Kingdom. However, it has been determined that these two products constitute the same "class or kind of merchandise" and on this basis an investigation is warranted with respect to galvanized sheets as well. No evidence was supplied to indicate that prices of cold rolled or galvanized steel sheets in the home market or to third countries have been made in the substantial quantities over an extended period of time at prices less than the cost of production and not permitting recovery of all costs within a reasonable period. However, it is only such facts that are relevant to section 205(b) of the Act. Petitioner has claimed that the home market prices of cold rolled sheet are the minimum prices established by the Davignon Plan, while galvanized steel sheet prices are based on official European Community published price lists. These exceed the cost of production (properly calculated) even as computed by petitioner. Thus, on the basis of the present record, no cost-of-production investigation appears warranted. However, petitioner has also asserted that the listed minimum prices in the European Community do not represent actual transaction prices. If, during the course of the investigation being initiated it is found that actual home market, of if appropriate, third country transactions, have been at prices below the Davignon Plan or list prices for these products, a comparison of these lower prices will be made with the cost of production. If these below cost sales have occurred in substantial quantities and over an extended period of time at prices not permitting the recovery of all costs within a reasonable period of time, then a cost of production investigation would be deemed appropriate and would be initiated. The Customs Service will, accordingly, be directed to solicit information relevant to these considerations as promptly as possible from all interested persons.

There is evidence on record concerning injury or likelihood of injury to the U.S. steel industry from the alleged less than fair value imports. This evidence includes increases in absolute imports in the first half of 1977 compared to the same period in 1976, a decrease in the market share held by domestic manufacturers from the first quarter to the second quarter of 1977 at a time when the share of the U.S. market held by imports from these six countries increased dramatically from 2.5 percent to 6.8 percent, declines in capacity utilization, declines in overall employment in the domestic steel industry and reduced profit margins for domestic firms producing cold rolled and galvanized sheets. It should, however, also be noted that domestic shipments of these products increase from 1975 through July 1977, that the market share held by imports from these six countries is now still below 1975 levels and that only a tenuous causal relationship has been established between imports from these six countries or from the United Kingdom in particular and the injury alleged by the domestic industry.

In assessing the injury caused by the alleged sales at less than fair value from these six countries of the European Community, it has been considered appropriate to cumulate the shares of the market held by imports from each of the countries named. The products appear to be fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury cause by imports from one country rather than another when it is the cumulative effect of all, occuring within a discrete time frame, that creates the problem.

Section 201(c)(2) of the Act, adopted as part of the Trade Act of 1974, requires the Secretary to refer a petition

to the U.S. International Trade Commission for a determination of whether there is "no reasonable indication that an industry is being or is likely to be injured" if he has "substantial doubt" that imports of the subject merchandise at less than fair value are the cause of present or likely injury to an existing industry. Considering the evidence presented and available regarding imports from these six countries, no "substantial doubt" has been determined to exist.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

NOVEMBER 25, 1977.

[FR Doc. 77-34555 Filed 12-1-77; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 540]

ASSIGNMENT OF HEARINGS

NOVEMBER 29, 1977.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 107912 (Sub-No. 18), Rebel Motor Freight, Inc,. now assigned December 12, 1977, at Jackson, Miss., and will be held at the Library, Downtowner Motor Inn, 225 East Capitol Street.

MC-F-13278, Leaseway Transportation Corp.—Continuance in control—Custom Deliveries, Inc., now being assigned January 26, 1978, for hearing at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 120257 (Sub-No. 39), K.L. Breeden & Sons, Inc., now being assigned January 17, 1978 (1 day), at Little Rock, Ark., in a hearing room to be later designated.

MC 134477 (Sub-No. 186), Schanno Transportation, Inc., now assigned January 18, 1978, at Chicago, Ill., is canceled and application dismissed.

No. MC 124947 (Sub-No. 55), Machinery Transports, Inc., now assigned December 1, 1977, at Dallas, Tex., is canceled and application dismissed.

No. MC 134906, Cape Air Freight, Inc., and MC 134906 (Sub-Nos. 1, 2, 3, 4, 5, 6, and 7), Cape Air Freight, Inc., now assigned December 6, 1977, at Louisville, Ky., is postponed indefinitely.

No. MC 29839 (Sub-No. 5), Evergreen Stage Lines, Inc., and MC 29839 (Sub-No. 6), Evergreen Stage Lines, Inc., now being assigned for hearing on January 24, 1978, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 107515 (Sub-No. 1074), Refrigerated Transport Co., Inc., now assigned January 17, 1978, at Madison, Wis., and will be held at the Madison Concourse Hotel, One West Dayton.

MC 124211 (Sub-No. 296), Hilt Truck Line, Inc., now being assigned January 16, 1978, for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 138861 (Sub-No. 6), C-Line, Inc., now being assigned February 1, 1978, for hearing at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 113678 (Sub-No. 695), Curtis, Inc., now being assigned January 26, 1978, for hearing at the Offices of the Interstate Commerce Commission, in Washington, D.C.

MC 124211 (Sub-No. 295), Hilt Truck Line, Inc., now being assigned March 1, 1978, for hearing at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 113678 (Sub-No. 697), Curtis, Inc., now being assigned February 15, 1978, for hearing at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 115311 (Sub-No. 216), J & M Transportation Co., Inc., now assigned January 17, 1978, at Little Rock, Ark., is canceled and application dismissed.

MC 120477 (Sub-No. 2), International Transport, Inc., now assigned January 16, 1978, at Boston, Mass., is canceled and application dismissed.

MC 135874 (Sub-No. 77), LTL Perishables, Inc., now assigned February 2, 1978, at St. Paul, Minn., is canceled and application dismissed.

MC 119864 (Sub-No. 69), Craig Transportation Co., now assigned December 13, 1977, at Lansing, Mich., will be held in the Self Training Room, Highway Building, 425 West Ottawa Street.

H.G. HOMME, JR.,
Acting Secretary.

[FR Doc. 77-34614 Filed 12-1-77; 8:45 am]

[7035-01]

[Finance Docket No. 28583]

BURLINGTON NORTHERN, INC.—CONTROL AND MERGER—ST. LOUIS-SAN FRANCISCO RAILWAY CO.

Consolidation of Rail Carriers

NOVEMBER 22, 1977.

The Commission has acted on a petition for waiver and/or clarification of the ICC railroad acquisition, control, merger, consolidation, coordination project, trackage rights and lease procedures, 42 FR 14871, March 17, 1977 (to be codified in 49 CFR 1111), called the consolidation procedures, and ICC revised rules of practice, 42 FR 23806, May 11, 1977 (to be codified in 49 CFR 1100), called the rules of practice. The specific actions the Commission was requested to take were (1) waiver of the specific requirements of section 1111.2(b)(3) of the consolidation procedures, information required for the exhibit A-15 traffic study, (2) waiver of the specific requirements of section 1111.2(b)(1)(i) of the consolidation procedures, relating to information required for the exhibit A-13, table B, (3) clarification of section 1111.1(d)(4) of the consolidation procedures relating to identification of subsidiaries and affiliates, and (4) waiver of section 1100.13 of the rules of practice, relating to documents size. The report granted the waivers requested in the petition except for the waiver relating to identification of subsidiaries and affiliates.

In the report the Commission required the filing of a traffic study meeting the informational requirements of section 1111.2(b)(3)(ii) of the consolidation procedures for the 8,692 movements for which there is a possibility of diversion. A printout of the remaining 30,027 movements containing sufficient information to determine divertability, including certain information required by the report, was also required by section 1111.2(b)(3)(ii) of the consolidation procedures was required to be made available and be presented to the Commission upon request.

The report also permitted waiver of the requirements of section 1111.2(b)(1)(ii) of the consolidation procedures relating to the inclusion of revenue carloads per year for each pair of origin and destination States for each connecting carrier. The waiver did not require inclusion in exhibit A-13, table B of those origin and destination State movements of less than 100 revenue carloads per year per connecting carrier. The reasoning was that the information had a three-fold purpose of (1) providing a useful comparison in data produced in traffic studies, (2) delineating the markets in the territory immediate to the applicants lines, and those markets beyond the region served, and (3) documenting complex competitive issues that might arise.

The report stated that pursuant to section 1111.1(d)(4) of the consolidation procedures, the Commission requires disclosure of all subsidiaries, affiliates, and holding companies regardless of whether such companies are considered carriers. The report then said that a complete application will

be deemed to have been filed only if the previously described relationships are disclosed. The basis for this decision was that the Commission is interested in all relationships that a carrier has with other business entities. This interest arises not only to insure that the carrier does not abuse its common carrier privilege, but also to insure that the carrier is not abused by a member of its corporate family, and thereby unable to perform its common carrier duties to the public.

The Commission permitted waiver of the document size of 8½ inches which is generally required by section 1100.13 of the rules of practice. This waiver was conditioned on all documents not exceeding 22 inches in width and being capable of folding to an 8½ inch width without disturbing the left margin. The report pointed out that although the proposal for the physical format was approved, it was to be taken neither as a carte blanche to deviate from the requirements of section 1100.13 of the rules of practice, nor as an acceptance of this portion of the proposed application. The report also went on to indicate that such formats should not be used on the narrative portions of the report.

The report stated that the Commission welcomes such petitions as the one considered to assist both it and the carriers to expedite railroad consolidation proceedings. The report went on to state that if any parties believed themselves to be adversely affected by the grant of the petition, they would have the opportunity at a pre-hearing conference to request that the application be modified and/or supplemented.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 77-34615 Filed 12-1-77; 8:45 am]

[7035-01]

[Ex Parte No. 241, Rule 19; Rev. Exemption No. 94, Amdt. No. 12]

DETROIT, TOLEDO, & IRONTON RAILROAD CO., AND CONSOLIDATED RAIL CORP.

Exemption Under Mandatory Car Service Rules

To: The Detroit, Toledo, & Ironton Railroad Co., and Consolidated Rail Corp.

Upon further consideration of exemption No. 94 issued February 5, 1975.

It is ordered, That, under the authority vested in me by car service rule 19, exemption No. 94 to the mandatory car service rules ordered in Ex Parte No. 241 is amended to continue in effect until further order of this Commission.

This amendment shall become effective November 30, 1977.

Issued at Washington, D.C., November 23, 1977.

For the Interstate Commerce Commission.

ROBERT S. TURKINGTON,
Agent.

[FR Doc. 77-3469 Filed 12-1-77; 8:45 am]

[7035-01]

[Ex Parte No. 241, Rule 19; Rev. Exemption No. 111, Amdt. No. 3]

DETROIT, TOLEDO AND IRONTON RAILROAD CO. AND NORFOLK AND WESTERN RAILWAY CO.

Exemption Under Mandatory Car Service Rules

To: The Detroit, Toledo and Ironton Railroad Co. and Norfolk and Western Railway Co.

Upon further consideration of Revised Exemption No. 111 issued December 9, 1976.

It is ordered, That, under authority vested in me by Car Service Rule 19, Revised Exemption No. 111 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to continue in effect until further order of this Commission.

This amendment shall become effective November 30, 1977.

Issued at Washington, D.C., November 22, 1977.

For the Interstate Commerce Commission.

ROBERT S. TURKINGTON,
Agent.

[FR Doc. 77-34617 Filed 12-1-77; 8:45 am]

[7035-01]

[Ex Parte No. 241, Rule 19; Corrected Exemption No. 93, Amdt. No. 13]

GRAND TRUNK WESTERN RAILROAD CO., AND CONSOLIDATED RAIL CORP.

Exemption Under Mandatory Car Service Rules

To: Grand Trunk Western Railroad Co. and Consolidated Rail Corp.

Upon further consideration of Exemption No. 93 issued January 15, 1975.

It is ordered, That, under the authority vested in me by Car Service Rule 19, Exemption No. 93 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to continue in effect until further order of this Commission.

This amendment shall become effective November 30, 1977.

Issued at Washington, D.C., November 22, 1977.

For the Interstate Commerce Commission.

ROBERT S. TURKINGTON,
Agent.

[FR Doc. 77-34618 Filed 12-1-77; 8:45 am]

[7035-01]

[Notice No. 261]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 2, 1977.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-77425. By application filed November 22, 1977, HOWARD M. LEE, an individual, d.b.a. LEE TRUCKING, 15309 Domart Street, Norwalk, Calif. 90270, seeks temporary authority to transfer the operating rights of Howard O. Lee, an individual, d.b.a. Lee Lumber Hauling, 9258 Muller Street, Downey, Calif. 90241, under section 210a(b). The transfer to Howard M. Lee, an individual, d.b.a. Lee Trucking, of the operating rights of Howard O. Lee, an individual, d.b.a. Lee Lumber Hauling, is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 77-34613 Filed 12-1-77; 8:45 am]

[7035-01]

[Ex Parte No. 241, Rule 19; Corrected Exemption No. 104, amdt. No. 8]

NORFOLK AND WESTERN RAILWAY CO. AND PITTSBURGH AND LAKE ERIE RAILROAD CO.

Exemption under Mandatory Car Service Rules

To: Norfolk and Western Railway Co. and the Pittsburgh and Lake Erie Railroad Co.

Upon further consideration of Corrected Exemption No. 104 issued October 7, 1975.

It is ordered, That, under the authority vested in me by Car Service Rule 19, Corrected Exemption No. 104 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to continue in effect until further order of this Commission.

This amendment shall become effective November 30, 1977.

Issued at Washington, D.C., November 22, 1977.

For the Interstate Commerce Commission.

ROBERT S. TURKINGTON,
Agent.

[FR Doc. 77-34616 Filed 12-1-77; 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).

CONTENTS

[6320-01]

1

CIVIL AERONAUTICS BOARD.

NOTICE OF DELETION OF ITEM FROM THE DECEMBER 1, 1977, MEETING AGENDA

TIME AND DATE: 10 a.m., December 1, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 14. Amendment to denied boarding compensation rule proposed by Alaska; staff recommendation that the Board adopt draft order setting for investigation and suspending (BFR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: In examining the amendment to denied boarding compensation rule proposed by Alaska, the staff discovered that the filing was inconsistent with part 250 of the Board's economic regulations. Consequently, the staff rejected Alaska's proposal and there is nothing for the Board to consider at this time. Accordingly, the following Members have voted that agency business requires the deletion of item 14 from the December 1, 1977, agenda and that no earlier announcement of this deletion was possible:

Chairman Alfred E. Kahn
Vice Chairman Richard J. O'Melia
Member G. Joseph Minetti
Member Elizabeth E. Bailey

[S-1966-77 Filed 11-30-77; 3:54 pm]

[6320-01]

2

CIVIL AERONAUTICS BOARD.

NOTICE OF ADDITION OF ITEMS TO THE DECEMBER 1, 1977 MEETING AGENDA

TIME AND DATE: 10 a.m., December 1, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 14a. Dockets 31377 and 31379, Contract Cargo Rates filed by British Airways (BFR).

18a. Docket 31427, United's request for clarification of Orders 77-10-58 and 77-10-69; staff recommendation—that Board adopt draft order dismissing complaint. (Memo No. 7617, BFR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Recently we have been informed by the British authorities that they will permit the U.S. carriers' filings to take effect concurrently with British Airways' filing in the Contract Cargo matter and accordingly, they have asked for the immediate vacation of the suspension. Accordingly, the following Members have voted that agency business requires the addition of Contract Cargo Rates filed by British Airways, Dockets 31377 and 31379 to the agenda of the Board's December 1, 1977, meeting and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn.
Vice Chairman Richard J. O'Melia.
Member G. Joseph Minetti.
Member Elizabeth E. Bailey.

Item 18a. United's petition concerning Continental's joint "Freedom" fares, involves individual excursion fares between Hawaii and the Mainland. Item 18 on the December 1, 1977, agenda, Docket 31695, Mainland-Hawaii excursion fares proposed by Western, concerns Western's competitive response to these Continental fares. So that the Board can consider these related items at the same meeting, the following Members have voted that agency business requires the addition of item 18a to the agenda of December 1, 1977, and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn.
Vice Chairman Richard J. O'Melia.
Member G. Joseph Minetti.
Member Elizabeth E. Bailey.

[S-1967-77 Filed 11-30-77; 3:54 pm]

[6570-06]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (Eastern Time), Tuesday, December 6, 1977.

PLACE: Chairman's Conference Room No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED: Litigation Authorization; General Counsel Recommendations. Matters closed to the public under Sec. 1612.13(a) of the Commission's Regulations. (42 FR 13830, March 14, 1977). Note: Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, 202-634-6748.

NOVEMBER 29, 1977.

[S-1960-77 Filed 11-30-77; 10:58 am]

[6715-01]

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, December 7, 1977 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance and audit.

DATE AND TIME: Thursday, December 8, 1977 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

I. Future meetings; II. Correction and approval of minutes; III. Advisory opinions: AO 1976-106 (Conoco). AO 1977-59. AOR status report; IV. Appropriations and budget—budget executive report; V. Contract for entry of disclosure data; VI. Procedures on non-filers; VII. Pending legislation; VIII. Pending litigation—status report; IX. Liaison with other Federal agencies; X. Classification actions; and XI. Routine administrative matters.

Portions closed to the public (executive session): Audit matters. Compliance. Personnel.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, Telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-1971-77 Filed 11-30-77; 3:54 pm]

[6740-02]

5

FEDERAL ENERGY REGULATORY COMMISSION.

NOTICE OF MEETING: November 30, 1977.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), S. U.S.C. 552b:

TIME AND DATE: December 7, 1977, 10 a.m.

STATUS: Open.

MATTERS TO BE CONSIDERED: (Agenda). Note—items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information, Room 1000.

POWER AGENDA.—12TH MEETING, DECEMBER 7, 1977—REGULAR MEETING

ER-1.—Docket No. ER77-578, Kansas Gas & Electric Co.
ER-2.—Docket No. ER76-532, Pacific Gas and Electric Co.
ER-3.—Docket No. ER77-511, New York Power Pool.
ER-4.—Docket No. ER77-196, Florida Power Corp.
ER-5.—Docket No. ER77-452, Monongahela Power Co., The Potomac Edison Co., West Penn Power Co.
CAP-1.—Docket No. ID-1577, Guy W. Nichols.
CAP-2.—Docket No. ID-1817, Warren F. Brecht.
CAP-3.—Docket No. ID-1814, John B. Madigan.
CAP-4.—Project No. 2266-California, Nevada Irrigation District.
CAP-5.—Project No. 1354, Pacific Gas and Electric Co.

MISCELLANEOUS AGENDA.—12TH MEETING, DECEMBER 7, 1977—REGULAR MEETING

CAM-1.—Southern Indiana Gas and Electric Co.

GAS AGENDA—12TH MEETING, DECEMBER 7, 1977—REGULAR MEETING

RP-1.—Docket No. RP-72-134 (DCA78-1), Eastern Shore Natural Gas Co.
RP-2.—Reserved.
RP-3.—Reserved.
RP-4.—Reserved.
RP-5.—Docket No. RP73-8 (PGA78-1a). North Penn Gas Co.
RP-6.—Docket No. RP72-157 (PGA77-10 and 78-2), Consolidated Gas Supply Corp.
CI-1.—Docket No. CP76-490, Transcontinental Gas Pipe Line Corp.; Docket No. CP77-558, United Gas Pipe Line Co.; Docket No. CP77-577, Michigan Wisconsin Pipe Line Co.
CI-2.—Reserved.
CI-3.—Reserved.
CI-4.—Reserved.
CI-5.—Docket No. RI75-66, Production Operators, Inc.
CP-1.—Docket No. CP77-140, Delhi Gas Pipeline Corp.; Docket No. CP77-307, Northern Natural Gas Co.; Docket No. CP77-328, Natural Gas Pipeline Co. of America.
CP-2.—Docket No. CP77-428, United Gas Pipe Line Co.
CP-3.—Docket No. CP77-473, Northern Natural Gas Co.; Docket No. CP77-479, Panhandle Eastern Pipe Line Co., and Trunkline Gas Co.; Docket No. CP77-532, Columbia Gas Transmission Corp.; Docket No. CP77-543, Transcontinental Gas Pipe Line Corp.
CP-4.—Docket No. CP77-421, Transcontinental Gas Pipe Line Corp.; Docket Nos. CP77-324 and CP77-548, Texas Eastern Transmission Corp.; Docket Nos. CP77-592 and CP77-639, Trunkline Gas Co.
CP-5.—Reserved.
CP-6.—Reserved.
CP-7.—Reserved.
CP-8.—Docket No. CP77-486, Columbia Gas Transmission Corp.; Docket No. CP77-498, Panhandle Eastern Pipe Line Co.
CP-9.—Docket No. CP77-487, Columbia Gas Transmission Corp.
CP-10.—Reserved.
CP-11.—Reserved.
CP-12.—Reserved.
CP-13.—Docket Nos. CP77-495, CP77-596, and CP77-598, Transcontinental Gas Pipeline Corp.
CP-14.—Reserved.
CP-15.—Reserved.
CP-16.—Reserved.
CP-17.—Docket No. RP77-89, Transcontinental Gas Pipe Line Corp.
CP-18.—Docket Nos. RP71-119 and RP77———, Panhandle Eastern Pipe Line Co. (Quanex Corp., formerly Michigan Seamless Tube Co.).
CP-19.—Docket No. RP76-52, et al., Northern Natural Gas Co.
CAG-1.—Docket No. CP77-255, El Paso Natural Gas Co.
CAG-2.—Docket No. CP77-453, Transcontinental Gas Pipe Line Corp.

KENNETH F. PLUMB,
Secretary.

[S-1968-77 Filed 11-30-77; 3:54 pm]

[6730-01]

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: December 7, 1977, 10 a.m.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Monthly report of actions taken by the Managing Director pursuant to delegated authority.
2. Agreement No. 5660-23: Modification of the Marseilles North Atlantic U.S.A. Freight Conference to effect revised self policing and voting procedures.
3. Agreement No. 5700-26: Application of the New York Freight Bureau of an indefinite extension of intermodal authority, conditionally disapproved May 18, 1977—Request for hearing.
4. Agreement No. 7680-36: Modification of the American West African Freight Conference to establish intermodal authority.
5. Proposed amendments to Rules of Practice and Procedure; Filing of comments and participation of Hearing Counsel in rulemaking proceedings.
6. Agreement No. 10051-2: Application for extension of Mediterranean Force Majeure Agreement through December 13, 1979.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5727.

[S-1953-77 Filed 11-30-77; 9:08 am]

[6750-01]

7

FEDERAL TRADE COMMISSION.

TIME AND DATE: 9 a.m. and 9:45 a.m., Thursday, December 1, 1977.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed/open.

MATTERS TO BE CONSIDERED:

Closed session—9 a.m.: Monthly Policy Review Session: discussion of current Commission investigations relating to advertising and marketing to children.

Open session—9:45 a.m.: Monthly Policy Review Session—focus on advertising and marketing to children: discussion about current knowledge of the way children receive and process information from television commercials. Dr. Kenneth O'Bryan, a Professor of Applied Psychology, will be present to participate in this discussion.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; recorded message, 202-523-3806.

[S-1952-77 Filed 11-30-77; 9:08 am]

[6750-01]

8

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, December 6, 1977.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

NONADJUDICATIVE MATTERS

(1) Approval of minutes of nonadjudicative matters considered at meeting of November 22, 1977.

(2) Consideration of issuance of a complaint in a nonpublic part II matter.

ADJUDICATIVE MATTERS UNDER PART 3 OF THE RULES OF PRACTICE

(1) Approval of minutes of adjudicative matters considered at meeting of November 22, 1977.

(2) Consideration of final decision in *Porter & Dietsch, Inc., et al.*, Docket No. 9047.

(3) Consideration of status of pending part III decisions.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; recorded message, 202-523-3806.

[S-1969-77 Filed 11-30-77; 3:54 pm]

[6750-01]

9

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, December 7, 1977.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has not yet scheduled any matter for discussion at this meeting. If no item is placed on the agenda by 10 a.m., on Wednesday, December 7, 1977, the meeting will automatically be canceled. Any item that is placed on the agenda before that time will be announced in accordance with the additional information procedures posted with Commission meeting notices outside Room 130 of the Federal Trade Commission Building.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; recorded message, 202-523-3806.

