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Federal Register

TUESDAY, JULY 19, 1977

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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	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 on a day that will be a Federal holiday will be published the next work day following the holiday.

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

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

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rules and regulations

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

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

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of State

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C the position of Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State, because the incumbent of this position will participate in policy development and execution.

EFFECTIVE DATE: July 19, 1977.

FOR FURTHER INFORMATION ON POSITION AUTHORITY CONTACT:

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

FOR FURTHER INFORMATION ON POSITION CONTENT CONTACT:

Jack Melton, Director, PER/PPM, Department of State, 202–235–9593.

Accordingly, 5 CFR 213.3304(s)(3) is added as set out below:

§ 213.3304 Department of State.

* * * * *

(s) *Bureau of Educational and Cultural Affairs.* * * *

(3) Deputy Assistant Secretary.

(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.77-20656 Filed 7-18-77;8:45 am]

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

Federal Grantor Agency Merit Requirements

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This final rule requires that all new merit requirements established as a condition of Federal grants-in-aid have prior Civil Service Commission approval. The purpose of this amendment is to avoid inconsistent or conflicting approaches when Federal agencies decide to adopt a merit personnel requirement as a condition of a grant.

EFFECTIVE DATE: August 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Greene, Director, Office of Personnel Assistance Policy Development, Bureau of Intergovernmental Personnel Programs, U.S. Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415, 202–632–6885.

SUPPLEMENTARY INFORMATION: On February 11, 1977, a document was published in the FEDERAL REGISTER (42 FR 8644) proposing to amend Part 900 of the Civil Service Commission regulations to require that all new merit requirements established as a condition of Federal grants-in-aid have prior Civil Service Commission approval. Interested parties were invited to submit comments, suggestions, or objections by March 28, 1977. Four letters were received. One contained no substantive comments and three expressed full support of the proposal. Only a few minor technical changes which do not change the substance of the regulation have been incorporated in the final published regulation. These are:

(1) We have added a new subsection (d) which makes it clear that the language in subsection (b) and (c) cannot be varied without the Commission's approval.

(2) Recognizing that some grant programs apply to both State and local governments while others apply only to the States, we have provided alternate language appropriate to these varying circumstances.

The intent of the rule is to help avoid inconsistent or conflicting approaches when Federal agencies decide to adopt a merit personnel requirement as a condition of a grant. At times in the past, merit requirements have been extended to additional grant-in-aid programs without prior consultation with the Civil Service Commission. When the Commission, however, has prior knowledge of a Federal agency's intention to adopt a merit requirement as a condition of its grant, it can assist the agency in choosing the most appropriate requirement. This helps to foster a uniform approach and avoid confusion on the part of State and local governments. The Civil Service Commission, under the authority of the Intergovernmental Personnel Act (IPA), is responsible for advising Federal agencies administering grant-in-aid programs as to the application of required personnel administration standards. This regulation will provide the Commission better opportunity to carry out this responsibility and to plan for whatever resources are needed to coordinate administration of merit personnel requirements.

In consideration of the comments received reflecting the support for this requirement, 5 CFR Part 900, Subpart F is amended by (1) designating the current §§ 900.604 through 900.607 as §§ 900.605 through 900.608, respectively; and (2) adding a new § 900.604 as follows:

§ 900.604 Establishing a merit requirement or policy as a condition of a grant-in-aid.

(a) Federal agencies may adopt, only with prior approval of the Commission, regulations that require as a condition for receiving Federal financial or other assistance that State and local agencies establish and maintain a personnel system that conforms with a Federal merit requirement or policy. To avoid inconsistent and conflicting approaches to State and local governments, normally such merit requirements or policies should consist of application of either the Standards for a Merit System of Personnel Administration or the Intergovernmental Personnel Act Merit Principles.

(b) The following regulation shall be adopted by Federal agencies that wish to require that grant-aided State or local agencies establish and maintain a personnel system that conforms with the Standards for a Merit System of Personnel Administration:

Methods of personnel administration will be established and maintained in public agencies administering the program in conformity with Standards for a Merit System of Personnel Administration, 45 CFR Part 70, and any standards prescribed by the U.S. Civil Service Commission pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 modifying or superseding such standards.

For grant programs that are State supervised and locally administered insert the following after the word "administering" in the above: "or supervising the administration of.

(c) The following regulation shall be adopted by Federal agencies that wish to require that grant-aided State or local agencies conform with the IPA Merit Principles:

Methods of personnel administration will be established and maintained in the public agencies administering the program in conformity with the Intergovernmental Personnel Act Merit Principles, Pub. L. 91–648, Section 2, administered by the U.S. Civil Service Commission.

For grant programs that are State supervised and locally administered insert the following after the word "administering" in the above: "or supervising the administration of."

(d) No variation from the language contained in paragraphs (b) and (c) of this section may be used without approval by the Commission.

(e) The Commission shall provide, within available resources, consultation and technical advice and assistance to State and local jurisdictions to aid them in complying with the Standards or Merit Principles. In the absence of available resources, the Commission may provide technical assistance on a reimbursable basis to Federal agencies administering grants and State and local agencies receiving grants for the purpose of aiding the State and local agencies to comply with the Standards or Merit Principles.

§§ 900.604—900.607 [Redesignated as §§ 900.605—900.608]

(The authority for subpart F is 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR 1971 Comp., p. 152.)

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.77-20657 Filed 7-18-77;8:45 am]

Title 7—Agriculture

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

[Lemon Reg. 100, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period July 10-16, 1977. The amendment recognizes that demand for lemons has improved since the regulation was issued. This action will increase the supply of lemons available to consumers.

DATES: Weekly regulation period July 10-16, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3545.

SUPPLEMENTARY INFORMATION: (a) *Findings.* (1) Pursuant to the amended marketing agreement 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 recommendations and information submitted by the Lemon Administrative Committee, established under the marketing agreement and order, and other available information, it is found that the limitation of handling of lemons, as provided in this amendment will tend to effectuate the declared policy of the act.

(2) Demand in the lemon markets has improved since the regulation was issued. Amendment of the regulation is necessary to permit lemon handlers to ship a larger quantity of lemons to market to supply the increased demand. The amendment will increase the quantity permitted to be shipped by 40,000 cartons, in the interest of producers and consumers.

(3) It is further found that it is impracticable and is contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after the publication in the FEDERAL REGISTER (5 U.S.C. 553), because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of lemons.

(b) *Order, as amended.* Paragraph (b) (1) of § 910.400 Lemon Regulation 100 (42 FR 35142) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period July 10, 1977, through July 16, 1977, is established at 315,000 cartons."

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

Dated: July 13, 1977.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-20652 Filed 7-18-77;8:45 am]

PART 924—PRUNES GROWN IN WASHINGTON AND OREGON

Expenses and Rate of Assessment for the 1977-78 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document authorizes expenses of $19,750 and a rate of assessment of $0.60 per ton of prunes for the functioning of the Washington-Oregon Fresh Prune Marketing Committee for the 1977-78 fiscal period. The committee administers locally a Federal marketing order program regulating the handling of prunes grown in Washington and Oregon. The regulation will enable the committee to collect assessments from first handlers on all assessable prunes handled and to use the resulting funds for its expenses.

DATES: Effective for fiscal year April 1, 1977, through March 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3545.

SUPPLEMENTARY INFORMATION: On June 24, 1977, notice of proposed rule making was published in the FEDERAL REGISTER (42 F.R. 32256), regarding proposed expenses and the proposed rate of assessment, under the amended marketing agreement and Order No. 924, as amended (7 CFR Part 924), regulating the handling of prunes grown in the States of Washington and Oregon. This notice allowed interested persons until July 11, 1977, during which they could submit written comments pertaining to these proposals. None were submitted. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

After consideration of all relevant matters presented, including the proposals which were set forth in the notice, which were submitted by the Washington-Oregon Fresh Prune Marketing Committee (established pursuant to the amended marketing agreement and order), it is hereby found and determined that:

§ 924.217 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Washington-Oregon Fresh Prune Marketing Committee during the fiscal year April 1, 1977, through March 31, 1978, will amount to $19,750.

(b) *Rate of assessment.* The rate of assessment for the fiscal year payable by each handler in accordance with § 924.41, is established at $0.60 per assessable ton of prunes.

It is hereby further found that good cause exists for not postponing the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of prunes grown in the designated production area are now being made; (2) provisions of the marketing agreement and this part require that the rate of assessment shall apply to all assessable prunes handled during the fiscal year, and (3) the year began on April 1, 1977, and the rate of assessment will automatically apply to all prunes handled during the year.

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

Dated: July 14, 1977.

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

[FR Doc.77-20760 Filed 7-18-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 5—Delegations and Designations

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA revokes § 1204.510, "Power and Authority—to exercise authority with respect to extraterrestrial exposure," and § 1204.511, "Power and Authority—to exercise authority with respect to extraterrestrial exposure." These are redelegations of authority. The revocation of these sections is necessary because internal NASA reorganizations have made the redelegations obsolete. The purpose of revoking these sections is to assure that delegations and redelegations of authority are consistent with the present NASA organization.

DATE: July 19, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. David L. Winter, NASA Director for Life Sciences, Office of Space Science, National Aeronautics and Space Administration, Washington, D.C. 20546.

§§ 1204.510 and 1204.511 [Revoked]

1. In 14 CFR 1204.510 and 1204.511 are hereby revoked.

NOEL W. HINNERS,
Associate Administrator for Space Science.

[FR Doc.77-20591 Filed 7-18-77;8:45 am]

Title 15—Commerce and Foreign Trade

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

SPECIAL COMMODITY POLICIES AND PROVISIONS AND GENERAL LICENSE GIT

Limited Revision

AGENCY: Department of Commerce, Office of Export Administration.

ACTION: Final rule.

SUMMARY: This revision imposes validated licensing control on exports of crime control and detection equipment to the Republic of South Africa and Namibia (South-West Africa) and modifies the Export Administration Regulations regarding intransit shipments to those destinations. Also, the revision states that it is the general policy to deny applications to export or reexport commodities to those destinations when there is a likelihood of military, police or other use contrary to U.S. policy.

EFFECTIVE DATE: July 19, 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: Consistent with U.S. policy condemning apartheid in the Republic of South Africa and Namibia (South-West Africa), § 376.14 of the Export Administration Regulations is revised to require validated export licenses for exports of crime control and detection instruments and equipment to those countries. Also § 385.4 (a) is revised to indicate that applications to export such equipment to these destinations, as well as other commodities, when there is a likelihood of use contrary to U.S. policy, generally will be denied. In addition, commodities originating in a foreign country and moving in transit through the United States to the Republic of South Africa and Namibia (South-West Africa) may no longer be exported from the United States under provisions of General License GIT (§ 371.4). Thus, unless another general license applies (e.g., General License G-DEST), validated export licenses will be required for such shipments.

Accordingly, Parts 371, 376 and 385 of the Export Administration Regulations (15 CFR Parts 371, 376 and 385) are amended as follows:

PART 371—GENERAL LICENSES

1. Section 371.4(b) is revised to read as follows:

§ 371.4 General license GIT; intransit shipments.

* * * * *

(b) Shipments Excepted from the Provisions of General License GIT. In addition to the prohibition shipments listed under § 371.2(c) the following may not be exported or reexported from the United States under General License GIT: (1) Commodities shipped to the United States under the provisions of an International Import Certificate, Form DIB-645P or FC-826; (2) Commodities disposed of by U.S. Government agencies under foreign excess property disposal programs; and (3) Commodities destined for the Republic of South Africa or Namibia (South-West Africa).

* * * * *

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

2. Section 376.14(a) is revised to read as follows:

§ 376.14 Crime control and detection instruments and equipment.

(a) Export License Requirements.—(1). A validated export license is required for the export to Country Groups Q, W, and Y; the Republic of South Africa; and Namibia (South-West Africa); of any instrument and equipment particularly useful in crime control and detection. Commodities affected by this requirement (in addition to commodities controlled by listing on the commodity Control List) include, but are not limited to: voice print identification or analysis equipment; psychological stress analysis equipment; mobile crime science laboratories; nonmilitary gas masks and bullet proof vests, helmets and shields; nonmilitary arms such as shotguns, stun guns, dart guns and riot guns; infrared and ultraviolet ray film, plates, and filters; photographing equipment specially designed for crime control and detection; items used for tracing, fixing, removing, preserving, processing and coding fingerprints; ballistics laboratory equipment; document authentication equipment; metal detecting and other special purpose searching equipment and devices; identification document reproduction and authentication equipment; and restraint devices.

(2) Any exporter who knows, or has reason to believe, that such commodities will be exported to a destination in Country Group Q, W, or Y or to the Republic of South Africa or Namibia (South-West Africa), either for exhibition or for sale for such purpose, shall include that information on his application for a validated export license or on his request for authorization to reexport. In preparing the application or reexport authorization request, the exporter shall enter the phrase "CRIME CONTROL AND DETECTION" at the top of the requisite form.

* * * * *

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

3. Section 385.4(a) is revised to read as follows:

§ 385.4 Country group V.

(a) *Republic of South Africa and Namibia (South-West Africa).*—(1). In conformity with the United Nations Resolution of 1963, the United States has imposed an embargo on shipments to the Republic of South Africa of arms, munitions, military equipment, and materials for their manufacture and maintenance. Accordingly, the prior approval of the Department of Commerce is required for the export or reexport to the Republic of South Africa and Namibia (South-West Africa) of commodities under its licensing jurisdiction in the general area of arms, munitions, military equipment and materials, and materials and machinery for their manufacture and maintenance, even though some commodities of this nature may be exported or reexported to other destinations in Country Group V under general licenses. The general policy is to deny applications or requests to export or reexport such commodities when there is a likelihood of military, police, or other use contrary to U.S. policy.

2. A validated export license is required for the export to the Republic of South Africa and Namibia (South-West

Africa) of any instrument and equipment particularly useful in crime control and detection, as defined in § 376.14 of this chapter.

(3) General License GIT may not be used for any commodity destined for the Republic of South Africa or Namibia (South-West Africa). (See § 371.4(b) of this chapter.)

(4) Except as defined in § 385.4(a) (1), (2), and (3), the policy for the Republic of South Africa and Namibia (South-West Africa) is the same as for other nations in Country Group V.

(Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. app. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, date 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 and 46-2 dated November 17, 1975, 40 FR 59761 (1975), as amended.)

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

[FR Doc.77-20757 Filed 7-18-77;8:45 am]

PART 373—SPECIAL LICENSING PROCEDURES

Revision of List of Approved Computer—Consignee Countries (Supplement No. 2 to CFR 373)

AGENCY: Office of Export Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the list of countries to which certain digital computers may be exported to approved consignees under the Distribution License procedure.

EFFECTIVE DATE: July 19, 1977.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Effective March 16, 1972, Supplement No. 2 to Part 373 was established to indicate those countries to which exports of digital electronic computers (Export Control Commodity Nos. 714 (3) through (5)), which do not exceed either a CPU bus rate of 200 million bits per second, or a processing data rate of 45 million bits per second, may be made under the provisions of the Distribution License procedure to approved consignees in those destinations. In order to update these approved destinations in the light of current conditions, the list is amended to delete the Republic of China (Taiwan) and to add Australia, Canada, and Switzerland. Accordingly, Supplement No. 2 to Part 373 of the Export Administration Regulations (15 CFR Part 373) is amended to read as follows:

SUPPLEMENT NO. 2—COMPUTER CONSIGNEE DESTINATIONS

Afghanistan	Lesotho
Australia	Liberia
Austria	Luxembourg
Belgium	Malagasy Republic
Bolivia	Malaysia
Botswana	Maldive Islands
Cameroon	Mali
Canada	Malta
Central African Empire	Mauritius
Chad	Mexico
Costa Rica	Morocco
Cyprus	Nepal
Denmark	Netherlands
Dominican Republic	New Zealand
Ecuador	Nigeria
Ethiopia	Norway
Finland	Paraguay
France	Peru
Germany, Federal Republic of	Portugal
Ghana	San Marino
Greece	Senegal
Guatemala	Somali Democratic Republic
Haiti	Swaziland
Hong Kong	Switzerland
Iceland	Sweden
Iran	Togo
Ireland	Tonga
Italy	Tunisia
Jamaica	Turkey
Japan	United Kingdom
Jordan	Upper Volta
Kenya	Uruguay
Lebanon	Yugoslavia
	Zaire

(Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. app. § 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated Nov. 17, 1975, 40 FR 58876 (1975), as amended; and Domestic and International Business Administration Organization and Function Orders 46-1, dated November 17, 1975, 40 FR 59764 (1975), as amended and 46-2, dated November 17, 1975, 40 FR 59761 (1975), as amended.)

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

[FR Doc.77-20754 Filed 7-18-77;8:45 am]

PART 373—SPECIAL LICENSING PROCEDURES

Limited Revision of Distribution License Procedure

AGENCY: Office of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This revision adds Libya to the list of Group V countries to which exports under the Distribution License Procedure are not authorized.

EFFECTIVE DATE: July 19, 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: A Distribution License authorizes export of certain commodities to approved consignees in specified countries during a period of one year (up to two years for replacements of expiring Distribution Licenses). The consignees must be foreign distributors or users of the licensed commodity.

In order that better control can be exercised over exports to Libya by means of a case-by-case review and evaluation of applications, the Distribution License Procedure will no longer apply to exports to that country.

Accordingly, effective as of July 19, 1977, all outstanding "Distribution License Consignee Statements," Forms DIB-678P, covering approved consignees in Libya are revoked, except that exporters holding current Distribution Licenses may ship to approved consignees in Libya up to and including August 3, 1977 commodities included in their Distribution Licenses that were on dock for lading, on lighter, laden aboard an exporting carrier, or in transit to a port of export pursuant to actual orders for export prior to 11:59 P.M. EDT, July 19, 1977. Any such shipment not laden aboard the exporting carrier on or before August 3, 1977 requires an individual validated license for export to Libya.

Accordingly, § 373.3(a)(2) of the Export Administration Regulations (15 CFR § 373.3(a)(2)) is revised to read as follows:

§ 373.3 Distribution license.

(a) * * *

(2) All countries in Country Group V, except:

Algeria	Sudan
Egypt	Syria
Iraq	Yemen (Aden)
Libya	Yemen (Sanaa)

(Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. app. § 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated Nov 17, 1975, 40 FR 58876 (1975), as amended; and Domestic and International Business Administration Organization and Function Orders 46-1, dated November 17, 1975, 40 FR 59764 (1975), as amended and 46-2, dated November 17, 1975, 40 FR 59761 (1975), as amended.)

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

[FR Doc.77-20755 Filed 7-18-77;8:45 am]

PART 375—DOCUMENTATION REQUIREMENTS

Limited Revision of Documentation Requirements for Yugoslav End-Use Certificate

AGENCY: Department of Commerce, Office of Export Administration.

ACTION: Final rule.

SUMMARY: This revision requires the submission of a supplement to the Yugoslav End-Use Certificate on the letterhead of the Yugoslav Chamber of Economy giving the End-Use Certificate number, the end-use and end-user information.

EFFECTIVE DATE: July 19, 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: This revision to 15 CFR 375.5(a) requires the submission of a supplement to the Yugoslav End-Use Certificate on the letterhead of the Yugoslav Chamber of Economy giving the End-Use Certificate number, the end-use and end-user information. If this supplement is not submitted to the exporter by the Yugoslav importer with the End-Use Certificate, it should be obtained prior to submission of the application or reexport request. This supplement was initiated by U.S. and Yugoslav export control authorities to expedite consideration of applications.

Accordingly, § 375.5(a) is revised to read as follows:

§ 375.5 Yugoslav end-use certificate.

(a) *Requirements.* A license application to export or reexport commodities to Yugoslavia, regardless of value, must be accompanied by the original End-Use Certificate issued to the Yugoslav importer by the Yugoslav Chamber of Economy in Belgrade covering the proposed export or reexport.[1] In addition, a supplement on the letterhead of the Yugoslav Chamber of Economy giving the End-Use Certificate number, the end-use and end-user information, must be submitted to the Office of Export Administration as part of the End-Use Certificate. The End-Use Certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the original of the Certificate shall be attached to the first such application. Each subsequent application shall include the following certification in the space entitled "Additional Information" or on an Attachment:

I (We) certify that the quantities of commodities shown on all export licenses (reexport authorizations) based on the Yugoslav End-Use Certificate No. ____, when added to the quantities shown on all additional applications pending in the Office of Export Administration based on the same End-Use Certificate, including the present application, do not total more than the quantities shown on that certificate. This End-Use Certificate was submitted in support of application number (insert case number or, if case number is unknown, the applicant's reference number, date of submission of the application to which the End-Use Certificate was attached, and Export Control Commodity Numbers and Processing Number on that application).

(Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. app. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated Nov. 17, 1975, 40 FR 58876 (1975), as amended; and Domestic and International Business Administration Organization and Function Orders 46-1, dated November 17, 1975, 40 FR 59764 (1975), as amended and 46-2, dated November 17, 1975, 40 FR 59761 (1975), as amended.)

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

[FR Doc.77-20756 Filed 7-18-77;8:45 am]

[1] Foreign consignees may obtain End-Use Certificates from the Yugoslav Chamber of Economy, Knez Mihailova 10, Belgrade.

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9066]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Frito-Lay, Inc.

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Dallas, Texas ready-to-eat snack food producer and distributor to cease engaging in discriminatory pricing practices by selling its products to certain retailers at prices higher than those paid by a competitive establishment. Further, the order stipulates that in any enforcement action, respondent must assume the burden of proving all defenses raised.

DATES: Complaint issued January 6, 1976 and Decision and Order, issued June 24, 1977.[1]

FOR FURTHER INFORMATION CONTACT:

Ronald J. Dolan, Asst. Dir., Bureau of Competition, Room 372, Federal Trade Commission, 6th and Pennsylvania NW., Washington, D.C. 20580. (202-523-3601).

SUPPLEMENTARY INFORMATION: On Tuesday, April 19, 1977, there was published in the FEDERAL REGISTER 42 FR 20346 a proposed consent agreement with analysis In the Matter of Frito-Lay, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR, are as follows:

Subpart—Corrective Actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533-37 Formal regulatory and/or statutory requirements. Subpart — Discriminating Between Customers: § 13.685 Discriminating between customers; 13.685-5 Clayton Act. Subpart—Discriminating in Price Under Section 2, Clayton Act: ------ Price Discrimination Under 2 (a): § 13.715 Charges and price differentials.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; (15 U.S.C. 13).)

CAROL M. THOMAS,
Secretary.

[FR Doc.77-20753 Filed 7-18-77;8:45 am]

[1] Copies of the Complaint and Decision and Order filed with the original document.

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 77C-0126]

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

Annatto

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is "permanently" listing annatto for use in externally applied drugs and in cosmetics generally, including those intended for use in the area of the eye. This is in response to a petition filed by the Cosmetic, Toiletry and Fragrance Association. The color additive regulations are amended to reflect the listing.

DATES: Effective August 19, 1977; objections by August 18, 1977.

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

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 notice published in the FEDERAL REGISTER of May 27, 1977 (42 FR 27299) stated that a petition (CAP 6C0118) for the use of annatto as a color additive for externally applied drugs and for cosmetics generally, including those intended for use in the area of the eye, had been filed by the Cosmetic, Toiletry and Fragrance Association Inc., 1133 15th St. NW., Washington, D.C. 20005. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

Annatto has been provisionally listed for use in cosmetics under § 81.1(g) (21

CFR 81.1(g)). With permanent listing of annatto under §§ 73.1030 and 73.2030, the listing under § 81.1(g) becomes obsolete.

The Commissioner, having evaluated the data in the petition and other relevant material, concludes that annatto is safe under the conditions set forth for use in coloring cosmetics generally and externally applied drugs, including cosmetics and drugs intended for use in the area of the eye, and that certification is not necessary for the protection of the public health.

Therefore, 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), (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)), and under authority delegated to the Commissioner (21 CFR 5.1), Parts 73 and 81 are amended as follows:

1. Part 73 is amended:

a. By revising paragraph (b) of § 73.1030 to read as follows:

§ 73.1030 Annatto extract.

* * * * *

(b) *Uses and restrictions.* Annatto extract may be safely used for coloring drugs generally, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

b. By adding new § 73.2030 to Subpart C, to read as follows:

§ 73.2030 Annatto.

(a) *Identity and specification.* The color additive annatto shall conform in identity and specification to the requirements for annatto extract in § 73.30(a)(1) and (b).

(b) *Use and restriction.* The color additive annatto may be safely used in coloring cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) *Labeling.* The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 81.1 [Amended]

2. Part 81 is amended in paragraph (g) of § 81.1 *Provisional lists of color additives,* by deleting the entry for "annatto."

Any person who will be adversely affected by the foregoing order may at any time on or before August 18, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the Hearing Clerk's office during working hours, Monday through Friday.

Effective date: This regulation shall become effective August 19, 1977, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note).)

Dated: July 13, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-20576 Filed 7-18-77;8:45 am]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0046]

PART 310—NEW DRUGS

PART 369—INTERPRETATIVE STATEMENTS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

Diamthazole Dihydrochloride

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule revokes regulations that allow the over-the-counter marketing of a topical drug formerly used for the prevention and treatment of athlete's foot. Neurotoxic reactions have been reported and there are safe and effective alternates available.

EFFECTIVE DATE: July 19, 1977.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD–32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: The proposed revocation, published in the FEDERAL REGISTER of October 29, 1976 (41 FR 47492), was based on an unfavorable benefit-risk ratio for the drug because of the danger of several neurotoxic reactions associated with the topical use of diamthazole dihydrochloride and the availability of safer, equally effective alternative drugs. Interested persons were invited to submit comments on the proposal within 60 days. No comments were received, and the revocation is adopted as proposed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 503 (b), 505, 701, 52 Stat. 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 352, 353(b), 355, 371)) and under the authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs amends Parts 310 and 369 as follows:

§ 310.201 [Amended]

1. In Part 310, by amending § 310.201 by revoking and reserving paragraph (a)(7).

§ 369.21 [Amended]

2. In Part 369, by amending § 369.21 by revoking the item headed "Diamthazole Dihydrochloride for External Use."

Effective date: This regulation shall be effective July 19, 1977.

(Secs. 502, 503(b), 505, 701, 52 Stat. 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 352, 353(b), 355, 371).)

Dated: July 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-20579 Filed 7-18-77;8:45 am]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

STERLING DRUG, INC.; CHANGE OF SPONSOR

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect the change of sponsor for six approved new animal drug applications (NADA's), from Winthrop Laboratories to Sterling Drug, Inc., and to delete the sponsor entry for the former sponsor who will no longer be the sponsor of an approved NADA.

EFFECTIVE DATE: July 19, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert A. Baldwin, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, has filed supplemental NADA's indicating its sponsorship of the following NADA's:

15–506V	Stanozolol tablets.
30–844V	Stanozolol solution.
44–611V	Pentazocine lactate injection.
93–985V	Nitrofurazone with sulfamylon.
100–403V	Meglumine diatrizoate injection.
100–703V	Mepivacaine hydrochloride injection.

Amendment of the regulations to reflect the intracorporate transfer of the NADA's from Winthrop Laboratories to Sterling Drug does not require a reevaluation of the underlying safety and effectiveness data.

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 510, 520, 522, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In § 510.600 *Names, addresses, and code numbers of sponsors of approved applications,* paragraph (c)(1) is amended by deleting the entry for "Winthrop Laboratories" and paragraph (c)(2) is amended by deleting the entry for drug listing number "000024."

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

2. In § 520.2150 Stanozolol tablets, paragraph (b) is amended by deleting the number "000024" and inserting in its place the number "000934."

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

3. Part 522 is amended as follows:

(a) In § 522.562 Diatrizoate meglumine injection, paragraph (b) is amended by deleting the number "000024" and inserting in its place the number "000934."

(b) In § 522.1372 Mepivacaine hydrochloride injection, paragraph (b) is amended by deleting the number "000024" and inserting in its place the number "000934."

(c) In § 522.1698 Pentazocine lactate injection, paragraph (b) is amended by deleting the number "000024" and inserting in its place the number "000934."

(d) In § 522.2150 Stanozolol sterile suspension, paragraph (b) is amended by deleting the number "000024" and inserting in its place the number "000934."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

4. In § 524.1301 Mafenide acetate and nitrofurazone aerosol powder, paragraph (b) is amended by deleting the number "000024" and inserting in its place the number "000934."

Effective date. July 19, 1977.

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

Dated: July 12, 1977.

RICHARD P. LEHMANN,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.77-20577 Filed 7-18-77;8:45 am]

[Dockets Nos. 75N-0171; 76N-0082]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Antibiotics, Nitrofuran, and Sulfonamides; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: This document corrects a final rule published in the FEDERAL REGISTER Friday, April 8, 1977.

EFFECTIVE DATE: July 19, 1977.

FOR FURTHER INFORMATION CONTACT:

John A. Richards, Federal Register Writer (HFC-11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-9874 appearing at page 18611 in the FEDERAL REGISTER for Friday, April 8, 1977, the following corrections are made:

1. On page 18615, § 558.55 Amprolium is corrected in paragraph (e)(2)(ii) in the table by changing the text in the "Limitations" column to read "Feed according to subtable in item (ii)."

2. On page 18616, § 558.58 Amprolium and ethopabate is corrected in paragraph (e)(1)(iii) in the table in the "Limitations" column as follows:

a. For "Bacitracin 4 to 50" by changing the third line to read "treatment for outbreaks of coccidiosis; as bacitracin methylene di-" and the last line to read "000006 in sec. 510.600(c) of this chapter."

b. For "Bacitracin 5 to 35 plus roxarsone 34 (0.00375 pct)" by changing the next to the last line to read "510.600(c) of this chapter; combination as provided by."

c. For "Bambermycins 1 to 3" by changing the first and second lines to read "Feed continuously as the sole ration; as sole source of amprolium; amprolium, ethopabate as provided by No. 000006 in sec. 510.600(c)."

d. For "Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1 (0.0025 pct to 0.00375 pct)" by changing the next to the last line to read "roxarsone by No. 017210, bambermycins by No. 000039."

3. On page 18617, § 558.76 Bacitracin methylene disalicylate is corrected in paragraph (e)(3)(iii) by changing "§ 556.680" to read "§ 558.680."

4. On page 18618, § 558.128 Chlortetracycline is corrected in paragraph (e)(3) by changing the title of Table 2 to read "Table 2.—In feed supplements".

5. On page 18618, § 558.460 Penicillin is corrected in paragraph (f)(2)(vii) by revoking and reserving the paragraph to read "(vii) [Reserved]."

6. On page 18619, § 558.680 Zoalene is corrected in paragraph (e)(1)(ii) in the table in the "Combination in grams per ton" column by changing the second line to read "roxarsone 22.7 to 45.4."

Dated: July 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-20468 Filed 7-18-77;8:45 am]

SUBCHAPTER L—REGULATIONS UNDER CERTAIN OTHER ACTS ADMINISTERED BY THE FOOD AND DRUG ADMINISTRATION

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

Tea Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document establishes tea standards for the year beginning May 1, 1977, and ending April 30, 1978. The tea standards are provided for under the Tea Importation Act.

FOR FURTHER INFORMATION CONTACT:

Ralph A. Strand, Bureau of Foods (HFF-314), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-245-1567.

SUPPLEMENTARY INFORMATION: This amendment is based on the recommendation of the Board of Tea Experts, which is comprised of tea experts drawn from the Food and Drug Administration and the tea trade, who are representative of the trade as a whole. This amendment is being issued as a final rule effective immediately, without notice of proposed rule making. By law the tea standards are to be revised annually effective May 1. Because this date has passed, the Commissioner believes the standards for the current year should be placed in effect without delay. He is offering interested persons the opportunity to submit comments by August 18, 1977, to determine whether the regulation should be modified or revoked. If any action is to be taken on the basis of the comments, the Commissioner will publish a notice in the FEDERAL REGISTER discussing the comments and announcing the action he determines to be necessary.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25.1(d)(4), formerly § 6.1(d)(4) prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)), that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this amendment.

Therefore, pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Tea Importation Act (secs. 3, 10, 29 Stat. 605, 607, 41 Stat. 712, 54 Stat. 1237, 67 Stat. 631

(21 U.S.C. 43, 50)) and delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the regulations for the enforcement of the act under Part 1220 (21 CFR Part 1220) are amended by revising § 1220.40(a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on March 1, 1977, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1977, and ending April 30, 1978:

(1) Formosa Oolong.

(2) Black Tea other than China, Formosa, Japan Type (to be used for all black teas except those from China, Formosa, and Japan).

(3) Black Tea, China, Formosa, Japan Type (to be used for black teas from China, Formosa, and Japan).

(4) Green Tea (to be used for all green teas).

(5) Canton Oolong Type (to be used for all Canton type teas of Formosa or China origin).

(6) Scented Black Tea.

(7) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1977. Tea shipped prior to May 1, 1977 will be governed by the standards that became effective on May 1, 1976.

* * * * *

Effective date: This regulation became effective May 1, 1977.

(Secs. 3, 10, 29 Stat. 605, 607, 41 Stat. 712, 54 Stat. 1237, 67 Stat. 631 (21 U.S.C. 43, 50).)

Dated: July 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-20587 Filed 7-18-77;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER R—CHARTERS

PART 355—DIRECTOR OF POLICY REVIEW

AGENCY: Office of the Secretary of Defense.

ACTION: Issuance of DOD Charter Directive 5130.2[1]

SUMMARY: The Secretary of Defense has established the position of Director of Policy Review and has assigned to it certain functions and responsibilities. This Directive serves as the instrument that defines the charter of the Director of Policy Review.

EFFECTIVE DATE: June 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), 202-695-4278.

Accordingly, Part 355 reads as follows:

Sec.
355.1 Purpose.
355.2 Responsibilities.
355.3 Functions.
355.4 Relationships.
355.5 Authorities.

AUTHORITY: 10 U.S.C. Chapter 4.

§ 355.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, United States Code, the position of Director of Policy Review is hereby established with responsibilities, functions, and authorities as prescribed herein.

§ 355.2 Responsibilities.

The Director of Policy Review is the principal staff assistant to the Secretary of Defense for Defense policy as it relates to communications and intelligence analysis, requirements and priorities, as well as other policy matters as determined by the Secretary of Defense. For each of his assigned areas the Director shall:

(a) Develop Department of Defense communications and intelligence policy and means to verify response to policy.

(b) Confirm requirements for research, development and systems acquisition for intelligence analysis and production, intelligence collection and communications.

(c) In accordance with existing guidelines determine priorities for Defense intelligence collection and establish guidelines for the assembly, integration and validation of all Defense intelligence requirements.

(d) Exercise staff supervision on policy matters over the Defense Intelligence Agency, the National Security Agency, the Defense Mapping Agency, the Defense Communications Agency, Air Force and Navy special intelligence programs, Defense communications and intelligence functions retained by the Military Departments, and, in conjunction with the Assistant Secretary of Defense (Comptroller), the Defense Investigative Service.

(e) Provide staff support for the Defense Intelligence Advisory Board.

(f) Conduct liaison with the Joint Staff and Unified and Specified Commands on policy matters related to his areas of responsibility.

(g) Develop Department of Defense policy and requirements for use of space for matters related to his areas of responsibility.

(h) Provide to the Assistant Secretary of Defense (Communications, Command, Control and Intelligence) requirements for intelligence and communications programs.

(i) Oversee Department of Defense participation in sensitive intelligence matters, including contracts or arrangements with other countries; cooperate with the Assistant Secretary of Defense (International Security Affairs) with respect to review of intelligence matters related to the Special Coordinating Committee (Intelligence).

(j) Provide guidance, oversight, and coordination for intelligence-related programs and issues.

(k) Participate in studies and analyses involving communications or intelligence policy matters and other matters as directed by the Secretary of Defense.

(l) Serve on boards, committees, and other groups pertaining to his functional areas.

(m) Perform such other duties as the Secretary of Defense may from time to time prescribe.

§ 355.3 Functions.

The Director of Policy Review shall carry out the responsibilities described in § 355.2 in the following areas:

(a) Intelligence planning, policy and requirements.

(b) Communications planning, policy and requirements.

(c) Requirements for intelligence production, research, development, and systems acquisition.

(d) Intelligence collection and analysis requirements and priorities.

(e) Consolidated Defense Intelligence Program.

(f) National and tactical intelligence.

(g) Counterintelligence and security policy.

(h) Mapping, charting and geodesy.

(i) Sensitive intelligence (HUMINT and TECHNICAL).

(j) Liaison with users.

(k) Such other areas as the Secretary of Defense may from time to time prescribe.

§ 355.4 Relationships.

(a) In the performance of his duties, the Director of Policy Review shall:

(1) Coordinate and exchange information with other DOD organizations having collateral or related functions.

(2) Use existing facilities and services whenever practicable to achieve maximum efficiency and economy.

(b) All DOD organizations shall coordinate all matters concerning the responsibilities cited in § 355.2 with the Director of Policy Review.

§ 355.5 Authorities.

The Director of Policy Review is hereby delegated authority to:

(a) Issue instructions and one-time directive-type memoranda which carry out policies approved by the Secretary of Defense, in his assigned fields of responsibility. Instructions issued to the Military Departments will be issued through the Secretaries of those Departments or their designees. Instructions to Unified or Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information and assistance, consistent with the policies and criteria of DOD Directive 5000.19, as he deems necessary.

(c) Communicate directly with the heads of DOD organizations, including the Secretaries of the Military Depart-

[1] Filed as part of original. Single copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120 Attention: Code 301.

ments, the Joint Chiefs of Staff, the Directors of Defense Agencies, and, through the Joint Chiefs of Staff, the Commanders of Unified and Specified Commands.

(d) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JULY 14, 1977.

[FR Doc.77-20752 Filed 7-18-77;8:45 am]

CHAPTER XII—DEFENSE LOGISTICS AGENCY

SUBCHAPTER B—MISCELLANEOUS

[DLAR 5720.3]

PART 1288—REGISTRATION OF PRIVATELY-OWNED MOTOR VEHICLES

AGENCY: Defense Logistics Agency (DLA).

ACTION: Final rule.

SUMMARY: Visitors to DLA installations may be subject to random vehicle spot searches upon entry, while on, and while departing such installations. These searches are conducted with the consent of the visitors who agree to this procedure as a condition of entry. Individuals entering a DLA installation who object to a vehicle search will not be subjected to a search, but will be denied entry to the installation. The DLA command security program recognizes the need to deter acts of sabotage, theft, pilferage, and espionage against DLA installations. A cornerstone of this program is the necessity to be an effective deterrent to unlawful acts and is recognized as a viable physical security practice. The psychological aspect of this policy will serve as a deterrent to those individuals who pilfer Government material from DLA installations.

EFFECTIVE DATE: June 16, 1977.

FOR FURTHER INFORMATION CONTACT:

LTC John W. Ross, Jr., Commercial—AC 202-274-6263. AUTOVON—284-6263.

BY ORDER OF THE DIRECTOR:

J. J. McAleer, Jr., Colonel, USA, Staff Director, Administration.

Part 1288, Subchapter B, Chapter XII of Title 32 of the Code of Federal Regulations is added to read as follows:

Sec.
1288.1 Purpose and scope.
1288.2 Policy.
1288.3 Definitions.
1288.4 Significant changes.
1288.5 Responsibilities.
1288.6 Procedures.
1288.7 Forms and reports.
Appendix A—Decal Specification.

AUTHORITY: 5 U.S.C., sec. 301; DOD Directive 5105.22, January 5, 1977.

§ 1288.1 Purpose and scope.

To prescribe policy and procedures for the registration, inspection, and marking of privately-owned vehicles (POV) on Defense Logistics Agency (DLA) activities. This regulation is applicable to individuals serving in or employed by the Defense Logistics Agency, and to all other individuals subject to motor vehicle registration requirements set forth in this Part 1288 and DLAR 5720.1/AR 190-5/OPNAVINST 11200.5B/AFR 125-14/MCO 5110.1B, Military Police Motor Vehicle Traffic Supervision.

§ 1288.2 Policy.

(a) The operation of a POV on a DLA activity constitutes a conditional privilege extended by the Head of the activity. Individuals registering or operating POVs on DLA activities shall be deemed to have given consent to a search of their vehicles while on such activities. This implied consent provision will be made known to all registrants and visitors at the time of registration or entry. Entry to DLA activities will be denied in the absence of consent to search.

(b) POVs permanently registered for operation on a DLA activity will be identified by use of one of the decals prescribed in this Part 1288 (appendices A and B).

(c) The DLA vehicle decal will be valid for a period of 3 years from the year and month of issue.

(d) Activities will use DLA Form 1454, Vehicle Registration/Driver Record, as the basic vehicle registration and driver record.

(e) DLA tenant activities will comply with host installation policies and procedures for registering POVs.

§ 1288.3 Definitions.

Terms used in this Part 1288 are contained in DLAR 5720.1.

§ 1288.4 Significant changes.

This Part 1288 has been completely revised and should be read in its entirety.

§ 1288.5 Responsibilities.

(a) HQ DLA.

(1) The Command Security Officer, DLA (DLA-T) will provide staff supervision and assistance to DLA activities on matters concerning this Part 1288.

NOTE.—This DLAR supersedes DLAR 5720.3, July 19, 1976, and Change 1.

(2) The Inspector General, DLA (DLA-I) will procure, issue, and control Inspector General (IG) vehicle decals in accordance with § 1288.6. (Vehicles bearing such decals will be permitted entry to all DLA activities.)

(b) The Heads of DLA Primary Level Field Activities will:

(1) Ensure that personnel adhere to the provisions of this Part 1288 when implemented.

(2) Procure, issue, and control vehicle decals in accordance with this Part 1288.

(3) Periodically inform personnel of the requirements of this Part 1288, DLAR 5720.1, and local requirements concerning the motor vehicle registration program.

(4) Ensure that the implied consent to search provisions are publicized as follows:

(i) Prominent sign displayed at all entrances to the activity.

(ii) Written notification, easily readable, on vehicle visitor passes and vehicle registration forms. Visitor passes and item 14 of the DLA Form 1454 will be annotated as follows: "Individuals registering or operating POVs on DLA activities shall have given consent to a search of their vehicles while entering on, or departing such activities. Entry to DLA activities will be denied in the absence of consent to search."

§ 1288.6 Procedures.

(a) *Issuance of DLA POV Decal and 3-year Validation Sticker.* (1) One decal will be affixed to the left front bumper (operator's side) of a four-wheel vehicle. An additional decal may be placed on the rear bumper of the vehicle. For vehicles not equipped with bumpers and two-wheeled vehicles, the placement of decals will be determined locally.

(2) A 3-year validation sticker indicating the decal expiration will be issued at the same time the DLA decal is issued. Every 3 years, or following a significant change, registrants will be required to update their registration information. Evidence of compliance will be documented by the issuance and display of a new 3-year validation sticker.

(3) The validation sticker will be placed next to the DLA decal affixed to the front bumper of the vehicle. This sticker will reflect the month and year of the decal expiration, e.g., vehicles registered during the month of June 1977 will have affixed a validation sticker with the numbers "6-80", indicating expiration of the decal at the end of June 1980. The specifications for the validation sticker will be determined locally.

(4) Decals or other media used to identify vehicles of temporary registrants or visitors will be locally prescribed.

(5) Decals will be removed from POVs by the registrant when activity registration is terminated. See DLAR 5720.1, chapter 3, for information on termination of registration.

(6) Vehicle decals will be purchased with appropriated funds for issuance at no cost to authorized users.

(b) Proof of insurance. (1) Individuals registering vehicles will certify possession of insurance per DLAR 5720.1, paragraph 3-3c.

(2) The certification contained on DLA Form 1454 will, as indicated thereon, be witnessed and manifested by a signature.

(c) Vehicle inspection. (1) DLA activities located in states or jurisdictions having mandatory vehicle safety inspections will reflect the provisions of DLAR 5720.1, paragraph 3-3d. in the supplementation of this Part 1288.

(2) Vehicle safety inspections are not mandatory for DLA activities located in areas not requiring such inspections.

(d) Registrant. Registrant must inform the vehicle registration office within 72 hours as information on DLA Form 1454 becomes invalid.

§ 1288.7 Forms and reports.

(a) DLA Form 1454 will be prepared at the time of initial registration of the vehicle and will remain valid for as long as the registrant retains ownership of the vehicle and complies with registration requirements. A Privacy Act Statement for use in conjunction with DLA Form 1454 will be made available to the individual supplying data on the form.

(b) Data blocks 3, 4, and 14 on DLA Form 1454 will be entered in ink; remaining entries will be in pencil.

(c) One copy of DLA Form 1454 will also serve as the driver record of the registrant.

(d) Upon permanent change of station of the Military Service registrant, activity clearance procedures will provide for DLA Form 1454 to be included in the registrant's military personnel folder for transmittal to the gaining activity. DLA Forms 1454 for transferring civilian personnel will be forwarded to the Security Officer of the gaining activity.

(e) The DLA Form 1454 for military personnel being discharged or separated and civilian personnel who terminate employment, will be forwarded to the appropriate personnel office for inclusion in the records folder for subsequent retirement.

APPENDIX A—DECAL SPECIFICATIONS

A. The design format of the standard DLA decal to be used for identifying POVs permanently registered for operation on DLA activities is shown in enclosure 2. The IG decal will be of the same design and color as that prescribed for the standard DLA decal except that the registration letter/number scheme will consist of the letters "IG" followed by a number. Standard DLA decals may be procured from the United States Disciplinary Barracks, USDB, Ft. Leavenworth, Kansas 66027, which is an approved Federal printing plant. Existing stocks of decals with "DSA" inscribed will be used until exhausted.

B. The following specifications apply to the separate elements of the decal:

1. *Basic Construction.* Decal will meet Federal Specification L-5300A, 7 Jan 70, type I, class 4, reflectivity 1.

2. *Colors.* a. Background—Silver.

b. DLA emblem, field activity name, and scroll, the letters DLA, and year/date—black.

c. Registration Letters/Numbers:

(1) Mandatory categories:

(a) Officer personnel—blue.

(b) Enlisted personnel—red.

(c) Civilian employees—green.

(2) The following additional colors will be used to categorize registration further:

(a) Noncommissioned Officer personnel, brown.

(b) Civilian employees (nonappropriated fund), Red Cross concessionaires, contractors, and other similar categories, black.

3. *Registration Letters/Numbers.* For each registration category a combination of letters and number(s) separated by the DLA emblem will be used. The number-letter system will progress from AA-1 to AA-2, and so on, to AA-99, from AB-1 to AB-99, eventually from AZ-1 to AZ-99, and so on from ZZ-1 to ZZ-9.

4. *Dimensions.*

a. Overall size: 3 inches by 6 inches. A reduced size decal will be used for vehicles with less than four wheels.

b. Registration letters and numerals: 1¼ to 1½ inches in height.

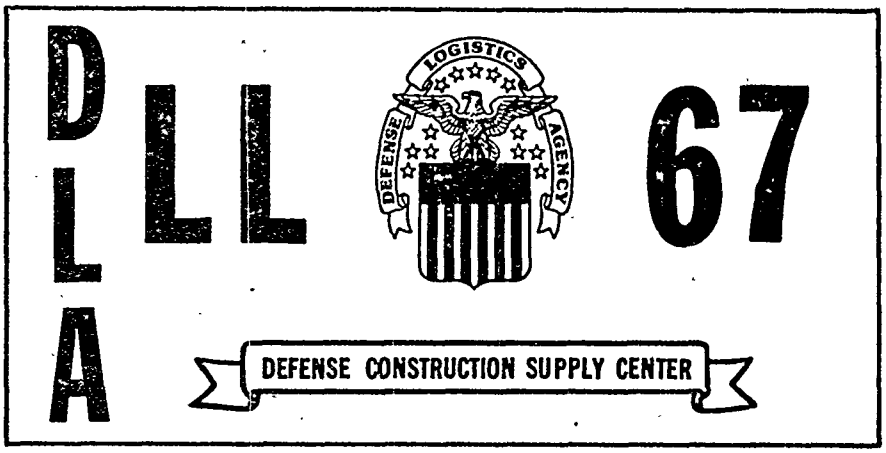
c. DLA emblem letters: 1½ inches to 1¾ inches in height.

d. DLA letters: ½ to ¾ inch in height.

e. Activity designation scroll and lettering: See enclosure 2.

APPENDIX B

STANDARD DLA PRIVATE VEHICLE IDENTIFICATION DECAL



[FR Doc.77-20751 Filed 7-18-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL-760-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, Pima County Regulations, State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: It is the purpose of this action to promulgate final approval, with exceptions, of amendments to the Rules and Regulations of the Pima County Air Pollution Control District submitted to EPA by the State of Arizona as a revision to the State of Arizona Air Pollution Control Implementation Plan. The amendments concern definitions, emission limitations for fuel burning installations, ambient air quality standards, exceptions to the regulations, standards of performance for new stationary sources, and emission standards for hazardous air pollutants. The Administrator is required to approve or disapprove of revisions to state implementation plans. The Administrator finds good cause for making this rulemaking effective 30 days from the date of publication of this notice. The additional time is being provided to allow the county a reasonable time in which to amend their regulation prior to further action by the Administrator. The regulations being approved are currently being enforced by the Pima County Air Quality Control District, and therefore pose no further requirements on any affected facility.

EFFECTIVE DATE: August 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air and Hazardous Materials Division, Attn: Erik Hauge, Air Programs Branch, EPA, Region IX, 100 California Street, San Francisco, California 94111, telephone 415-556-7595.

SUPPLEMENTAL INFORMATION:

BACKGROUND

On March 21, 1977 (42 FR 15343) EPA proposed approval, with exceptions, of amendments to the Rules and Regulations of the Pima County Air Pollution Control District. These revisions to the State implementation plan were submitted on September 30, 1976. The proposed rulemaking notice provided for a 30-day public comment period. Information concerning the regulations proposed for approval and disapproval (the EPA evaluation report), the regulations under consideration, and a copy of the proposed rulemaking notice were made available during the comment period at locations in Phoenix and Tucson, Arizona and at the EPA offices in San Francisco, California and Washington, D.C. as per the March 21, 1977 notice.

DISCUSSION OF ACTION

Final rulemaking is similar to that proposed. Approval is being promulgated for all of the Pima County regulatory amendments received on September 30,

1976, with the exception of Regulation II, Rule 7A, paragraphs 2 through 5, applicable to the use of fuel oil at electric energy producing-fuel burning installations; and Regulation II, Rule 11A, Malfunction, Startup, Shutdown, and Scheduled Maintenance.

The Administrator, after having proposed to disapprove Regulation II, Rule 7A, is disapproving paragraphs 2 through 5 of the rule. In the effort to protect against violations of the national standards the control officer could allow an existing fuel oil-fired power plant to use diffusion dependent techniques alone as a means of attaining and maintaining the National Ambient Air Quality Standards, contrary to recent court decisions which have clarified the intent of Section 110(a)(2)(B) of the Clean Air Act (see 41 FR 7450). Also, the portion of the same rule applicable to low sulfur fuel usage is being disapproved because it is unenforceable without the other provisions of the rule.

The Administrator is also disapproving the control strategy portion of the State plan applicable to the control of sulfur dioxide in the Pima County portion of the Phoenix-Tucson Intrastate Air Quality Control Region because the State has failed to submit a demonstration that Regulation II, Rule 7A will not interfere with the attainment and maintenance of the national standards.

No action was proposed and none is being taken at this time on Regulation II, Rule 11A.

DISCUSSION OF MAJOR COMMENTS

One public comment was received. The Arizona Public Service Company maintains that Regulation II, Rule 7A provides power plants with the flexibility which is needed during periods of low sulfur oil supply problems and that the disapproval of the regulation may severely restrict the operating criteria of such facilities. EPA agrees that some flexibility is needed during such periods, however it is up to the county to amend their regulation to conform with the EPA requirements while allowing the desired flexibility. If the county does not amend its regulation within a reasonable time, EPA will propose and promulgate a substitute regulation, through the public hearing process, which provides the necessary flexibility.

AUTHORITY

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. 1857c-5 and 1857g(a), respectively).)

Dated: July 14, 1977.

BARBARA BLUM,
Acting Administrator.

Subpart D of Part 52 of Chapter 1, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. Section 52.120, paragraph (c) is amended by the addition of subparagraph (11) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(11) Amendments to the Rules and Regulations of the Pima County Air Pollution Control District (Regulation I: Rule 2 (paragraph uu-yy, Definitions); Regulation II (Fuel Burning Equipment): Rule 2G (paragraphs 1-4c, Particulate Emissions), Rule 7A (paragraphs 1-6, Sulfur Dioxide Emissions), Rule 7B (paragraphs 1-4, Nitrogen Oxide Emission); Regulation VI: Rule 1A-H, (Ambient Air Quality Standards); Regulation VII (paragraph A-D, Standards of Performance for New Stationary Sources); and Regulation VIII (paragraphs A-C, Emission Standards for Hazardous Air Pollutants)) submitted on September 30, 1976 by the Director, Arizona Department of Health Services (the Governor's official representative).

2. Section 52.125, paragraphs (d), (e), (f), and (g) are reserved as follows:

§ 52.125 Control strategy and regulations; Sulfur oxides.

* * * * *

(d) [Reserved]
(e) [Reserved]
(f) [Reserved]
(g) [Reserved]

3. Section 52.125, paragraph (h) is added as follows:

§ 52.125 Control strategy and regulations; Sulfur oxides.

* * * * *

(h)(1) The requirements of § 51.13 of this chapter are not met since the plan does not demonstrate that the emission limitations applicable to existing fuel burning equipment producing electrical energy will provide for the attainment and maintenance of the national standards in the Pima County portion of the Phoenix-Tucson Intrastate Air Quality Control Region (§ 81.36 of this chapter).

(2) Regulation II: Rule 7A—paragraphs 2 through 5, Emission Limitations Fuel Burning Equipment—Sulfur Dioxide, of the Rules and Regulations of the Pima County Air Pollution Control District are disapproved because they could allow existing facilities to use dispersion dependent techniques along as a means of attaining and maintaining the National Ambient Air Quality Standards. The regulation does not assure the attainment and maintenance of the national standards in a manner which is consistent with the intent of Section 110(a)(2)(B) of the Clean Air Act.

[FR Doc.77-20758 Filed 7-18-77;8:45 am]

SUBCHAPTER C—AIR PROGRAMS

[FRL 758-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Control Strategy Revision to Louisiana Plan

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This rule approves a revision to the Particulate Matter Control Strategy portion of the Louisiana State Implementation Plan (SIP). This action is being taken to show that the date for attainment of the National Ambient Air Quality Standard for particulate matter will not be interfered with due to the compliance schedule for Kaiser Aluminum extending beyond the attainment date of May 31, 1975.

EFFECTIVE DATE: August 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Oscar Cabra, Jr., Air Programs Branch, Environmental Protection Agency, Region VI, Dallas, Texas 75270, 214-749-3837.

SUPPLEMENTARY INFORMATION: On January 28, 1972, the Governor of Louisiana submitted the State Implementation Plan (SIP) for attainment and maintenance of the national ambient air quality standards. With specific exceptions, the Administrator approved the plan on May 31, 1972 (37 FR 10869).

In accordance with the SIP revision requirement as provided by § 51.6 of 40 CFR Part 51, the Governor of Louisiana submitted a revision to the SIP on January 2, 1973. This revision amends the particulate matter control strategy portion of the SIP by demonstrating that the compliance schedule established for Kaiser Aluminum and Chemical Company Chalmette Works will not interfere with the attainment date of May 31, 1975, for the achievement of the national ambient air quality standard for particulate matter in Louisiana's portion of the Southern Louisiana-Southeast Texas Air Quality Control Region (AQCR).

The rollback analysis, using the highest annual geometric mean from the AQCR, 80 $\mu g/m^3$, demonstrates that a 36 percent reduction in emission is required in the New Orleans area to meet the primary ambient air quality standard for particulate matter. Emission calculations provided in the State submittal show an expected 34 percent reduction in total emissions by June, 1975, a 38 percent reduction by February 1976, and a 39 percent reduction at the time the source achieves final compliance, September 1, 1976.

These reductions in emissions have been reflected in measured ambient particulate levels with no violation of the primary ambient air quality standard for particulate matter having been recorded in the New Orleans area for 1975 or 1976. The Administrator finds that this revision should be approved without proposal since air quality levels clearly show that the primary ambient air quality standard for particulate matter has been met in the applicable AQCR, and the facility referenced in the control strategy revision is reported by the State to be in compliance with all particulate emission standards.

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

Dated: July 8, 1977.

DOUGLAS M. COSTLE,
Administrator.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart T—Louisiana

1. In § 52.970 paragraph (c) is amended by adding paragraph (6) as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(6) A revision concerning the control strategy for particulate matter for the Southern Louisiana-Southeast Texas AQCR was submitted by the Governor on January 2, 1973.

[FR Doc.77-20556 Filed 7-18-77;8:45 am]

[FRL 752-2]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Units and Abbreviations

AGENCY: Environmental Protection Agency

ACTION: Final rule

SUMMARY: This action revises the General Provisions by reorganizing the units and abbreviations and adding the International System of Units (SI). Until recently, EPA did not have a preferred system of measurement to be used in its regulations. Now the Agency is using SI units in all regulations issued under this part. This necessitates that SI units be added to the General Provisions to provide a complete listing of abbreviations used.

EFFECTIVE DATE: August 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. 919-541-5271.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 3 of Pub. L. 94-168, the Metric Conversion Act of 1975, declares that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States. On December 10, 1976, a notice was published in the FEDERAL REGISTER (41 FR 54018) that set forth the interpretation and modification of the International System of Units (SI) for the United States. EPA incorporates SI units in all regulations issued under 40 CFR Part 60 and provides common equivalents in parentheses where desirable. Use of SI units requires this revision of the abbreviations section (§ 60.3) of the General Provisions of 40 CFR Part 60.

REFERENCE DOCUMENTS

An explanation of the International Systems of Units was presented in the FEDERAL REGISTER notice mentioned above (41 FR 54018). The Environmental Protection Agency is using the Standard for Metric Practice (E 380-76) published by the American Society for Testing and Materials (A.S.T.M.) as its basic reference. This document may be obtained by sending $4.00 to A.S.T.M., 1916 Race Street, Philadelphia, Pennsylvania 19103.

MISCELLANEOUS

As this revision has no regulatory impact, but only defines units and abbreviations used in this part, opportunity for public participation was judged unnecessary.

(Sections 111 and 301(a) of the Clean Air Act; sec. 4(a) of Pub. L. 91-604, 84 Stat. 1683; sec. 2 of Pub. L. 90-148, 81 Stat. 504 (42 U.S.C. 1857c-6, 1857g(a)).)

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Orders 11821 and 11949 and OMB Circular A-107.

Dated: July 8, 1977.

DOUGLAS M. COSTLE,
Administrator.

40 CFR Part 60 is amended by revising § 60.3 to read as follows:

§ 60.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) System International (SI) units of measure:

A—ampere
g—gram
Hz—hertz
J—joule
K—degree Kelvin
kg—kilogram
m—meter
m^3—cubic meter
mg—milligram—10^{-3} gram
mm—millimeter—10^{-3} meter
Mg—megagram—10^6 gram
mol—mole
N—newton
ng—nanogram—10^{-9} gram
nm—nanometer—10^{-9} meter
Pa—pascal
s—second
V—volt
W—watt
Ω—ohm
μg—microgram—10^{-6} gram

(b) Other units of measure:

Btu—British thermal unit
°C—degree Celsius (centigrade)
cal—calorie
cfm—cubic feet per minute
cu ft—cubic feet
dcf—dry cubic feet
dcm—dry cubic meter
dscf—dry cubic feet at standard conditions
dscm—dry cubic meter at standard conditions
eq—equivalent
°F—degree Fahrenheit
ft—feet
gal—gallon
gr—grain
g-eq—gram equivalent
hr—hour
in—inch
k—1,000
l—liter
lpm—liter per minute
lb—pound
meq—milliequivalent
min—minute
ml—milliliter
mol. wt.—molecular weight
ppb—parts per billion
ppm—parts per million
psia—pounds per square inch absolute
psig—pounds per square inch gage
°R—degree Rankine
scf—cubic feet at standard conditions
scfh—cubic feet per hour at standard conditions
scm—cubic meter at standard conditions
sec—second
sq ft—square feet
std—at standard conditions

(c) Chemical nomenclature:

CdS—cadmium sulfide
CO—carbon monoxide
CO_2—carbon dioxide
HCl—hydrochloric acid
Hg—mercury
H_2O—water
H_2S—hydrogen sulfide
H_2SO_4—sulfuric acid
N_2—nitrogen
NO—nitric oxide
NO_2—nitrogen dioxide
NO_x—nitrogen oxides
O_2—oxygen
SO_2—sulfur dioxide
SO_3—sulfur trioxide
SO_x—sulfur oxides

(d) Miscellaneous:

A.S.T.M.—American Society for Testing and Materials

(Sections 111 and 301(a) of the Clean Air Act; sec. 4(a) of Pub. L. 91-604, 84 Stat. 1683; sec. 2 of Pub. L. 90-148, 81 Stat. 504 (42 U.S.C. 1857c-6, 1857g(a)).)