[S-1970-77 Filed 11-30-77; 3:54 pm]

[7550-01]

10

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, December 7, 1977.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of November 1977.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary; telephone 202-523-5920.

Dated: November 28, 1977.

[S-1955-77 Filed 11-30-77; 9:45 am]

[7600-01]

11

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., December 6, 1977.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudication process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Lottie Richardson 202-634-7970.

Dated: November 29, 1977.

[S-1956-77 Filed 11-30-77; 9:45 am]

[7910-01]

12

RENEGOTIATION BOARD.

"FEDERAL REGISTER CITATION" OF PREVIOUS ANNOUNCEMENT: 42 FR 60631, November 28, 1977.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, December 6, 1977; 10 a.m.

CHANGES IN MEETING: Addition of Matters 6 through 9 to the previously announced agenda.

MATTERS TO BE CONSIDERED:

6. Segmentation.

7. Recommended Clearance Without Assignment (List No. 1890).

A. Brush Wellman, Inc., fiscal years ended December 31, 1973, 1974 and 1975.

A-1. The S. K. Wellman Corp., fiscal years ended December 31, 1973, 1974 and 1975.

A-2. Consolidated Ceramics and Metalizing Corp., fiscal years ended April 30, 1974, December 31, 1974 and 1975.

A-3. Bucyrus Blades, Inc., fiscal year ended December 31, 1975.

A-4. Sawyer Research Products, Inc., fiscal year ended December 31, 1975.

B. Continental Air Services, fiscal years ended December 31, 1973 and 1974.

C. American Cyanamid Co., fiscal year ended December 31, 1975.

D. Western Reserve Electronics, fiscal year ended September 30, 1976.

E. Marinette Marine Corp., fiscal years ended December 31, 1974 and 1975.

E-1. Menominee Engineering Corp., fiscal years ended December 31, 1974 and 1975.

F. Itek Corp., fiscal years ended December 31, 1970, 1971 and 1972.

F-1. Univis Inc., fiscal years ended December 31, 1970 and 1971.

8. Withdrawal of Grant of Commercial Exemption Shell Oil Co., fiscal year ended December 31, 1973.

9. Request for Terms, Bromfield Corp., fiscal year ended July 21, 1968.

STATUS: Matters 6 and 7 are open to public observation. Matters 8 and 9 are close to public observation.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 29, 1977.

GOODWIN CHASE,
Chairman.

[S-1958-77 Filed 11-30-77; 10:58 am]

[7910-01]

13

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, December 6, 1977, immediately following 10 a.m. meeting.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Special Board Meeting concerning: Personnel.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 29, 1977.

GOODWIN CHASE,
Chairman.

[S-1957-77 Filed 11-30-77; 10:58 am]

[7590-01]

14

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Wednesday, December 7, and Thursday, December 8, 1977.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

WEDNESDAY

9:30 a.m.—Review of Policy Concerning Use of Cameras During NRC Licensing Hearings (approximately 1 hour) (public meeting).

2 p.m.—1. Decision Meeting on GESMO (approximately 1½ hours) (public meeting).

2. Personnel Matters (approximately 1½ hours) (closed—Exemptions 2 and 6).

THURSDAY

9 a.m.—1. General Briefing on Waste Management (approximately 1½ hours) (public meeting).

2. Discussion of OMB Budget Mark (continued) (tentative) (closed—Exemption 9).

2 p.m.—1. NRC/ACRS Joint Meeting (approximately 1½ hours) (public meeting).

2. Discussion of Export Matters (continued) (tentative) (approximately 1 hour) (public meeting).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

Dated at Washington, D.C., this 29th day of November 1977.

WALTER MAGEE,
Office of the Secretary.

[S-1959-77 Filed 11-30-77; 10:58 am]

[8010-01]

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 Securities and Exchange Commission will hold the following meetings during the week of December 5, 1977, in room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, December 6, 1977, at 9:30 a.m. Open meetings will be held on Thursday, December 8, 1977, at 10 a.m. and at 2:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. 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 meeting may be so considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)A and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams, Commissioners Loomis, Evans, and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 6, 1977, at 9:30 a.m., will be:

Formal orders of investigation.

Referral of investigative files to Federal, State, or self-regulatory authorities.

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings.

Settlement of administrative proceedings.

Regulatory matters arising from or bearing enforcement implications.

Other litigation matters.

The subject matter of the open meeting scheduled for Thursday, December 8, 1977, at 10 a.m., will be:

1. Application filed by Avon Overseas Capitol Corporation for an order exempting the company from certain reporting requirements under the Securities Exchange Act of 1934.

2. Consideration of soliciting public comment on a revised, proposed rule, Rule 17f-4, under the Investment Company Act of 1940, concerning the use of depository systems by registered management companies.

3. Consideration of the adoption of proposed amendments to Form X-17A-5, the FOCUS Reporting System, to update and clarify financial reports presently required to be filed by brokers and dealers.

4. Consideration of proposed rule changes filed respectively by the New York Stock Exchange, Inc., and the American Stock Exchange, Inc., to institute the leasing of Exchange memberships.

5. Proposed amendment filed by the Municipal Securities Rulemaking Board ("MSRB"), to MSRB Rule G-15, which proposes to exclude issuers from the definition of customer in transactions involving the sale by the issuer of a new issue of its securities.

6. Consideration of soliciting public comment on revised proposed requirements for financial statements of bank holding companies and banks.

7. Consideration of soliciting public comment on proposed amendments to Rule 2-01 of Regulation S-X, Qualifications of Accountants, which specify certain litigation situations which would adversely affect the independence of public accountants with respect to their examination of financial statements filed or to be filed by a registrant.

8. Proposed issuance of an Accounting Series Release, which would provide interpretations and guidelines regarding the independence of accountants.

9. Further consideration of proposed amendments to Rule 15c3-1, the uniform net capital rule, which would: (a) eliminate present exemption of certain specialists in listed options and would require them to maintain net capital of at least $25,000 and prescribe early warning and surveillance reports by firms that carry such specialists accounts and (b) propose adjustments in the calculation of net capital with respect to specialists positions in options.

The subject matter of the open meeting scheduled for Thursday, December 8, 1977, at 2:30 p.m., will be:

Meeting with representatives of the Securities Industry Conference on Arbitration to discuss proposals for a nationwide investor dispute resolution procedure for investor claims involving small dollar amounts.

FOR FURTHER INFORMATION CONTACT:

Julian T. Pierce at 202-376-7155 or Frank A. Wilson at 202-755-4868.

NOVEMBER 28, 1977.

[S-1954-77 Filed 11-30-77; 9:08 am]

federal register

FRIDAY, DECEMBER 2, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

EMERGENCY SCHOOL AID

Proposed Rulemaking

[4110-02]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 185]

EMERGENCY SCHOOL AID

AGENCY: Office of Education, HEW.

ACTION: Proposed rule.

SUMMARY: These proposed amendments to regulations under the Emergency School Aid Act ("ESAA") would (1) establish standards to govern awards of assistance for compensatory services to students who received those services under title I of the Elementary and Secondary Education Act of 1965 but who no longer receive them because of attendance area changes under a recent desegregation plan; (2) revise the maintenance of effort requirements for local educational agencies applying for ESAA assistance; and (3) make technical changes to conform the regulations to statutory amendments and improve the administration of the program.

DATES: Comments must be received on or before January 3, 1978.

ADDRESSES: Comments on these regulations should be sent to Dr. Thomas W. Fagan, Room 2017, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C., 20202.

FOR FURTHER INFORMATION CONTACT:

Dr. Thomas W. Fagan, 202-245-2465.

SUPPLEMENTARY INFORMATION: Under the authority of the Emergency School Aid Act (20 U.S.C. 1601 et seq.) and, in particular, the 1976 amendments to that statute contained in sections 321 and 323(a)(5) of Pub. L. 94-482, the Commissioner (to whom the Assistant Secretary has delegated functions under the ESAA) proposes to amend the regulations in 45 CFR Part 185 as set forth below.

Most of the proposed amendments in this document grow out of the 1976 amendments to the ESAA made by Pub. L. 94-482. First, section 321(a) of the 1976 statute authorized the use of a limited amount of funds to continue certain compensatory services to students who would otherwise lose them as a result of a recent desegregation plan. Second, section 323(a)(5) of the 1976 statute amended the maintenance of effort requirements for programs under the ESAA. Third, section 321 of the 1976 statute contained a number of technical amendments which require conforming changes in the program regulations. Other amendments to the ESAA made by the 1976 statute have been implemented in regulations published on July 1, 1977 (42 FR 33874).

A Notice of Intent to Issue Regulations to implement the 1976 amendments to the ESAA was published in the FEDERAL REGISTER on November 22, 1976 (41 FR 51550). One commenter responded with a suggestion concerning the matters treated in this document and the Commissioner has considered that suggestion in developing the regulations below. In addition, the Commissioner has received and considered the advice of the National Advisory Council on Equal Educational Opportunity respecting matters treated in these regulations.

The proposed amendments to the regulations in 45 CFR Part 185 are set out below in the order in which they would appear in that Part. However, for the convenience of the reader, the amendments are discussed in this preamble under three substantive headings.

SPECIAL COMPENSATORY PROJECTS

The Commissioner proposes to amend Subpart J of Part 185 by adding a new division relating to Special Compensatory Projects. (See proposed amendment No. 32.) The purpose of the new division is to govern awards of assistance to continue certain compensatory services to students who would otherwise lose them as a result of a recent desegregation plan.

The eligibility requirements for applicants for Special Compensatory Projects are set out in § 185.95-1 of the regulations. A local educational agency may apply if (1) it is implementing a desegregation plan ordered by a court or State, or approved by the Secretary under title VI of the Civil Rights Act of 1964, after August 21, 1974; (2) there are attendance area changes under the desegregation plan; (3) as a result of those changes, students who received compensatory services funded in whole or part under title I of the Elementary and Secondary Education Act of 1965 no longer receive those services; and (4) the applicant meets the civil rights eligibility requirements that apply to any educational agency seeking ESAA funds. The term "attendance area change" is defined at § 185.95 as a change in the applicant's policy that results in a student's enrolling at a school other than the one at which he or she would normally have been enrolled in the absence of the policy change. This definition incorporates both voluntary and mandatory changes in enrollment, so long as those changes are under a qualifying desegregation plan.

Under § 185.95-2 and the definition of "compensatory services" at § 185.95, funds under Special Compensatory Projects may be used for any educational services authorized under title I so long as those services are for the benefit of eligible students. The regulations set out, at § 185.95-2 (b) and (c), two alternative tests for eligible students. Under either test a student must, as the statute requires, have received compensatory services under title I at some time prior to the implementation of the desegregation plan. Under the first test such a student is eligible if, in addition, he or she (1) is receiving no title I services in the ESAA project period; (2) is educationally deprived, for title I purposes, at the beginning of that period; and (3) would, in the absence of the desegregation plan, be enrolled at a school where title I services were provided (just before the plan was implemented) at his or her present grade level. Under this test, an applicant may identify eligible students without constructing a hypothetical title I project showing which students would have received which services in the absence of attendance area changes under the desegregation plan. Under the second test, a student who received title I services in the past is eligible if his or her loss of compensatory services is shown to be caused solely by attendance area changes under the desegregation plan.

Section 185.95-3 sets out the funding procedures for Special Compensatory Projects. Unlike other assistance under the ESAA, grants for these projects are not awarded competitively. Rather, the Commissioner announces by a notice in the FEDERAL REGISTER the amount of funds available for these grants, the project period, and the deadline for submission of applications. After applications are reviewed, the Commissioner fixes the amount of each grant at a level sufficient to meet the additional cost of providing, in the most economical way, the level of compensatory services that students would otherwise lose as a result of the desegregation plan. If the amount of funds needed for all approvable services exceeds the amount set in the FEDERAL REGISTER notice, each grant is reduced by an equal proportion.

Section 185.95-4 sets out the information and assurances required to be included in an application for a Special Compensatory Project. In addition to information relating to the requested assistance in particular, an applicant must include the information and assurances required of local educational agencies under other ESAA programs.

Section 185.95-5 contains requirements for public and advisory committee participation in the development and implementation of a Special Compensatory Project. These requirements differ substantially from those under other ESAA programs. While the applicant must hold a public hearing on its proposed project and consult with an advisory committee in developing and implementing the project, the requirements relating to this process have been greatly simplified.

Finally, § 185.95-6 provides for the participation of students enrolled in nonpublic schools. Under this section the regulations relating to nonpublic school participation in other ESAA programs apply to Special Compensatory Projects to the extent that they are consistent with the purpose of this new program.

MAINTENANCE OF EFFORT

The Commissioner proposes to amend 45 CFR 185.13(i) to implement the 1976 statutory amendment to the maintenance of effort requirements applicable to any local educational agency seeking ESAA assistance. (See proposed amendment No. 13.) Consistent with the Congressional purpose in enacting the 1976 statute, the regulations require that the applicant meet at least one of two tests. Either its "fiscal effort per student" or its

"aggregate expenditure" for the fiscal year for which it seeks ESAA assistance must be no less than that for the second preceding fiscal year.

In order to provide an objective, easily verifiable measurement of an applicant's effort and one that is consistent with the legislative history of the 1976 statute, the regulations define both "fiscal effort per student" and "aggregate expenditure" in terms of expenditure for free public education. Thus, "fiscal effort per student" is computed by adding expenditures in specified categories for the computation year and dividing the sum of these expenditures by the number of students in average daily attendance at the applicant's schools in that year. The categories of expenditures to be used in this computation are the expenditures for free public education contained in section 1619(2) of the ESAA, with which past applicants are familiar. "Aggregate expenditure" is simply the sum of the expenditures used to compute "fiscal effort per student."

TECHNICAL CHANGES

The Commissioner proposes to amend 45 CFR Part 185 to make numerous technical changes. Many are for the purpose of conforming the regulations to the 1976 statutory amendments. Included in this category are numerous amendments to citations of authority to reflect the redesignations of statutory provisions made by the 1976 statute. Also included in this category are proposed amendments relating to the authorized activities under various ESAA programs. The 1976 statute added three activities (relating to magnet schools, university/business cooperation, and neutral site planning) to section 1606(a) of the ESAA and provided for a separate authorization of appropriations to carry them out. On July 1, 1977 the Commissioner published regulations providing for the award of assistance for these activities as a separate program (42 FR 33874). Therefore, the regulations in Subpart B—Basic Grants and Subpart F—Bilingual Projects provide for funding the new activities under those programs only if no such activities are funded under the program described in the July 1, 1977 regulations. (See proposed amendments No. 11, No. 12, and No. 22.) The regulations in Subpart C—Pilot Projects limit the authorized activities under that program to those authorized before the 1976 statute. (See proposed amendment No. 15.) This limitation is contained in section 1606(b) of the ESAA.

The second category of proposed amendments is for the purpose of improving the administration of the various ESAA programs by repealing unnecessary restrictions on the allotment of funds among and within them. These amendments include (1) the repeal of § 185.91(b), limiting the amount of funds available for Special Arts Projects; (2) the repeal of § 185.93(b), limiting the amount of funds available for Special Student Concerns Projects; (3) the repeal of § 185.94(a)(2), limiting the amount of funds available for Other Special Projects in jurisdictions other than States; and (4) the repeal of Subpart K, providing for the reservation of funds for the various ESAA programs. An amendment to § 185.21(a) reserves 15 percent of appropriations under section 1603(a) of the ESAA for Subpart C—Pilot Projects; unlike reservations for other ESAA programs, the reservation for Pilot Projects is required to be made by regulation. (See proposed amendments No. 33, No. 28, No. 30, No. 31, and No. 14.) Numerous technical changes are made to reflect the amendments described above.

The Commissioner emphasizes that the repeal of the regulatory provisions described above would not permit unlimited use of ESAA appropriations. Sections 1603, 1604, and 1612 of the statute contain constraints on the use of those appropriations under the various ESAA programs. Additional constraints are frequently contained in appropriations statutes. Both the authorizing and appropriations statutes govern the use of ESAA funds whether or not they are implemented in regulations. However, the Commissioner believes that the regulatory amendments described above would afford him a measure of flexibility in the use of ESAA funds and thereby improve his ability to use those funds to achieve the purposes of the statute.

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

Accordingly, 45 CFR Part 185 is proposed to be amended as set forth below.

Dated: September 14, 1977.

ERNEST L. BOYER,
Commissioner of Education.

Approved: September 28, 1977.

MARY F. BERRY,
Assistant Secretary for Education.

Approved: November 21, 1977.

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

(Catalog of Federal Domestic Assistance Numbers 13.525, Basic Grants; 13.526, Pilot Programs; 13.527, Metropolitan Area Projects; 13.528, Bilingual Projects; 13.529, Special Programs and Projects; 13.530, Educational Television; 13.531, Evaluation; 13.532, Special Programs; 13.589, Magnet Schools, University/Business Cooperation; and 13.590, Neutral Site Planning.)

1. The Table of Contents is amended to read as follows:

PART 185—EMERGENCY SCHOOL AID

* * * * *

Subpart J—Special Projects

* * * * *

SPECIAL COMPENSATORY PROJECTS

Sec.
185.95 Definitions.
185.95-1 Eligibility.
185.95-2 Authorized activities.
185.95-3 Funding procedures.
185.95-4 Applications.
185.95-5 Public and advisory committee participation.
185.95-6 Participation of students enrolled in nonpublic schools.
185.96-185.100 [Reserved]

Subpart K—Magnet Schools, University/Business Cooperation, and Neutral Site Planning

185.101 Definitions.

* * * * *

185.110 Nonpublic school participation.

AUTHORITY: Except as specifically noted below, the provisions of this Part 185 are issued under Title VII of Pub. L. 92-318, 88 Stat. 354-371, as amended by sections 222, 641-646, and 845 of Pub. L. 93-380, 88 Stat. 484-613; section 3 of Pub. L. 94-43, 89 Stat. 233-234; and sections 321 and 323 of Pub. L. 94-482, 90 Stat. 2081-2241 (20 U.S.C. 1601-1619).

§ 185.02 [Amended]

2. The citation of authority after § 185.02(f)(2) is changed to:

(20 U.S.C. 1619(10).)

3. The citation of authority after § 185.02(g) is changed to:

(20 U.S.C. 1619(11).)

4. The citation of authority after § 185.02(i) is changed to—

(20 U.S.C. 1619(16).)

5. The citation of authority after § 185.02(j) is changed to—

(20 U.S.C. 1619(17).)

6. The citation of authority after § 185.02(k) is changed to—

(20 U.S.C. 1605(a), 1619(10).)

7. Section 185.02 is amended by adding and reserving, after § 185.02(k), paragraphs (l) and (m) and revising (n) to read as follows:

§ 185.02 Definitions.

* * * * *

(l) [Reserved]

(m) [Reserved]

(n) "The Act" means the Emergency School Aid Act (Title VII of Pub. L. 92-318, as amended).

(Pub. L. 92-318, section 701.)

§ 185.11 [Amended]

8. The citation of authority after § 185.11(b)(6) is changed to—

(20 U.S.C. 1601(a)(2), 1605(a)(1) (B), (C), and (D), 1619(11).)

9. The citation of authority after § 185.11(c)(3) is changed to—

(20 U.S.C. 1605(a), 1606.)

10. Section 185.12 is amended by changing the period after the text of § 185.12(a)(12) to a semicolon and by adding (a)(13), (14) and (15) and adding a new (e) as follows:

§ 185.12 Authorized activities.

(a) * * *

(13) Planning and design of, and conduct of programs in, magnet schools;

(14) The pairing of schools and programs with specific colleges and universities and with leading businesses; and

(15) The development of plans for neutral site schools.

(20 U.S.C. 1601(b), 1606(a).)

(e) The activities described in § 185.12 (a) (13) through (15) may be funded under this subpart for a particular fiscal year only if no such activities are funded under subpart K for that fiscal year.

(20 U.S.C. 1603(d), 1606(a) (13)–(15).)

11. Section 185.13(i) is revised to read as follows:

§ 185.13 Applications.

* * * * *

(i) *Maintenance of effort.* Evidence that the applicant meets at least one of the following requirements:

(1) The applicant's fiscal effort per student for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year; or

(2) The applicant's aggregate expenditure for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year. For the purpose of this paragraph, "fiscal effort per student" means the expenditure for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities (but not including expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance) divided by the number of students in average daily attendance at the applicant's schools during the fiscal year for which the computation is made. "Aggregate expenditure" means the total expenditures used to compute "fiscal effort per student," as described in the preceding sentence.

(20 U.S.C. 1609(a)(13); H.R. Rep. No. 94-1701, 94th Cong., 2d Sess., 232 (1976); 122 CONG. REC. H4209 (daily ed. May 11, 1976).)

12. Section 185.21(a) is revised to read as follows:

§ 185.21 Eligibility for assistance.

(a) A local educational agency which is eligible for assistance under § 185.11 may apply for assistance by grant or contract for unusually promising and innovative pilot programs or projects specially designed to overcome the adverse effects of minority group isolation by improving the academic achievement of children in one or more minority group isolated schools, if the number of minority group children enrolled in the schools of such agency for the fiscal year preceding the fiscal year for which assistance is to be provided (1) is at least 15,000, or (2) constitutes more than 50 percent of the total number of children enrolled in such schools. The Assistant Secretary shall reserve an amount equal to 15 percent of the sums appropriated under section 704(a) of the Act for any fiscal year for the assistance described in this paragraph.

(Pub. L. 92-318, sections 705(a)(2), 706(b); Pub. L. 93-380, section 643 (a) and (b).)

* * * * *

13. Section 185.22(a) is revised to read as follows:

§ 185.22 Authorized activities.

(a) Assistance under this subpart shall be made available to carry out the authorized activities described in § 185.12 (a) (1) through (12) with respect to the children or schools to be served by the proposed program, project or activity.

(Pub. L. 92-318, sections 706(b), 707(b).)

* * * * *

§ 185.23 [Amended]

14. The citation of authority after § 185.23 is changed to—

(20 U.S.C. 1609(a).)

15. Section 185.31 (a) and (b) are revised to read as follows:

§ 185.31 Eligibility for assistance.

(a) *Interdistrict transfers.* (1) A local educational agency (i) which is located within a Standard Metropolitan Statistical Area, or which serves a school district adjacent to a school district which is located wholly within such an area, and (ii) whose total student enrollment includes a percentage of minority group members which is smaller than the percentage of minority group members enrolled as students in all schools of the local educational agencies within such an area, may apply for assistance, by grant or contract for the purpose of a joint arrangement with a cooperating local educational agency located within the same Standard Metropolitan Statistical Area (whose student enrollment includes a percentage of minority group members which is greater than the percentage of minority group members enrolled as students in all schools of the local educational agencies within such area) for the establishment or maintenance of one or more integrated schools.

(b) *Area-wide plans.* (1) Two or more local educational agencies located within a Standard Metropolitan Statistical Area may apply for a grant for the joint development of a plan to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools in such area. Such a plan shall, at a minimum, provide that by a certain date (no later than July 1, 1983), the percentage of minority group children enrolled in each public elementary and secondary school in such area shall be at least 50 percent of the percentage of such children enrolled in all such schools in such area, and shall specify in detail the means by which such objective is to be achieved.

* * * * *

16. Section 185.33 is revised to read as follows:

§ 185.33 Applications.

An applicant desiring to receive assistance under this subpart for any fiscal year shall submit to the Assistant Secretary an application therefor for that fiscal year, which application shall set forth a program, project, or activity which, and such policies and procedures as will assure that, the applicant will use the funds received under this subpart only for the activities set forth in § 185.32. Such application, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and the Assistant Secretary. Such application shall comply with the requirements of § 185.13 (a) through (n), except that applications for assistance under § 185.31(b) need not comply with § 185.13(h) (with respect to the statement of procedures described therein).

(20 U.S.C. 1608(a)(2); 1609(a); Pub. L. 93-380, section 222.)

17. Section 185.51(a) is revised to read as follows and the citation of authority after (c) is changed to read as follows:

§ 185.51 Eligibility for assistance.

(a) Any local educational agency which is implementing a plan or project described in § 185.11 or § 185.31(a) may apply for assistance, by grant or contract (1) to develop educational programs designed (i) to meet the educational needs of minority group children who are from environments in which a dominant language is other than English for the development of reading, writing, and speaking skills in the English language and their primary language, and (ii) to meet the educational need of such children and their classmates to understand the history and cultural background of the minority groups of which such children are members; or (2) carry out activities authorized by § 185.12 to implement the educational programs described in this paragraph (whether or not developed with assistance made available under this subpart).

(20 U.S.C. 1603(b)(A), 1607(c)(1) (B) and (C).

* * * * *

(c) * * *

(20 U.S.C. 1619(10)(A).)

18. Section 185.52(f) is revised to read as follows:

§ 185.52 Authorized activities.

* * * * *

(f) The limitations on authorized activities set forth in § 185.12(b), (c), (d), and (e) apply to assistance under this subpart.

(20 U.S.C. 1601(b), 1603(d), 1606(a), 1607(c)(1).)

19. Section 185.61(a) is amended to read as follows and the citation of authority after (b)(5) is changed to read as follows:

§ 185.61 Eligibility for assistance.

(a) *Eligible applicants.* (1) Any public agency, institution, or organization (other than a local educational agency) and any nonprofit private agency, institution, or organization may apply for assistance, by grant or contract to carry out programs, projects, or activities designed to support the development or implementation of a plan or project described in § 185.11 or § 185.31(a).

(2) Any such agency, institution, or organization (other than a local educational agency or a nonpublic elementary or secondary school) may apply for such assistance to carry out such programs, projects, or activities.

(Pub. L. 92-318, sections 705(a)(3) and 708(b); Pub. L. 93-380, section 645.)

* * * * *

(b) * * *

(5) * * *

(20 U.S.C. 1607(b), 1619(13).)

* * * * *

20. Section 185.71(a) is revised to read as follows:

§ 185.71 Eligibility for funds.

(a) Any public or private nonprofit agency, institution, or organization with the capability of providing expertise in the development of television programming and with access to facilities necessary for such development may apply for a contract to pay the cost of development and production of integrated children's television programs of cognitive and affective educational value. For purposes of this subpart, "programs of cognitive and affective educational value" are those which teach concrete academic skills and encourage interracial and interethnic understanding.

(20 U.S.C. 1603(b)(B), 1610(a), (b)(1); Senate Rept. No. 92-61, p. 24.)

* * * * *

21. Section 185.81 is revised to read as follows:

§ 185.81 Eligibility for awards.

Any State educational agency, institution of higher education, or private agency, organization, or institution (including an advisory committee established by a local educational agency pursuant to § 185.37, § 185.41, § 185.55(a), § 185.75(b), or § 185.94) may submit a proposal for a contract for the purpose of evaluating specific programs or projects assisted under this part.

(20 U.S.C. 1603(b), 1612.)

22. Section 185.84(b) is revised to read as follows:

§ 185.84 Criteria for awards.

* * * * *

(b) *Funding criteria.* In awarding contracts under this subpart the Assistant Secretary shall apply the provisions of the Federal Procurement Regulations (41 CFR Ch. 1 and 3), except that the Assistant Secretary shall not be required to approve any proposal which does not meet the requirements of the Act or this subpart, or which sets forth a proposed evaluation of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. For any fiscal year, the Assistant Secretary may award one or more contracts under this subpart.

(20 U.S.C. 1612.)

23. Section 185.91 is revised to read as follows:

§ 185.91 Eligibility for assistance.

Any public agency or organization responsible for the administration of statewide public arts programs, such as a State Arts Council or State Arts and Humanities Commission, may apply for assistance by grant for special projects that would through the arts provide opportunities for interracial and intercultural communication and understanding to help meet the special needs incident to the implementation of a plan or project described in § 185.11 or § 185.31(a). Activities assisted under this section must be conducted primarily with students who attend schools affected by such plan or project, in which the proportion of minority group children enrolled is no less than 20 percent. Such schools must be located in local educational agencies which are in compliance with the requirements described in § 185.43 or § 185.44.

(20 U.S.C. 1603 (b) and (c), 1605(d) and 1607(a).)

24. Section 185.92 is revised to read as follows:

§ 185.92 Eligibility for assistance.

Any private, nonprofit agency, institution, or organization, or a combination of such agencies, institutions, or organizations, may submit an application for a grant for the conduct, in cooperation with one or more local educational agencies implementing a plan or project described in § 185.11 or § 185.31(a), of special programs for the teaching of standard mathematics to both minority and nonminority group children attending schools affected by such a plan or project in which the proportion of minority group children enrolled is no less than 20 percent. Such special programs shall consist of instruction in advanced mathematics by qualified instructors with bachelor degrees in mathematics or the mathematical sciences from colleges or other institutions of higher education, or with equivalent experience. A cooperating local educational agency must be in compliance with the requirements described in § 185.43 or § 185.44.

(20 U.S.C. 1603 (b) and (c), 1605(d) and 1607(a)(3).)

25. Section 185.93 is revised to read as follows:

§ 185.93 Eligibility for assistance.

Any public agency or organization (or a combination of such agencies or organizations) other than a local educational agency may apply for assistance by grant for the conduct of special student concerns projects designed to eliminate the disproportionately high incidence of suspension, expulsion, and other disciplinary action involving minority group students in the schools of cooperating local educational agencies. Projects must be conducted in cooperation with one or more local educational agencies implementing a plan or project described in § 185.11 or § 185.31(a). Cooperating local educational agencies must be in compliance with the requirements described in § 185.43 or § 185.44.

(20 U.S.C. 1603 (b) and (c), 1605(d), 1607(a).)

26. Section 185.94(a) is revised to read as follows:

§ 185.94 Eligibility for assistance.

(a) The Assistant Secretary may assist, by grant or contract, any State or local educational agency or other public agency or organization (or a combination of such agencies and organizations), for the purpose of conducting special programs or projects which the Assistant Secretary determines will make substantial progress toward achieving the purposes of the Act.

(20 U.S.C. 1603 (b) and (c), 1607(a).)

* * * * *

27. Subpart J is amended by adding at the end thereof the following new division:

SPECIAL COMPENSATORY PROJECTS

§ 185.95 Definitions.

The following definitions apply to terms used in § 185.95 through § 185.95-6:

"Attendance area change" means any change in the policy of a local educational agency that results in a student's voluntary or mandatory enrollment at a school other than the school at which the student would normally have been enrolled in the absence of the change in policy.

"Compensatory services" means any educational services authorized under title I to meet the special educational needs of educationally deprived children.

"This division" means §§ 185.95 through 185.95-6, relating to Special Compensatory Projects.

"Title I" means title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1603(a), 20 U.S.C. 241(a).)

§ 185.95-1 Eligibility.

(a) Any local educational agency may apply for a grant under this division if—

(1) It is implementing a desegregation plan that was ordered under § 185.11(a)(1) or approved under § 185.11(a)(2) after August 21, 1974; and

(2) Under the desegregation plan, there are attendance area changes; and

(3) As a result of the attendance area changes, students who received compensatory services funded in whole or in part under title I are no longer receiving those services.

(b) The provisions of § 185.43 (limitations on eligibility), § 185.44 (waiver of ineligibility), and § 185.46 (determina-

tions of ineligibility prior to award of assistance) apply to any local educational agency seeking a grant under this division.

(20 U.S.C. 1603(a), 1605(d), H.R. Rep. No. 94-1701, 94th Cong., 2d Sess. 231 (1976).)

§ 185.95–2 Authorized activities.

(a) Funds awarded under this division may be used solely to provide compensatory services to students who received compensatory services funded in whole or in part under title I and who, in the project period, are no longer receiving compensatory services as a result of attendance area changes under a desegregation plan described in § 185.95–1.

(b) The Assistant Secretary will consider a student eligible to receive compensatory services under this division if—

(1) The student actually received compensatory services funded under title I at any time prior to the implementation of a desegregation plan described in § 185.95–1; and

(2) The student is not receiving any compensatory services funded under title I in the project period; and

(3) The student is an educationally deprived child, for title I purposes, at the beginning of the project period; and

(4) In the absence of a desegregation plan described in § 185.95–1, the student would be enrolled at a school in which compensatory services funded under title I were provided, during the last regular school term prior to the implementation of the plan, for the grade in which the student is enrolled in the project period.

(c) In addition, a student is eligible to receive compensatory services under this division if—

(1) The student meets the requirement in § 185.95–2(b)(1); and

(2) The applicant shows by credible evidence that attendance area changes under a desegregation plan described in § 185.95–1 alone caused the student to receive, in the project period, fewer (or no) compensatory services funded in whole or in part under title I.

(d) A receipient of a grant under this division shall use the grant funds to provide to each eligible student the level of compensatory services he or she failed to receive in the project period because of attendance area changes under a desegregation plan described in § 185.95–1. However, if the Assistant Secretary has reduced the grant amount under § 185.95–3(c) the recipient may use the grant funds to provide services to only some eligible students, or to provide fewer services to eligible students, or both.

(20 U.S.C. 1603(a).)

§ 185.95–3 Funding procedures.

(a) The Assistant Secretary shall make any grant under this division from funds appropriated under section 704(a) or section 704(c) of the Act for the purpose of section 708(a) of the Act. The Assistant Secretary will announce, by publication of a notice in the FEDERAL REGISTER (1) the amount of funds, if any, available for grants under this division in any fiscal year, (2) the project period for these grants, and (3) the deadline for receipt of applications for these grants.

(b) To the extent funds permit, the Assistant Secretary shall fix the amount of each grant at a level sufficient to provide to each eligible student the level of compensatory services he or she will not receive in the project period because of attendance area changes under a desegregation plan described in § 185.95–1. In fixing the amount of a grant the Assistant Secretary shall consider only the additional cost (as defined in § 185.13(a)(1)) of providing the compensatory services in the most economical way.

(c) If the amount needed to fund all approvable services exceeds the amount of funds available, the Assistant Secretary shall reduce the amount for each grant by an equal proportion.

(20 U.S.C. 1603(a), 1603(c), 1607(a), 1609(a)(4), 1609(e).)

§ 185.95–4 Applications.

(a) An applicant for a grant under this division shall include in its application the following information:

(1) A copy of the desegregation plan upon which the applicant bases its eligibility for assistance;

(2) A precise description of attendance area changes under the desegregation plan;

(3) The number of students eligible to receive compensatory services under this division, and a description of how the applicant determined their eligibility;

(4) A description of the compensatory services for which the applicant seeks assistance; and

(5) A detailed budget which shows the additional cost of providing the compensatory services in the most economical way.

(b) The provisions of § 185.13(a) through (n) apply to any applicant for a grant under this division. An applicant shall include in its application the information and assurances required by those provisions.

(c) Both an applicant for a grant under this division and the Assistant Secretary shall make the application and all correspondence and other written materials relating to it readily available to the public.

(20 U.S.C. 1609(a), 1612, 1232c, 1605(d), 1228.)

§ 185.95–5 Public and advisory committee participation.

(a) The provisions of § 185.41 do not apply to an applicant for a grant under this division.

(b) An applicant shall develop its application in open consultation with parents, teachers, and secondary school students. At minimum, the applicant shall—

(1) Hold a public hearing at which a representative of the applicant fully explains the purpose of the application and the choices available to the applicant in preparing its application, and solicits recommendations on the application; and

(2) Consult with an advisory committee composed of parents of students who have received services funded in whole or in part under title I, teachers, and secondary school students. At least half the members of the advisory committee must be parents of students who have received services funded in whole or in part under title I. Also, at least half the members of the committee must be members of minority groups (as defined in § 185.02(f)).

(c) The Assistant Secretary shall not approve an application without having received the written comments of a committee formed in accordance with § 185.95–5(b)(2) concerning the application. If a majority of the members of the committee requests an informal hearing concerning the application, the Assistant Secretary shall not approve the application without first affording the committee an opportunity for such a hearing.

(d) If an applicant receives a grant under this division, it shall—

(1) Promptly after receiving the grant, review the composition of the advisory committee and, if necessary, modify the membership of the committee so that (i) at least half the members are parents of students actually receiving services under the grant, and (ii) consistent with the requirement that at least half the members be members of minority groups, the committee membership generally reflects the proportion of nonminority group members and members of each minority group actually receiving services under the grant.

(2) Periodically consult with the advisory committee, parents of students receiving services under the grant, and representatives of the area served regarding the services under the grant.

(20 U.S.C. 1609(a)(2), 1609(a)(3), 1609(b).)

§ 185.95–6 Participation of students enrolled in nonpublic schools.

The provisions of § 185.42 apply to any applicant for a grant under this division to the extent that those provisions are consistent with the applicant's serving students enrolled in nonpublic schools who meet the requirements of § 185.95–2(c).

(20 U.S.C. 1603(a), 1605(d), 1609(a)(12), 1611(c).)

§§ 185.96–185.100 [Reserved]

28. Subpart K (§ 185.95) is repealed.

29. Subpart L (§ 185.101–185.110) is redesignated as follows:

Subpart K—Magnet Schools, University/Business Cooperation and Neutral Site Planning

[FR Doc.77-34124 Filed 12-1-77;8:45 am]

federal register

FRIDAY, DECEMBER 2, 1977
PART III

CIVIL AERONAUTICS BOARD

■

PROTECTION OF CHARTER PARTICIPANTS' FUNDS

Notice of Proposed Rulemaking

[6320-01]

CIVIL AERONAUTICS BOARD

[14 CFR Part 369]

[SPDR-63; Docket 31735; Dated: November 22, 1977]

PROTECTION OF CHARTER PARTICIPANTS' FUNDS

Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new part that would establish uniform procedures for the protection of charter participants' funds. It would require a depository escrow account, and one of three forms of additional security agreement. The proposal is made on the Board's initiative as a result of experience with some charter enforcement cases in which questions have arisen as to the validity and effectiveness of existing protective measures.

DATES: Comments by: January 31, 1978. Reply comments by: February 21, 1978. Requests to be placed on the Service List by: December 12, 1977.

ADDRESSES: Comments should be sent to Docket 31735, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Office of General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

SUPPLEMENTARY INFORMATION: In July 1976 the Board appointed a staff committee to review the financial security provisions of the charter regulations. This notice is based on the findings and recommendations of that committee.

In a recent enforcement proceeding (*U.S. v. Leisure Int'l. Vacations Corp.*, Civil Action No. 75-1434, W.D. Pa.), both a tour operator and its surety bonding company, defendants in the case, had seriously questioned the validity of the bond required by the Board's charter regulations, in a way that led the Bureau of Enforcement to believe that the bond may not furnish adequate security to charter participants' funds. In other enforcement investigations, the Bureau of Enforcement had found that the depository arrangements used with the bond by most charterers under the Board regulations do not sufficiently ensure that funds will not be misused, as they apparently were, for example, in the Tour Travel Enterprises case (*CAB v. Tour Travel Enterprises*, Civil Action No. 76-4693, N.D. Ill.).

There are several specific weaknesses in the depository scheme as it now exists:

(1) The provisions intended to ensure that participants funds are put directly into the depository account are weak. Contracts between charterers and participants, and between charterers and the depository bank, are required to contain a provision stating that checks and money orders must be made payable either to the depository account or to a travel agent who in turn must make his check payable to the account (presumably after deducting a commission). In practice it has been found that travel agents sometimes make their checks payable to the charterer or to a charter wholesaler. This opens the door to various abuses by charterers, such as using participants' funds for operating expenses, or to pay for flights departing at earlier dates than the ones for which the payments were made. The regulations also implicitly allow payment by cash or cash equivalents, for which no protective channeling is provided. The problem of proper channeling of participants' funds is heightened by the fact that there is no prohibition of charterers paying unidentified money directly into the escrow accounts. This makes it easy for charterers to collect money in an improper form, and to divert participants' payments at will.

(2) Another weakness that tends to make it easy to divert money from its proper destination is the lack of any explicit requirement for charterers to give the depository bank information identifying payments with the name, address, and flight of the participant.

(3) The rules do not prohibit the charterer from obtaining money from the depository account, or using it to discharge obligations or make advance payments, before the charter is completed. For example, a charterer may obtain money for the stated purpose of reimbursing itself for a refund to a canceling participant, without presenting any verification to the bank that it did in fact make the refund. Or, it may make advance payments to a hotel under conditions where it would not get the money back if the tour in question is canceled. This can cause losses to charter participants in situations where the charterer is unscrupulous or financially pressed.

(4) The charterer is permitted to substitute securities for cash held in the escrow account. This can reduce the liquidity of the account, thus slowing down the refund process, and can potentially reduce the amount in the account because of fluctuations in the value of the securities.

(5) Ther are no time periods specified for key steps in the depository scheme, such as forwarding participants' money to the bank, notifying the bank of the cancellation of the flight, or mailing refunds to participants.

Problems have also been found to exist with the present surety bond requirements. The bond-only option may, with no depository, provide less than full coverage of participants' funds. Also, the bond, with the collateral demanded, is perceived as too expensive by many charterers, who frequently apply for waivers to use less expensive equivalents. Finally, the provisions of the bond are in some respects unclear or unfavorable to participants. For example, the bond does not on its face provide a direct right of action against the surety; and the party to whom notice of a claim should be given depends on whether the charterer is "available."

To remedy these problems, the Board hereby proposes a revised set of requirements designed to provide protection for charter participants' funds. The main features of the proposed scheme are as follows:

All charter flights for which financial protection is required would be covered by a depository escrow agreement between the charterer, and escrow bank, and the direct air carrier. Thus the bond-only option would be discontinued.

All payments would have to be made to the escrow bank by check, money order, or credit card in the name of the participant or a person acting on his or her behalf. Such person may not be a travel agent or a charterer.

The amount of the payments would have to be according to a schedule (including any options offered) specified in the depository contract. Advance deduction of commissions would be prohibited.

Payments in any other amount, or to the knowledge of the bank by any unauthorized person, could not be accepted and would have to be returned by the bank.

The bank would receive detailed information from the charterer concerning the charter trip before receiving any money from participants to enable the bank to return any deviating payments and discharge its other administrative responsibilities.

Funds from participants forwarded to the escrow account by the charterer would have to be accompanied by the names, addresses, and charter trips of the participants.

Although one agreement could cover many charter trips, each trip must have a separate account with the escrow bank, and funds could not be transferred from one account to another without the written authorization of the concerned participants.

In cases where there was "intermingling" between charter units (participants departing with one unit and returning with another), each charter unit would nevertheless be identified with a single departure and single return flight, and the bank would divide a participant's payment at the time of deposit between the escrow accounts for the units with which the participant elected to travel.[1]

[1] Although the Board is of the tentative opinion that this system, set out in § 369.5a of the proposed rule, would best handle the situations where there is intermingling, comments are invited on other possible systems that would accomplish the goals of this rulemaking.

The direct air carrier could receive advance payments for flights as at present, which would continue to be placed in escrow under existing regulations. In the event of a canceled flight, the direct air carrier would have to make refunds in the total amount of the participants' payments, however, with any cancellation fees obtained from the charterer and not withheld from the amounts already paid.

In addition to the depository escrow agreement required for each charter flight, third-party security would be required in the amount of 5 percent of the total charter price to participants ($2,000 minimum).

The third-party security could take one of three forms, each of which is specified in the proposed rule: a surety bond, a third-party guarantee, or an escrow agreement (not to be confused with the separate depository escrow). Each of these would have the function, like the present surety bond, of providing an independent source of recovery for participants' funds, especially those that did not reach the depository escrow, in the event the charterer is financially distressed or otherwise unavailable.

Each of the security agreements would provide a direct right of action against the securer (surety, guarantor, or escrow holder), with a requirement of notice sent to the securer within 90 days, and a time limit of 15 months for the bringing of suit against the securer.

The securing third party in any of the three types may be a surety bonding or insurance company as in the present regulations, or a national bank whose deposits are covered by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

It is the intent of the Board that in providing the flexibility of the three alternative forms of third-party security, it will eliminate the need for charterers to seek waivers in order to supply a different form of security, as they often do now. These waivers present serious problems of fairness and difficulties of administration, in that they tend to provide an advantage to one party that is not provided to all, they often must be handled on a last-minute basis, and they involve complex legal instruments whose flaws may not be obvious to a nonexpert. These alternatives should lower the costs of security to charterers by allowing them to "shop" for the type of instrument and the type of third-party securer that best suits their needs.

The Board has tentatively decided that the current practice of travel agents deducting their commissions immediately from charter participants' payments should be discontinued. The portion of the participants' funds that goes to pay the commission needs the protection of the escrow account just as do the rest; an agent is not entitled to keep the commission until the charter flight takes place. Furthermore, making the charter payment in a form convertible by the agent (such as cash or a check payable to the agent) defeats the most important feature of the proposed protective system: that the participant makes his payment (as prominently specified in solicitation and contract materials) directly to the escrow bank. Finally, fragmentation of the participants' charter payments increases the difficulty and expense of recovering them in the event of cancellation, and is a discouraging factor where relatively small amounts of money are involved.

Travel agents may, of course, make whatever arrangement they wish for payment of commissions, as long as it does not involve participants' funds before the charter is completed. In this as in other aspects of advance payments to suppliers of charter services, the Board's tentative judgment is that while commercial realities may make them necessary and even desirable in some cases, they should not be made with participants' funds. Members of the public who sign up and pay for charters do not typically view them as risk-taking ventures; they have a right to assume that their money will be held safely "in trust," and the aim of these proposed protective measures is to make that assumption a reality.

The proposed rule is set forth in annotated form, with footnotes explaining many of the key provisions.

Proposed Rule

In light of the foregoing, it is proposed that a new Part 369 be added to Title 14, Code of Federal Regulations, to read as set forth below.

Sec.

§ 369.1 Scope.

This part sets forth requirements for the handling of participants' funds by charterers, travel agents, banks, and suppliers of transportation and other charter services,[1] and other matters related to th protection of participants' funds against loss.[2]

§ 369.2 Application.

This part applies to all charter trips for which the Board requires the charterer, by rule or otherwise, to provide financial security arrangements for participants' funds.

§ 369.3 Definitions.

"Bank" means a financial institution that undertakes to act as an escrow holder for participants' funds in accordance with this part.[3]

"Charter unit" means a group of persons who—

(a) Are assembled by a charterer to travel in air transportation;

(b) Have identical rights, obligations, and itinerary with respect to the air transportation;[4] and

(c) Are subject to identical provisions of the Board's regulations.[5]

"Charter trip" means the air transportation and any other services that are provided to a charter unit according to the terms of the contract between the charterer and the participants in a charter unit.

"Charterer-bank contract" means the contract entered into between a bank eligible to act as escrow holder under § 369.5(a) and a charterer in accordance with the requirement of § 369.4(a)(2) and § 369.5(c).

"Charterer-direct air carrier contract" means the contract entered into between a charterer and a direct air carrier or a direct foreign air carrier for the performance of the charter air transportation portion of a charter trip.

"Charterer - participant contract" means the contract entered into between a charterer and a participant pursuant to the requirements of the Board's regulations or orders governing specific charter types.

"Charterer" means a person or organization that contracts as a principal

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[1] Portions of the proposed regulation are addressed to direct air carriers, charterers (indirect air carriers), travel agents, banks, and surety companies. In light of the growing charter air transportation market and the increasing amounts of consumer funds handled by the charter industry, without what appear to be adequate safeguards, the Board has a compelling interest in regulating the relationship between the charterer and depository banks, the charterer and travel agents, the charterer and surety companies, and the charterer and persons acting as a provider of additional security.

[2] There are two elements in the structure for the protection of charter participants' payments. First, there is a comprehensive set of requirements for the handling of participants' payments by charterers, travel agents, banks, and direct air carriers, from the moment of purchase through the completion of the flight (or refund). Second, there is "additional security" established on a proportional basis to provide for loss of funds mishandled in violation of the depository requirements, and to provide a fund for participants' claims in the event of the insolvency or unavailability of the indirect air carrier.