[FR Doc.77-20557 Filed 7-18-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amdt. No. 1 to Revised Service Order No. 1182]

PART 1033—CAR SERVICE

Substitution of Stock Cars for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amendment No. 1 to Revised Service Order No. 1182).

SUMMARY: Revised Service Order No. 1182 authorizes the Burlington Northern Inc. to substitute specially prepared stock cars for boxcars for shipments of grain originating on its line in order to augment the available supply of cars suitable for grain traffic. Amendment No. 1 extends the order for an additional six-month period.

DATES: Effective July 15, 1977. Expires January 15, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, phone 202-275-7840.

SUPPLEMENTARY INFORMATION: The Order is reprinted in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 12th day of July, 1977.

Upon further consideration of a Revised Service Order No. 1182 (42 F.R. 3844), and good cause appearing therefor:

It is ordered, That:

Revised Service Order No. 1182 be, and it is hereby, amended by substituting the following paragraph (h) for paragraph (h) thereof:

§ 1033.1182 Substitution of stock cars for boxcars.

* * * * *

(h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 15, 1978, unless otherwise modified, changed or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., July 15, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15 and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that 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. Member Joel E. Burns not participating.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-20692 Filed 7-18-77;8:45 am]

SUBCHAPTER C—ACCOUNTS, RECORDS AND REPORTS

[No. 35345 (Sub-No. 2)]

PART 1251—REPORTS OF FREIGHT FORWARDERS

Freight Forwarder Report of Freight Loss and Damage Claims

AGENCY: Interstate Commerce Commission.

ACTION: Report and order.

SUMMARY: This report and order is being issued to implement a requirement for annual reporting of freight loss and damage claims by freight forwarders. Freight forwarders will be required to file the annual report schedule as set out in the Notice of Proposed Rulemaking for Freight Forwarder Report of Freight Loss and Damage Claims (42 FR 2092, January 10, 1977). This rule applies to all Class A and B freight forwarders subject to the Interstate Commerce Act. This schedule contains summarized loss and damage data and will be made a part of the respective annual reports. The quarterly reporting proposed in the same rulemaking for freight forwarders with annual gross operating revenues of $10 million, or more, will not be adopted.

EFECTIVE DATE: Year ended December 31, 1975.

FOR FURTHER INFORMATION CONTACT:

James H. Bayne, Chief, Section of Reports, Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, Phone No. 202-275-7331.

SUPPLEMENTARY INFORMATION: *Background.* Pursuant to section 412 of the Interstate Commerce Act and sections 553 and 559 of the Administrative Procedure Act, a rulemaking proceeding was instituted by the Commission on December 29, 1976 (42 FR 2092), announcing that it was considering adoption of a requirement for the filing of a quarterly report of freight loss and damage claims by freight forwarders with annual revenues of $10 million or more, and adoption of an annual report schedule of freight loss and damage claims by all freight forwarders. The proposed reporting was initiated to support activities under Executive Order No. 11836, increasing the Effectiveness of the Transportation Cargo Security Program (40 FR 4255).

Three comments were received in response to the rulemaking notice, none of which strongly supported the proposed reporting. One expressed opposition to the proposed reporting. The other two did not oppose the reporting but proposed modifications in the report form and the reporting requirements.

Upon consideration of the comments received, the Commission has decided to adopt the annual report schedule and applicable reporting requirements. Due to lack of support and in the interest of reduction of paperwork burden on carriers, quarterly reporting of loss and damage claims by freight forwarder will not be prescribed.

The information reported in the annual schedule will enable the Commission and other interested parties to detect freight forwarders that are experiencing high losses from theft claims or other claims problems. The respondents reporting burden will be minimized by inclusion of these data in the annual report forms of the forwarders.

For the reasons shown above, freight forwarders are required to file annual report schedule, Summary of Freight Loss and Damage Claims for Freight Forwarders, and the reporting rules and requirements thereto as modified and shown below, be and they are hereby adopted and prescribed.

(Section 412 of the IC Act and pursuant to Sections 553 and 559 of the Administrative Procedure Act.)

Issued at Washington, D.C., July 1, 1977.

H. G. Homme, Jr.,
Acting Secretary.

Freight forwarder Forms F-1 (49 CFR 1251.1) and F-2 (49 CFR 1251.2) are amended by adding the following schedule:

SCHEDULE XX.—*Summary of Freight Loss and Damage Claims*

Line:
1. Freight revenue (account 501)_ $
2. Number of theft related claims paid _____
3. Number of other claims paid___
4. Net dollars paid (see instructions below)_____
5. Claims expense/revenue ratio (line 4 divided by line 1) (percent) _____

INSTRUCTIONS TO SCHEDULE XX

Exclude from this schedule the revenues and claims incurred in connection with freight forwarder services and shipments which have a prior or subsequent movement by air. Line 1 should show all freight forwarder revenue in Account 501. Line 2 should show the number of claims paid during the year for robbery, theft and pilferage, and other shortage as defined below:

Robbery—Failure to deliver all or part of a shipment as the result of stealing, including hijacking, with the use of force or threat of force against a person or persons. (NOTE.—Claims for physical damage to freight in the same or other shipments resulting from robbery should be reported under Robbery.)

Theft and Pilferage—Failure to deliver all or part of a shipment as the result of known stealing, or under circumstances indicating the probable cause was stealing, without use of force or threat of force against a person or persons, when it is known the freight was in the carrier's custody. (NOTE.—Claims for physical damage to freight in the same or other shipments resulting directly from theft or pilferage should be reported under Theft and Pilferage).

Other Shortage—Failure to deliver all or part of a shipment for unknown reasons. (NOTE.—Includes the unexplained disappearance of all or part of a shipment for reasons other than robbery or theft and pilferage, as defined above).

Line 3 should show the number of all other claims paid in full or in part during the year not reported on line 2.

Line 4 should include the net dollar amount of claims paid during the year. This includes claims paid in full or paid in part, less amounts recovered from underlying carriers, salvage, insurance, and claim refund cancellations.

Line 5 should show the ratio in percentage form (two decimal places).

[FR Doc.77-20759 Filed 7-18-77;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.

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Share Accounts and Share Certificate Accounts; Withdrawal of Proposed Rulemaking; Share Certificates

AGENCY: National Credit Unit Administration.

ACTION: Proposed Rule and Withdrawal of Proposed Rule.

SUMMARY: The purpose of this proposed rule is to implement the provisions of the April 19, 1977, amendments to the Federal Credit Union Act (Pub. L. 95-22, 91 Stat. 49) which authorize Federal credit unions to establish share accounts with varying dividend rates and share certificate accounts with varying rates and maturities.

DATES: Comments must be received on or before September 19, 1977.

ADDRESS: National Credit Union Administration, 2025 M St., NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

J. Leonard Skiles, Deputy General Counsel, Telephone: 202-254-9810.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 17, 1976, the Administrator of the National Credit Union Administration published (41 FR 55199) a proposed rule implementing the authority of Federal credit unions to issue share certificates. Subsequently, on April 19, 1977, Congress enacted Pub. L. 95-22 (91 Stat. 49), which, in Title III, amended various provisions of the Federal Credit Union Act (12 U.S.C. 1751, et seq.). Among the amendments were changes to Sections 107 and 117 of the Act (12 U.S.C. 1757 and 1763) which authorize Federal credit unions to issue share accounts at varying dividend rates and share certificate accounts at varying dividend rates and maturities. Therefore, in light of the recent amendments to the Federal Credit Union Act, the Administration has decided to withdraw the previously proposed rule on share certificates, and to now issue a proposed rule on share accounts and share certificate accounts.

In addition, upon finalization of this proposed rule, the Administration shall issue a Standard Bylaw Amendment authorizing the payment of 7¾ percent on share certificate accounts.

ANALYSIS OF THE PROPOSED RULE

The purpose of the proposed rule is to define, and to place certain limitations on, those conditions upon which a Federal credit union may decide to pay dividends at different rates on different types of classes of accounts. The board of directors of each Federal credit union, after examining the credit union's financial situation and the needs of its members, should decide whether, in addition to regular share accounts, any or all of the types of accounts based upon these conditions should be offered.

Section 107(6) of the Federal Credit Union Act, as amended (12 U.S.C. 1756 (6)) authorizes two types of Federal credit union accounts, shares (which may be issued at varying dividend rates) and share certificates (with varying rates and maturities). The proposed rule, at § 701.35(a) (1) and (2), sets forth these basic categories and recognizes that the distinguishing feature of share certificate accounts is the maturity requirement. Section 701.35(a)(1) then further defines share accounts by setting forth the basic conditions which may be varied for different classes of share accounts to earn dividends at different rates. Subparagraph (1)(A), the "Regular Share Account," is the traditional type of share account that Federal credit unions have been authorized to issue since the enactment of the Federal Credit Union Act. It should be noted that for the purpose of this proposed rule and thus for the purpose of determining dividend rates, any transaction account that may be authorized by law or regulation shall be treated as a regular share account. Subparagraph (1)(ii), the "Notice Account," establishes a requirement of a written notice of intent to withdraw funds as a basic condition upon which a Federal credit union may pay dividends at a rate different than that paid on other accounts. This notice requirement is the standard practice of this type of account and, like all other types of accounts, is still subject to the additional 60-day maximum notice requirement that the board of directors may authorize under Article III, Section 5(a) of the Bylaws. Subparagraph (1)(ii), the "Minimum Balance Account," defines a type of account which will receive dividends, on the entire balance held in the account, at a different rate if a certain minimum is maintained. Subparagraph (1)(iv), the "Split-rate Account," defines an account which receives dividends at different rates on different portions of the balance of the account. For example, an account of this type could earn dividends at 5 percent on the balance between 0 and $500, and then earn 5½ percent on the balance between $500 and $1,000, and then 6¼ percent on the balance above $1,000. This is in contrast to the "Minimum Balance Account" which would earn one rate on the entire balance as long as at least the minimum requirements is maintained in the account for an entire dividend period. It should be noted that these definitions can be combined, so that a Federal credit union could establish a class of accounts with both a minimum balance and notice requirement, but in that case, the limitations applicable to each basic condition would apply to this account. Paragraph (2) defines "Share Certificate Account." It should be noted that the definition, in keeping with Congressional intent ("H.R. Rep. No. 95-23," Committee on Banking, Finance and Urban Affairs, House of Representatives, 95th Cong., 1st Sess., p. 12 (1977)), does not require the issuance of a certificate.

Paragraph (b)(1) sets forth the basic authority of the Federal credit union's board of directors to establish share accounts and share certificate accounts, to impose additional terms and conditions not inconsistent with the requirements of this rule, and to impose penalties. Subparagraph (b)(1)(ii), however, specifically prohibits the board from, for example, requiring that a member maintain $500 in a regular share account in order to open a share certificate account. This type of practice would circumvent the limitations set forth in this regulation which are designed to make these accounts accessible to the average credit union member. Therefore, this type of requirement is specifically prohibited. In addition, paragraph (b)(2) is designed to prevent credit union "insiders" from receiving preferential rates on their accounts by virtue of their position in the credit union. This provision is intended to cover not only the more blatant practices, for example, where there are a limited number of certificate accounts offered and only "insiders" with advance notice are able to obtain these accounts, but also any practice which effectively denies credit union members from becoming holders of these accounts to the benefit of credit union "insiders."

Subsection (c) sets forth certain limitations on Federal credit union share accounts and share certificate accounts and is intended to make these accounts accessible to the average credit union member. The terms and conditions that the board may adopt should not be utilized to circumvent the reason for regulating a minimum balance requirement. For those accounts which meet the definition of a notice account, subparagraph (1)(i) requires a minimum of 90 days written notice of intent to withdraw.

Since, in theory, a credit union member could, at the time he or she places funds in this type of account, also give the credit union the written notice as required and then withdraw the funds 90 days later, there is a provision whereby the board of directors could waive the notice requirement for funds that have been in the account for at least the required period (in this example, 90 days). This waiver, of course, would have to apply to all such accounts. Subparagraph (1) (ii) states that, if a Federal credit union establishes accounts that meet the definition of a minimum balance account, it must offer these accounts with minimum balance requirements starting at $500 or less. Subparagraph (1) (iii) indicates that the split-rate type of account can have one or more levels at which the dividend rate changes, but also requires that the lowest minimum level must be $500 or less.

Paragraph (c) (2) contains specific limitations on share certificate accounts. The dividends on these accounts may be varied in accordance with the length of the qualifying period and the minimum amount requirements. Again, in order to make such accounts accessible to the average credit union member, subparagraph (2) (iii) provides that these accounts shall start at minimum amount requirements of $500 or less. The qualifying period, the time from issuance to maturity, is limited by subparagraph (2) (ii) to a period from 90 days (or 30 days for public unit accounts) to 5 years, but may be renewed automatically, under subparagraph (2) (iv), for the same period provided that the holder receives at least 10 days notice prior to the end of the qualifying period. Subparagraph (2) (v) indicates that both principal and dividends may be withdrawn from share certificate accounts. If the amount of principal withdrawn reduces the balance below the minimum amount requirement, then the account no longer exists and the withdrawal must be treated as a withdrawal of all the funds. As a result, the penalty must be imposed to the entire amount of the account. However, if the amount remaining exceeds the minimum balance requirement, then the account is considered to continue and only the amount withdrawn is used to determine the penalty. No penalty is assessed on the withdrawal of dividends previously paid on share certificate accounts.

Paragraph (d) (2) provides the board of directors with the option to impose penalties on share accounts (other than regular share accounts) for violations of any balance or notice requirement. If the board of directors establishes penalties, then these penalties must be within the range set forth in paragraph (d) (2), which is designed so that those account holders who fail to comply with such requirements will, at least, fare no better than regular share holders in the payment of dividends. Penalties on share certificate account withdrawals, however, are mandatory and require a reduction of dividends to the regular share account rate on the amount withdrawn and then the forfeiture of up to 90 days' dividends on the amount withdrawn. Subsection (e) contains contains exceptions to the penalty provisions, and applies to both the mandatory penalties for share certificate accounts and the optional penalties which may be established for share accounts.

Subsection (f) implements the legislative intent behind the recent amendment to Section 117 of the Federal Credit Union Act (12 U.S.C. 1763). "This amendment would provide NCUA with the authority to draft regulations which would permit Federal credit unions to specify in advance a dividend rate should NCUA determine such a practice would not be inimical to Federal credit unions." "H.R. Rep. No. 95-23", supra, p. 17. The Administration believes that, under the proposed rule, this practice would not be harmful to Federal credit unions. First, as paragraph (f) (1) indicates, this practice would not constitute a guarantee of the stated dividend rate. Thus, the basic nature of Federal credit union shares would not be changed since the rate of return paid on these accounts would, as always, be dependent upon the earnings and expenses of the credit union. Second, as paragraph (f) (3) and subsection (g) provide, the specified rate could not exceed the regular share account dividend rate by more than 2½ percent. This would prevent an inequitable lowering of the rate paid to regular share account holders, who the Administration believes will still be the majority of credit union members, in order to meet the rate specified on other types of accounts. For example, a Federal credit union specifies 7½ percent on share certificate accounts, but at the close of the dividend period determines that it would have to lower the regular share account rate from 5 percent to 4 percent in order to meet the specified 7½ percent certificate rate. The proposed rule would prohibit this because the difference between the rates would exceed 2½ percent. Instead, the board would have to either pay the share certificate accounts at a maximum 6½ percent rate, or pay both classes of accounts at a reduced rate, or decide to declare no dividends for that period, or take other appropriate action. It is expected by the Administration that, if this proposed rule is adopted, Federal credit unions will proceed with caution in exercising this power and will specify dividend rates on a conservative basis so as to prevent or to avoid the necessity of paying dividends at a rate less than specified. In this way, and under these restrictions, the Administration believes that the practice of specifying dividends in advance will not be harmful to Federal credit unions.

Subsection (h) is intended to reflect a change in Section 117 of the Federal Credit Union Act (12 U.S.C. § 1763). That Section previously stated that dividends are to be paid on all paid up shares, that is, on the $5 value of each share. This language was dropped from the Act by Pub. L. 95-22. As a result, subsection (h) authorizes a Federal credit union to pay dividends either on the par value of shares or on the actual value of funds held in the account. Subsection (i) indicates that, while a Federal credit union may issue different types of accounts, the length of the dividend period and the dividend declaration date for all these accounts shall be the same.

Subsection (j) sets forth requirements for advertisements, announcements, or solicitations of share accounts and share certificate accounts. This provision is intended to alert prospective credit union account holders of the basic conditions which must be met for an account to earn a specified rate, of the fact that dividends are not guaranteed, of the basis upon which dividends are calculated, and of any penalties which may be imposed. In addition, this provision permits Federal credit unions to advertise a percentage yield based on compounding specified dividends, but requires that the annual rate of dividends without compounding also be stated. A more complete description of the account is required to be given to the account holder, under subsection (k), at the time the account is opened. This written disclosure statement must include all the terms and conditions which must be met for the account to earn dividends at the rate paid on that class or type of account, the basis upon which dividends are calculated, the limitation on dividends and the fact that the specified rate is not guaranteed, a complete description of the penalties which may be imposed, the manner in which funds may be withdrawn without a penalty, any automatic renewal provisions, the disposition of share certificate account funds if not renewed at maturity, and the possibility that membership might be terminated if the member maintains no other account when the share certificate account matures. While a credit union need not give a copy of the disclosure statement to the holder of an existing account when it is renewed, the holder must be sent a copy of any change in any provision which would affect that account. In addition, the credit union must display a list of the available types of accounts and keep copies of standard disclosure statements available.

C. AUSTIN MONTGOMERY,
Administrator.

JULY 14, 1977.

Title 12 Part 701 is proposed to be amended by revising § 701.35 to read as follows:

§ 701.35 Share Accounts and Share Certificate Accounts.

(a) *Definitions.* As used in this section: (1) Share Account means:

(i) Regular Share Account—an account which does not require the holder to maintain a minimum balance greater than the par value of a share or to give notice of intent to withdraw, except as may be imposed in accordance with Article III, Section 5(a) of the Federal Credit Union Bylaws;

(ii) Notice Account—an account which, in addition to any notice which may be imposed pursuant to Article III, Section 5(a) of the Federal Credit Union Bylaws, requires the holder to give written notice of the intent to withdraw;

(iii) Minimum Balance Account—an account which requires the holder to maintain a specified balance in the account for at least an entire dividend period; and

(iv) Split-rate Account—an account which earns dividends at a different rate on the portion of the balance above a certain minimum requirement;

(2) Share Certificate Account means an account that will earn dividends at a particular rate if held to maturity, and on which a penalty will be assessed for the withdrawal of all or any portion of the principal amount prior to maturity.

(b) *Issuance of share accounts and share certificate accounts.* (1) The board of directors, by resolution, may establish:

(i) Share accounts at varying dividend rates, and share certificate accounts at varying dividend rates and maturities, in conformance with this section; and

(ii) Additional terms and conditions concerning the issuance and maintenance of share accounts and share certificate accounts not inconsistent with the requirements of this section. provided that there shall be no minimum balance required to be maintained in an account in order to qualify for any other type of account: and

(iii) Penalties, in addition to those required by this section. to be imposed for failure to comply with any minimum balance. notice or time requirement, or any additional terms and conditions.

(2) Share accounts and share certificate accounts shall be made available to all members. No officer, director, member of the credit or supervisory committees, employee. or other official appointed or elected. shall be the holder of a share account or a share certificate account that receives a dividend rate higher than that paid on a regular share account unless the members of the credit union are given an equal opportunity to become holders of those types of accounts.

(3) Share accounts and share certificate accounts shall be subject to any notice which may be imposed pursuant to Article III. Section 5(a) of the Bylaws.

(c) *Limitations on share accounts and share certificate accounts.* In addition to the general provisions of this section, the terms and conditions established by the board of directors concerning the issuance and maintenance of share accounts shall take into account the requirements set forth below. Where a minimum balance is required by this section, the board shall not establish terms and conditions which would effectively negate or circumvent the purpose of the minimum balance requirements.

(1) Share Accounts—

(i) Notice accounts shall require a minimum of 90 days written notice of intent to withdraw except, however, the board of directors may provide that the written notice requirement for all such accounts may be waived at the end of a dividend period, but only if the funds withdrawn pursuant to this waiver have remained in the account for at least the required notice period.

(ii) Minimum balance accounts may be established if the lowest minimum balance accounts offered are $500 or less. Such accounts must be maintained at or above the minimum balance established for an entire dividend period.