[3] As explained in § 369.5(a) "bank" includes Federally insured banks and savings and loan institutions.

[4] This paragraph refers only to the air transportation itself—the actual times and places of departure and arrival—not ground accommodations. Members of one charter unit may contract for varying options on ground accommodations.

[5] Thus, for example, an OTC and an ABC aboard the same flight would necessarily constitute at least two charter units.

with a direct air carrier for bulk air transportation.[6]

"Credit card system" means a company, or a group of banks or other enterprises acting under a common agreement, that—

(a) Furnishes identifying instruments (credit cards) to approved members of the public (cardholders) for use in making purchases on credit of goods or services from cooperating retailers;

(b) Makes payment for those purchases; and

(c) Bills the cardholders directly for their purchases.

"Participant" means a person who intends to become, is, or was a member of a charter unit.

"Payment" means the deposits, installment payments, if any, and final payments required to be made by a participant in accordance with the charterer-participant contract, whose sum equals the total charter price for such participant.

"Travel agent" means any person, other than a charterer or any employee of a charterer, who sells, offers for sale, or arranges for any air transportation governed by Board regulations.[7]

§ 369.4 Requirements for charterers.

(a) Before advertising a charter trip, or soliciting or accepting money from any participant in a charter unit, a charterer shall:

(1) Enter into a security agreement that meets the requirements of § 369.8; and

(2) Enter into a contract with the direct air carrier(s) and with a bank qualified to act as an escrow holder under § 369.5(a), under which—

(i) The bank agrees (A) to conform to all the provisions of this part pertaining to banks, and (B) to hold payments made by participants for that charter trip in escrow in accordance with the provisions of this part; and

(ii) The charterer agrees (A) to deliver a copy of the contract with the bank to the direct air carrier(s) performing the air transportation for the charter trip, and (B) upon request of a participant, to deliver a copy of the contract with the bank to such participant within 5 business days of such request.[8]

(b) All solicitation materials for a charter unit prepared or distributed by or on behalf of the charterer,[9] and all charterer-participant contracts, shall contain the following statement in boldfaced, 9-point or larger type, with the name of the bank inserted in the blank:

"All payments for charter trips must be by check, money order or by credit card payable to _____ as payee. Do not pay in any other form." [10]

(c) Each participant shall be given a copy of the charterer-participant contract. All charterer-participant contracts shall include a statement that the (named) bank has agreed to act as escrow holder for the charter trips involved, pursuant to a written agreement between the bank and the charterer, that each participant, by making payments to the (named) bank, agrees to have the bank hold such payments in escrow for purposes of the charter trip in accordance with the provisions of this part, and that each participant has the right, by making a written request to the charterer, to receive a copy of the agreement.[11]

All charterer-participant contracts shall also contain:

(1) A brief description of the security agreement entered into pursuant to § 369.8;

(2) The name and address of the securer, the charterer, and the securer's agent for service of process, if any;

(3) That any claims against the charterer with respect to the charter trip should be filed by certified mail, return receipt requested, with the securer (although delivery of the claim by other means will not invalidate it); and

(4) That the securer will not be liable with respect to any claims filed more than 90 days after the scheduled date of completition of the charter trip, or on any suit or other legal action on a disputed claim filed more than 15 months after the scheduled date of completion of the charter trip.[12]

(d) A charterer shall not accept payment for a charter trip in any form other than a check or money order drawn by or on behalf of one or more participants (not by a travel agent), payable to the bank as payee, or by credit card charges as provided in § 369.9.[13] The charterer shall immediately return to the remitter any payments that are not in that form.[14] If the charterer accepts a charge made on a credit card as payment for a charter trip, the charterer shall identify the bank as escrow holder as the payee on all sales drafts for the transaction.[15] The charterer shall within 3 business days of receipt forward the appropriate copy of the sales draft to the credit card system for payment to the bank as escrow holder.[16] Simultaneously, the charterer shall forward to the bank the names and

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[6] This definition, combined with that of "charter unit," delineates the basic regulatory unit of the protection system. The definitions are intentionally broad. They are not intended to make precise distinctions for all time as to which types of transportation should be covered by this part. In the Board's judgment that is better done by provisions of the specific governing rules, such as Parts 371 or 378a. Indeed, in some future cases the Board may wish to apply this part to forms of bulk transportation that are not commonly thought of as charters, and the rule is intended to be flexible enough to accommodate those cases.

[7] Organizers of charters often sell their charters through agents who are not IATA or ATC authorized agents. This term includes those "wholesalers" or "suboperators" who act as middlemen between charterers and retail agents.

[8] Under this section a charterer would be to have one escrow agreement covering all charter units. The agreement, however, would have to identify each charter unit covered by the agreement and the bank would be required to maintain a separate account for each charter unit. As provided in subsection 4(f), infra, the bank would be prohibited from transferring a participant's funds from the account of one charter unit to another without the express authorization of the participant. The transfer prohibition is essential to the scheme since it precludes a charterer from using the funds from one charter unit to meet the obligations of another unit.

[9] This section would cover solicitation materials prepared by travel agents. The purpose of this requirement is to ensure notice to the participant that payments are to be made directly to the escrow account and are consistent with § 369.4(d).

[10] This provision is intended to ensure that the passenger is advised as to how payment should be made, and also to help to inform travel agents as to the correct procedure for selling charters.

[11] When the participant enters into an agreement with the charterer, he consents to the bank acting as escrow holder. In the Board's judgment, the charterer, or its successors in interest, including a bankruptcy trustee, would have no claim to the escrowed funds, unless and until the conditions precedent to transfer (performance of the charter) had occurred.

[12] This provision requires that the participant be fully informed of the additional security being provided, and other facts relevant to the security arrangement, in the charterer-participant contract. Under the existing surety bond arrangement, the limitations on the protections are not made known to participants.

[13] The purpose of this section is to ensure that all participants funds are sent directly to the escrow account without any deduction. Under the present rules the travel agent will normally deduct his commission before forwarding the participants' payments to the charterer. Thus, the funds do not come within the protection of the escrow account unless and until the organizer forwards them to the escrow holder and even then the amount withheld by the agent is never sent to the escrow. With regard to the agent's commission, in the event that a refund is due the participants, there would be insufficient funds in the escrow account to make full refund. Thus, the participant must look to two sources for a refund. Funds in the possession of the travel agent and/or charterer would be reachable by creditors in the event that either, or both, became bankrupt.

[14] This section is intended to ensure that the charterer (or its agent) does not accept payments other than in the prescribed form. If the charterer is permitted to place its own funds into the escrow account there will be no effective means of ensuring that these funds have not been obtained from participants.

[15] This requirement is comparable to the requirement that participants make their checks and money orders payable to the depository bank. When making a credit card purchase, the cardholder does not fill in the payment information on the sales draft; this information is supplied by the retail merchant making the sale. Accordingly, responsibility for correctly completing the sales draft, so that all payments are made by the credit card system directly to the bank, must be placed with the charterer if it makes the sale directly. Parallel provisions for travel agents are in § 369.7(b).

[16] In the next step in the credit card transaction, the charterer-merchant forwards the negotiable copy of the sales draft to the credit card system. The system, in turn, directly pays the appropriate sum to the bank, as escrow holder.

addresses of the participants for whom the credit card was used as payment and the charter unit(s) to which they belong, together with the name and credit card number of the cardholder.[17]

(e) The charterer shall, within 3 business days of receipt, forward to the bank as escrow holder all checks or money orders received from each participant, fully identified with the name and address of the participant and the charter trip(s) for which the payment is made.[18]

(f) The charterer shall not direct the bank to transfer funds from the escrow account maintained for one charter trip to the escrow account maintained for another charter trip[19] until the charterer has received written authorization or the transfer from, or from a person acting on behalf of, each participant involved in the transer. The transfer directive to the bank must be in writing, and must include a statement that the charterer has received such authorization.[20]

(g) All payments made by participants shall be held by the bank, and shall remain the property of the participants, subject to the terms of the charterer-bank and charterer-participant contracts whereby the bank holds the funds, in escrow, until the bank receives a written certification from the direct air carrier that the charter trip has been completed or canceled, or from the charterer that the charter trip has been canceled. The charterer shall have no interest in, or right to, the participants' funds until the completion of the charter trip or until the trip has been canceled and all refunds due participants have been made, and then only to the extent provided in the charterer-bank contract.[21]

(h) If a participant withdraws from the charter trip, the charterer shall, not later than 5 days after receiving notice that the participant has withdrawn, notify the bank in writing of the amount owed to the withdrawn participant as a refund under the charterer-participant contract. If any amounts become owed to the withdrawn participant at a later time (*e.g.*, because of substitution), the charterer shall so notify the bank in writing not later than 5 days after learning of the obligation.[22]

(i) If the charterer or the direct air carrier cancels the charter trip, or if the charterer learns that the trip cannot take place for any other reason, the charterer shall so notify the bank in writing not later than the close of business on the bank's next business day.[23] If the charterer does not elect to attempt to have participants in the canceled charter trip organized by it, the charterer shall so notify the bank. If the charterer elects to attempt to have participants in the canceled charter trip transfer to another charter trip organized by it, the notification to the bank shall include a statement to that effect.[24] Not more than 10 days after the notice to the bank of cancellation and attempted transfer, the charterer shall notify the bank of those participants, if any, who have elected to transfer to another charter trip, based on written authorizations received in accordance with paragraph (f) of this section. Notice of cancellation to the bank shall include the names and addresses of those participants to whom refunds are due and the amounts of such refunds.[25]

(j) The charterer shall retain either the signed original, or a true photostatic copy of the signed original, of each contract that it enters into pursuant to this part, until two years after the date of completion of the charter trip(s) that it covers.

§ 369.5 Requirements for banks.

(a) A bank is eligible to act as escrow holder under this part only if its deposits and accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and it has authority under the applicable laws of the jurisdiction in which it is organized to perform the duties required by this part.[26]

(b) A bank that undertakes to be an escrow holder of payments made by participants for charter air transportation in accordance with Board regulations shall be bound by all the requirements of this part pertaining to banks. Any bank that consents to act as an escrow holder under this part shall be deemed to have consented to the terms of this part and to have subjected itself to the regulatory jurisdiction of the Civil Aeronautics Board on all matters involving this regulation.

(c) Before receiving payments from participants for a charter trip, a bank shall enter into a contract with the charterer in which the bank will agree to establish an escrow account for the charter trip and to hold payments made by participants in escrow in accordance with the provisions of this part.[27] The contract must incorporate by reference, and have appended to it by exhibit, the charterer-direct carrier contract and the form of the charterer-participant contract for the charter trip, including a schedule of the exact amount of the payment(s) required to be made by each participant.[28] The contract between the charterer and the bank may not contain any provision which has the effect of relieving or releasing the bank from liability for losses sustained by participants as the result of the bank's failure to comply with this part or with other regulations of the Civil Aeronautics Board applicable to the charter trip. The contract shall contain a provision in which the bank affirmatively acknowledges its liability to participants for any losses sustained by them as a result of, or attributable to, the failure of the bank to comply with this part or with other regulations applicable to it. The sum of the payments to be received by the bank from each participant must equal the total

[17] This provision enables the bank to match the information it receives from the credit card system pursuant to § 369.9(b) with that required to identify the charter participant.

[18] This provision is required in order to implement § 369.4(a), which requires the bank to maintain a separate accounting for each charter unit.

[19] This section is primarily intended to ensure that the charterer does not use the funds from one charter unit to pay for another charter unit. It is consistent with the view that the organizer has no right to the funds in the escrow account until the conditions precedent have occurred.

[20] This section would permit the participant to authorize transfer of his funds from one charter unit to another. Often the contract/reservation form which the participant sends to the charterer provides for specific alternative dates. In this event, the charterer would have in its possession the participant's written authorization for the alternative charter units the participant found acceptable. In the event of cancellation of one charter unit, the charterer could transfer the participant's funds to another acceptable unit without the necessity of obtaining a new authorization. The charterer would not, however, be permitted to transfer the funds to an unauthorized unit without contacting and receiving written authorization from the participant.

[21] This section implements the concept that the charterer has no right to the participants' funds until the conditions precedent have been met.

[22] This section is intended to ensure that individual participants' refunds are made promptly. The current regulations generally require refunds to be made "promptly," but no specific time period is set forth (see e.g., § 399.80(1)). The Office of the Consumer Advocate has received complaints from participants whose refunds have been delayed several weeks.

[23] While § 369.4(h) deals with the case of individual participant cancellations, this section deals with the situation of the charter trip being canceled. In the case of an individual cancellation the charterer is given a longer period (5 days) to notify the bank so that the charterer may process the paper work and if possible effect an assignment (thus requiring the organizer to communicate only once with the bank). In the case of cancellation of the entire charterer trip, the bank should be notified immediately.

[24] This provision would permit the bank to delay refunds for a reasonable period while the charterer contacts participants to obtain authorization to transfer the funds to another charter unit.

[25] Some participants may be in default and entitled to only a partial refund or no refund (see e.g., § 372a.11 of the Special Regulations).

[26] The requirement for FDIC or FSLIC coverage continues the requirement in the present charter regulations for depository banks. It reflects the Board's understanding that the Federal insurance covers the amounts held in escrow by the banks up to $40,000 for each participant.

[27] This provides the structure of the escrow scheme. The charter unit, as defined, is the basic element, and a separate account must be set up for the trip before any money is accepted by the bank.

[28] Although it may result in the charterer-bank contract being rather bulky, it is important that the bank have copies of the other main contracts in the charter picture. The bank is to disburse money to the direct air carrier at the charterer's direction, so it must know that the terms of the carrier-charterer contract are being fulfilled. It also is responsible for refunding money to charter participants either when they withdraw or when the charter is canceled, and it must conform to the relevant contractual provisions in those cases.

charter price to be paid by the participant for the charter trip.[29]

(d) Except for amounts returned by a direct air carrier in accordance with § 369.6(b), the bank shall not accept any amounts for deposit in the escrow account for a charter trip other than payments in the form of checks or money orders drawn by or on behalf of one or more participants and payable to the bank as payee. The bank shall return payments or other consideration received in any other form to the participants on whose behalf the payment is made, if their identity is known to the bank, with a statement of the reason for the return and an explanation of the proper procedure to be followed. The bank shall at the same time notify the charterer of the return of the funds.[30]

(e) Except for amounts returned by a direct air carrier in accordance with § 369.6(b), the bank shall not accept funds for deposit in the escrow account for a charter trip in any amounts other than those set forth in the charterer-bank contract as the payments to be made by participants. The bank shall return, as set forth in paragraph (d) of this section, funds received in any different amounts.[31]

(f) In all its actions with respect to a charter trip, including holding, accounting for, and disbursing the funds deposited with it for a bank shall be an escrow holder for both the participants and the charterer,[32] until the bank receives a written certification from the direct air carrier that the charter trip has been completed or that it has been canceled.[33]

(g) The bank may charge the charterer fees for its services in acting as escrow holder in the amount agreed upon by the charterer and the bank. The charterer may also agree to reimburse the bank for expenses incurred by the bank as escrow holder. The contract between the charterer and the bank may permit the charterer to agree to indemnify the bank and hold it harmless from all liabilities, costs, and expenses (including reasonable attorneys' fees in the event it becomes necessary for the escrow holder to consult with its legal counsel on questions arising under the contract) incurred by it in acting as escrow holder, except only in the case of negligence on the part of the bank. These fees and expenses, and any other liabilities or obligations owed by the charterer to the bank, may not be paid from the escrow account unless and until all disbursements and refunds required to be made from the escrow account have been made.[34]

(h) The bank shall maintain a separate escrow account for the payments held for each charter trip, and shall keep seperate accounting records of all receipts and disbursements from each account. It shall not disburse amounts held in escrow for a charter trip for any purposes other than those of that charter trip, in accordance with this part.[35] The bank may transfer funds from the escrow account maintained for one charter trip to that of another charter trip only upon receipt of a written transfer directive from the charterer in accordance with § 369.4(f).[36]

(i) Where the charterer has engaged the entire capacity of the aircraft, the bank shall not make payment to the direct air carrier earlier than 15 days before the departure date.[37] Where the charterer has engaged less than the entire capacity of the aircraft, the bank shall not make payment to the direct air carrier earlier than 35 days before the departure date. The bank shall pay the direct air carrier only upon written notice of the amount due, signed by both the direct air carrier and the charterer, identifying the charter trip involved.[38]

(j) Except for payments to the direct air carrier permitted by paragraph (i) of this section, the bank shall not pay any fees or commissions or other payments to any supplier of services in connection with the charter trip until the direct air carrier notifies the bank, in writing, that the charter trip has been completed. The bank may, however, accept and honor an assignment to a supplier of services of the charterer's right to payment of all or part of amounts held in escrow for a charter trip in excess of the amounts to be paid to the direct air carrier, where the assignment provides for payment to the assignee after completion of the charter trip and is subject to the prior rights of participants to refunds under this part.[39]

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[29] The payment schedule ties into paragraph (e) of this section, which requires that the bank accept only payment amounts conforming to the pre-established schedule, and return anything deviating from it. The purpose is to ensure that no commissions or other deductions not expressly permitted by the rules are removed before the money is deposited, so that if a refund is necessary the entire amount due the participants will be available. The schedule must include the proper amounts for any options that may be chosen by the participants.

[30] This is the main protective provision whereby a bank can ascertain that no funds have passed through any intermediary hands on the way from the participant to the escrow account. Although the current Special Regulations have somewhat similar provisions, they allow two crucial exceptions: as interpreted, they allow payment to be made in cash, which may be passed on in any form, with deductions, into the escrow account, and of course is subject to diversion in various ways; and they allow payment to be made by check or money order to a retail travel agent, who may deduct a commission and remit his own check to the bank, [e.g., § 378a.30(k)]. Neither of these exceptions would be allowed under the new scheme.

[31] Although various payment schedules may be established by the charterer, the payments to the bank must conform to one of them, in order to prevent deductions of commissions or other diversions of participants' funds.

[32] The escrow arrangement where the participants pay money directly into the escrow accounts appears to be the best one to protect the participants' funds from the charterer's creditors.

[33] It is necessary that the bank have a clear indication of the point at which its role as escrow holder of participants' money comes to an end. The direct air carrier makes a certification of completion under present regulations, [e.g., § 378a.31(b)(2)(ix)], and appears to be the best choice to deliver this news. Having received its own payment, it is a relatively disinterested party; its continuing position as a Board-regulated person tends to make it responsible; and in the normal case it will be the last company to deliver services as part of the charter trip. The last condition may not be true in every case, of course. Hotels, for example, or surface carriers may deliver the last services. It would probably not be desirable, however, to have these incidental suppliers be the medium for notifications, since they would often have little knowledge of or interest in the inner workings of the escrow scheme. In such atypical cases, it would appear to be a reasonably simple matter for the charterer to arrange for a verification sufficient to satisfy the direct air carrier, which then can be passed on to the bank.

[34] The bank in its own dealings should obivously stand in the same position as any other person with respect to the money in the escrow account, i.e., the money must be used for no purposes other than the participants' until the charter trip is completed.

[35] The use of funds collected from one group of participants to defray the expenses of another, usually an earlier, charter is one of the abuses this protection scheme is specifically designed to prevent. The specific intent of the "separate account" requirement is to prevent "deficit spending" for any charter unit, so that any shortage in, for example, money to pay the direct air carrier for a trip will be immediately brought to the character's attention for appropriate remedial action.

[36] As noted in footnote 19 supra, there must be a method whereby a charterer can transfer participants from one trip to another. Where the transfer is done with the written authorization of the participants in accordance with § 369.4(f), it is, of course, proper. The bank must receive the appropriate information from the charterer identifying the participants being transferred, and the possibility of charterer abuse of this transfer capability appears to be minimal.

[37] The requirement that the direct air carrier not be paid more than 15 days before flight time, except in the case of split charters, is intended to reduce to a minimum the situations where the carrier, already paid, must refund the money to the bank upon cancellation of the flight for inadequate participation. For split charters the same intent applies, but the 35-day period reflects the requirement of the Economic Regulations that the carrier be paid at least 30 days before flight time, thus creating a 5-day payment period.

[38] The two signatures are needed to ensure that there is full understanding on all sides of the amounts due and the charter trip involved.

[39] Protection of participants' funds cannot be reasonably assured unless the entire charter price, except for the amounts paid to the direct air carrier, is retained in the escrow account until the charter trip has been completed. The exceptions are allowed only because of the reasonable certainty that these payments can and will be reversed if refunds become due. Advance payment to ground accommodations suppliers, often in foreign countries, creates a serious danger of an unrecoverable shortage should the charterer become insolvent. Retention of such payments in the event of cancellation by the charterer may be entirely legitimate from the view-

(k) Except as provided in paragraph (l) of this section, if the bank receives written notice of cancellation of the charter trip from the charterer in accordance with § 369.4(i) or from the direct air carrier in accordance with § 369.6(b), the bank shall refund all amounts held in the escrow account for that trip directly to the participants. The bank shall mail the refunds not more than 5 business days after receiving notification of the cancellation, or, if an advance deposit has been paid to the direct air carrier, after receiving the return of that payment.[40]

(l) If the charterer includes in the notice of cancellation to the bank a statement that the charterer will attempt to have participants in the canceled charter trip transfer to another charter trip, the bank shall hold the funds of those participants in the escrow account until the charterer identifies the participants who have elected to transfer and those who are entitled to full or partial refunds. However, if the charterer does not provide the identifying information within 10 days after the initial notice of cancellation, the bank shall make the appropriate refunds to all affected participants, completing the mailing of the refunds not more than 12 days after the initial notice of cancellation.[41]

(m) If the bank is notified by the charterer in accordance with § 369.4(h) that a participant has withdrawn from the charter unit, the bank shall, not more than 5 days after receiving that notice, refund directly to that participant the amount stated by the charterer to be owed under the charterer-participant contract.[42]

(n) After the direct air carrier notifies the bank that the charter trip has been completed, as required by § 369.6 (b), the bank shall, subject to the prior rights of participants to refunds pursuant to this part, pay the funds in the escrow account to the charterer, or to any other person in accordance with assignments, if any, made by the charterer.[43]

§ 369.5a Intermingling between charter units.

If there is intermingling between charter units as permitted by Board regulations, i.e., participants departing as member of one charter unit and returning as members of another, all the provisions of this part shall apply with the following modifications:

(a) The schedule of payments contained in the charterer-bank contract in accordance with § 369.5(c) shall include the appropriate payment for a single leg of a charter trip, to cover the cases where participants elect to return with charter units different from the ones with which they depart.

(b) A charter unit shall nevertheless be identified with a single round-trip air transportation itinerary under a single type of charter (ABC, OTC, etc.), departing and returning on specified dates. The depository escrow bank shall continue to set up separate escrow accounts for each charter unit. All restrictions concerning transfer of funds between accounts shall apply.

(c) Each participant's itinerary must be established at the time the charterer-participant contract is entered into. If a participant chooses, at the time of entering into the charterer-participant contract, to return with a charter unit different from the one which he will depart, the charterer shall inform the bank of the charter units involved at the time the participant's payment is deposited.

(d) The bank shall divide the payment into the amounts established for the different legs of the charter trip in the charterer-bank contract, and shall deposit those amounts into the escrow accounts for each of the charter units involved.

§ 369.6 Requirements for direct air carriers.[44]

(a) If the direct air carrier for a charter trip cancels the charter trip or learns that the charter trip has been canceled, it shall so notify the bank in writing not later than the close of business on the bank's next business day.[45] In that event, if the direct air carrier has already received an advance deposit from the escrow account for the charter trip, it shall return the full amount of the advance deposit to the bank[46] not later than 3 business days after learning of the cancellation.[47]

(b) After the completion of a charter trip, the direct air carrier for the final air portion of the trip shall notify the bank in writing that the charter trip has been completed.[48]

§ 369.7 Requirements for travel agents.

(a) A travel agent that undertakes to sell or arrange for air transportation governed by Board regulations shall be bound by all the requirements of this

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point of the supplier. The Board recognizes that these "up front" payments may be commercially necessary in some cases, but because of the risk involved concludes that they must not come from the funds of participants, who generally know nothing of them and do not view the purchase of a charter flight as a risk-taking venture. Assignment of the funds in escrow, in contrast, does not involve risk to participants, and may in some cases satisfy suppliers that payment of the amounts due them is assured.

[40] Direct payment of a refund to participants, without passing through the charterer or any other intermediaries, completes the basic chain of protection of participants' funds. Any other course would tend to increase the risk of either loss or delay. The 5-day period is selected as an adequate time for the bank to do the necessary bookkeeping and paper handling.

[41] The provision for allowing the charterer a limited time to effect transfers between charter units was devised in recognition of the frequent need to consolidate undersubscribed charters. The time limits are included to prevent abuses of this function, such as prospective charters spread too widely over areas and times, with the intent of later consolidation when the participants feel they have little choice but to go along.

[42] There appears to be little possibility of abuse in allowing the charterer to make the initial indication to the bank of the amount due to a withdrawing participant, and this is probably the most efficient method. If the bank suspected that the amount indicated was not in accordance with the charterer-participant contract, it could of course inquire of the charterer, and if unsatisfied would be obliged under § 369.11 to report the irregularity to the Board.

[43] After completion of the charter trip, the escrow account will have fulfilled its function of protecting participants' payments, and the charterer should be able to direct the disposition of the funds. The escrow is not designed to furnish a fund for claims based on inadequate charter services; to use it in that way would probably make its administration much more cumbersome and work a greater burden on the chartering industry. The security agreements set forth in § 369.8 are partly, though not entirely, for the benefit of such post-charter claims.

[44] In the past the Board has permitted, by waiver, a direct air carrier to substitute securities for money deposited in escrow. This practice was permitted as the result of regulations permitting charterers to substitute securities for payments deposited in the escrow account. The Board has tentatively concluded that this practice should be discontinued as to charterers, and intends to take parallel action as to direct air carriers. The basic problem is that of the valuation of substituted securities. The fluctuation of value of such securities may result in less than the total amount escrowed being secured. This is an unnecessary complication and weakness in the chain of protections.

[45] This requirement acts as a backup mechanism for § 369.4(i), which requires the charterer to notify the bank of any cancellations.

[46] In the event the direct air carrier defaults in the repayment of the advance deposit to the bank the participants' claims (through the bank, acting as escrow agent) against the direct air carrier will be on a par with the claims of other unsecured creditors of the direct air carrier. The Board has, however, provided protection for advance deposits held by direct air carriers for charter flights (see 14 CFR §§ 207.12, 208.40, 212.15, and 214.9(c) which should provide adequate protection for participant's funds).

[47] Should the charterer owe any cancellation penalties to the direct air carrier pursuant to the terms of their charter contract, the charterer would pay such penalties from its own operating funds, rather than from the escrowed patricipants' funds. The direct air carrier may not retain any of the monies it receives from the bank as payment of such cancellation penalties.

[48] Most of the charter regulations require the provision of round-trip charter transportation. The Inclusive Tour Charter regulation (14 CFR Part 378), however, permits the operation of charter tours involving air transportation on only one leg of the journey, allowing the provisions of the other leg by cruise ship (see § 378.12). Accordingly, the charter trip is not always complete once all of the contracted charter air transportation services have been provided. Therefore, notice from the carrier thta it has completed its contracted services may not always be evidence that the charter trip has been completed (see also footnote 32, supra).

The Special Regulations now require that the direct air carrier certify to the bank that the charter trip has been completed [§ 371.31 (b)(2)(ix), § 372a.25(b)(2)(vii), § 373.15(b)(2)(ix), § 378.16(b)(2)(ix), § 378a.31(b)(2)(ix)]. This system of requiring a third party—the direct air carrier—to make the certification which authorizes the charterer to receive the remainder of the escrowed funds from the bank has worked successfully.

part pertaining to travel agents, and shall be deemed to have submitted to the regulatory jurisdiction of the Board.

(b) A travel agent shall not solicit or accept payment for participation in a charter trip in any form other than by a check or money order, drawn by or on behalf of one or more participants, payable to the bank as payee, or by credit card as provided in § 369.9.[49] The agent shall forward the check or money order to the charterer within 3 business days of receipt, together with the name and address of each participant and the charter trip for which the payment is made. A travel agent shall not draw such a check or money order for a participant.[50] If a travel agent accepts a credit card as payment for a charter trip, the travel agent shall identify the bank acting as escrow holder as the payee on all sales drafts for the transaction. The travel agent shall forward to the charterer, in addition to other identifying information, the name and credit card number of the cardholder together with the names and addresses of the participants for whom the credit card was used as payment and the charter trip(s) for which the payment is made.[51]

(c) A travel agent shall not solicit or accept payment of any agent's fees or commissions from a participant. A travel agent shall accept from a participant only payments in the amounts described by the charterer, or set forth in the charterer-participant contract, as payment for the charter trip.[52]

§ 369.8 Security agreement.

(a) The security agreement for a charter trip shall be either—

(1) A surety bond in the form set forth in Appendix A;[53]

(2) A third-party guarantee in the form set forth in Appendix B;[54] or

(3) An escrow agreement in the form set forth in Appendix C.[55]

(b) The charterer and the person with whom the charterer makes the security agreement (hereafter referred to as the "securer") shall conform to all the requirements of this section.[56]

(c) The securer shall be a company—

(1) Whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR § 1084.6; or

(2) Who is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better; or

(3) Who is eligible to act as an escrow bank in accordance with § 369.5(a). If the surety bond or third-party guarantee is to be provided by a bank, the bank must be a national bank and must comply with the provisions of 12 CFR § 7.7010 (a).[57]

(d) If the bond or third-party guarantee is issued by a securer which is neither organized under the laws of, nor qualified as a foreign corporation in, the jurisdiction in which the principal office of the charterer is located, the securer shall appoint an agent for service of process in such jurisdiction. The agent so appointed shall be either an attorney licensed to practice law in the jurisdiction in which the charterer's principal office is located or a corporation regularly engaged in the business of serving as registered agent for foreign and domestic corporations in such jurisdiction. The appointment of the agent for service of process shall be made by the inclusion of the language contained in Appendix D in the form of the surety bond, or third-party guarantee issued by the securer.[58]

(e) The limit of protection under the security agreement shall be not less than $2,000 or 5 percent of the total charter price (the number of seats under contract for the charter trip times the price of the charter trip per participants),[59] whichever is greater.[60] The bond for each charter trip permitted by § 369.8(a)(1), the maximum liability of the third-party guarantee in a third-party guaranty permitted by § 369.8(a)(2), or the amount of collateral required to be deposited by the charterer with the escrow agent under the escrow arrangement permitted by § 369.8(a)(3), shall be in an amount at least equal to the limit of protection required by this section. One security agreement may cover more than one charter trip. In that event, the total limit of protection afforded by that agreement shall be at least equal to the sum of the individual limits of protection required for each charter trip covered.

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[49] This provision, in conjunction with § 369.4(d), is an important element of the proposed regulation. It requires that the travel agent, who is generally the link between the participant and the charterer, accept payments from participants only in such form as will assure their direct deposit into the depository account—by check or money order made payable to the account. Travel agents may not accept payment in any other form that may possibly be subject to diversion from the account, such as cash, or a check or money order payable to either the agent or the charterer. The purpose of this requirement is to ensure that all participants' payments fall within the protection of the depository account.

[50] This is consistent with § 369.4(d), which prohibits the charterer from accepting checks or money orders drawn by travel agents. The purpose of this provision is to ensure that all participants' funds are sent directly to the escrow account without any deduction.

[51] This provision requires notification of the charterer, who in turn notifies the bank, of the specific participants whose payments are included in a specific credit card transaction.

[52] The purpose of this requirement is to assure that all funds collected from charter participants be deposited in the depository account. It is meant to ensure that agents do not ask their participants/clients to make out checks for the net amount of their trip payment to the depository bank, and then ask them to make a separate payment for the commission directly to the agent. An agent may, of course, make collateral arrangements for commission payments by the charterer from its own funds.

[53] The form surety bond differs from the existing form of bond contained in the Special Regulations in several material respects. First, a specific provision has been included to give a participant a direct right of action against the surety. Second, a provision has been changed to require notice to the surety by the participant. Third, the period for notice of claim has been extended by making the period 90 days from the date of completion of the charter trip. Fourth, provisions have been included waiving defenses the surety might have under the existing bond. Fifth, the provision in the existing bond permitting termination of the bond by the surety's giving 30 days' notice to the Board is eliminated. The provisions permitting the direct action against the surety and the waiver of certain defenses are calculated to encourage prompt settlement of claims by the surety short of litigation. The provision relating to the giving of notice to the surety within 90 days of scheduled completion is a convenience to the participant necessitated by the need to assess the extent of damages, if any, and the need to locate the charterer and negotiate with charterer and/or the surety, and is not such a burden on the surety as to be unworkable or unreasonable.

[54] The third-party guarantee as proposed is expected to accomplish the same result as the bond. Indeed, it is anticipated that the sole functional difference between the bond and the guarantee is that it will be entered into by banks rather than by sureties.

[55] Like the third-party guarantee, the escrow agreement is expected to provide protection identical to the surety bond.

[56] This provision affirmatively obligates all parties to security agreements to comply with the terms of § 369.8, including the letter of the form instruments appended thereto. It asserts Board jurisdiction over surety companies and banks acting as sureties, guarantors, or trustees under this part, and brings them within the regular sanctions of the Federal Aviation Act if they should enter into agreements contrary to § 369.8 or violate the terms and conditions of such agreements (see § 369.9 concerning the effect of inconsistent contractual provisions).

[57] If these alternative forms of security when offered by a bank are not limited to bonds or guarantees issued by national banks, the law of each State would have to be examined to determine if surety bonds or third-party guarantees provided by State banks were within their corporate powers and were not ultra vires. It is extremely difficult to make conclusive determinations as to State law on these issues, because of conflicting case law. 12 CFR § 7.7010(a) establishes the legal authority for national banks to issue surety bonds or guarantees if they meet the conditions specified there.

[58] The proposed bond and third-party guaranty provide for a charter participant bringing suit against the securer. To facilitate the bringing of such suits, an agent for service would be appointed in the jurisdiction of the principal office of the charaterer, since a participant suing the securer would probably simultaneously sue the charterer. Since the escrow agreement does not provide for direct suit against the securer, this provision does not apply to that form of security.

[59] In the case of an "area origination" charter, where more than one possible origination city is listed for the flight, the greatest possible charter price shall be used in determining the amount of the security agreement.

[60] This provision is intended to provide security for participants' payments to ensure against: (a) slippage in protections afforded by depository arrangements, (b) insolvency and/or defalcation by charterer and/or its agents selling charter trips; and (c) claims made by particular participants who did not receive contracted for services in the manner agreed to, in the event such claims are made of a financially distressed charterer. The $2,000 or 5-percent figures are only minimums, it should be noted, and the charterer may contract for any larger amount.

(f) The securer shall not be liable to any participant, with respect to any charter trip, unless—[61]

(1) The participant files a claim, by written notice to the securer, within 90 days after the scheduled date of completion of the charter trip; [62] and

(2) If a claim filed in accordance with § 369.8(e)(1) is not paid by the charterer, the participant begins a suit or other legal action within 15 months after the scheduled date of completion of the charter trip.[63]

§ 369.9 Charter trips purchased with credit cards.

(a) If a participant uses a credit card to pay for a charter trip, the credit card system shall forward the payment for the charter trip directly to the bank acting as escrow holder, and shall not make such payment to any other person.[64] If the credit card system fails to remit payments made by a participant directly to the bank, the credit card system shall, immediately upon learning of such failure, make the appropriate payment to the bank, regardless of its degree or absence of fault in the matter.[65]

(b) A payment by the credit card system to the bank shall identify, at a minimum, the cardholder on whose behalf the payment is made and the cardholder's credit card number.[66]

(c) A credit card system may not deduct any discount from the payment to the bank.[67]

(d) If the participant has used a credit card to pay for a charter trip, and the charter trip is canceled or the participant withdraws from the charter unit, the bank shall pay the appropriate refund to the participant in accordance with § 369.5.

§ 369.10 Inconsistent provisions void.

To the extent that any contract or other arrangement, or portion thereof, entered into by a bank, charterer, travel agent, or person providing additional security, is inconsistent with the requirements of this part, it shall be void. The requirements set forth in this part shall govern the relationship between the parties in the place of the inconsistent provision(s).[68]

§ 369.11 Reporting violations.

Every person who acts as a charterer, bank, travel agent, direct air carrier, or securer with respect to a charter trip shall promptly report to the Bureau of Enforcement, Civil Aeronautics Board, any failure to conform to the requirements of the part that occurs in connection with any transaction in which such person participates, or of which such person has knowledge.[69]

§ 369.12 Enforcement.

In the case of any violation of the provisions of this part, the violator may be subject to a proceeding pursuant to §§ 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of § 901(a) of the Act, or to criminal penalties pursuant to the provisions of § 902 of the Act, or other lawful sanctions.[70]

[61] This provision is intended to remove the ambiguity of the existing regulation and bond form which states that notice of a claim may be directed by a participant to the charterer or, if the charterer is unavailable, the surety. What constitutes unavailability is undefined and could present problems. It appears that notice only to the person providing additional security is less burdensome on the participant and accomplishes the purposes of the notice. It should be recognized that failure to give proper notice is a technical defense which should be discouraged. The actual purpose of the notice requirement should be to permit true identification of liabilities and to establish finality with respect to obligations under the bond.

[62] This provision extends the period within which a claim may be made on the security instrument from the present 60-day period to 90 days.

[63] This provision is intended to establish a reasonable general rule limiting the bringing of actions. Effectively, the participant would be required to perfect a claim by giving the notice contemplated by § 369.8(f)(1), and to file suit within 15 months after completion of the charter if the claim is disputed by the charterer.

[64] The purpose of this requirement is to assure that, like checks and money orders, credit card payments are deposited directly in the escrow account.

[65] The credit card system presumably can devise its own methods of identification of charter trip purchases, and of ways of ensuring that retailers follow the proper procedures. This provision makes clear that the participant will suffer no loss due to improper handling of his transaction by either the retailer or the credit card system.

[66] The sales draft for each transaction automatically names the cardholder whose account is responsible for the payment. The credit card system must transmit this information to the bank. The bank then matches this information with that it receives from the charterer or travel agent, which lists both the cardholder and the participants whose payments were included in the transaction.

[67] The credit card system can of course negotiate with the charterer to arrange for direct payment of any discount it may charge for its services. The accounting burdens created for the bank if discounts are allowed to be deducted, or if discount deductions must be repaid for refund payments to be made to participants, would be cumbersome and probably cause credit-card-using participants untoward delays in obtaining refunds.

[68] There are instances where a charterer has entered into contracts with intermediaries (wholesalers or suboperators) for the sale of blocks of seats or entire planeloads. This provision explicitly states that any such agreements cannot amend or change the obligations of the charterer, agent, bank, or air carrier.

[69] This provision is designed to augment the investigative and prosecutorial efforts of the Bureau of Enforcement to monitor compliance with the regulation. In particular, given the increasing reliance of the depository arrangement on the financial institutions involved, imposing the reporting requirement is deemed necessary. Failure to comply with this provision will constitute a violation, subjecting the alleged offender to prosecution at the discretion of the Bureau of Enforcement.

[70] This provision is the same as that appearing in the various special regulations governing charters.

Request for Comments

Interested persons may take part in this rulemaking by submitting 20 copies of written data, views, or arguments on the subjects discussed. All relevant material received by the dates shown at the beginning of this notice will be considered by the Board before taking final action on the proposed rules. Those persons planning to file comments or reply comments who wish to be served with such comments filed by others, and are willing to serve their own comments on others, shall file with the Docket Section, at the address and by the date shown at the beginning of this notice, a request to be placed on the Service List. The Service List will be prepared by the Docket Section and sent to the persons named on it. Persons filing responsive comments should serve any person whose comment is dealt with in their responsive comment, whether or not either party is on the Service List.

Individual members of the general public who wish to express their interest as consumers may do so by submitting comments in letter form to the Docket Section, without having to file additional copies.

(Sec. 204, 901, 902, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 783, 784, 49 U.S.C. 1324, 1471, 1472.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

Appendix A.—Charterer Surety Bond

Know All Men By These Presents: That

(Name of Charterer)

of ---

(Address of Charterer)

as Principal (hereinafter called the "Principal"), and ---

(Name of Surety)

of ---

(Address of Surety)

a corporation created and existing under the laws of the State of ---, as Surety (hereinafter called the "Surety"), are held and firmly bound unto the United States of America, as Obligee, as trustee for the use and benefit of tour participants as hereinbelow defined, in the amount of ---- Dollars ($---, for the payment whereof the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a Charterer pursuant to the provisions of Part 369 of the Regulations promulgated by the Civil Aeronautics Board (the "Board") and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and has elected to file with the Board such a bond as will insure financial responsibility and the supplying of transportation and other services subject to the Board's Regulations in accordance with contracts, agreements or arrangements between the Principal and charter participants; and

Whereas this bond is written to assure compliance by the Principal as an authorized charterer within the meaning of Part 369 of the Board's Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and

shall inure to the benefit of any and all participants on the charter trips described in Exhibit A attached hereto and made a part hereof, with whom the Principal has contracted to provide transportation and other services subject to the Board's Regulations and to no other persons.

Now, therefore, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform, fulfill, and carry out all of its obligations contained in all contracts, agreements and arrangements made by the Principal for the supplying of transportation and other services to charter participants pursuant to and in accordance with the provisions of the Board's Regulations, then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A charter participant is defined as one who is a participant on one or more of the charter trips described in Attachment A attached hereto, with who the Principal has contracted to provide transportation and other services.

2. The liability of the Surety to any charter participant shall not exceed the total amount paid by such charter participant for transportation and other services in accordance with the contract, agreement or arrangement between the charter participant and the Principal.

3. The liability of the Surety to all charter participants on a single charter trip shall not exceed the amount shown in Attachment A as the "Secured Amount" for that trip.[1] If the aggregate amount of claims filed by charter participants under this bond for a single charter trip exceeds (without regard to the provisions of this paragraph) the Secured Amount for that trip, the liability of the Surety to each charter participant shall not exceed an amount determined by multiplying the Secured Amount by a fraction the numerator of which is the amount for which the Surety would be liable to the charter participant under this bond (determined without regard to the provisions of this paragraph) and the denominator of which is the amount for which the Surety would be liable to all charter participants on the same charter trip under this bond (determined without regard to the provisions of this paragraph).

4. The Principal and the Surety hereby jointly and severally agree that every charter participant, as herein defined, who incurs or suffers loss or damage caused by the failure of the Principal promptly and faithfully to perform, fulfill and carry out all of its obligations contained in all contracts, agreements and arrangements made by the Principal for the supplying of transportation and other services to such charter participant, may sue the Principal or the Surety, or both of them, directly on this bond for his own use and benefit, prosecute the suit to final judgment for such sum or sums as may be justly due him, and have execution thereon.

5. The liability of the Surety under this bond shall be reduced by and to extent of payment or payments made by it in good faith hereunder. The Surety agrees to furnish written notice to the Board within ten days after each occurrence, of all suits filed against, judgments rendered against, and payments made by, the Surety under this bond.

6. No suit or action shall be commenced under this bond by any charter participant:

(a) Unless the tour participant shall have given written notice to the Surety at its address set forth in this bond, within 90 days after the scheduled date of return of the particular charter which was the subject of the contract, agreement or arrangement between the Principal and such charter participant, stating the amount claimed and the alleged default of the Principal.

(b) After the expiration of 15 months following the scheduled date of completion of the particular charter trip or charter which was the subject of the contract, agreement or arrangement between the Principal and such charter participant.

7. The Surety hereby waives (i) notice of acceptance of this bond by the Obligee and all persons benefitted by this bond, and (ii) notice of default by the Principal under any contract, agreement, or arrangement between the Principal and a charter participant benefitted by this bond entered into during the period this bond is in effect.

8. The liability of the Surety under this bond shall not be discharged or affected by any alteration, addition, extension, modification, waiver or release of any underlying contract, agreement, or arrangement between the Principal and a charter participant or by any extension of time or other indulgence granted to the Principal for satisfaction of its obligations thereunder, and the Principal and the Surety shall each be bound under the contract, agreement or arrangement as so changed or extended. The Surety waives any requirement that it be notified of any such alteration, addition, extension, modification, waiver or release, time extension or other indulgence and further waives notice of such matters.

In witness whereof, the Principal and the Surety have executed this instrument on the ____ day of _____, 19__.

Witness	Principal
_____	_____ (seal)
	Title _____
Witness	Surety
_____	_____ (seal)
	Title _____

ATTACHMENT A

Charter trip designation	Date of flight departure	Secured amount

APPENDIX B.—THIRD-PARTY GUARANTY

Whereas, _____ (the "Charterer") intends to become a charterer pursuant to the provisions of Part 369 of the Regulations promulgated by the Civil Aeronautics Board (the "Board") and other rules and regulations of the Board relating to insurance or other security for the protection of participants, and has elected to file with the Board such a guaranty as will insure financial responsibility and the supplying of transportation and other services subject to the Board's Regulations in accordance with the contracts, agreements or arrangements between the Charterer and participants; and

Whereas the undersigned has agreed to guarantee the performance of certain obligations of the Charterer in order to assure compliance by the Charterer as an authorized charterer within the meaning of Part 369 of the Board's Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of participants;

Now, therefore, in order to induce the Board to accept the Charterer as an authorized charterer within the meaning of Part 369 of the Board's Regulations with respect to the charter trips described in Attachment A attached hereto and made a part hereof, and in order to induce participants to enter into contracts, agreements, or arrangements with the Charterer with respect to the charter trips described in Attachment A attached hereto, and in consideration thereof, the undersigned (hereinafter referred to as the "Guarantor") hereby agrees as follows:

1. *Definition of Participant.* A participant is defined as one who is a participant on one or more of the charter trips described in Attachment A attached hereto, with whom the Charterer has contracted to provide transportation and other services.

2. *Guarantee of Charterer's Obligations.* The Guarantor hereby irrevocably and unconditionally guarantees to the United States of America and to each of the participants the prompt and full performance by the Charterer of all terms, convenants, and conditions to be performed or observed by the Charterer (the "Guaranteed Obligations") under all contracts, agreements and arrangements made by the Charterer for the supplying of transportation and other services to participants pursuant to and in accordance with the provisions of the Board's Regulations.

3. *Limitations on Guarantor's Liability.* The liability of the Guarantor under this Guaranty shall be subject to the following limitations:

(a) The amount of the Guarantor's liability to each participant shall not be greater than the total amount paid by such participant for transportation and other services in accordance with the contract, agreement, or arrangement between the participant and the Charterer.

(b) The aggregate amount of the Guarantor's liability to all participants shall not be greater than $_____.

(c) The liability of the Guarantor to all participants on a single charter trip shall not exceed the amount shown in Attachment A as the "Secured Amount" for that trip.[2] If the aggregate amount of claims filed by participants under this Guaranty for a single charter trip exceeds (without regard to the provisions of this paragraph) that amount, the liability of the Guarantor to each participant shall not exceed an amount determined by multiplying that amount by a fraction the numerator of which is the amount for which the Guarantor would be liable to the participant under this Guaranty (determined without regard to the provisions of this paragraph) and the denominator of which is the amount for which the Guarantor would be liable to all participants on the same charter trip under this Guaranty (determined without regard to the provisions of this paragraph).