(iii) Split-rate accounts shall have one or more minimum balance requirements. The lowest minimum balance that must be maintained to earn a particular rate shall be $500 or less.

(2) Share Certificate Accounts—

(i) In determining the dividend rate to be paid, different qualifying periods and minimum amount requirements shall be taken into account.

(ii) Qualifying periods shall not be less than 90 days nor more than 5 years, except, however, public unit accounts may be issued with qualifying periods of not less than 30 days nor more than 5 years.

(iii) The lowest minimum amount requirement shall be $500 or less.

(iv) Upon maturity share certificate accounts may be automatically renewed for the same qualifying period. Notice of such renewal or expiration of the qualifying period shall be provided at least 10 days prior to the expiration of the qualifying period.

(v) (A) In case of early withdrawal of a portion of the funds which reduces the balance below the minimum amount requirement, the account shall be cancelled and a penalty pursuant to paragraph (d) of this section shall be imposed upon the entire amount evidenced by the share certificate account. If the minimum amount requirement continues to be met. a penalty pursuant to paragraph (d) of this section shall be imposed upon the amount withdrawn (and not upon the remaining balance) and either

(*1*) An appropriate notation may be made on the account indicating the amount and date of the withdrawal and the remaining balance, or

(2) The account may be cancelled and a new account issued for the remaining balance.

(ii) A share certificate account holder may withdraw any and all dividends previously paid on the share certificate account without incurring a penalty. In the case of an early withdrawal of the principal amount of funds, if any dividends had previously been withdrawn, a deduction shall be made from the principal amount withdrawn to adjust for the applicable penalty.

(d) *Penalty provisions.* (1) Penalties imposed shall be on the actual dividends earned, and shall not be imposed on the principal amount held in a share account or share certificate account. In assessing any applicable penalty, however, the amount of the penalty may be deducted from the principal amount if the dividends upon which the penalty is assessed have been previously withdrawn.

(2) Share Accounts—The board of directors may establish a penalty to be imposed for failure of the holder to comply with any balance or notice requirement of a share account other than a regular share account. The penalty shall require that the dividend rate paid on the remaining balance in the share account be reduced to at least the rate paid on regular share accounts for the same period. No penalty shall be imposed upon the principal amount held in the share account.

(3) Share Certificate Accounts—The board of directors shall establish a penalty to be imposed on the withdrawal of funds from a share certificate account before maturity:

(i) The holder shall receive dividends at a rate not in excess of the rate paid on regular share accounts from the date of issuance on the amount withdrawn; and

(ii) The holder shall also forfeit an amount at least equal to the lesser of:

(*a*) All dividends for 90 days on the amount withdrawn, or

(*b*) All dividends on the amount withdrawn since the date of issuance.

(e) *Exceptions to the penalty provisions.* The penalty provisions of paragraph (d) of this section shall not be applied if:

(1) The withdrawal is made subsequent to the death of any owner of the share account or share certificate account or is made pursuant to Article III, Section 5(e) of the Federal Credit Union Bylaws; or

(2) The share account or share certificate account is part of a pension plan which qualifies or qualified for specific tax treatment under Section 401(d) or 408 of the Internal Revenue Code and withdrawal is made to effect distribution of the funds evidenced by such account following the participant's death or disability or upon attaining not less than 59½ years of age; or

(3) Such withdrawal is made as a result of the voluntary or involuntary liquidation of the Federal credit union issuing the account.

(f) *Rate specified in advance.* (1) The board of directors may specify, but not guarantee, the dividend rate expected to be paid on share accounts and share certificate accounts.

(2) The dividend rate specified shall:

(i) For regular share accounts, be expressed as a single dividend rate; and

(ii) For the remaining types of share accounts and share certificate accounts, be expressed as:

(*a*) A percentage, or part thereof, above or below the dividend rate declared for regular share accounts, or

(*b*) A single dividend rate.

(3) The dividend rate specified shall not be in excess of 2½ percent of the rate specified for regular share accounts or, if a dividend rate is not specified for regular share accounts, then the amount specified shall not exceed 2½ percent of the dividend rate paid on the regular share accounts at the close of the last dividend period.

(g) *Maximum dividend rate.* A Federal credit union shall no pay dividends at a rate which would exceed the lesser of the maximum rate set forth in the Bylaws or 2½ percent above the dividend rate paid on regular share accounts.

(h) *Dividends calculated on par value or dollar amount.* A Federal credit union may calculate dividends to be paid on share accounts and share certificate accounts either upon the par value of shares or upon the actual value held in the share accounts and share certificate accounts.

(i) *Dividend periods.* The board of directors shall not vary dividend periods for share accounts and share certificate accounts.

(j) *Advertising.* In addition to the advertising requirements established in Part 740 of the rules and regulations (12 CFR Part 740) and elsewhere in this section, the following rules shall apply to every advertisement, announcement, or solicitation relating to share accounts and share certificate accounts.

(1) Where a dividend rate is specified or stated:

(i) Any terms and conditions concerning required minimum balance, notice, or time period necessary to earn the dividend at the rate shall be stated;

(ii) A clear and conspicuous notice shall be included indicating that the specified or stated rate is not guaranteed and shall not exceed the lesser of the maximum rate set forth in the Bylaws or 2½ percent above the dividend rate paid on regular share accounts;

(iii) The basis upon which dividends are calculated, either on par value or actual value, shall be stated.

(2) Where a penalty will be imposed for failure to comply with any term or condition, a clear and conspicuous notice shall be included. Such notice may state "A substantial penalty is required for failure to comply with these requirements."

(3) Where a percentage yield achieved by compounding dividends during one year is stated, the annual rate of dividends without the effect of compounding shall be stated with equal prominence, together with a reference to the basis of compounding and the basis for calculating dividends (either on par value or actual value). The percentage yield based on the effect of grace periods shall not be stated.

(k) *Disclosures.* (1) At the time that a Federal credit union opens any share account or issues a share certificate account. the holder of the account shall be provided with a written statement setting forth the following, to the extent applicable:

(i) Any minimum balance, notice requirement, or time requirement which must be met for the share account or share certificate account to earn dividens at a particular rate, and any additional terms and conditions;

(ii) The basis of compounding, the basis upon which dividends will be paid (either the par value of shares or the actual value) and the effect of withdrawal prior to the close of a dividend period;

(iii) The fact that any dividend rate specified in advance is not guaranteed and that the dividend rate paid shall not exceed the lesser of the maximum rate established in the Bylaws or 2½ percent above the dividend rate paid on regular share accounts;

(iv) Any penalty imposed for the failure to comply with any balance, notice, or time requirement, or any additional terms and conditions;

(vi) The terms and conditions upon which the funds in the share account or share certificate account may be withdrawn without penalty;

(vii) Any provisions relating to automatic renewal of share certificate accounts;

(viii) The disposition of a share certificate account if it is not renewed; and

(ix) The fact that membership in the Federal credit union will terminate upon maturity of a share certificate which is not renewed if the holder does not have. or establish, a share account or share certificate account in addition to the share certificate which is maturing.

(2) A Federal credit union need not provide a written disclosure statement in connection with the renewal of an existing account. Notice must be sent to affected account holders of any change in any provision required to be disclosed.

(3) A copy of a standard disclosure statement for each class or type of account offered by a Federal credit union shall be provided upon request. If accounts other than regular share accounts are offered, a listing of the accounts available shall be prominently displayed in the Federal credit union's offices and shall indicate that a copy of a standard disclosure statement for each class or type of account is available upon request.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766); Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).)

[FR Doc.77-20679 Filed 7-18-77;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Part 157]

[Docket No. RM77-23]

APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT

AGENCY: Federal Power Commission.

ACTION: Proposed Rule.

SUMMARY: By this rulemaking the Commission proposes to permit the exemption from certificate regulation of certain sales of natural gas flared prior to coal mining operations. The purpose of the proposed amendment is to encourage the short term sales to interstate pipelines of the natural gas produced, and presently flared, as a by-product of coal mining operations.

DATES: Comments must be received on or before: September 7, 1977.

ADDRESSES: Send comments to: Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. Comments will be available for public inspection at the Office of Public Information, Room 1000 at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mark G. Magnuson, Office of the General Counsel, 202-275-4210.

NOTICE OF PROPOSED RULEMAKING

JULY 7, 1977.

Pursuant to 5 U.S.C. 553, Sections 7, 14, 15, and 16 of the Natural Gas Act (52 Stat. 825, 823, 829, 830; 15 U.S.C. 717f, 717m, 717n, 717o), the Commission gives notice that it proposes to amend:

Regulations under the Natural Gas Act, Subchapter E, Chapter I, Title 18, CFR.

The Commission proposes to amend its Regulations to provide for the exemption from certificate regulation of sales of natural gas produced by the flaring of methane from coal seams, in accordance with various state regulations prior to resumption of coal mining operations. We believe that this proposal would encourage those persons engaged in coal mining activities to make such short-term sales of the natural gas produced, and presently flared as a by-product of their operations, to interstate pipelines. The wasteful flaring of the methane, which is the current safety practice in the coal mining industry, is very substantial in some deep-mining operations, and has, and will, result in the loss of substantial quantities of methane.

Of course, once the coal bearing seam is vented, in accordance with the applicable state regulations, the present practice of flaring ceases and the coal mining commences. The coal operators have evidenced no desire whatever to become jurisdictional natural gas companies, even for a short period of time, and this proposal is to cease flaring the methane, and perhaps encourage them to sell such natural gas to jurisdictional pipeline companies.[1]

Any interested person may submit to the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, to be received no later than September 7, 1977, data, views, comments or suggestions in writing concerning all or part of the amendments proposed herein. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should in-

[1] We do not intend to regulate the rates at which the coal operators may sell this natural gas.

dicate the name, title, mailing address and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference with the Staff of the Federal Power Commission to discuss the proposed revisions. The Staff, in its discretion, may grant or deny written requests for conference prior or subsequent to the filing of formal submittals.

The proposed amendment to the Commission's Regulations under the Natural Gas Act would be issued under the authority granted the Federal Power Commission by the Natural Gas Act, particularly Sections 7(c) and 16 (52 Stat. 825, 830; 15 USC 717f(c) and 717o).

(A) The following is a proposed amendment to Part 157—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act, of subchapter E—Regulations under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations:

Add a new § 157.41 which reads as follows:

§ 157.41 Exemption of sales by coal mining operations.

Public interest does not require the issuance of a certificate authorizing the sale of natural gas produced as a by-product of coal mining operations provided that any jurisdictional pipeline company, or other person undertaking such a purchase, shall so advise the Commission immediately by telegram or letter stating briefly the circumstances and shall within ten (10) days file a statement in writing and under oath, together with four (4) conformed copies thereof, setting forth the purpose and character of the purchase, the rate being paid, the estimated volumes to be delivered, the seller of the gas, the date of initial delivery, the location of the sale, the facts warranting invocation of this section, and, upon completion of the sale, shall advise the Commission of the actual volumes delivered and the price paid pursuant to this section.

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

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20713 Filed 7-18-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 131]

[Docket No. 77N-0119]

NONFAT DRY MILK, LOWFAT DRY MILK, DRY WHOLE MILK, AND DRY CREAM

Proposal Based on Recommended International Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would establish United States standards of identity for dry whole milk, lowfat milk, and dry cream and would amend standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D. In response to a recommendation of the Codex Alimentarius Commission, this proposal is made to more closely conform United States standards to international standards.

DATES: Comments by September 19, 1977.

ADDRESSES: 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:

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

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing under 21 CFR Part 131 (formerly 21 CFR Part 18 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) to establish United States standards of identity for dry whole milk, lowfat dry milk, and dry cream, based on the "Recommended International Standards for Dry Milk and Cream Products" hereinafter referred to as the Codex standard. The proposed new standards of identity include (1) requirements for mandatory ingredients in these foods, (2) provisions for optional safe and suitable carriers for vitamin A and D, stabilizers, emulsifiers, anticaking agents, antioxidants, and characterizing flavoring ingredients, with or without coloring and (3) requirements for label declarations of all optional ingredients except carriers for vitamins which are exempted by § 101.100(a)(3)(i) (21 CFR 101.100 (a)(3)(i)) (formerly 21 CFR 1.10a(a)(3)(i) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). In addition, FDA is proposing to amend the standards of identity for nonfat dry milk (21 CFR 131. and nonfat dry milk fortified with vitamins A and D (21 CFR 131.127) to provide for the use of nutritive carbohydrate sweeteners in the optional characterizing flavoring ingredients.

The Joint Food and Agriculture Organization/World Health Organization's (FAO/WHO) Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, an auxiliary body of the Codex Alimentarius Commission, has submitted to the United States recommended international standards for whole milk powder, partly skimmed milk powder, and skimmed milk powder (Codex Standard No. A-5 (1971)) and recommended international standards for cream powder, half cream powder, and high-fat milk powder (Codex Standard No. A-10 (1971)) for consideration of acceptance.

The United States, as a member nation of FAO/WHO, is under treaty obligation to consider all recommended international standards. The rules of procedure of the Codex Alimentarius Commission state that a standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance with specified deviations. A participating country which concludes that it cannot accept the standard in full is requested to indicate the ways in which its requirements differ from the recommended international standard. Member nations of the FAO/WHO Codex Alimentarius Commission are requested to notify the Technical Secretary, Committee on the Code of Principles Concerning Milk and Milk Products, Animal Production and Health Division, FAO, Rome, Italy, of their decision. Should a sufficient number of governments accept these standards, the Secretariat of the Committee will notify the Codex Alimentarius Commission and request the publication of these standards by the Codex Alimentarius Commission as worldwide standards in light of the acceptance received.

The United States currently has standards of identity for skimmed milk powder under the name "nonfat dry milk" in 21 CFR 131.125 and "nonfat dry milk fortified with vitamins A and D" in 21 CFR 131.127, as well as a statutory definition under the name "nonfat dry milk" in 70 Stat. 486 (21 U.S.C. 321c). The former standard of identity for skimmed milk powder was amended in the FEDERAL REGISTER of October 10, 1973 (38 FR 27924)) on the Commissioner's initiative to effect consistency in the name of the food with the name in the statutory definition. The U.S. standard of identity for nonfat dry milk differs in many respects from the recommended international standard for skimmed milk powder. Also, there are no U.S. standards of identity for dry whole milk, partly skimmed milk powder, cream powder, half cream powder, or high-fat milk powder. These factors and our obligation to review all the recommended international standards form the basis of this proposal by the Commissioner of Food and Drugs. He is of the opinion that it will promote honesty and fair dealing in the interest of consumers and will facilitate international trade to adopt insofar as practicable the Codex standards. Therefore, pursuant to 21 CFR 130.6 (formerly 21 CFR 10.8 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) the Commissioner, on his own initiative, is proposing the establishment of standards of identity for lowfat dry milk (partly skimmed milk powder) and dry whole milk. He is also proposing establishment of a single standard for dry cream that would cover the range of milkfat concentrations provided for by the three cream powders in Codex standard No. A-10.

The Codex standards include certain labeling requirements that are not considered a part of food standards of identity under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Among these are declaration of net quantity of contents, name of the manufacturer, and country of origin. Such re-

quirements are authorized by other sections of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and regulations promulgated thereunder in 21 CFR Parts 1 and 101 (some sections of 21 CFR Part 101 were formerly contained in Part 1 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302) and March 22, 1977 (42 FR 15553)) and are applicable to all products entered into interstate commerce in the United States.

The Codex standards also reference specific methods of sampling (FAO/WHO Standard B–1 "Sampling Methods for Milk and Milk Products," paragraphs 2 and 5, (CAC/M–1973)) that were prepared jointly by the International Dairy Federation (IDF), the International Organization for Standardization (ISO), and the Association of Official Analytical Chemists (AOAC) for the FAO/WHO Code of Principles Concerning Milk and Milk Products and Associated Standards, and approved by the Joint FAO/WHO Committee of Government Experts on the Code of Principles. Such sampling methods are not specifically referenced in the U.S. Standards of identity for milk and cream products. However, these FAO/WHO sampling methods have been published in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975, the source of the referenced methods of analysis for milk and cream products contained in the U.S. standards of identity.

The Codex standards for dry milk and cream products also permit the use of milk other than cow's milk provided the package label bears a statement clearly indicating the animal or animals from which the milk was derived, except in cases where the consumer would not be misled by the absence of such a statement. Providing for milk other than cow's milk in standardized milk products is of concern to the Commissioner. Although he is not proposing a change in the existing U.S. standards or providing for other than cow's milk in the new standards, he believes this is an opportune time to invite comments on the need or desirability of providing for the use of milks other than cow's milk in dry milk products.

The proposed new standards of identity for lowfat dry milk, dry whole milk, and dry cream are based on the following Codex standards and other available information:

Standard No. A-5 (1971)

STANDARD FOR WHOLE MILK POWDER, PARTLY SKIMMED MILK POWDER AND SKIMMED MILK POWDER[1]

1. SCOPE

This standard applies exclusively to dried milk products as defined, having a fat conent of not more than 40 percent m/m.

2. DEFINITIONS

Milk powder is a product obtained by the removal of water only from milk, partly skimmed milk or skimmed milk.

3. ESSENTIAL COMPOSITION AND QUALITY FACTORS

3.1	*Whole milk powder*	
3.1.1	Minimum milkfat content	26 percent m/m.
3.1.2	Maximum milkfat content	Less than 40 percent m/m.
3.1.3	Maximum water content	5 percent m/m.
3.2	*Partly skimmed milk powder*	
3.2.1	Minimum milkfat content	More than 1.5 percent m/m.
3.2.2	Maximum milkfat content	Less than 26 percent m/m.
3.2.3	Maximum water content	5 percent m/m.
3.3	*Skimmed milk powder*	
3.3.1	Maximum milkfat content	1.5 percent m/m.
3.3.2	Maximum water content	5 percent m/m.

4. FOOD ADDITIVES

4.1	*Stabilizers*	
	Sodium, potassium and calcium salts of:	
	Hydrochloric acid	*Maximum level*
	Citric acid	5,000 mg/kg singly or in combination expressed as anhydrous substances.
	Carbonic acid	
	Orthophosphoric acid	
	Polyphosphoric acid	
4.2	*Emulsifiers in instant milk powders only*	
4.2.1	Mono- and di-glycerides	2500 mg/kg.
4.2.2	Lecithin	5000mg/kg.
4.3	*Anticaking agents in milk powders intended to be dispensed in vending machines*	
4.3.1	Tricalcium phosphate	10 g/kg singly or in combination.
4.3.2	Silicates of aluminium, calcium, magnesium and sodium-aluminium.	
4.3.3	Silicon dioxide (amorphous)	
4.3.4	Calcium carbonate	
4.3.5	Magnesium oxide	
4.3.6	Magnesium carbonate	
4.3.7	Magnesium phosphate, tribasic	

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

5. LABELING

In addition sections 1, 2, 4, and 6 of the General Standard for the Labeling of Prepackaged Foods (Reg. No. CAC/RS 1–1969), the following specific provisions apply:

5.1 *The name of the food*

5.1.1 The name of the product shall be (a) "whole milk powder" or "Dried full cream milk" or "Full cream milk powder" or "Dry whole milk" or "Milk powder" or "Dried milk" or (b) "Partly skimmed milk powder" or "Partly skimmed dried milk" or (c) "Skimmed milk powder" or "Nonfat dry milk" or "Dried skimmed milk", as appropriate.

5.1.2 Where milk other than cow's milk is used for the manufacture of the product or any part thereof, a word or words denoting the animal or animals from which the milk has been derived should be inserted immediately before or after the designation of the product except that no such insertion need be made if the consumer would not be misled by its omission.

5.1.3 The percentage by weight of milkfat content in partly skimmed milk powder shall be declared on the label.

5.1.4 The fat content of whole milk powder, when declared, shall be expressed as a percentage by weight of the final product.

5.2 *List of ingredients*

The presence of emulsifiers and of anticaking agents shall be declared on the label. The class titles "Emulsifier(s)" and "Anticaking agent(s)" may be used.

5.3 *Net contents*

The net contents shall be declared by weight in either the metric ("Système International" units) or avoirdupois or both systems of measurement, as required by the country in which the product is sold.

5.4 *Name and address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor, shall be declared.

5.5 *Country of origin (manufacture)*

The country of manufacture of the food shall be declared except that foods sold within the country of manufacture need not declare the country of manufacture.