4. *Participants' Rights Against Guarantor.* The Guarantor agrees that any participant who incurs or suffers loss or damage caused by the failure of the Charterer promptly and fully to perform any of the Guaranteed Obligations may sue the Guarantor under this Guaranty for his own use and benefit, prosecute the suit to final judgment for such sum or sums as may be justly due him, and have execution thereon without regard to whether or not suit is filed against the Charterer or the Charterer is joined as a defendant in any suit brought against the Guarantor. The Guarantor agrees to give written notice to the Board, within 10 days after each occurrence, of all suits filed against, judgments rendered against, and payments made by, the Guarantor under this Guaranty.

[1] 14 CFR 369.8(e) provides that the secured amount must be at least equal to $2,000 or 5 percent of the total charter price (the number of seats under contract for the charter trip times the price of each charter trip per participant), whichever is greater.

[2] 14 CFR 369.8(e) provides that the secured amount must be at least equal to $2,000 or 5 percent of the total charter price (the number of seats under contract for the charter trip times the price of each charter trip per participant), whichever is greater.

5. *Limitations on Suit.* No suit or action shall be commenced under this Guaranty by any participant:

(a) Unless the Participant shall have given written notice to the Guarantor within 90 days after the scheduled date of completion of the particular charter trip which was the subject of the contract, agreement, or arrangement between the Charterer and such participant, stating the amount claimed and the alleged default of the Charterer.

(b) After the expiration of 15 months following the scheduled date of completion of the particular charter trip which was the subject of the contract, agreement, or arrangement between the Charterer and such participant.

6. *Waiver of Defenses.* The Guarantor hereby waives (i) notice of acceptance of this Guaranty by the United States of America and each participant and of any action taken or omitted in reliance on this Guaranty, (ii) except as provided in Section 5, notice of the occurrence of any default by the Charterer under any contract, agreement or arrangement between the Charterer and a participant, (iii) to the fullest extent lawfully possible, all defenses which may now or hereafter exist by virtue of any statute of limitations, stay, valuation, moratorium or similar law, except the sole defense of payment, (iv) any and all notices required by statute, rule of law or otherwise to preserve rights against the Guarantor under this Guaranty (other than the notice required by Section 5), and (v) all formalities legally required to charge the Guarantor with liability under this Guaranty or which would impair the right of action by the United States of America or a participant against the Guarantor. The Guarantor hereby agrees that its obligations under this Guaranty shall not be subject to, and the Guarantor agrees that it will not assert, any counterclaim, set-off, recoupment, deduction or defense based upon any claim that the Guarantor may have against the Charterer, and that the obligations of the Guarantor shall remain in full force and effect without regard to, and shall not be discharged or rendered unenforceable by, any circumstances (whether or not the Guarantor shall have knowledge or notice thereof), including, without limitation, the taking or holding by the United States of America or a participant of a security interest in any property as security therefor, any bankruptcy, insolvency, reorganization, arrangement, liquidation or similar proceeding with respect to the Charterer.

7. *Modifications and Extensions of Time.* The liability of the guarantor under this Guaranty shall not be discharged or affected by any amendment, alteration, or modification of any underlying contract, agreement or arrangement between the Charterer and a participant or by any extension or postponement of time for performance or other indulgence granted to the Charterer for satisfaction of its obligations thereunder and the Guarantor shall be bound under this Guaranty wtih respect to the obligations of the Charterer under any such contract, agreement or arrangement as so changed or extended. The Guarantor waives any requirement that it be notified of any such alteration, amendment, extension of time, modification or other indulgence. Without limitation of the generality of any of the foregoing, the Guarantor assents to any other action or failure to act on the part of the Charterer or on the part of any participant, or any other person at the time liable, absolutely or contingently, in respect of all or any of the Guaranteed Obligations including, without limitation, any failure strictly to assert any right or pursue any remedy and any failure fully to comply with applicable laws or regulations which might but for the provisions of this Section, afford grounds for terminating, discharging, or releasing the Guarantor in whole or in part, from its irrevocable absolute and unconditional obligations under this Guaranty, it being the intention of the Guarantor that, except as otherwise provided in Section 5, so long as any of the Guaranteed Obligations remain unperformed, the obligations of the Guarantor under this Guaranty shall not be discharged except by performance and then only to the extent of such performance.

8. *Waivers.* Neither this Guaranty nor any term hereof may be changed, waived, discharged, or terminated except by an instrument in writing executed on behalf of the Board and the Guarantor expressly referring to this Guaranty and to the provisions so changed or limited. No such waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of the United States of America or any participant in exercising any right shall operate as a waiver thereof.

9. *Notices.* All notices or demands required or permitted to be given under the Guaranty shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first-class mail, addressed as follows: (i) if to the Board, at _____, or (ii) if to the Guarantor or the Charterer, as the case may be, at the address set forth for each of them in the contract, agreement or arrangement between the Charterer and the participant. The date of mailing shall be deemed to be the date of giving of notice.

10. *Due Authorization of Guaranty.* The Guarantor represents and warrants that (i) it has the corporate power to enter into this Guaranty; (ii) all required corporate action (including the approval of its Board of Directors, if required) has been taken to authorize the execution and delivery of this Guaranty; and (iii) this Guaranty constitutes a valid and binding obligation enforceable against the Guarantor in accordance with its terms.

11. *General Provisions.* This Guaranty shall be binding upon the successors and assigns of the Guarantor, and shall inure to the benefit of the United States and the heirs, personal representatives, successors and assigns of each participant. The descriptive headings of the Sections of this Guaranty have been inserted for convenience of reference only and shall not define or limit the provisions of this Guaranty. If any provision of this Guaranty shall be invalid, illegal or unenforceable, the validity of all other terms of this Guaranty shall not be affected thereby, and this Guaranty shall operate and be enforceable as if such invalid, illegal or unenforceable provisions had not been included as a part of this Guaranty.

In witness whereof, the Guarantor has executed this Guaranty under seal on _____, 19____.

Attest:	_____
[Corporate Seal]	(Name of Guarantor)
By: _____	By: _____
Title: _____	Title: _____

ATTACHMENT A

Charter trip designation	Date of flight departure	Secured amount

APPENDIX C.—ESCROW AGREEMENT

This escrow agreement is made and entered into this ____ day of _____, 1977, by and between (i) _____ (hereinafter referred to as the "Charterer"), and (ii) _____ (hereinafter referred to as the "Escrow Agent").

RECITALS

A. The Charterer intends to become an authorized chartered pursuant to the provisions of Part 369 of the Regulations promulgated by the Civil Aeronautics Board (the "Board") and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and has elected to enter into and file with the Board this Escrow Agreement for the purpose of insuring financial responsibility and the supplying of transportation and other services subject to the Board's Regulations in accordance with the contracts, agreements or arrangements between the Charterer and Participants.

B. The Charterer has agreed to deposit with the Escrow Agent certain cash funds and/or one or more irrevocable letters of credit issued to the Escrow Agent in order to assure compliance by the Charterer as an authorized charterer within the meaning of Part 369 of the Board's Regulations, with all rules and regulations of the Board relating to insurance or other security for the protection of Participants.

Now, therefore, in consideration of the mutual promises hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

INTERPRETATION

Section 1.01. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires:

(a) terms specifically defined in Section 1.02 have the meanings therein assigned to them and such definitions shall be applicable to both the singular and plural forms of the term defined;

(b) *"Agreement"* or *"this Agreement"* means this Agreement as originally executed, or if modified, amended or supplemented, as so modified, amended or supplemented; and

(c) the word *"herein"*, *"hereof"*, *"hereunder"* and other words of similar import refer to this Agreement as a whole and not any particular Article, Section or other subdivision of this Agreement.

Section 1.02. Subject to the provisions of Section 1.01, the following terms shall have the respective meanings set forth below:

(a) *"Allowable Amount"* means, with respect to any claim, an amount equal to the lesser of (i) the total amount of damages claimed by the Claimant as a result of an alleged default by the charterer in performing the Secured Obligations, or (ii) the total amount paid by such Claimant for transportation and other services in accordance with the contract, agreement between the Claimant and the Charterer.

(b) *"Allowed Claim"* means a claim which has been allowed in accordance with the provisions of Section 6.01.

(c) *"Board"* means the Civil Aeronautics Board.

(d) *"Charter Trip"* means each separate charter trip listed on Exhibit A attached hereto, including the unscheduled air transportation and any other services to be provided to Participants in accordance with the terms of the contracts, agreements, or arrangements between the Charterer and the Participants.

(e) *"Charter Trip Escrow Amount"* means, with respect to each Charter Trip, the amount set forth in Exhibit A as the "Secured Amount" for that trip.

(f) *"Claimant"* means a Participant who files a claim with the Escrow Agent within 90 days after the scheduled date of completion of the Charter Trip which was the

subject of the contract, agreement or arrangement between the Charterer and such Participant.

(g) *"Collateral"* means cash (including deposits in savings accounts) or a Qualified Letter of Credit or a combination of cash and a Qualified Letter of Credit.

(h) *"Escrow Fund"* means the fund initially established by the Charterer and thereafter maintained by the Escrow Agent pursuant to Article II.

(i) *"Minimum Escrow Amount"* means, as of any time, an amount equal to the sum of (i) the Charter Trip Escrow Amounts for all Charter Trips which have not been completed, and (ii) the Charter Trip Escrow Amounts for all Charter Trips which have been completed within the immediately preceding 90-day period.

(j) *"Participant"* means a person who is a participant on one or more Charter Trips with whom the Charterer has contracted to provide transportation and other services.

(k) *"Participant Claim Fund"* means the fund required to be established and maintained by the Escrow Agent pursuant to Article V for each Charter Trip for which a claim is filed by one or more Participants.

(l) *"Qualified Letter of Credit"* means an irrevocable letter of credit which (i) is issued by a national bank (other than the Escrow Agent), the deposits in which are insured by the Federal Deposit Insurance Corporation, in compliance with the provisions of 12 C.F.R. § 7.7016, (ii) contains an undertaking by the issuing bank to honor sight drafts or other demands for payment made by the Escrow agent and presented to the issuing bank within a period ending not earlier than 100 days after the scheduled date of completion of the last Charter Trip, and (iii) is subject to no conditions other than a condition that each sight draft or other demand for payment drawn under the letter of credit be accompanied by a certificate signed by an authorized officer of the Escrow Agent to the effect that a claim has been filed by a Claimant for damages arising out of a Charter Trip.

(m) *"Secured Obligations"* means the obligation of the Charterer to perform and observe all terms, covenants and conditions to be performed or observed by it under all contracts, agreements and arrangements made by the Charterer for the supplying of transportation and other services to Participants pursuant to and in accordance with the provisions of the Board's Regulations.

ARTICLE II

DEPOSIT AND MAINTENANCE OF ESCROW FUND

Section 2.01. As security for the prompt and faithful performance of the Secured Obligations, the Charterer is, simultaneously with the signing of this Agreement, establishing the Escrow Fund by depositing with, or delivering to, the Escrow Agent, the receipt of which by the Escrow Agent is hereby acknowledged, Collateral in an amount at least equal to the sum of the Charter Trip Escrow Amounts for all Charter Trips. The Charterer represents and warrants to the Escrow Agent that the amount of the Collateral deposited with, or delivered to, the Escrow Agent pursuant to this Section complies with all applicable provisions of the Board's Regulations with respect to the amount of the escrow required to be established for the Charter Trips.[3]

[3] 14 CFR 369.8(e) provides that the collateral must be at least equal to $2,000 or 5 percent of the total charter price (the number of seats under contract for the charter trip times the price of each charter trip per participant), whichever is greater.

Section 2.02. Until the termination of the Escrow Fund pursuant to Section 2.04, the Charterer agrees at all times to keep and maintain on deposit in the Escrow Fund Collateral in an amount at least equal to the Minimum Escrow Amount. The Collateral required to be maintained on deposit in the Escrow Fund shall be in addition to the Collateral (in the form of cash or deposits in savings accounts, or both) required to be maintained by the Escrow Agent in the Separate Participant Claim Funds established pursuant to Article V.

Section 2.03. For all purposes of this Agreement, the amount of Collateral consisting of a Qualified Letter of Credit shall be the difference between the face amount of the Qualified Letter of Credit and sum of the amounts (if any) previously drawn by the Escrow Agent under the Qualified Letter of Credit.

Section 2.04. The Escrow Fund shall terminate on the expiration of 100 days after the scheduled date of completion of the last Charter Trip, at which time the Escrow Agent shall deliver to the Charterer all Collateral then held in Escrow Fund.

ARTICLE III

WITHDRAWAL OF COLLATERAL UPON COMPLETION OF CHARTER TRIP

Section 3.01. Except as otherwise provided in Section 3.03, unless a claim is filed pursuant to Section 4.01 by one or more Participants within 90 days after the scheduled date of completion of a Charter Trip, the Charterer shall have the right, at any time after 10 days after the expiration of the 90-day period, to withdraw Collateral from the Escrow Fund in an amount equal to the Charter Trip Escrow Amount for the Charter Trip.

Section 3.02. Except as otherwise provided in Section 3.03, if a claim is filed pursuant to Section 4.01 by one or more Participants within 90 days after the scheduled date of completion of a Charter Trip, the Charterer shall have the right, at any time after 10 days after the expiration of the 90-day period, to withdraw Collateral from the Escrow Fund in an amount equal to the excess (if any) of the Charter Trip Escrow Amount for the Charter Trip over the sum of the Allowable Amounts of all claims filed within the 90-day period with respect to the Charter Trip; *Provided, however*, That no withdrawal of collateral from the Escrow Fund may be made by the Charterer in the form of cash until the Escrow Agent has complied with the provisions of Section 3.04.

Section 3.03. No withdrawal of Collateral from the Escrow Fund may be made by the Charterer pursuant to Sections 3.01 or 3.02 unless, immediately after such withdrawal, the Collateral remaining in the Escrow Fund shall be in an amount at least equal to the Minimum Escrow Amount.

Section 3.04. If a claim is filed pursuant to Section 4.01 by one or more Participants within 90 days after the scheduled date of completion of a Charter Trip, the Escrow Agent shall, within 10 days after the expiration of the 90-day period (or, within five days after the Escrow Agent's receipt of any amounts drawn on a Qualified Letter of Credit pursuant to this Section, if that occurs later), transfer from the Escrow Fund to the Participant Claim Fund for such Charter Trip an amount of Collateral (in the form of cash or deposits in savings accounts, or both) equal to the sum of the Allowable Amounts of all claims filed within the 90-day period with respect to the Charter Trip. If, at the expiration of the 90-day period, the Collateral in the Escrow Fund consisting of cash and deposits in savings accounts is less than the amount required by the preceding sentence to be transferred to a Participant Claim Fund (such difference being hereinafter referred to as the *"deficiency"*), the Escrow Agent shall, within three business days after the expiration of the 90-day period, present to the issuer of the Qualified Letter of Credit then held in the Escrow Fund a sight draft or other demand for payment thereunder for an amount equal to the deficiency. The amount received by the Escrow Agent in payment of the sight draft or other demand for payment shall be added to, and become a part of, the Participant Claim Fund.

Section 3.05. A withdrawal of Collateral consisting of a Qualified Letter of Credit may be made by the Charterer by delivering to the Escrow Agent a new Qualified Letter of Credit with a lower face amount in substitution for the Qualified Letter of Credit to be withdrawn.

ARTICLE IV

FILING OF CLAIMS BY PARTICIPANTS

Section 4.01. The purpose of this Escrow Agreement is to establish a fund for the payment of claims by participants who are damaged by the failure of the Charterer to perform the Secured Obligations. Any Participant who incurs or suffers loss or damage caused by the failure of the Charterer promptly and fully to perform the Secured Obligations may file a claim within 90 days after the scheduled date of completion of the Charter Trip. The claim shall be filed with the Escrow Agent and shall state the amount claimed and the alleged default by the Charterer in the performance of the Secured Obligations.

Section 4.02. Within three business days after receipt of a claim filed pursuant to Section 4.01, the Escrow Agent shall give notice of the claim to the Charterer in the manner provided by Section 8.03 accompanied by a copy of the claim. If the Charterer does not deliver a written denial of the claim to the Escrow Agent within 20 days after the Escrow Agent gives notice of the claim to the Charterer, or if, within the 20 day period, the Charterer delivers a written acknowledgement of liability for the claim to the Escrow Agent, then in either such event the claim shall be considered to be an Allowed Claim and, subject to the provisions of Article VI, the Claimant shall be entitled to payment from the Participant Claim Fund for the Charter Trip of an amount equal to the total amount of damages claimed as a result of the alleged default. If the Charterer delivers a written denial of the claim to the Escrow Agent within 20 days after the Escrow Agent gives notice of the claim to the Charterer, the Escrow Agent shall, within three business days after receipt of the Charterer's written denial, deliver a copy of the denial to the Claimant at the mailing address stated in his claim.

Section 4.03. To preserve his rights under this Agreement, a Claimant must commence a suit or action against the Charterer to recover damages for the alleged default described in his claim within 15 months after the scheduled date of completion of the Charter Trip. If a Claimant whose claim is not otherwise treated as an Allowed Claim pursuant to paragraphs (a) or (b) of Section 6.01 fails within 15 months after the scheduled date of completion of the Charter Trip to commence a suit or action against the Charterer to recover damages for the alleged default described in his claim, the Claimant's right to payment from the Participant Claim Fund of damages for the Charterer's alleged default shall terminate and his claim shall not be allowed to any extent.

ARTICLE V

ESTABLISHMENT OF PARTICIPANT CLAIM FUND

Section 5.01. The Escrow Agent shall establish and maintain a separate Participant Claim Fund for each Charter Trip for which a claim has been filed by one or more Participants pursuant to Section 4.01. The Participant Claim Fund for each Charter Trip shall be an amount equal to the lesser of (i) the Charter Trip Escrow Amount for the Charter Trip, or (ii) the sum of the Allowable Amounts of all claims filed by Claimants with respect to the Charter Trip, and shall be used for the sole purpose of satisfying the Allowed Claims of Participants of the Charter Trip for which the Participant Claim Fund was established. A Participant Claim Fund established for one Charter Trip shall not be used to satisfy the Allowed Claims of Participants of a different Charter Trip.

Section 5.02. Subject to the Escrow Agent's receipt of funds drawn on the issuer of a Qualified Letter of Credit pursuant to Section 3.04, the Participant Claim Fund for each Charter Trip shall be established by the Escrow Agent within 10 days after the expiration of the 90-day period provided by Section 4.01 for the filing of claims by Participants for the Charter Trip, and shall include only Collateral consisting of cash or deposits in savings accounts, or both. Disbursements from the Participant Claim Fund for each Charter Trip shall be made only in payment of Allowed Claims in the manner set forth in Article VI.

Section 5.03. The Participant Claim Fund established for each Charter Trip shall terminate after the disbursement to Claimants of all amounts required for payment of Allowed Claims, at which time the Escrow Agent shall return the balance (if any) of the Collateral held in the Participant Claim Fund to the Charterer.

ARTICLE VI

ALLOWANCE AND PAYMENT OF CLAIMS

Section 6.01. A claim filed within the 90-day period provided by Section 4.01 shall be allowed in accordance with the following provisions:

(a) A claim which is not denied by the Charterer pursuant to Section 4.02 or for which the Charterer acknowledges liability, in writing, shall be allowed in an amount equal to the Allowable Amount of the claim.

(b) A claim which is settled by mutual agreement between the Charterer and the Claimant (including a claim with respect to which a suit or action is commenced pursuant to Section 4.03 but which is thereafter settled) shall be allowed in an amount equal to the lesser or (1) the Allowable Amount of the claim, or (2) the amount of the Charterer's liability to the Claimant as evidenced by a written settlement agreement signed by the Charterer and the Claimant and delivered to the Escrow Agent.

(c) A claim with respect to which a suit or action is commenced and which is not thereafter settled by mutual agreement between the Claimant and the Charterer shall be allowed in an amount equal to the lesser of (1) the Allowable Amount of the claim, or (2) the amount (if any) of the Charterer's liability to the Claimant (exclusive of costs awarded by the court) as determined by the court in which the suit or action was commenced and as evidenced by a certified copy of the final judgment of such court delivered to the Escrow Agent. If the final judgment entered in such suit or action dismisses the Claimant's complaint with prejudice or otherwise determines that the Charterer is not liable in damages to the Claimant on account of the claim, the claim shall not be allowed to any extent.

(d) A claim with respect to which a suit or action is not commenced within the time allowed by Section 4.03 shall not be allowed to any extent.

Section 6.02. Claims with respect to a Charter Trip which have been allowed pursuant to Section 6.01 shall be paid from the Participant Claim Fund for the Charter Trip in accordance with the following provisions:

(a) Subject to the provisions of paragraph (b), each Allowed Claim shall be paid by the Escrow Agent to the Claimant in full within 10 days after the expiration of the 20-day period referred to in Section 4.02, the Escrow Agent's receipt of a signed counterpart of the settlement agreement referred to in Section 6.01(b), or the Escrow Agent's receipt of a certified copy of the final judgment referred to in Section 6.01(c), as the case may be.

(b) If the sum of the Allowable Amounts of all claims filed with respect to a Charter Trip is greater than the Charter Trip Escrow Amount for the Charter Trip,

(1) a tentative payment shall be made by the Escrow Agent with respect to each Allowed Claim within the applicable 10-day period referred to in paragraph (a) in an amount (but not more than the amount of the Allowed Claim) equal to the product obtained by multiplying the Charter Trip Escrow Amount by a fraction, the numerator of which is the Allowable Amount of the claim and the denominator of which is the sum of the Allowable Amounts of all claims filed with respect to the Charter Trip, and

(2) a final payment with respect to each Allowed Claim shall be made by the Escrow Agent within 20 days after the occurrence of the event establishing the allowance of the last claim to be allowed with respect to the Charter Trip in an amount equal to the excess (if any) of (A) the product obtained by multiplying the Charter Trip Escrow Amount by a fraction, the numerator of which is the amount of the Allowed Claim and the denominator of which is the sum of all Allowed Claims with respect to the Charter Trip, over (B) the amount of the tentative payment made pursuant to paragraph (1) of this Section 6.02(b). Notwithstanding the foregoing, the amount payable pursuant to this subparagraph shall not be greater than the amount which, when added to the tentative payment made pursuant to subparagraph (1), will cause the total to exceed the amount of the Allowed claim.

Section 6.03. Within 20 days after the occurrence of the event establishing the allowance of the last claim to be allowed with respect to each Charter Trip, the Escrow Agent shall pay any balance remaining in the Participant Claim Fund for the Charter Trip to the Charterer.

ARTICLE VII

RIGHTS AND DUTIES OF ESCROW AGENT

Section 7.01. The Escrow Agent shall receive and hold the Collateral deposited in the Escrow Fund and in each Participant Claim Fund and shall be responsible for the safekeeping of the same. All Collateral consisting of cash shall be invested by the Escrow Agent in an interest-bearing savings account in a financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings & Loan Insurance Corporation. To the extent permitted by applicable law, the Escrow Agent may deposit the Collateral consisting of cash in an interest-bearing savings account in the Escrow Agent's own banking department. All interest earned by the investment of the Collateral shall be paid by the Escrow Agent to the Charterer at such times as they may agree upon.

Section 7.02. The Escrow Agent agrees to accept as full compensation for its services under this Agreement, including its services in connection with the payment of Allowed Claims, the fees and charges agreed to between the Charterer and the Escrow Agent by separate written agreement. All such fees and charges shall be paid by the Charterer out of its separate funds.

Section 7.03. The Escrow Agent shall not be responsible for, and it assumes no liability for, performance by the Charterer of any of the Secured Obligations, and its only duties or responsibilities shall be to hold the collateral and to dispose of it in accordance with the terms of this Agreement. If any disputes arise with respect to this Agreement or the Collateral at any time held in the Escrow Fund or any Participant Claim Fund, whether such disputes arise between the parties hereto or between the parties hereto and other persons, the Escrow Agent may interplead such disputants and the Charterer agrees to indemnify and hold harmless the Escrow Agent from and against all costs and expenses it may incur in connection with such disputes. If the Escrow Agent finds it necessary to consult with legal counsel of its own choosing in connection with this Agreement, any reasonable expenses so incurred by it shall be for the account of the Charterer and shall be reimbursed to it by the Charterer upon demand.

ARTICLE VIII

PROVISIONS OF GENERAL APPLICATION

Section 8.01. *Entire Agreement.* No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. Except as otherwise provided in Section 7.02, this agreement contains the entire agreement between the parties relating to the Escrow Fund and the Participant Claim Funds, all prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between them other than as herein set forth.

Section 8.02. *Benefit and Burden.* All terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective legal representatives, successors, and assigns.

Section 8.03. *Notices.* All notices, requests, demands, and other communications required or permitted hereunder ("*Notices*") shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first-class mail, addressed (i) if to the Charterer, at_____

_____,

_____

or (ii) if to the Escrow Agent, at_____

_____,

or any other address that may be given by either party to the other party by Notice in writing pursuant to provisions of this (Section. All Notices sent by mail shall be effective upon being deposited in the United States mail in the manner prescribed above. If a Notice sent by mail is rejected by the addressee or the addressee refuses to accept the Notice or the Postal Service is unable to deliver a Notice sent by mail because of a changed address of which no Notice was given, the Notice shall be deemed to have been received by the addressee on the date of such rejection, refusal or inability to deliver.

Section 8.04. *Counterparts.* This Agreement is being executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8.05. *Governing Law.* This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted and determined in accordance with the laws of the jurisdiction in which the Escrow Agent's principal office is located.

Section 8.06. *Separability of Provisions.* In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 8.07. *Headings.* The headings of the Articles of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this agreement.

In witness whereof, the Charterer and the Escrow Agent have signed this Agreement on the day and year first above written.

Attest:
Escrow Agent
[Corporate Seal]

Principal
By: _____ By: _____
Title: _____ Title: _____

ATTACHMENT A

Charter trip designation	Date of flight departure	Secured amount

APPENDIX D.—SERVICE OF PROCESS

The [Guarantor or Surety] hereby (i) agrees that the [Guarantor or Surety] may be served with process in the City (Town) or _____, State of _____ (the "Designated Service Jurisdiction"), in any action or proceeding for the enforcement against the [Guarantor or Surety] of any obligation or liability under this [Guaranty, or Bond;] (ii) irrevocably appoints _____ as the [Guarantor's or Surety's] agent (the "Agent") to accept service of process in any such action or proceeding; (iii) agrees that any such action or proceeding against the [Guarantor or Surety] may be commenced in any court of competent jurisdiction within the Designated Service Jurisdiction, by service of process upon the Agent with the same effect as if the [Guarantor or Surety] were physically present in the Designated Service Jurisdiction and had lawfully been served with process in the Designated Service Jurisdiction; and (iv) directs that a copy of any notice, process or pleading served on the Agent pursuant to the provisions of this Section be forwarded by the Agent to the [Guarantor or Surety], by United States mail, first-class postage prepaid at its address set forth in this [Guaranty or Bond], or at such other address as may have been designated by the [Guarantor or Surety] by written notice to the Civil Aeronautics Board and the agent.

[FR Doc.77-34489 Filed 12-1-77;8:45 am]

[6320-01]

[14 CFR Parts 371, 372, 372a, 373, 378, 378a]

[SPDR-62; Docket 31735; Dated: Nov. 22, 1977]

PROTECTION OF CHARTER PARTICIPANTS' FUNDS

Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes changes in each of the charter types established under the Board's Special Regulations, to conform to the new proposed scheme for protection of charter participants' funds published and discussed in detail in this issue of the Federal Register.

DATES: Comments by: January 31, 1978. Reply comments by: February 21, 1978. Requests to be placed on the Service List by: December 12, 1977.

ADDRESSES: Comments should be sent to Docket 31735, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

SUPPLEMENTARY INFORMATION: A discussion of the background and issues concerning this proposal is contained in SPDR-63, which the Board has issued contemporaneously with this notice.

It is proposed that the following amendments be made in 14 CFR Chapter II, Subchapter D, *Special Regulations.*

PART 371—ADVANCE BOOKING CHARTERS

1. § 371.25(b)(1)(ii) would be deleted.

2. § 371.28 would be amended to read as follows:

§ 371.28 Charter prospectus.

The Prospectus shall be filed in duplicate and shall include two copies of the following: The charter contract, the contract between the charter operator or foreign charter operator and charter participants, the charter operator's or foreign charter operator's security agreement (an original and a copy thereof), and two copies of the depository escrow agreement with a bank as provided in § 371.31 and Part 369 of this chapter

* * *

3. Paragraphs (h), (j), and (k) of § 371.30 would be deleted.

4. § 371.31 would be revised to read:

§ 371.31 Protection of participants' funds.

The charter operator or foreign charter operator, and all persons and organizations with whom the operator deals, shall comply with all the applicable requirements of Part 369 of this chapter.

5. § 371.32 and Appendix B would be deleted.

PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

1. § 372.24 would be revised to read:

§ 371.24 Protection of participants' funds.

A charter operator, and all persons with whom the operator deals, shall comply with all the applicable requirements of Part 369 of this chapter.

2. In § 372.30(a), item 13 would be amended to read:

"the charter operator's security agreement and depository escrow agreement required by Part 369 of this chapter."

PART 372a—TRAVEL GROUP CHARTERS

1. In § 372a.18(c), the phrase "surety bond" would be changed to "security agreement".

2. § 372a.25 would be revised to read:

§ 372a.25 Protection of participants' funds.

A charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise jurisdiction), and all persons with whom the charter organizer deals, shall comply with all the applicable requirements of Part 369 of this chapter.

3. In 372a.29, paragraphs (e) and (j) would be deleted.

4. Appendix B would be deleted.

PART 373—STUDY GROUP CHARTERS, BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS

1. In § 373.10(c), the phrase "surety bond" would be changed to "security agreement".

2. § 373.15 would be revised to read:

Except as provided in § 373.10a, the study group charterer, and all persons and organizations with whom the charterer deals, shall comply with all the applicable requirements of Part 369 of this chapter.

3. § 373.16 would be deleted.

4. In § 373.18, paragraphs (h), (i), and (j) would be deleted.

PART 378—INCLUSIVE TOUR CHARTERS

1. § 378.13 would be amended to read as follows:

§ 378.13 Tour prospectus.

The prospectus shall be filed in duplicate and shall include two copies of the following: The charter contract, the contract between the tour operator or foreign tour operator and tour participants, the tour operator's or foreign tour operator's security agreement (an original and a copy), and two copies of the depository escrow agreement with a bank as provided in § 378.16 and Part 369 of this chapter.

2. § 378.16 would be revised to read:

§ 378.16 Protection of participants' funds.

The tour operator or foreign tour operator, and all persons and organizations with whom the operator deals, shall comply with all the applicable requirements of Part 369 of this chapter.

3. In § 378.17, paragraphs (e), (i), and (j) would be deleted.

4. § 378.18 and Appendix A would be deleted.

PART 378a—ONE-STOP-INCLUSIVE TOUR CHARTER

1. § 378a.25(b)(1)(ii) would be deleted.

2. The lead paragraph of § 378a.28 would be amended to read as follows:

§ 378a.28 Tour prospectus.

The prospectus shall be filed in duplicate and shall include two copies of the following: The charter contract, the contract between the tour operator or foreign tour operator and tour participants, the tour operator's or foreign tour operator's security agreement (an original and a copy thereof), and two copies of the depository escrow agreement with a bank as provided in § 378a.31 and Part 369 of this chapter. * * *

3. Paragraphs (h), (j), and (k) of § 378a.30 would be deleted.

4. § 378a.31 would be revised to read:

§ 378a.31 Protection of participants' funds.

The tour operator or foreign tour operator, and all persons and organizations with whom the operator deals, shall comply with all the applicable requirements of Part 369 of this chapter.

5. § 378a.32 would be deleted.

6. Paragraph (d) of § 378a.105 would be deleted.

7. § 378a.107(c)(4) would be amended to read:

§ 378a.107 Application for statement of authorization.

* * * * *

(c) * * *

(4) The tour operator's security agreement (an original and a copy thereof) and the depository escrow agreement with a bank, as provided in § 378a.31 and Part 369 of this chapter.

8. Appendix A would be deleted.

REQUEST FOR COMMENTS

Interested persons may take part in this rulemaking by submitting 20 copies of written data, views, or arguments on the subjects discussed. All relevant material received by the dates shown at the beginning of this notice will be considered by the Board before taking final action on the proposed rules. Those persons planning to file comments or reply comments who wish to be served with such comments filed by others, and are willing to serve their own comments on others, shall file with the Docket Section, at the address and by the date shown at the beginning of this notice, a request to be placed on the Service List. The Service List will be prepared by the Docket Section and sent to the persons named on it. Persons filing responsive comments should serve any person whose comment is dealt with in their responsive comment, whether or not either party is on the Service List.

Individual members of the general public who wish to express their interest as consumers may do so by submitting comments in letter form to the Docket Section, without having to file additional copies.

(Sec. 204, 901, 902, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 783, 784, 49 U.S.C. 1324, 1471, 1472.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-34488 Filed 12-1-77;8:45 am]

federal register

FRIDAY, DECEMBER 2, 1977
PART IV

DEPARTMENT OF STATE

■

FISHERY CONSERVATION AND MANAGEMENT

Applications for Permits To Fish Off the Coasts of the United States

[4710-01]

DEPARTMENT OF STATE

[Public Notice 580]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Additional applications for fishing during 1977 have been received from the Government of Cuba and additional applications for fishing during 1978 from the Government of Spain, and are published herewith.

Dated: November 23, 1977.

BRIAN S. HALLMAN,
Acting Director, Office of Fisheries Affairs.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. SP-78-0037

1. Name of Vessel: COSTA DE NORUEGA
2. Visual Identifier (Call Sign): E.D.E.L.
3. Type of Vessel: Stern trawler
4. Length: 38
5. Gross Tonnage: 412
6. Net Tonnage: 190
7. Maximum Speed (knots): 10
8. Owner's Name and Address: HIJOS DE ANGEL CJEDA, S.A.
Pza. R. Alvargonzalez, 5.- GIJON
9. Types of Processing Equipment: Flash freezer

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
SQU	Illex Loligo	Bottom trawl	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) No. SP-78-0105

1. Name of Vessel: MYRDOMA B
2. Visual Identifier (Call Sign): E.C.A.I.
3. Type of Vessel: Side Trawler
4. Length: 32
5. Gross Tonnage: 270
6. Net Tonnage: 100
7. Maximum Speed (knots): 9
8. Owner's Name and Address: M. Y R. DOMINGUEZ MACAYA.- Marqués de Valladares, 29.- VIGO
9. Types of Processing Equipment: FLASH FREEZER

10. Fisheries for Which Permit is Requested:

Fishery Plans	Target Species	Gear To Be Used	Activity: Catching	Activity: Processing	Activity: Other Support
SQU	Illex Loligo	BOTTOM TRAWL	X	X	

11. Are Fishing Activities Requested in Support of Vessels of a Different Flag:

☒ No ☐ Yes (If yes, attach supplemental sheet showing flag of other vessels, fishery, species, quantities, dates, locations and specific activities requested.)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: _____

Application No. CU-77-0113 For Use of Issuing Office

State: CUBA

1. Name of Vessel PLAYA DUABA
2. Vessel No.: Hull No. 702 Registration No. 7763
3. Name and Address of Owner

Name FLOTA CUBANA DE PESCA
Address Muelle Osvaldo Sánchez Mercado y Desamparados Luyanó Apartado 74, Habana 1
Habana, Cuba

Cable Address Telex 177 FLOCUBA

Name and Address of Charterer

4. Homeport and State of Registry: PUERTO DE LA HABANA, CUBA
5. Type of Vessel ATLANTIK Stern Trawler engaged in fishing and prodessing
6. Tonnage (Gross) 2652.25 (Net) 1129.51
7. Length 82.2 M. 8. Breadth 13.63 M. 9. Draft 5.9 M.
10. Horsepower 2,320 shp. 11. Maximum Speed 12.5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),

Other _____

13. Date Built 1971
14. Number and Nationality of Personnel 81, Cubans

Officers 11 Crew 70 Other (Specify) _____

15. Communications: VHF-FM (X), AM/SSB Voice ( ), Telegraphy (X)

Other MAIN AND EMERGENCY RADIO TRANSMITTER

International Radio Call Sign COMF

Radio Frequencies Monitored 500, 2182, 4179, 6268.5, 8358, Channel 16

Other Working Frequencies 454-468, 2315-2760, 4194-4215, Channel 25

Schedule _____

CU-77-0113

16. Navigation Equipment: Loran C (X), Loran A (X), Omega ( ), Decca ( ), Navsat ( ), Radar (X), Fathometer (X),

Other Radiogonomioter

17 Cargo Capacity (MT)

Salted Fish _____
Fresh Fish _____
Frozen Fish 1055 M 3
Fish Meal 163 M 3
Other 9 M 3

18. Cargo Space

Number	Name
Freezer	2 Freezer Storage
Dry Hold	1 Store Room for fish meal
Tanks	1 Fish Oil Tank
Other	

19. Processing Equipment (Indicate daily capacity, MT)

Freezing rotor 2 . 36 Tons

Fish meal Plant VF/M/02 1 4 Tons

Theorical daily production when working at 80 % of its capacity during a 24 hours period.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
N.W.A	May 10-Jul 2	Silver Hake	965	Midwater and Bottom Trawler
" "	" "	Red Hake	82	" "
" "	" "	Mackerel	253	" "
" "	" "	Herring	22	" "
" "	" "	Others	158	" "
" "	Nov 15-Dec 31	Mackerel	660	Midwater trawler
" "	" "	Others	90	" "
" "	Dec 1-31	Squid	250	Bottom Trawler

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

_____

_____

_____

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

CU-77-0115

Permit Period Applied For: _____

Application No. For Use of Issuing Office CU-77-0115

State: Cuba

1. Name of Vessel Playa Varadero
2. Vessel No.: Hull No. 704 Registration No. 7750
3. Name and Address of Owner
   Name FLOTA CUBANA DE PESCA
   Address Muelle Osvaldo Sánchez Mercado y Desamparados Luyanó, Aptdo. 74 Habana 1 Habana, Cuba
   Cable Address TELEX 177 Flocuba

   Name and Address of Charterer: _____
4. Homeport and State of Registry: Puerto de La Habana, Cuba
5. Type of Vessel Atlantik, Stern Trawler, Engaged in Fishing and processing.
6. Tonnage (Gross) 2652.25 (Net) 1129.51
7. Length 82.2 M. 8. Breadth 13.63 M. 9. Draft 5.9 M.
10. Horsepower 2320 shp. 11. Maximum Speed 12.5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other _____
13. Date Built 1971
14. Number and Nationality of Personnel 81 cubans
    Officers 11 Crew 70 Other (Specify) _____
15. Communications: VHF-FM (X), AM/SSB, Voice (O), Telegraphy (X),
    Other Main and emergency radio transmitters
    International Radio Call Sign COMY
    Radio Frequencies Monitored 500, 2182, 4179, 6268.5, 8358, Channel 16.
    Other Working Frequencies 454-468, 2135-2760, 4194-4215 Channel 25
    Schedule _____
16. Navigation Equipment: Loran C (X), Loran A (X), Omega (O), Decca (O), Navsat (O), Radar (X), Fathometer (X),
    Other Radiogoniometer
17. Cargo Capacity (MT)

Salted Fish		Freezer	2 Freezer Storage
Fresh Fish		Dry Hold	1 Store room for fish meal
Frozen Fish	1055 m³	Tanks	1 Fish oil tank
Fish Meal	163 m³	Other	
Other	9 m³		

18. Cargo Space

Number	Name
2	Freezer Storage
1	Store room for fish meal
1	Fish oil tank

19. Processing Equipment (Indicate daily capacity, MT)

Freezing rotor	2	36 tons.
Fishmeal plant VF/MO2	1	4 tons.

Theorical daily production when working at 80% of its capacity during a 24 hours period.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
N.W.A.	May 10-Jul 2	Silver Hake	965	Midwater and Bottom Trawler
" "	" "	Red Hake	82	" "
" "	" "	Mackerel	253	" "
N.W.A.	" "	Herring	22	" "
" "	" "	Others	158	" "
" "	Nov 15-Dec 31	Mackerel	660	Midwater Trawler
" "	" "	Others	90	" "

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

No. 20 Continued

N.W.A.	Dec 1-31	Squid	250 MT	Bottom Trawler

[FR Doc.77-34424 Filed 12-1-77;8:45 am]

federal register

FRIDAY, DECEMBER 2, 1977
PART V

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Iowa:		
	IA77-4223; IA77-4224; IA 77-4225; IA77-4226; IA 77-4227; IA77-4228; IA 77-4229; IA77-4230; IA 77-4231; IA77-4232; IA 77-4233; IA77-4234; IA 77-4235.	Sept. 30, 1977.
Missouri:		
	MO77-4271; MO77-4272; MO77-4279.	Do.
Nebraska:		
	NE77-4208	Aug. 26, 1977.
	NE77-4281	Sept. 30, 1977.
Oklahoma:		
	OK77-4274	Do.
Pennsylvania:		
	PA77-3050; PA77-3053; PA 77-3054; PA77-3055; PA 77-3058.	May 13, 1977.
	PA77-3061	June 10, 1977.
	PA77-3102	July 22, 1977.
	PA77-3107	Aug. 26, 1977.
	PA77-3121; PA77-3123; PA 77-3125.	Sept. 9, 1977.
	PA77-3128	Sept. 16, 1977.
Texas:		
	TX77-4221; TX77-4222	Sept. 23, 1977.
	TX77-4252; TX77-4253; TX77-4256; TX77-4258; TX77-4260; TX77-4261.	Sept. 30, 1977.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida:		
	FL75-1083 (FL77-1136)	Sept. 5, 1975.
	FL77-1065 (FL77-1142)	May 13, 1977.
North Dakota:		
	ND75-5019 (ND77-5099)	Aug. 29, 1975.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

General Wage Determination Decision Nos. AM-398, Allegan & Ottawa Counties, Michigan, AM-399, Berrien County, Michigan and AM-402, Kent & Montcalm Counties, Michigan have been withdrawn from the FEDERAL REGISTER. Agencies with residential construction projects pending in these counties should utilize the project determination procedure by submitting Form SF-308. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice, and consistent with 29 CFR 1.7 (b)(2), the incorporation of Decision Nos. AM-398, AM-399 & AM-402 in contract specifications the opening of bids for which is within (10) days of this notice need not be affected.

Signed at Washington, D.C., this 25th day of November 1977.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 1

Decision #IA77-4223-Mod. #2 (42 FR 53002- September 30,1977) Black Hawk County, Iowa	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers	$ 11.435				.06
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05
Decision #IA77-4224-Mod. #1 (42 FR 53004- September 30,1977) Cerro Gordo (City of Mason City) County, Iowa					
Change:					
Glaziers	$ 7.80	.70	.25		
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05
Decision #IA77-4225-Mod. #1 (42 FR 53006- September 30,1977) Clinton (City of Clinton and abutting municipalities) Co., Ia.					
Change:					
Carpenters	$ 9.55	.45	.70		.04
Piledriverman	9.95	.45	.70		.04
Decision #IA77-4226-Mod. #2 (42 FR 53007- September 30,1977) Des Moines (City of Burlington and abutting municipalities and Burlington Ordnance Plant) Co. Ia					
Change:					
Carpenters	$ 10.05	.60	.85		.04
Piledriverman	10.73	.60	.85		.04
Millwright	10.73	.60	.85		.04
Laborers: Group 1	8.77	.30			
Group 2	8.93	.30			
Group 3	9.03	.30			
Group 4	9.14	.30			
Group 5	9.24	.30			
Cement Masons	11.15				
Plasterers	10.78				
Decision #IA77-4227-Mod. #1 (42 FR 53009- September 30,1977) Dubuque (City of Dubuque and abutting municipalities) Co. Ia.					
Change:					
Cement masons	9.93				

MODIFICATIONS P. 2

Decision #IA77-4227-Mod. #1 cont.	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 9.54		.37		
Millwrights	10.04		.37		
Piledriverman	9.94		.37		
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05
Decision #IA77-4228- Mod. #1 (42 FR 53011- September 30,1977) Johnson (City of Iowa City and abutting municipalities) Co., Ia.					
Change:					
Carpenters; Soft Floor Layers	$ 9.70	.45	.45		.08
Piledriverman	10.05	.45	.45		.08
Millwrights	10.39	.45	.45		.08
Ironworkers	11.435				.06
Plumbers and Steamfitters	11.39	.50	.61		.10
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05
Decision #IA77-4229- Mod. #2 (42 FR 53013- September 30,1977) Linn County, Iowa					
Change:					
Carpenters	$ 9.70	.45	.45		.08
Millwrights	10.39	.45	.45		.08
Piledriverman	10.05	.45	.45		.08
Ironworkers	11.435				.06
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05
Soft Floor Layers	9.70	.45	.45		.08
Decision #IA77-4230- Mod. #2 (42 FR 53015- September 30,1977) Polk County, Iowa					
Change:					
Carpenters	$ 9.875	.40	.50		.04
Millwrights; Piledriverman	10.225	.40	.50		.04
Cement Masons	9.87		.80		.02
Electricians	11.73	.40	3%+.70		3/4%
Glaziers	9.12	.70	.25	4.35%+C	.005
Plumbers and Steamfitters	11.40	.60	.85		.10
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05

MODIFICATIONS P. 3

Decision #IA77-4230-Mod. #2 cont.	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 4	$ 8.465	.60	.60		.05
Roofers	8.93	.60	.35		
Add to footnotes:					
C. Six paid holidays, A thru F					
Decision #IA77-4231-Mod. #1					
(42 FR 53017- September 30,1977)					
Pottawattamie County, Iowa					
Change:					
Plumbers	$ 11.74	.70	.85		.10
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05
Decision #IA77-4232-Mod. #1					
(42 FR 53019- September 30,1977)					
Scott County, Iowa					
Change:					
Electricians	$ 11.69	.55	7.5%		.03
Cable Slicer	12.69	.55	7.5%		.03
Glaziers	9.80	.60	1.00		
Power Equipment Ops. Group 1	11.15	.65	.60		.08
Group 2	9.75	.65	.60		.08
Group 3	8.70	.65	.60		.08
Decision #IA77-4233-Mod. #1					
(42 FR 53020- September 30,1977)					
Story (City of Ames and abutting municipalities) County, Iowa					
Change:					
Electricians	$ 11.73	.40	3%+.70		3/4%
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05
Roofers	8.93	.60	.35		
Decision #IA77-4234-Mod. #1					
(42 FR 53022- September 30,1977)					
Webster (City of Fort Dodge) Co. Ia					
Change:					
Bricklayers and Stonemasons	$ 9.72		.20		
Power Equipment Ops. Group 1	10.16	.60	.60		.05
Group 2	9.985	.60	.60		.05
Group 3	9.02	.60	.60		.05
Group 4	8.465	.60	.60		.05