6. METHODS OF SAMPLING AND ANALYSIS

6. Sampling: according to FAO/WHO Standard B.1 "Sampling Methods for Milk and Milk Products", paragraphs 2 and 5.

6.2 Determination of fat content: according to FAO/WHO Standard B.2 "Determination of the Fat Content of Dried Milk".

Standard No. A–10 (1971)

STANDARD FOR CREAM POWDER, HALF CREAM POWDER AND HIGH FAT MILK POWDER [1]

1. DEFINITION

Cream powder, half cream powder and high fat milk powder are the milk products obtained by the removal of water only from cream or high fat milk and containing not less than 65 percent, 50 percent or 40 percent of milkfat respectively in the product.

2. ESSENTIAL COMPOSITION AND QUALITY FACTORS

2.1	*Cream powder*	
2.1.1	Minimum milkfat content	65 percent m/m.
2.1.2	Maximum water content	5 percent m/m.
2.2	*Half cream powder*	
2.2.1	Minimum milkfat content	50 percent m/m.
2.2.2	Maximum milkfat content	Less than 65 percent m/m.
2.2.3	Maximum water content	5 percent m/m.
2.3	*High fat milk powder*	
2.3.1	Minimum milkfat content	40 percent m/m.
2.3.2	Maximum fat content	Less than 50 percent m/m.
2.3.3	Maximum water content	5 percent m/m.

3. FOOD ADDITIVES

		Maximum level
3.1	*Stabilizers*	
	Sodium, potassium and calcium salts of:	
	Hydrochloric acid	5 g/kg singly or in combination expressed as anhydrous substances.
	Citric acid	
	Carbonic acid	
	Orthophosphoric acid	
	Polyphosphoric acid	
3.2	*Emulsifiers in instant powders only*	
3.2.1	Mono- and di-glycerides	2,500 mg/kg.
3.2.2	Lecithin	5,000 mg/kg.
3.3	*Anticaking agents in powders intended to be dispensed in vending machines*	
3.3.1	Tricalcium phosphate	1,000 mg/kg singly or in combination.
3.3.2	Silicates of aluminium, calcium, magnesium and sodium-aluminium.	
3.3.3	Silicon dioxide (amorphous)	
3.3.4	Calcium carbonate	
3.3.5	Magnesium oxide	
3.3.6	Magnesium carbonate	
3.3.7	Magnesium phosphate, tribasic	

4. LABELING

In addition to sections 1, 2, 4 and 6 of the General Standard for the Labeling of Prepackaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

4.1 *The name of the food*

4.1.1 The name of the product shall be (a) "Cream powder" or (b) "Half cream powder" or cream powder qualified by an appropriate alternative term in place of "half", or (c) "High fat milk powder", as appropriate.

4.1.2 Where milk other than cow's milk is used for the manufacture of the product or any part thereof, a word or words denoting the animal or animals from which the milk has been derived should be inserted immediately before or after the designation of the product except that no such insertion need be made of the consumer would not be misled by its omission.

4.1.3 The percentage by weight of the milkfat content shall be declared on the label.

4.2 *List of ingredients*

The presence of emulsifiers and of anticaking agents shall be declared on the label. The class titles "Emulsifier(s)" and "Anticaking agent(s)" may be used.

4.3 *Net contents*

The net contents shall be declared by weight in either the metric ("Systeme International" units) or avoirdupois or both systems of measurement, as required by the country in which the product is sold.

4.4 *Name and address*

The name and address of the manufacturer, packer, distributor, importer, or vendor, shall be declared.

4.5 *Country of origin* (manufacturer)

The country of manufacture of the food shall be declared except that foods sold within the country of manufacture need not declare the country of manufacture.

5. METHODS OF SAMPLING AND ANALYSIS

Sampling: according to FAO/WHO Standard B.1, "Sampling Methods for Milk and Milk Products", paragraphs 2 and 5.

In some respects, the provisions of the existing and the proposed U.S. standards of identity and the Codex standards for dry milk and dry cream products are identical, but in certain instances there are significant variations. The following is a comparison of the differences on which the Commissioner particularly requests comments with supporting data. Following each item of comparison is the Commissioner's proposed action.

COMPARISON OF THE CODEX STANDARD AND THE STANDARDS OF IDENTITY FOR DRY MILK PRODUCTS AND PROPOSED COURSE OF ACTIONS

1. *Product description.* The U.S. standards of identity for nonfat dry milk (21 CFR 131.125), nonfat dry milk fortified with vitamins A and D (21 CFR 131.127), and the proposed standards of identity for lowfat dry milk and dry whole milk describe these foods as products obtained by the removal of water only from the appropriate pasteurized and/or homogenized milk. The Codex standard for dry milk products in section 2 describes these foods similarly, but makes no reference to pasteurization or homogenization of the fluid milk.

The Commissioner is of the opinion that pasteurization and homogenization of the fluid milk, as indicated, are essential in the manufacture of acceptable products and therefore is proposing that this requirement be retained in the existing U.S. standards of identity and included in the proposed new standards.

2. *Composition*—a. *Milkfat content.*—Paragraph (a) of § 131.125 and paragraph (a) of § 131.127 provide for a maximum of 1½ percent milkfat by weight (m/m) in nonfat dry milk unless otherwise indicated on the label. If the fat content is over 1½ percent, it should be declared to the nearest one-tenth of 1 percent within the limits of good manufactur practice. The Codex standard in section 3.3.1 also provides for a maximum of 1½ percent by weight (m/m) of milkfat in nonfat dry milk, but does not provide for declaration of the milkfat percentage should the level exceed the maximum provided in the standard. No change is proposed in the milkfat labeling requirement in the standards of identity for nonfat dry milk.

The Codex standard for partly skimmed dried milk in sections 3.2.1 and 3.2.2 states that the milkfat content of the food shall be more than 1½ percent and less than 26 percent by weight (m/m). In the proposed standard of identity for lowfat dry milk, the Commissioner is limiting the milkfat concentration to more than 5 percent but less than 20 percent by weight by providing for the use of lowfat milk, which conforms to the standard of identity in 21 CFR 131.135, in the manufacture of the lowfat dry milk. He is of the opinion that the reconstituted lowfat dry milk should provide the same levels of milkfat and solids not fat as provided by lowfat fluid milk.

The Commissioner proposes to adopt in the proposed U.S. standard of identity for dry whole milk the minimum and maximum milkfat percentage requirements for dry whole milk of not less than 26 percent but less than 40 percent by weight (m/m), as provided in the Codex standard in sections 3.1.1 and 3.1.2.

b. *Moisture content.* The Codex standard provides for a maximum water content of 5 percent by weight (m/m) in each milk powder. Since dry milk produced in this country usually contains less than 5 percent moisture, the Commissioner proposes to adopt the Codex maximum level of 5 percent by weight (m/m).

c. *Vitamin addition.* The Codex standard does not provide for the addition of vitamins A and D to dry whole milk, partly skimmed dried milk, or nonfat dry milk; nor does § 131.125 provide for the addition of vitamins. But § 131.127 (b) does provide for the addition of vitamins A and D, each quart of the reconstituted food shall provide 400 I.U. of vitamin D and not less than 2,000 I.U. of vitamin A. Nonfat dry milk has been shown to be an appropriate vehicle for fortification with vitamins for correcting and preventing nutritional deficiencies. This practice has also been endorsed by nutritional authorities. Currently, nonfat dry milk fortified with vitamins A and D is widely distributed in the United States. In view of its acceptance by consumers, the Commissioner is not proposing a change in the vitamin requirements in § 131.127.

In the proposed standards of identity for dry whole milk and lowfat dry milk (Codex partly skimmed dried milk), the Commissioner is providing for the addition of vitamins A and D so that the vitamin content of the reconstituted dry milk would be essentially equivalent to the vitamin A and D content in milk and lowfat milk as defined in § 131.110 and § 131.135, respectively. Accordingly, the proposed standard of identity for dry whole milk provides for the optional addition of vitamins A and D; while the proposed standard of identity for lowfat dry milk provides for the mandatory addition of vitamin A and the optional addition of vitamin D. The Commissioner also proposes that when added to the foods, vitamin A and vitamin D shall be present in such quantity that each quart of the reconstituted food provides 400 I.U. of vitamin D and not less than 2,000 I.U. of vitamin A.

3. *Optional ingredients*—a. *Stabilizers, emulsifiers, and anticaking agents.*—The Codex standard for milk powders designates specific types of functional food additives, such as stabilizing salts in section 4.1, emulsifiers for instant milk powders only in section 4.2, and anticaking agents in powders prepared for vending machines in section 4.3, as optional ingredients. The standard also lists by name specific compounds for each type of food additive, which may be used singly or in combination, and designates the maximum levels of use for these compounds.

Neither the provisions of §§ 131.125 and 131.127 nor the statutory definition for nonfat dry milk provides for the use of stabilizers, emulsifiers, or anticaking agents. Since the Commissioner is not aware of the need to provide for such additives in nonfat dry milk products, no provisions for these additives in the existing standards are proposed. However, the proposed standards for dry whole milk and lowfat dry milk do provide for the use of safe and suitable stabilizers, emulsifiers, and anticaking agents. The Commissioner is of the opinion that providing for such safe and suitable optional ingredients, or classes thereof, rather than listing specific ingredients as provided in the Codex stand-

ard, will result in greater flexibility in product formulation and will permit the development of new and improved foods.

b. *Characterizing flavoring ingredients.* The Codex standard does not provide for charcaterizing flavoring ingredients in dry milk products.

The U.S. standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D were amended in the FEDERAL REGISTER of December 5, 1974 (39 FR 42351) to provide for the optional use of safe and suitable characterizing flavoring ingredients, with or without coloring, including fruit, fruit juice, natural and artificial food flavoring. The proposed standards for dry whole milk and lowfat dry milk also provide for the optional use of characterizing flavoring ingredients.

The existing standards of identity for milk, lowfat milk, and skim milk also provide for the optional use of characterizing flavoring ingredients, with or without coloring. These standards also provide for the use of nutritive sweeteners as optional ingredients in the flavoring mixture.

In order to effect consistency in the U.S. standards of identity for milk and dry milk products with respect to the use of flavoring ingredients, the Commissioner proposes to provide for the use of safe and suitable nutritive carbohydrate sweeteners as ingredients in the flavoring mixture for dry milk products. He is of the opinion that providing for the use of safe and suitable flavoring ingredients in dry milk products, consistent with the existing provisions for flavoring ingredients in fluid milk products in Part 131, will provide a greater variety of products available to consumers.

c. *Antioxidants.* The Codex standard does not provide for the use of antioxidants. Most dry milk products containing high levels of milkfat are currently packed in containers from which almost all the oxygen has been removed to minimize the development of oxidized and tallowy off-flavors. But when these containers are opened and the dry milk product is exposed to atmospheric oxygen, the flavor deteriorates rapidly because of oxidative changes in the milkfat. Antioxidants can retard the flavor deterioration after opening, but antioxidants will not completely eliminate off-flavor development since the antioxidant is rendered ineffective on long-term exposure to oxygen.

The Commissioner is of the opinion that the optional use of antioxidants in dry whole milk, lowfat dry milk, and dry cream products will extend the shelf-life of these foods, though not indefinitely, and thus is in the interest of consumers. Accordingly, the proposed standards for these foods provide for the use of safe and suitable antioxidants. These antioxidants must be safe and suitable in the context of the definition provided in 21 CFR 130.3 (formerly 21 CFR 10.1 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)).

4. *Nomenclature.* The Codex standard for milk powders in section 5.1.1 provides for alternative names for each type of milk powder, while the existing and proposed U.S. standards of identity provide only one name for each food. The names nonfat dry milk and dry whole milk are common to both the Codex standards and the U.S. standards of identity for these foods; therefore, no change is required. However, the Codex standard names the dry milk made from partly skimmed milk, "partly skimmed milk powder" or "partly skimmed dried milk." In the proposed standard of identity for the food, the Commissioner defines the food as lowfat dry milk. He is of the opinion that less confusion will result if the name of the food is consistent with the name of the partly skimmed fluid milk, designated as lowfat milk in § 131.135.

Sections 131.125(d) and 131.127(e) and the proposed standards of identity for lowfat dry milk and dry whole milk require that the name of the food shall include a declaration of any characterizing flavoring ingredients used as specified in 21 CFR 101.22 (formerly 21 CFR 1.12 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302). In addition, the name must include the name of any vitamins added and a declaration of the milkfat percentage when required by the standard of identity.

5. *Label declaration.* The Codex standard for milk powders in section 5.2 requires that the emulsifiers and anticaking agents used in the foods be declared on the label. The existing and proposed U.S. standards of identity for dry milk products require a complete listing of all optional ingredients, except carriers for vitamins A and D, in accordance with the applicable sections of 21 CFR Parts 1 and 101. In addition, all added vitamins must be declared as part of the name of the food.

The Codex standard in section 5.1.3 and 5.1.4 provides for the mandatory labeling of the percentage milkfat in lowfat dry milk and the optional labeling of the percentage milkfat in dry whole milk. The proposed standards of identity for these foods provide for mandatory declaration of the percentage of milkfat. Sections 131.125(d) and 131.127(e) require label declaration of the percentage of milkfat if the level exceeds 1½ percent by weight. The Codex standard is silent in this regard. No changes are proposed in the labeling requirements of these standards of identity.

The Commissioner notes that the addition of vitamins and declaration of the percentage milkfat in dry milk products, as well as the use of the term "lowfat" in the name lowfat dry milk, will trigger nutritional labeling, pursuant to 21 CFR 101.9 (formerly 21 CFR 1.17 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)).

6. *Milk other than cow's milk.* The Codex standard requires that in the event milk other than cow's milk is used in the manufacture of milk powders or any part thereof, a word or words denoting the animal or animals from which the milk was derived should be inserted on the label immediately before or after the designation of the product. However, no such insertion need be made if the consumer would not be misled by the absence of such words. The inclusion of such a statement in the U.S. standards of identity is not proposed since the use of milk other than cow's milk is not permitted in any standardized milk or cream product named in 21 CFR Part 131. In the event that no adverse comments are received on this issue, the Commissioner proposes that dairy products made from milk other than cow's milk be treated as nonstandardized foods and as such need not comply with the requirements of Part 131.

7. *Methods of analysis.* The Codex standard and P.S. standard of identity for dry milk products provide for the determination of milkfat content. The details of the referenced AOAC method of analysis for milkfat content in the U.S. standards of identity are consistent with those in the FAO/WHO method referenced by the Codex standard; therefore, no change is necessary.

Only the U.S. standards of identity provide for the determination of the percent of moisture. The Commissioner proposes that this provision be retained since the percent moisture in the powder is one of the critical factors affecting the shelf life of the powder.

The proposed U.S. standards of identity for dry whole milk and lowfat dry milk provide for the determination of vitamin D but § 131.127 does not. The Commissioner is hereby proposing to amend § 131.127(d) to provide for the determination of vitamin D, since compliance with the minimum level of vitamin D required by the standard must be assured. He further proposes that the referenced methods of analysis provided in §§ 131.125(c) and 131.127(d) be updated to reference the 12th edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists."

COMPARISON OF THE CODEX STANDARD FOR CREAM POWDER, HALF-CREAM POWDER, HIGH-FAT MILK POWDER AND THE PROPOSED STANDARD OF IDENTITY FOR DRY CREAM

1. *Scope.* The Codex standard for cream powders provides for the following three products: Cream powder, half-cream powder, and high-fat milk powder containing not less than 65, 50, and 40 percent by weight (m/m) of milkfat, respectively. The Commissioner proposes to establish a standard of identity for one dry cream product in which the milkfat concentration could vary from 40 to 75 percent by weight. The proposed U.S. standard of identity would require the declaration of the percent milkfat as part of the name of the product. The Codex standard also provides for declaration of the percent of milkfat.

2. *Processing.* The proposed standard of identity for dry cream provides for pasteurization and optional homogenization of the fluid cream before drying. The Codex standard has no requirement for homogenization or pasteurization.

3. *Optional ingredients.* The Codex standard for cream powders provides for the optional use of stabilizers, emulsifiers, and anticaking agents, singly or in combination, all with maximum levels of use. The proposed standard of identity for dry cream also provides for the optional use of safe and suitable stabilizers, emulsifiers, and anticaking agents. In addition, the proposed standard of identity permits the use of safe and suitable antioxidants, nutritive carbohydrate sweeteners, and characterizing flavoring ingredients, with or without coloring. The optional use of antioxidants is to retard "off flavor" development in the dry cream, and the use of sweeteners and flavoring is to provide for a greater variety of dry cream products.

4. *Moisture content.* The Codex standard for cream powders provides for a maximum moisture content of 5 percent by weight (m/m). The Commissioner proposes to adopt the Codex requirement of 5 percent moisture in dry cream products. He is of the opinion that adoption of this provision of the Codex standard is in the best interest of consumers.

5. *Nomenclature.* According to the proposed standard of identity, the name of the food is dry cream instead of cream powder as specified in the Codex standard. This terminology is more consistent with the names of other dry milk products in the United States.

The proposed standard of identity for dry cream requires that the name of the food include a declaration of any characterizing flavoring as specified in 21 CFR 101.22, the word "sweetened" if sweetener is added without characterizing flavoring, and a statement of the percentage of milkfat in the dry cream.

6. *Methods of sampling and analysis.* The proposed standard of identity for dry cream references methods of analysis for the determination of the moisture and milkfat content in dry cream products. The Codex standard for cream powders does not reference methods of analysis for cream powder products.

7. *Milk other than cow's milk.* The Codex standard for cream powders provides for label declaration of milk other than cow's milk when such milks are used in the product. The proposed standard of identity for dry cream has no provision for milks other than cow's milk.

Accordingly, the Commissioner proposes to amend 21 CFR Part 131 by (1) adding standards of identity for dry whole milk, lowfat dry milk, and dry cream, based on the recommended Codex Standards and other information, (2) providing for the use of nutritive carbohydrate sweeteners as ingredients in the optional characterizing flavoring ingredients in nonfat dry milk products (21 CFR 131.125(b) and 21 CFR 131.127(c)) to effect consistency with the provisions of the skim milk standard of identity (21 CFR 131.145(c)), (3) updating the referenced methods of analysis in the standards of identity for nonfat dry milk to reflect the 12th edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists," and (4) including a method of analysis for vitamin D in nonfat dry milk fortified with vitamins A and D (21 CFR 131.127(d)), which will, in his opinion, promote honesty and fair dealing in the interest of consumers.

The Commissioner proposes that, except as to any provisions that may be stayed by the filing of proper objections, all products initially introduced into interstate commerce on or after July 1, 1979 shall comply with the final regulation.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in 21 CFR 25.1(d)(4) (formerly 21 CFR 6.1(d)(4) prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

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

1. By adding § 131.123 to read as follows:

§ 131.123 Lowfat dry milk.

(a) *Description.* Lowfat dry milk is the product obtained by removal of water only from pasteurized, homogenized lowfat milk as defined in § 131.135(a). It contains not less than 5 percent but less than 20 percent by weight of milkfat and not more than 5 percent by weight of moisture. Lowfat dry milk contains added vitamin A as prescribed by paragraph (b) of this section.

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

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

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

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

(1) Carriers for vitamins A and D.
(2) Emulsifiers.
(3) Stabilizers.
(4) Anticaking agents.
(5) Antioxidants.
(6) Characterizing flavoring ingredients, with or without coloring and nutritive carbohydrate sweeteners, as follows:

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

(ii) Natural and artificial food flavoring.

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

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

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

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

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

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

(2) The phrase "vitamin A" or "vitamin A added", and if vitamin D is added, the phrase "vitamins A and D" or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit."

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

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

§ 131.125 Nonfat dry milk.

* * * * *

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

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

(2) Natural and artificial food flavorings.

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

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

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

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

* * * * *

(e) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

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

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

* * * * *

(c) * * *

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

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

(ii) Natural and artificial food flavorings.

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

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

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

* * * * *

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

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

§ 131.147 Dry whole milk.

(a) *Description.* Dry whole milk is the product obtained by removal of water only from pasteurized, homogenized milk as defined in § 131.110. It contains the lactose, milk proteins, milkfat, and milk minerals in the same relative proportions as the milk from which it was made. It contains not less than 26 percent but less than 40 percent by weight of milkfat and not more than 5 percent by weight of moisture.

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

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

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

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

(1) Carriers for vitamins A and D.

(2) Emulsifiers.

(3) Stabilizers.

(4) Anticaking agents.

(5) Antioxidants.

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

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

(ii) Natural and artificial food flavoring.

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

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

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

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

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

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

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

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

§ 131.149 Dry cream.

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

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

(1) Emulsifiers.