MODIFICATIONS P. 4

Decision #IA77-4235-Mod. #1	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
(42 FR 53024- September 30,1977)					
Woodbury (City of Sioux City and abutting municipalities) Co., Ia					
Change:					
Asbestos Worker	$ 10.40	.50	1.00		
Electricians:					
Within 15 mile radius of Sioux City and all electrical contracts over 300,000 dollars	11.21	.40	3%+.50		.01
All contracts $300,000 and under outside 15 mile radius of Sioux City	5.50	.40	3%+.50		.01
Ironworkers	9.95	.62	.30		.045
Power Equipment Ops. Group 1	9.785	.60	.60		.05
Group 2	9.605	.60	.60		.05
Group 3	8.665	.60	.60		.05
Group 4	8.09	.60	.60		.05
DECISION #MO77-4271 - Mod. #1					
(42 FR 53068 - September 30, 1977)					
Franklin, Jefferson, Lincoln, St. Charles, Warren Counties & City & County of St. Louis, Missouri					
Change:					
Elevator constructors	$10.96	.745	.56	3%+a	.025
Elevator constructors helpers	70%JR	.745	.56	3%+a	.025
Footnote: a-Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit, also (6) Paid Holidays					
Ironworkers	11.225	.55	.70		
Laborers:					
Zone 1					
General laborer	9.775	.45	1.00		
Wrecking	9.45	.45	1.00		
Plumber laborers	10.15	.45	1.00		
Dynamiter or powderman	10.275	.45	1.00		
Mason tenders (brick)	9.25	.45	1.00		
Residential rehabilitation work	6.05	.45	1.00		
Roofers:					
Composition; slate & tile	10.45	.47	.45		.03
Kettlemen	8.25	.47	.45		.03
Sheet metal workers	11.74	.56+3%	.71		.04
Terrazzo workers	11.75				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #MO77-4272 - Mod. #1 (42 FR 53071 - September 30, 1977) Franklin, Jefferson, Lincoln, St. Charles, Warren Counties & City & County of St. Louis, Missouri					
Change:					
Elevator constructors	$10.96	.745	.56	3%+a	.025
Elevator constructors helpers	70%JR	.745	.56	3%+a	.025
Footnote: - a-Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit; also (6) Paid Holidays					
Ironworkers	11.225	.55	.70		
Laborers:					
Zone 1					
General laborer	9.775	.45	1.00		
Wrecking	9.45	.45	1.00		
Plumber laborer	10.15	.45	1.00		
Dynamiter or powderman	10.275	.45	1.00		
Mason tenders (brick)	9.25	.45	1.00		
Residential rehabilitation work	6.05	.45	1.00		
Zone 2	9.225	.45	1.00		
Roofers:					
Composition; slate and tile	10.45	.47	.45		.03
Kettlemen	8.25	.47	.45		.03
Sheet metal workers	11.74	.56+3%	.71		.04
Terrazzo workers	11.75				
DECISION #MO77-4279 - Mod. #2 (42 FR 53074 - September 30, 1977) Description of Work and Location: Heavy and Highway Construction, Missouri					
Change:					
Laborers					
Zone 6					
General laborers	$9.775	.45	1.00		
Plumber laborers	10.15	.45	1.00		
Dynamiter or powderman	10.275	.45	1.00		
Omit:					
Laborers					
Zone 6					
Pier hole	9.825	.45	1.00		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #NE77-4281-Mod. #2 (42 FR 53087- September 30,1977) Lancaster County, Nebraska					
Change:					
Sheetmetal Workers	$ 10.68	.50	.33		.03
Decision #NE77-4208- Mod. #1 (42 FR 43340-August 26,1977) Cass, Douglas, Sarpy, Washington, and that portion of Saunders County East of Highway #109					
Change:					
Carpenters	$ 9.64	.57	.50		.05
Piledriverman	9.765	.57	.50		.05
Cement Masons	9.81	.57	.50		
DECISION NO. OK77-4274 - Mod. #2 (42 FR 53094 - September 30, 1977 Garfield County, Oklahoma					
CHANGE DECISION NO. FOR MODIFICATION NO. 1 to read "OK77-4274"					
DECISION #PA77-3050 - Mod. # 7 (42 FR 24669 - May 13, 1977) Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania					
Change:					
Electricians:					
Lackawanna, Susquehanna, and Wayne Counties:	$10.45	.50	3%+.50	.50	.10
Wyoming County:					
East of Susquehanna River	10.45	.50	3%+.50	.50	.10
DECISION #PA77-3053 - Mod. #6 (42 FR 24672 - May 13, 1977) Elk, Forest, McKean & Warren Counties, Pennsylvania					
Change:					
Electricians					
Zone 1	$11.80	4.5%	3%+.375	.70	.06
Asbestos Workers					
Zone 3	11.71	1.02	.55		.04
DECISION #PA77-3054 - Mod. # 7 (42 FR 24677 - May 13, 1977) Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford, and Venango Counties, Pennsylvania					

MODIFICATIONS P. 7

Decision No. PA77-3054 - Mod.#7 (CONTINUED)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians - Zone 3	$12.50	.50	3%		1/2 of 1%
Painters:					
Zone 1					
Commercial					
Brush	9.49	.75	.45		.02
Spray	9.54	.75	.45		.02
Industrial					
Brush	10.04	.75	.45		.02
Spray	10.54	.75	.45		.02
DECISION #PA77-3055 - Mod. # 6 (42 FR 24688 - May 13, 1977) Greene, Somerset & Potter Counties, Pennsylvania					
Change:					
Asbestos Workers					
Zone II	$11.71	1.02	.55		.04
Painters:					
Zone II					
Commercial					
Brush & Roller	9.49	.75	.45		.02
Spray	9.54	.75	.45		.02
Industrial					
Brush	10.24	.75	.45		.02
Spray	10.74	.75	.45		.02
Terrazzo Workers					
Zone II	11.26	.60	.85		
DECISION #PA77-3058 - Mod. # 5 (42 FR 24702 - May 13, 1977) Erie County, Pennsylvania					
Change:					
Electricians	11.80	4.5%	3%+.375%	.70	.06
DECISION #PA77-3061 - Mod. # 5 (42 FR 30133 - June 10, 1977) Armstrong, Allegheny, Beaver, Butler, Fayette, Indiana, Washington, and Westmoreland Counties, Pennsylvania					
Change:					
Painters:					
Zone 6					
Commercial					
Brush	9.49	.75	.45		.02
Spray	9.54	.75	.45		.02
Industrial					
Brush	10.24	.75	.45		.02
Spray	10.74	.75	.45		.02
Terrazzo Workers					
Zone 1	11.26	.60	.85		

MODIFICATIONS P. 8

DECISION #PA77-3102 - Mod. # 6 (42 FR 37754 - July 22, 1977) Clinton, Centre, Huntingdon, Fulton, & Mifflin Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Zone I					
Brush	$9.30	.50	.30		.05
Tapers	9.56	.50	.30		.05
Hazardous	10.56	.50	.30		.05
Zone 2					
Commercial					
Brush & Roller	9.49	.75	.45		.02
Spray	9.54	.75	.45		.02
Industrial					
Brush & Steel	10.24	.75	.45		.02
Spray	10.74	.75	.45		.02
Area covered by painters zones					
Zone - 1 - Clinton County					
Zone - 2 - Centre, Fulton, Huntingdon & Mifflin Counties					
DECISION #PA77-3107 - Mod. # 5 (42 FR 43353 - August 26, 1977) Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, Pennsylvania					
Change:					
Electricians					
Commercial					
Zone 3	12.27	6%	10%		1/2 of 1%
DECISION #PA77-3121 - Mod. # 4 (42 FR 45612 - Sept., 9, 1977) Lebanon County, Pennsylvania					
Change:					
Electricians					
Remainder of County	$9.40	.65	3%		1/4 of 1%
DECISION #PA77-3123 - Mod. # 2 (42 FR 45616 - Sept., 9, 1977) Schuylkill County, Pennsylvania					
Change:					
Electricians:					
Pine Grove Twps.	$9.40	.65	3%		1/4 of 1%
DECISION #PA 77-3125 - Mod. # 3 (42 FR 45620 - Sept. 9, 1977) Berks County, Pennsylvania					
Change:					
Electricians:					
Marion, Tulpehocken, and Bethel Twps.	9.40	.65	3%		1/4 of 1%

MODIFICATIONS P. 9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PA77-3128 - Mod. # 3 (42 FR 46901 - Sept., 16, 1977) Adams & York Counties, Pennsylvania					
Change:					
Electricians	10.25	.45	3%+.15		.01
DECISION #TX77-4221 - Mod. #4 (42 FR 48723 - September 23, 1977) Travis County, Texas					
Change:					
Electricians & cable splicers	$10.70		8%		.8%
Line construction:					
Linemen	10.82	.40	3%		1/2%
Groundmen	5.95	.40	3%		1/2%
Groundmen (1st year)	5.41	.40	3%		1/2%
DECISION #TX77-4222 - Mod. #5 (42 FR 48725 - September 23, 1977) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change:					
Electricians - Zone 1	9.40	.60	3%		1/4%
Zone 2	10.70		8%		.8%
DECISION #TX77-4252 - Mod. #4 (42 FR 53147 - September 30, 1977) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
Change:					
Electricians:					
Zone 1 - Electricians	10.58	.60	3%		1/2%
Cable splicers	11.66	.60	3%		1/2%
Line Construction:					
Zone 1 - Lineman	10.58	.60	3%		1/2%
Cable splicer	11.66	.60	3%		1/2%
Groundman, more than 1 year experience	6.88	.60	3%		1/2%
Groundman, less than 1 year experience	6.00	.60	3%		1/2%
Operator-hole digger, line truck	8.03	.60	3%		1/2%
Flat bed truck driver	6.00	.60	3%		1/2%
Plumbers & pipefitters:					
Zone 1	9.56	.45	.65	.60	
Zone 2	9.81	.45	.65	.60	
Zone 3	10.06	.45	.65	.60	

MODIFICATIONS P. 10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX77-4253 - Mod. #3 (42 FR 53149 - September 30, 1977) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
Change:					
Electricians	$10.58	.60	3%		1/2%
Plumbers	9.56	.45	.65	.60	
DECISION #TX77-4256 - Mod. #6 (42 FR 53154 - September 30, 1977) Brazos County, Texas					
Change:					
Electricians	11.05	.55	10%		.06
DECISION #TX77-4258 - Mod. #5 (42 FR 53158 - September 30, 1977) Galveston & Harris Cos., Texas					
Change:					
Electricians - Harris Co.	11.05	.55	10%		.06
DECISION #TX77-4260 - Mod. #4 (42 FR 53162 - September 30, 1977) Jefferson & Orange Cos., Texas					
Change:					
Bricklayers & stonemasons	11.905	.63	.30		.04
DECISION #TX77-4261 - Mod. #3 (42 FR 53165 - September 30, 1977) Lubbock County, Texas					
Change:					
Cement masons	7.45				
Electricians - Electricians	9.95	.60	3%		1/10%
Cable splicers	10.20	.60	3%		1/10%
Line Construction:					
Linemen	9.95	.60	3%		
Operators	80%JR	.60	3%		
Groundmen (more than 1 year experience)	55%JR	.60	3%		
Groundmen (less than 1 year experience)	50%JR	.60	3%		
Flat bed truck operator	70%JR	.60	3%		
Plumbers & steamfitters	9.66	.39	.45		.04

SUPERSEDEAS DECISION

STATE: Florida COUNTIES: *See below
DECISION NUMBER: FL77-1136 DATE: Date of Publication
Supersedes Decision No.: FL75-1083, dated September 5, 1975, 40 FR-41361
DESCRIPTION OF WORK: Highway Construction (does not include airport runways and taxiways; tunnels; bridges designed to accommondate navigation; rest areas which include building structures; and railroad construction).

*Counties: Charlotte; Collier; DeSoto, Glades, Hardee, Hendry, Highlands, Lee, Monroe, and Okeechobee

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	4.50				
Carpenters	5.94				
Cement masons	5.16				
Electricians:					
Traffic Signal Installers	6.00				
All Other Electrical Work	8.00				
Ironworkers:					
Reinforcing	6.79				
Laborers:					
Asphalt Rakers	4.12				
Highway Formsetters	4.45				
Pipelayers	3.83				
Unskilled	3.51				
Piledrivermen	5.12				
Truck drivers	3.56				
POWER EQUIPMENT OPERATORS:					
Asphalt distributor	3.51				
Asphalt paving machine	4.35				
Asphalt plant	5.40				
Aggregate spreader	3.51				
Backhoe	4.40				
Bulldozer	4.38				
Crane, dragline	5.26				
Front end loader	4.53				
Mechanic	4.50				
Motor grader	5.18				
Oiler	4.68				
Piledriver	6.69				
Roller	4.21				
Scraper	3.90				
Tractor	3.51				

STATE: Florida
COUNTIES: *See below
DECISION NUMBER: FL77-1142
DATE: Date of Publication
Supersedes Decision No.: FL77-1065 dated May 13, 1977 in 42 FR 24575.
DESCRIPTION OF WORK: Building Construction (does not include single family homes or garden type apartments of four or stories or less); Heavy Construction, and Highway Construction.

*Counties:
That part of Brevard and Volusia Counties, Florida which comprises Cape Kennedy, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	10.53	.50	.35		.06
Boilermakers	10.05	.95	1.05		.02
Bricklayers:					
Bricklayers	7.56	.40	.25		
Blocklayers	7.56	.40	.25		
Manhole bricklayers	7.56	.40	.25		
Plasterers	7.56	.40	.25		
Terrazzo workers	7.56	.40	.25		
Tile setters	7.56	.40	.25		
Cement masons	7.41	.40	.25		
Masonary cutting or grinding machine operator	7.71	.40	.25		
Carpenters:					
Carpenters	7.66	.50	.40		.05
Radial saw operators	7.96	.50	.40		.05
Soft floor layers	7.96	.50	.40		.05
Electricians:					
Base Zone (within 40 miles of Daytona Beach):					
Electrical contracts of under $100,000					
Electricians	7.50	.45	3%+.48		.1%
Cable splicers	7.75	.45	3%+.48		.1%
Electrical contracts of over $100,000:					
Electricians	8.74	.45	3%+.48		.1%
Cable splicers	8.99	.45	3%+.48		.1%
All work in Zone 1(beyond 40 miles from Daytona Beach):					
Electricians	9.19	.45	3%+.48		.1%
Cable splicers	9.44	.45	3%+.48		.1%
Elevator constructors:					
Mechanics	9.785	.745	.56	4%+a+b	.025
Helpers	6.85	.745	.56	4%+a+b	.025
Probationary helpers	4.89				
Glaziers	7.35		.10		.01
Ironworkers	9.33	.65	.60	.65	.05

FL77-1142 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Air tool operators; concrete laborers; Hod carriers; Mason tenders; Mortar mixers; kettlemen (excl. roofing & water proofing); Pipelayers; Powdermen; form setters (paving & curbing & gutter); Well point & dewatering system laborer	6.10	.45	.30		
Gunnite laborer	6.37	.45	.30		
Gunnite nozzlemen	6.77	.45	.30		
Unskilled	5.95	.45	.30		
Lathers	8.88	.35	.25		.15
Linemen:					
Linemen	9.32	.45	3%		
Cable splicers	9.47	.45	3%		
Class A operators	9.32	.45	3%		
Class B operators	6.52	.45	3%		
Groundmen - over 1 year	4.82	.45	3%		
Groundmen - under 1 year	4.00	.45	3%		
Millwrights	9.80	.55	.70		.08
Painters:					
Brush; roller	7.95		.30		.05
Spray	8.65		.30		.05
Mitten	8.65		.30		.05
Tar, bituminous, & similar materials, asphalt (excl. asphalt base aluminum & varnish)	8.65		.30		.05
Paperhanging	8.65		.30		.05
Sandblasting	8.65		.30		.05
Piledrivers	7.96	.50	.40		.25
Plumbers; Pipefitters; Steamfitters:					
Commercial	9.40	.49	.51	.60	.25
Industrial	11.19	.62	.59	.60	.05
Roofers:					
Roofers	7.40	.35	.25		
Kettlemen	5.95	.35	.25		
Sheet metal workers	9.85	.40	.30		.06
Sprinkler fitters	10.16	.65	.95		.10
Welders - rate for craft to which welding is incidential.					

PAID HOLIDAY (WHERE APPLICABLE)

A-New Year's Day;	B-Memorial Day;	C-Indenpendence Day
D-Labor Day;	E-Thanksgiving Day;	F-Christmas Day;

FOOTNOTES:

a. Six paid holidays: A through F.

b. Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

FL77-1142 - (Cont'd)

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	9.60	.50	.35		.05
GROUP II	9.00	.50	.35		.05
GROUP III	8.50	.50	.35		.05
GROUP IV	8.10	.50	.35		.05
GROUP V	7.40	.50	.35		.05

GROUP I: Cranes, hydraulic or derrick on structural or reinforcing iron, cranes or derrick, clam shell, dragline, piledriver operator (including auger & boring machine operator for drilling in piling), backhoe (including hydraulic), hydraulic crane, gradall, shovell, motor patrol, mechanic heavy equipment, side boom cat & multi-drum hoist.

GROUP II: Bulldozer & trenching machine, bridge crane, highlift, straddle buggy, hoist, earth hauling scraper (regardless how powered), pump crete & front end loader

GROUP III: Winch truck, concrete/asphalt paver, fork lift engineer, boring machine, well drilling machine & mobile cleaning plant

GROUP IV: Tractor, well point pump & installation man, lubrication engineer equipment greaser, air compressor, & fireman

GROUP V: Motor boat, oiler, mechanic helper, pumpman (other than well point), roller (steel & rubber tires), self-propelled, conveyor, welding machine, three or more combustion engines & Pulver mixer

SUPERSEDEAS DECISION

STATE: North Dakota COUNTIES: Statewide
DECISION NUMBER: ND77-5099 DATE: Date of Publication
Supersedes Decision No. ND75-5019 dated August 29, 1975, in 40 FR 40022.
DESCRIPTION OF WORK: Highway Construction (does not include airport runways and taxiways, bridges designed to accomodate navagation; tunnels; rest areas which include building construction; and railroad construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS	$6.50				
ELECTRICIANS:					
Cass, Fargo and Grand Forks Counties	9.97	.40	3%	6%	1½%
Bismarck, Burleigh, Minot and Ward Counties	10.00	.40	3%	6%	1½%
LABORERS:					
Group 1:					
General Construction Laborer; reinforced steel setter; Sack shaker (cement and mineral filler); Pipe handler; Drill rummer helper; Carpenter tender; Salamander heater and blower tender; Flagperson	4.00				
Group 2:					
Semi Skilled Laborer; Bulk cement handler; Conduit layer, telephone or electrical; Form setter (pavement); Gas, electric or penumatic tool operator (chipping hammer, grinders and paving brakers (tamper (dirt)) (concrete vibrator operator); Chain saw operator; Concrete saw operator; Concrete curing man (not water); Bituminous worker (shoveler, dumper raker and floater); Kettleman (Bituminous or lead); Concrete bucket signalman; Power buggy operator; Brick and mason tender; Multiplate pipe layer; Culvert pipe layer	4.15				
Group 3:					
Caisson work; Bottom man, (Sanitary sewer, storm sewer, water, and gas lines); Concrete mixer operator (one bag capacity); Mortar mixer	4.30				

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 4:					
Pipe Layers (sanitary sewer, storm sewer, water and gas lines); Drill runner (includes wagon churn or air track); Powderman, gunite and sandblast, nozzleman	$4.45				
POWER EQUIPMENT OPERATORS:					
Group 1:					
Cableway Operator; Crane operator with over 135' boom, all types; Derrick (guy and stiff leg), (power), (skids and stationary); Front end loader over 10 cu. yds. mfg. rating; Gantry crain operator; Helicopter operator (construction work only); Mole operator, including power supply or tunnel mucking machine; Power shovel and/or other equipment with shovel type controls 3½ cu. yds. mfg. rated capacity and over	8.45	.45	.40		
Group 2:					
Concrete mixer stationary plant operator over 34E; Dredge operator or Engineer, Dredge operator (power) and engineer; Elevator grader Operator; Hydro crane operator, 15 ton and over; Locomotive crane operator; Master mechanic (the inclusion of the classification of Master Mechanic in this agreement does not mean that a master mechanic must be employed, but if employed, that he shall perform manual work); Mixer (paving) concrete paving operator, road; Power shovels and/or other equipment with shovel type controls up to 3½ cu. yds. mfg. rated capacity; Scraper tandem; Tandem pusher quad 9 or similar; Tractor operator (pipeline) Side boom; Truck crane operator	8.30	.45	.40		

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 3: Dope Machine Operator (pipeline); Drill Rigs, Heavy duty rotary or churn or cable drill; Front end loader operator, 6 cu. yds. and over; Locomotive, all types; Pipeline wrapping, cleaning and bending machine operator; Power actuated horizontal boring machine over 6" operator (pipeline); Pumpcrete operator; Refrigeration plant engineer; Slip form operator (power driven)(paving); Tandem scraper-twin engine, 50 cu. yds. Struck and over	$8.15	.45	.40		
Group 4: Asphalt Paving Machine Operator; Asphalt plant operator and console board operator; CMI grading operator; Crushing plant operator (gravel and stone or gravel washing, crushing and screening plant operator); Front end loader operator, 1 cu. yds. up to 6 cu. yds.; Grader or motor patrol, finishing earth work and bituminous; Mechanic or welder (heavy duty); Rubber tired industrial tractor with backhoe attachment (water main sanitary sewer and storm sewer, trunk line construction); Scraper operator; Tractor type or rubber tired dozer, D-6 and over; Trenching machine operator, sewer and water, (except ditch witch or similar use oiler rate); Turnapull operator, (or similar type)	8.10	.45	.40		

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 5: Bituminous Spreader and Bituminous Finishing operator (power); Concrete distrbutor and spreader operator, finishing machine logitudinal float operator, Ft. machine operator and spray operator; Concrete mixer operator on job site 16S or over; Paving breaker or tamping machine operatror or including machine with power shovel attachments (power driven); Power actuated augers and boring machine operator; Power actuated jacks operator; Power plant engineer, 100 K.W.H. and over (when an engineer is in charge of crushing or blacktop plants with the the operation of these plants no power plant engineer shall be required); Push tractor; Self-propelled traveling soil stabilizer; Slip form, curb and gutter operator (electronic or automatic controls); Soil cement stabilizer; Truck mechanic, Rotomill operator	$ 7.85	.45	.40		
Group 6: Bituminous Spreader and Bituminous Finishing Machine Operator (helper) (power); Concrete saw operator (multiple blade) (power operated); Distributor operator; Fine grade operator; Roller, steel and self-propelled rubber, on hot mix asphalt paving; Sheepsfoot packer with dozer attachment; Tractor type or rubber tired dozer under D-6 H.P.	7.62	.45	.40		

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 7: Brakeman or Switchman; Concrete Batch plant operator (cement, rock and sand) Electronic; Concrete mixer operator on job site under 16S; Crane truck oiler; Fireman or tank car heater operator; Grader operator (Motor patrol) (haul road); Gravel screening plant operator (portable not crushing or washing); Greaser (truck or tractor); Gunite operator gunall; Hoist Engineer (power); Hydro crane operator, under 15 ton; Launchman (Tankerman or pilot license); Pick-up sweeper, 1 yd. and over hopper capacity; Sheepsfoot roller or compactor (self-propelled); Shouldering machine operator (power) (Apsco or similar type) including self-propelled sand chip spreader flaherty or similar	$6.69	.45	.40		
Group 8: Boom Truck Operator; Crawler type and/or steiger or similar tractor pulling compaction or areating equipment; Farm type rubber tired tractor with backhoe attachment; Roller, steel and self-propelled rubber, on other than hot mix asphalt paving; Self-propelled vibrating packer operator pad type (35 HP and over); Off-road self-propelled watering equipment	6.54	.45	.40		

POWER EQUIPMENT OPERATORS (Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 9: Concrete Batch Operator (cement rock and sand) (manual); Form trench digger (power); Front end loader operator, up to 1 cu. yd.; Hyster carrier or forklift; Leverman; Mechanic's helper or greaser helper; Oiler (power shovel), crane, dragline); Pugmill operator; Pump operator (well points); Self-propelled Broom	$6.44	.45	.40		
Group 10: Conveyor Operator; Curb machine operator (manual); Dredge deck hand; Farm tractors, rubber tired for compacting and areating; Front end loader operator (farm type rubber tired tractor); Paint machine striping operator; Stump chipper operator; Tie tamper and ballast machine Op.	6.10	.45	.40		
TRUCK DRIVERS					
Single Axle	5.92	.40	.30		
Tandem	6.02	.40	.30		
Agitator Dumpcrete	6.27	.40	.30		
Lowboy; Off road heavy duty end dumps, 20 yds. and under; Tandem semi	6.27	.40	.30		
Euclid, over 20 yds.	6.90	.40	.30		

[FR Doc.77-34308 Filed 12-1-77;8:45 am]