(2) Stabilizers.

(3) Anticaking agents.

(4) Antioxidants.

(5) Nutritive carbohydrate sweeteners.

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

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

(ii) Natural and artificial food flavoring.

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

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

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

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

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

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

(e) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

Interested persons may, on or before September 19, 1977, submit to the Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A–107.

Dated: June 23, 1977.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

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

[FR Doc.77-20463 Filed 7-18-77;8:45 am]

[21 CFR Part 131]

[Docket No. 77N-0118]

EVAPORATED MILK, SWEETENED CONDENSED MILK, EVAPORATED SKIMMED MILK AND SWEETENED CONDENSED SKIMMED MILK

Proposed Rulemaking Based on Recommended International Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would establish United States standards of identity for evaporated skimmed milk and sweetened condensed skimmed milk and would amend the compositional requirements for evaporated milk and sweetened condensed milk. This proposal ensues from a recommendation to more closely conform U.S. standards to international standards.

DATES: Comments by September 19, 1977.

ADDRESSES: Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing under 21 CFR Part 131 (formerly 21 CFR Part 18 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) to establish United States standards of identity for evaporated skimmed milk and sweetened condensed skimmed milk based on the "Recommended International Standards for Evaporated Milk and Sweetened Condensed Milk Products," hereinafter referred to as the Codex standards. The proposed standards of identity include (1) requirements for mandatory ingredients in these foods, (2) provisions for optional ingredients such as safe and suitable carriers for vitamins A and D, stabilizers, emulsifiers, and characterizing flavoring ingredients, with or without coloring, and (3) requirements for label declaration of all optional ingredients except carriers for vitamins, which are exempted by § 101.100(a)(3)(i) (21 CFR 101.100(a)(3)(i)) (formerly 21 CFR 1.10a(a)(3)(i) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). In addition, FDA is proposing to amend the compositional requirements for evaporated milk (21 CFR 131.130) and sweetened condensed milk (21 CFR 131.120) for consistency with the Codex standard and to provide for the use of nutritive carbohydrate sweeteners in the optional characterizing flavoring ingredients permitted in these foods.

The Joint Food and Agriculture Organization/World Health Organization's (FAO/WHO) Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, an auxiliary body of the Codex Alimentarius Commission, has submitted to the United States recommended internatonal standards for evaporated milk and evaporated skimmed milk (Codex Standards No. A-3 (1971)) and recommended international standards for sweetened condensed milk and sweetened condensed skimmed milk (Codex Standad No. A-4 (1971)) for consideration of acceptance.

The United States, as a member nation of FAO/WHO, is under treaty obligation to consider all recommended international standards. The rules of procedure of the Codex Alimentarius Commission state that a standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A participating country that concludes that it cannot accept the standard in full is requested to indicate the ways in which its requirements differ from the recommended international standard. Member nations of the FAO/WHO Codex Alimentarius Commission are requested to notify the Technical Secretary, Committee on the Code of Principles Concerning Milk and Milk Products. Animal Production and Health Division. FAO. Rome, Italy, of their decision. Should a sufficient number of governments accept these standards, the Secretariat of the Committee will notify the Codex Alimentarius Commission and request the publication of these standards by the Codex Alimentarius Commission as worldwide standards in light of the acceptances received.

The United States presently has standards of identity for evaporated milk in 21 CFR 131.130 and sweetened condensed milk in 21 CFR 131.120 that differ in several respects from the recommended international standards for evaporated milk and sweetened condensed milk. Also, there are no standards of identity for evaporated skimmed milk and sweetened condensed skimmed milk. These factors and our obligation to review all recommended international standards from the basis of this proposal by the Commissioner of Food and Drugs. He is of the opinion that it will promote honesty and fair dealing in the interest of consumers and facilitate international trade to adopt, insofar as practicable, the Codex standards. Therefore, pursuant to 21 CFR 130.6 (formerly 21 CFR 10.8 prior to the recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), the Commissioner, on his own initiative, is proposing the establishment of standards of identity for evaporated skimmed milk and sweetened condensed skimmed milk and to amend the compositional requirements of the standards of identity for evaporated milk and sweetened condensed milk to effect consistency with the Codex standards.

The Codex standards include certain labeling requirements that are not considered a part of food standards of identity under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Among these are declaration of net quantity of contents, name of the manufacturer, and country of origin. Such requirements are authorized by other sections of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging, and Labeling Act, and regulations promulgated thereunder in 21 CFR Parts 1 and 101 (some sections of Part 191 were formerly contained in 21 CFR Part 1 prior to the recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302) and March 22, 1977 (42 FR 15553)) and are applicable to all products entered into interstate commerce in the United States.

The Codex standards also reference specific methods of sampling (FAO/WHO Standard B-1 "Sampling Methods for Milk and Milk Products," paragraphs 2 and 5, CAC/M 1-1973), which were prepared jointly by the International Dairy Federation (IDF), the International Organization for Standardization (ISO), and the Association of Official Analytical Chemists (AOAC) for the FAO/WHO Code of Principles Concerning Milk and Milk Products and Associated Standards, and approved by the Joint FAO/WHO Committee of Government Experts on the Code of Principles. Such sampling methods are not specifically referenced in the U.S. standards of identity for milk and cream products. However, these FAO/WHO sampling methods have been published in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975, the source of the referenced methods of analysis for milk and cream products contained in the U.S. standards of identity.

The Codex standards for evaporated milk products and sweetened condensed milk products also permit the use of milk other than cow's milk, provided the package label bears a statement clearly indicating the animal or animals from which the milk was derived, except in cases where the consumer would not be misled by the absence of such a statement. Providing for milk other than cow's milk in standardized milk products is of concern to the Commissioner. Although he is not proposing to change the existing U.S. standards or provide for other than cow's milk in the proposed new standards, he believes this is an opportune time to invite comments on the need or desirability of providing for the use of milks other than cow's milk in evaporated milk and sweetened condensed milk products.

The proposed amendments to the standards of identity for evaporated milk and sweetened condensed milk and the proposed standards of identity for evaporated skimmed milk and sweetened condensed skimmed milk as published below are based on the following Codex standards and other available information.

Standard No. A-3 (1971)

STANDARD FOR EVAPORATED MILK AND EVAPORATED SKIMMED MILK [1]

1. DEFINITIONS

1.1 *Evaporated milk* is a liquid product, obtained by the partial removal of water only from milk.

1.2 *Evaporated skimmed milk* is a liquid product, obtained by the partial removal of water only from skimmed milk.

2. ESSENTIAL COMPOSITION AND QUALITY FACTORS

2.1	*Evaporated milk*	
2.1.1	Minimum milkfat content	7.5 pct. m/m.
2.1.2	Minimum solids content	25.0 pct. m/m.
2.2	*Evaporated skimmed milk*	
	Minimum milk solids content	20.0 pct. m/m.

FOOD ADDITIVES

	Stabilizers	
3.1	Sodium, potassium, and calcium salts of:	MAXIMUM LEVEL
	Hydrochloric acid Citris acid Carbonic acid Orthophosphoric acid Polyphosphoric acid	2,000 mg/kg singly, 3,000 mg/kg in combination expressed as anhydrous substances.
3.2	Carrageenan	150 mg/kg.

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

4. LABELING

In addition to sections 1, 2, 4, and 6 of the General Standard for the Labeling of Prepackaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

4.1 *The name of the food*

4.1.1 The name of the product shall be (a) "Evaporated milk" or "Evaporated whole milk" or "Evaporated full cream milk" or "Unsweetened condensed whole milk," or "Unsweetened full cream condensed milk", or (b) "Evaporated skimmed milk," or "Unsweetened condensed skimmed milk" as appropriate.

4.1.2 Where milk other than cow's milk is used for the manufacture of the product or any part thereof, a word or words denoting the animal or animals from which the milk has been derived should be inserted immediately before or after the designation of the product except that no such insertion need be made if the consumer would not be misled by its omission.

4.2 *Net contents*

4.2.1 The net contents shall be declared by weight in either the metric ("Systeme International" units) or avoirdupois or both systems of measurement or by volume in one or more of the following systems of measurement: Metric (Système International), U.S. or British units, as required by the country in which the product is sold.

4.2.2 The milk equivalent may be declared according to national legislation.

4.3 *Name and address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor, shall be declared.

4.4 *Country of origin (manufacture)*

The country of manufacture of the food shall be declared except that foods sold within the country of manufacture need not declare the country of manufacture.

5. METHODS OF SAMPLING AND ANALYSIS

5.1 Sampling: According to FAC/WHO Standard B-1, "Sampling Methods for Milk and Milk Products," Pars. 2 and 4.

5.2 Determination of fat content: According to FAO/WHO Standard B-7, "Determination of the Fat Content of Evaporated Milks and of Sweeetened Condensed Milks."

Standard No. A-4 (1971)

STANDARD FOR SWEETENED CONDENSED MILK AND SKIMMED SWEETENED CONDENSED MILK [1]

1. DEFINITIONS

1.1 *Sweetened condensed milk* is a product obtained by the partial removal of water only from milk, with the addition of sugars.

1.2 *Skimmed sweetened condensed milk* is a product obtaned by the partial removal of water only from skimmed milk with the addition of sugars.

2. ESSENTIAL COMPOSITION AND QUALITY FACTORS

2.1	*Sweetened condensed milk*	
2.1.1	Minimum milkfat content	8.0 pct. m/m.
2.1.2	Minimum milk solids content	28.0 pct. m/m.
2.2	*Skimmed sweetened condensed milk*	
	Minimum milk solids content	24.0 pct. m/.

3. FOOD ADDITIVES

Stabilizers	*Maximum level*
Sodium, potassium and calcium salts of: Hydrochloric acid Citric acid Carbonic acid Orthophosphoric acid Polyphosphoric acid	2,000 mg/kg singly, 3,000 mg/kg in combination expressed as anhydrous substances.

4. LABELING

In addition to sections 1, 2, 4 and 6 of the General Standard for the Labeling of Prepackaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

4.1 *The Name of the Food*

4.1.1 The name of the product shall be (a) "Sweetened condensed milk" or "Sweetened condensed whole milk" or "Sweetened full cream condensed milk," or (b) "Skimmed sweetened condensed milk" or "Sweetened condensed skimmed milk," as appropriate.

4.1.2 Where milk other than cow's milk is used for the manufacture of the product or any part thereof, a word or words denoting the animal or animals from which the milk has been derived should be inserted immediately before or after the designation of the product except that no such insertion need be made if the consumer would not be misled by its omission.

4.1.3 When one or several sugars are used the name of each sugar shall be declared on the label (e.g. "with sucrose," with "dextrose", "with sucrose and dextrose").

4.2 *Net Contents*

The net contents shall be declared by weight in either the metric ("Système International" units) or avoirdupois or both systems of measurement, as required by the country in which the product is sold.

4.3 *Name and address*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor, shall be declared.

4.4 *Country or origin* (manufacturer)

The country of manufacture of the food shall be declared except that foods sold within the country of manufacture need not declare the country of manufacture.

5. METHODS OF SAMPLING AND ANALYSIS

5.1 Sampling: According to FAO/WHO Standard B-1, "Sampling Methods for Milk and Milk Products", pars. 2 and 4.

5.2 Determination of fat content: According to FAO/WHO Standard B-7, "Determination of the Fat Content of Evaporated Milks and of Sweetened Condensed Milks".

5.3 Determination of sucrose content: According to FAO/WHO Standard B-14, "Polarimetric Determination of the Sucrose Content of Sweetened Condensed Milk"

Proposed minor changes from the requirements of the existing U.S. standards for the purpose of being consistent with the Codex standards are considered by the Commissioner as reasonable, beneficial for the furtherance of international trade, and deemed not in conflict with the need to promote honesty and fair dealing in the interest of consumers.

In some respects, the provisions of the existing and the proposed U.S. standards of identity and the Codex standards for evaporated milk and sweetened condensed milk products are identical, but in certain instances there are significant variations. The following is a comparison of the differences on which the Commissioner particularly requests comments with supporting data, Following each item of comparison is the Commissioner's proposed action.

COMPARISON OF THE CODEX STANDARDS AND THE STANDARDS OF IDENTITY FOR EVAPORATED MILK PRODUCTS AND THE PROPOSED COURSE OF ACTIONS

1. *Product description.* Both the existing U.S. standard of identity for evaporated milk (21 CFR 131.130) and the proposed U.S. standard of identity for evaporated skimmed milk describe the food as the liquid food obtained by partial removal of water only from milk or skim milk as appropriate. In addition, the definitions state that the food is thermally processed, that evaporated milk must be homogenized and evaporated skimmed milk may be homogenized, and that the food is sealed in a container to prevent spoilage. The Codex standard for evaporated milk and evaporated skimmed milk (Codex standard No. A-3) provides similar definitions in sections 1.1 and 1.2 except that these definitions make no reference to processing operations.

The Commissioner is of the opinion that the definitions in the existing and proposed U.S. standards of identity are more explicit and is proposing no change.

2. *Composition*—a. *Total solids content.* Paragraph (a) of § 131.130 provides for a minimum total milk solids content of 25.5 percent by weight in evaporated milk, while the Codex standard in section 2.1.2 provides for a minimum total milk solids content of 25.0 percent by weight (m/m). Since the difference is small the Commissioner proposes to adopt the Codex standard value of 25.0 percent by weight for the minimum total milk solids content.

b. *Milkfat content.* The Codex standard for evaporated skimmed milk does not specify the milkfat content. However, the Commissioner is of the opinion that the maximum level of milkfat in evaporated skimmed milk should be provided in the standard of identity to more clearly define the nature of the food. Accordingly, he is proposing that the maximum level of milkfat be not more than 0.5 percent by weight unless otherwise indicated on the label.

c. *Vitamin addition.* The Codex standard for evaporated milk products does not provide for vitamin addition. Paragraph (b) of § 131.130 provides for the addition of vitamin D in such quantity that each fluid ounce of the food shall contain 25 International Units of vitamin D. Vitamin A addition is optional, but if added, each fluid ounce of the product shall contain not less than 125 International Units of vitamin A.

No change in the U.S. standard of identity is proposed. Recognizing that vitamin levels in raw milk are subject to seasonal variations, the Commissioner is of the opinion that vitamin fortification is a necessary measure to ensure uniformity of the nutritional quality of the food.

The proposed standard of identity for evaporated skimmed milk provides for mandatory addition of both vitamin D and vitamin A. The vitamin D content of raw whole milk is very low and separation of the cream in the preparation of skim milk removes virtually all the vitamin D as well as the vitamin A. While the present standard of identity for skim milk (21 CFR 131.145) does not require mandatory addition of vitamin D, the Commissioner is of the opinion that since evaporated milk products are used in infant feeding programs, it is reasonable to require vitamin D fortification of evaporated skimmed milk as in evaporated milk. Similarly, the proposed standard of identity for evaporated skimmed milk provides for mandatory addition of vitamin A such that on reconstitution the level of vitamin A in the food is equivalent to that in skim milk (21 CFR 131.145(b)).

3. *Optional ingredients*—a. *Stabilizers, emulsifiers, and characterizing ingredients.* The Codex standard for evaporated milk products in sections 3.1 and 3.2 designates specific stabilizers, namely, sodium, potassium, and calcium salts of hydrochloric, citric, carbonic, orthophosphoric or polyphosphoric acid, and carrageenan, which may be used singly or in combination in evaporated milk products. The Codex standard also provides maximum levels of use for these optional ingredients. On the other hand, 21 CFR 131.130(c) and the proposed U.S. standard of identity for evaporated skimmed milk do not list optional ingredients by their common name or specify definite amounts of such additives. These standards provide for optional ingredients in terms of classes of safe and suitable food additives, such as stabilizers, with or without dioctyl sodium sulfosuccinate (when permitted by, and complying with provisions of § 172.810 (formerly 21 CFR 121.1137 prior to the recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302))), emulsifiers, and characterizing flavoring ingredients, with or without coloring.

The Commissioner is of the opinion that the designation of optional ingredients in the manner set out in the U.S. standards permits greater flexibility in the selection of the proper food additives and thereby provides for the development of new and improved products at lower costs to the consumer. No change is proposed in the manner of listing optional ingredients in 21 CFR 131.130.

b. *Nutritive carbohydrate sweeteners.* The Codex standard has no provisions for the use of nutritive carbohydrate sweeteners in evaporated milk products.

The existing U.S. standards of identity for milk in § 131.110(c) and skim milk in § 131.145(c) provide for the use of characterizing flavoring ingredients, with or without coloring, stabilizers, and emulsifiers, as well as nutritive sweeteners. In order to effect consistency with these standards of identity, the Commissioner is proposing to amend the standard of identity for evaporated milk and to include provisions in the proposed standard of identity for evaporated skimmed milk to allow the use of safe and suitable nutritive carbohydrate sweetners as ingredients in the characterizing flavoring mixture.

4. *Methods of analysis.* Paragraph (d) of § 131.130 and the proposed standard of identity for evaporated skimmed milk reference methods of analysis for the determination of the percent milkfat, the percent of total milk solids, and the viatmin D content in the foods. The Codex standard for evaporated milk products provides for the determination of milkfat content only. The Commissioner proposes that all standard methods of analysis now included in 21 CFR 131.130(d) be retained consistent with retention of the requirements for total milk solids and vitamin D content. He further proposes that the referenced methods of analysis provided in 21 CFR 131.130(d) be updated to reference the 12th Ed. of the "Official Methods of Analysis of the Association of Official Analytical Chemists."

5. *Nomenclature.* Paragraph (e) of § 131.130 states that the name of the food is evaporated milk. The Codex standard also refers to the food as evaporated milk. In addition, the Codex standard in section 4.1.1(a) offers other alternative names—evaporated whole milk, evaporated full cream milk, unsweetened condensed whole milk, and unsweetened full cream condensed milk. No change is proposed in 21 CFR 131.130(e) for inclusion of these alternative names since use of names other than the familiar name—evaporated milk—might result in confusion regarding the product's identity.

The Codex standard in section 4.1.1(b) states that evaporated skimmed milk may also be named unsweetened condensed skimmed milk. The Commissioner proposes to adopt only the name evaporated skimmed milk in the standard of identity for the food since this name is currently used in this country.

Paragraph (e) of § 131.130 and the proposed standard of identity for evaporated skimmed milk require that a phrase denoting the presence of any added vitamins immediately precede or follow the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name. No change is proposed in the labeling requirements in § 131.130(e).

6. *Label declaration.* The Codex standard for evaporated milk products does not provide for the labeling of optional ingredients, nor does it provide for nutritional labeling. Paragraph (f) of § 131.130 and the proposed standard of identity for evaporated skimmed milk require that all optional ingredients, such as emulsifiers, stabilizers, and flavoring ingredients used in these foods must be declared on the label in accordance with the applicable sections of Parts 1 and 101 (21 CFR Parts 1 and 101). In addition, since both evaporated milk products contain added vitamins, nutrition information must also appear on the label as required by 21 CFR 101.9 (formerly 21 CFR 1.17 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). No change is proposed in the labeling requirements in § 131.130(f). The Commissioner is of the opinion that providing information on the optional ingredients used in the food and on its nutritional quality is necessary for the consumers' interest and protection.

7. *Milk other than cow's milk.* The Codex standard requires that in the event milk other than cow's milk is used in the manufacture of the food or any part thereof, a word or words denoting the animal or animals from which the milk was derived should be inserted on the label immediately before or after the designation of the product. However, no such insertion need be made if the consumer would not be misled by the absence of such words. The inclusion of such a statement in the U.S. standard of identity is not proposed since the use of milk other than cow's milk is not permitted in any regulated milk or cream product in 21 CFR Part 131. In the event that no adverse comments are received on this issue, the Commissioner proposes that dairy products made from milk other than cow's milk be treated as nonstandardized foods and as such need not comply with the requirements of Part 131.

COMPARISON OF THE CODEX STANDARD AND THE STANDARDS OF IDENTITY FOR SWEETENED CONDENSED MILK PRODUCTS AND THE PROPOSED COURSE OF ACTIONS

1. *Product description.* The Codex standard for sweetened condensed milk (No. A–4) in section 1.1 describes the food as one obtained by the partial removal of water only from milk with the addition of sugars. Paragraph (a) of § 131.120 describes the food similarly but, instead of "sugars," permits the use of any safe and suitable nutritive sweetener and also states that the amount of such sweetener shall be sufficient to prevent spoilage. Paragraph (a) of § 131.120 also provides for pasteurization and optional homogenization of the food, and no change in these provisions is proposed. Use of the term "nutritive carbohydrate sweetener" is proposed in order to be more definitive, and it is consistent with the language of new U.S. food standards.

2. *Composition.* Paragraph (a) of § 131.120 states that sweetened condensed milk shall contain not less than 8.5 percent milkfat by weight while the Codex standard in section 2.1.1 provides for a minimum of 8.0 percent milkfat by weight (m/m). The Commissioner proposes to adopt the minimum 8.0 percent milkfat as prescribed by Codex.

The Codex standard for sweetened condensed skimmed milk in section 2.2 provides for a minimum total milk solids content of 24.0 percent by weight (m/m) of the food. The Commissioner proposes to adopt the Codex minimum total milk solids requirement of 24 percent by weight. He further proposes to establish a maximum milkfat requirement of not more than 0.5 percent by weight in the standard of identity for sweetened condensed skimmed milk. The Commissioner is of the opinion that designation of the maximum percent milkfat in the standard of identity is necessary to adequately define the nature of the food. The Codex standard does not provide for a maximum level of milkfat in sweetened condensed skimmed milk.

3. *Optional ingredients*—a. *Inorganic salts.* The Codex standard designates specific food additives (salts) with maximum levels which may be used in sweetened condensed milk products. Section 131.120 and the proposed U.S. standard of identity for sweetened condensed skimmed milk do not provide for the use of these salts. The Commissioner is of the opinion that such salts are unnecessary and, therefore, he makes no provision for their use.

b. *Characterizing flavoring ingredients.* The proposed revision of § 131.120 (b) and the proposed standard for sweetened condensed skimmed milk permit the optional use of characterizing flavoring ingredients, with or without coloring and nutritive carbohydrate sweeteners, including fruit, fruit juice, natural and artificial food flavoring. The Codex standard for sweetened condensed milk products has no such provision. The Commissioner is of the opinion that providing for flavoring ingredients will permit manufacturers to exercise their creativity in the development of new sweetened condensed milk products and thereby provide a greater range of products for consumer selection.

4. *Methods of analysis.* The Codex standard for sweetened condensed milk products provides methods of analysis for the determination of milkfat and sucrose content. Paragraph (c) of § 131.120 and the proposed standard of identity for sweetened condensed skimmed milk reference a method for the determination of milkfat content only. No provision is being proposed for the determination of nutritive carbohydrate sweeteners since no minimum or maximum values are specified.

5. *Label declaration.*—a. The Codex standard permits the use of milk other than cow's milk in sweetened condensed milk products if the label so indicates. Such milk is not permitted in any U.S. standardized milk or cream product, and hence no reference to the milk's origin is necessary.

b. Paragraph (e) of § 131.120 and the proposed standard of identity for sweetened skimmed milk state that if the food is homogenized the label must bear the word "homogenized." Further, if used in the food, any characterizing flavoring must be declared on the label as provided for in 21 CFR 101.22 (formerly 21 CFR 1.12 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)). The Codex standard for sweetened condensed milk products has no provision for homogenization or the addition of characterizing flavoring ingredients and is therefore silent with respect to such label declarations. The Commissioner proposes no change in the labeling provisions of § 131.120(e).

Accordingly, having reviewed the Codex standards, the Commissioner proposes that 21 CFR Part 131 be amended by: (1) Revising certain aspects of the standards of identity for evaporated milk (21 CFR 131.130) and for sweetened condensed milk (21 CFR 131.120) based on the recommended Codex standards for these foods; and (2) establishing new standards of identity for evaporated skimmed milk (21 CFR 131.132) and for sweetened condensed skimmed milk (21 CFR 131.122) which in the opinion of the Commissioner, will promote honesty and fair dealing in the interest of consumers; and (3) updating the referenced methods of analysis in §§ 131.120 (c) and 131.130(d) to reflect the 12th Ed. of the "Official Methods of Analysis of the Association of Official Analytical Chemists"; and (4) amending § 131.130 (c) to provide for safe and suitable nutritive carbohydrate sweeteners as ingredients in the optional characterising flavoring ingredients.

The Commissioner proposes that, except as to any provisions that may be stayed by the filing of proper objections, all products initially introduced into interstate commerce on or after July 1, 1979 shall comply with the final regulations.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in 21 CFR 25.1(d)(4) (formerly 21 CFR 6.1(d)(4) prior to the recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

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

1. By revising § 131.120 to read as follows:

§ 131.120 Sweetened condensed milk.

(a) *Description.* Sweetened condensed milk is the food obtained by partial removal of water only from a mixture of milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not less than 8.0 percent by weight of milkfat, and not less than 28 percent by weight of total milk solids. The quantity of nutritive carbohydrate sweetener used is sufficient to prevent spoilage. The food is pasteurized and may be homogenized.

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

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

(2) Natural and artificial food flavoring.

(c) *Method of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975, section 16.167, under "Fat—Official Final Action."[2]

(d) *Nomenclature.* The name of the food is "Sweetened condensed milk." The word "homogenized" may appear on the label if the food has been homogenized. The name of the food shall include a declaration of the presence of any characterizing flavoring, as specified in § 101.22 of this chapter.

(e) *Label declaration.* The optional nutritive carbohydrate sweetener(s) required in paragraph (a) of this section and each of the optional ingredients specified in paragraph (b) of this section, when used in the food, shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

2. By adding § 131.122 to read as follows:

§131.122 Sweetened condensed skimmed milk.

(a) *Description.* Sweetened condensed skimmed milk is the food obtained by the partial removal of water only from a mixture of skim milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not more than 0.5 percent by weight of milkfat unless otherwise indicated and not less than 24 percent by weight of total milk solids. The quantity of nutritive carbohydrate sweeteners used is sufficient to prevent spoilage. The food is pasteurized and may be homogenized.

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

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

(2) Natural and artificial food flavoring.

(c) *Method of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975, section 16.167 under "Fat—Official Final Action."[2]

(d) *Nomenclature.* The name of the food is "Sweetened condensed skimmed milk." The word "homogenized" may appear on the label if the food has been homogenized. If the milkfat content is over 0.5 percent by weight, the name of the food shall be accompanied by the statement "Contains ____ percent milkfat", the blank to be filled in with the fraction "½", or multiple thereof, closest to the actual milkfat content of the product. The name of the food shall be accompanied by a declaration of the presence of any characterizing flavoring, as specified in § 101.22 of this chapter.

(e) *Label declaration.* The optional nutritive carbohydrate sweetener required in paragraph (a) of this section and each of the optional ingredients specified in paragraph (b) of this section when used in the food, shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

3. By revising § 131.130 to read as follows:

§ 131.130 Evaporated milk.

(a) *Description.* Evaporated milk is the liquid food obtained by partial removal of water only from milk. It contains not less than 7.5 percent by weight of milkfat and not less than 25.0 percent by weight of total milk solids. Evaporated milk contains added vitamin D as prescribed by paragraph (b) of this section. It is homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

(b) *Vitamin addition.* (1) Vitamin D shall be present in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practice.

(2) Addition of vitamin A is optional. If added, vitamin A shall be present in such quantity that each fluid ounce of the food contains not less than 125 International Units thereof within limits of good manufacturing practice.

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

(1) Carriers for vitamins A and D.

(2) Emulsifiers.

(3) Stabilizers, with or without dioctyl sodium sulfosuccinate (when permitted by and complying with the provisions of § 172.810 of this chapter) as a solubilizing agent.

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

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

(ii) Natural and artificial food flavoring.

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

(1) Milkfat content—"Fat—Official Final Action," section 16.154.[2]

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

(2) Total milk solids—"Total Solids—Official Final Action," section 16.151.[2]

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

(e) *Nomenclature.* The name of the food is "Evaporated milk". The phrase "vitamin D" or "vitamin D added", or "vitamin A and D" or "vitamins A and D added", as is appropriate, shall immediately precede or follow the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name. The name of the food shall include a declaration of the presence of any characterizing flavoring, as specified in § 101.22 of this chapter.

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

4. By adding § 131.132 to read as follows:

§ 131.132 Evaporated skimmed milk.

(a) *Description.* Evaporated skimmed milk is the liquid food obtained by the partial removal of water only from skim milk. It contains not less than 20 percent by weight of total milk solids, and not more than 0.5 percent by weight of milkfat unless otherwise indicated. Evaporated skimmed milk contains added vitamins A and D as prescribed by paragraph (b) of this section. It may be homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

(b) *Vitamin addition.* (1) Vitamin D shall be present in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practice.

(2) Vitamin A shall be present in such quantity that each fluid ounce of the food contains not less than 125 International Units thereof within limits of good manufacturing practice.

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

(1) Carriers for vitamin A and D.

(2) Emulsifiers.

(3) Stabilizers, with or without dioctyl sodium sulfosuccinate (when permitted by, and complying with provisions of § 172.810 of this chapter) as a solubilizing agent.

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

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

(ii) Natural and artificial food flavoring.

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

(1) Milkfat content—"Fat—Official Final Action," section 16.154.[2]

(2) Total milk solids—"Total Solids—Official Final Action," section 16.151.[2]

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

(e) *Nomenclature.* The name of the food is "Evaporated skimmed milk." The phrase "vitamins A and D" or "vitamins A and D added", shall immediately precede or follow the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name. If the milkfat content is over 0.5 percent by weight, the name of the food shall be accompanied by the statement, "Contains _____ percent milkfat", the blank to be filled in with the fraction "½", or multiple thereof, closest to the actual milkfat content of the product. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring, as specified in § 101.22 of this chapter.

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Parts 1 and 101 of this chapter.

Interested persons may, on or before September 19, 1977, submit to the Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A–107.

Dated: June 23, 1977.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

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

[FR Doc.77–20578 Filed 7–18–77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR 171]

LEASING OF TRIBAL LANDS FOR MINING

Definitions, Etc.

AGENCY: Bureau of Indian Affairs, Interior Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise 25 CFR 171 so as to define oil and gas or other mining agreements; to prescribe the responsibilities of the Area Oil and Gas and Mining Supervisor, U.S. Geological Survey; and to provide the necessary authority for said Supervisors to carry out those responsibilities.

COMMENT DATE: Comments must be received on or before August 18, 1977.

ADDRESSES: Interested persons are invited to participate in the evaluation of the proposed amendments by submitting written data, views, or arguments. Responses should identify the subject matter and be directed to the Commissioner, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. 20245, with a copy to the Chief, Conservation Division, U.S. Geological Survey, National Center (650), 12201 Sunrise Valley Drive, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT:

Mr. Tommy Riggs, Division of Trust Services, Bureau of Indian Affairs, Washington, D.C. 20245 (202–343–7737).

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes to amend the regulations entitled Leasing of Tribal Lands for Mining (25 CFR Part 171) by revising the definition of "supervisor" in § 171.1(b), adding a new subsection (c) to § 171.1 defining the term "oil and gas or other mining agreement," and adding a new § 171.2a to provide the approval mechanism for oil and gas or other mining agreements and to prescribe that operations conducted pursuant to said agreements are subject to the regulations contained in 25 CFR 171 and, in the absence of a conflict, to the regulations in Chapter II, 30 CFR.

The revision is proposed pursuant to the authority vested in the Secretary of the Interior by the Unallotted Indian Land Leasing Act of May 11, 1938, as amended (25 U.S.C. 396a), as an interim measure pending final revision of 25 CFR Parts 171, 177, 182, and 183 governing mineral development contracts on Indian lands which was published as proposed rulemaking in the FEDERAL REGISTER of April 5, 1977 (Vol. 42, No. 65, pp. 18083–18099).

The recent entry of certain Indian tribes into oil and gas or other mining agreements with private companies, through negotiation as authorized by 25 U.S.C. 396b, necessitates the proposed revision because the term "lease," as used in Capter II or Title 30 of the Code of Federal Regulations and the existing regulations in 25 CFR 171, does not specifically include such oil and gas or other mining agreements. As a result, the Geological Survey is without authority under 25 CFR 171 or 30 CFR 221 to provide the approval and supervisory functions relating to operations conducted pursuant to the terms of these negotiated agreements.

The proposal would amend the existing regulations in Part 171 of Title 25 of the Code of Federal Regulations to define the responsibilities of the Area Oil and Gas or Mining Supervisor with respect to these "oil and gas or other mining agreement" and to provide the necessary regulatory authority to carry out those responsibilities.

As proposed, Part 171 would be amended as follows:

PART 171—LEASING OF TRIBAL LANDS FOR MINING

Section 171.1(b) is revised and § 171.1 (c) is added as follows:

§ 171.1 Definitions.

* * * * *

(b) The term "supervisor" in this Part refers to the Area Oil and Gas or Mining Supervisor; a representative of the Secretary, subject to the direction and supervisory authority of the Director, Geological Survey; Chief, Conservation Division, and the appropriate Regional Conservation Manager, Conservation Division, Geological Survey. The supervisor is authorized and empowered to approve, supervise, and direct operations under oil and gas or other mining leases and oil and gas or other mining agreements; to furnish scientific and technical information and advice; to ascertain and record the amount and value of production; and to determine and record rentals and royalties due and paid. However, as to oil and gas or other mining agreements, or leases approved hereafter having profit-sharing provisions, the supervisor is not authorized or empowered to perform operational cost accounting functions, collect, or distribute funds resulting from any profit-sharing provisions contained therein nor to enforce those contract provisions relating to performance which are beyond the scope of the services normally provided by the supervisor for oil and gas or other mining leases approved pursuant to the proviso contained in 25 U.S.C. 396a.

(c) The term "oil and gas or other mining agreement" in this Part refers to a contract for the exploration and development of oil and/or gas or other minerals on restricted Indian lands entered into pursuant to the proviso contained in 25 U.S.C. 396b.

Section 171.2a is added as follows:

§ 171.2a Oil and gas or other mining agreements.

Any agreement for the exploration and development of oil and/or gas or other minerals made pursuant to the proviso contained in 25 U.S.C. 396b shall be submitted to the Superintendent prior to approval by the Secretary or his authorized delegate. When not inconsistent with the express provisions of the agreement, operations conducted pursuant to such an agreement are subject to the regulations in this Part and, in the absence of any conflict, to the regulations in Chapter II of Title 30 of the Code of Federal Regulations.

NOTE.—It has been determined that issuance of the proposed amendments to the regulations does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 852, 853).

NOTE.—The Department of the Interior 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: July 7, 1977.

CECIL D. ANDRUS,
Secretary.

NEGATIVE DECLARATION

In accordance with Executive Order No. 11821 and OMB Circular No. A-107, the Department of the Interior has reviewed and evaluated the inflationary effects of the proposed revision of 25 CFR 171.

The proposed modification to the regulations will not increase costs. Competition among oil and gas or other mining operators will not be affected nor will there be any appreciable effect on the number or availability of jobs.

I have determined, based on the proposal and attached Economic Impact Analysis, that approval of the proposed amended regulations does not constitute a "major" Federal action as defined by the Department of the Interior guidelines. Accordingly, the preparation of an inflation impact statement is unnecessary.

CECIL D. ANDRUS,
Secretary.

JULY 7, 1977.

ECONOMIC IMPACT ANALYSIS

Proposed Revision of the Leasing of Tribal Lands for Mining (25 CFR Part 171).

The proposed modification of 25 CFR section 171.1(b) updates the definition of the Area Oil and Gas or Mining Supervisor to clarify the extent of their authority; adds a new subsection (c) to 25 CFR section 171.1 to define the term "oil and gas or other mining agreement" as a contract for the exploration and development of oil and/or gas or other minerals on restricted Indian lands entered into pursuant to the proviso contained in 25 U.S.C. 396b; and adds a new section 25 CFR 171.2a to provide the approval mechanism for oil and gas or other mining agreements and to prescribe that operations conducted pursuant to said agreements are subject to the regulation contained in 25 CFR 171 and, in the absence of a conflict, to the regulations in Chapter II, 30 CFR.

The effect of this proposed revision on costs, competition, and jobs has been analyzed as follows:

1. *Costs.* The revised regulations merely define the responsibility and authority of the Area Oil and Gas or Mining Supervisor with respect to negotiated oil and gas or other mining agreements relating to restricted Indian lands. As such, there will be no significant increase in costs.

2. *Competition.* Competition among operators will not be affected by the revised regulations as the provisions will be uniformly applied to the operators of all negotiated oil and gas or other mining agreements and leases.

3. *Jobs.* Since the proposed revision imposes no new burdens on industry, the regulations will have no appreciable effect on the number or availability of jobs.

In summary, the proposed modification of 25 CFR 171.1(b) and the addition of §§ 171.1 (c) and 171.2a will not constitute a "major" inflationary action and, therefore, should not require the preparation of an Inflation Impact Statement.

[FR Doc.77-20566 Filed 7-18-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

[32 CFR Part 806b]

[AF Reg. 12-35]

PRIVACY ACT OF 1974

Exemption

Correction

In FR Doc. 77-18798 appearing on page 33776 in the issue of Friday, July 1, 1977, in the third line of § 806.58(m)(3), the word now reading "disqualification" should read "qualification".

VETERANS ADMINISTRATION

[38 CFR Part 21]

VETERANS EDUCATION

Cooperative Courses; Remedial and Refresher Training

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The cooperative training course has a work and an in-school phase. The in-school portion must be at least as great as the work portion. The proposed rule provides that, when the student continues to work during vacation or break periods, the additional amount of work performed during such phases will not be counted against the student. This will enable the student to gain the additional work experience available during such periods without violating the basic legal requirements for cooperative training courses.

It is also proposed to amend other regulations which refer to deficiency training to add definitions of remedial and refresher training so that the reader will be aware of the meaning of these terms when they are referred to in these regulations and to indicate that those types of training are also subject to the provisions of these regulations. Designations of "wife or widow" are changed to "spouse or surviving spouse" in accordance with statutory authority.

DATES: Comments must be received on or before August 18, 1977. It is proposed to make these changes effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Ave. NW., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until August 29, 1977.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, Assistant Director for Benefits and Facilities, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, 202-389-2092.

SUPPLEMENTARY INFORMATION: Section 21.4233(a)(1) is amended to clarify the intent as to the work phase of a course of training. The existing provisions require that the in-school portion of the course shall be at least as great as the work portion of a cooperative course. It was not the intent that the students be barred from working during vacation or break periods merely because the student's work phase would become the predominant portion of the course.

Sections 21.4235 and 21.4237 are amended to add definitions of remedial and refresher training to the sections concerning the Predischarge Education Program and the Special Assistance for Educationally Disadvantaged veterans, spouses and surviving spouses. Experience has indicated a tendency by educational institutions and beneficiaries to fail to understand that deficiency, remedial and refresher training are each a separate type of training.

Section 21.4272 concerning noncredit deficiency courses is amended to make clear that the existing reference to deficiency training has always been intended to include the types of training characterized as remedial or refresher. Also definitions of deficiency, remedial or refresher courses have been added.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), until August 29, 1977. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Inflation impact: The Veterans 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.

Approved: July 13, 1977.

By the direction of the Administrator.

JOHN J. LEFFLER,
Associate Deputy Administrator.

1. In § 21.4233, paragraph (a)(1) is revised to read as follows:

§ 21.4233 Combination.

* * * * *

(a) *Cooperative courses.* A full-time program of education consisting of phases of school instruction alternated with training in a business or industrial establishment with such training being strictly supplemental to the school instruction may be approved. Alternating periods may be a part-day in school and a part-day on job or may be such periods which alternate on a daily, weekly, monthly or on a term basis. For purposes of approval the school offering the course must submit to the State approving agency, with its application, statements of fact showing at least the following:

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in § 21.4270 (c) and (g). The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time.

* * * * *

2. In § 21.4234, paragraph (d)(2) is revised to read as follows:

§ 21.4234 Change of program.

* * * * *

(d) *Chapter 35; spouse and surviving spouse.* * * *

(2) In any instance where the eligible spouse or surviving spouse has interrupted, or failed to progress in, her or his program due to her or his own misconduct, neglect or lack of application, there exists a reasonable likelihood with respect to the program which she or he proposes to pursue that there will not be a recurrence of such an interruption or failure to progress.

* * * * *

3. In § 21.4235, paragraphs (h) and (i) are added to read as follows:

§ 21.4235 Predischarge education program (PREP) and special assistance for educationally disadvantaged veterans; chapter 34.

* * * * *

(h) *Remedial course.* A special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study or to overcome a handicap, such as in speech.

(i) *Refresher course.* A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

4. In § 21.4237, the headnote, the introductory portion of paragraph (a) preceding subparagraph (1), and paragraph (d) are revised and paragraphs (h) and (i) are added so that the revised and added material reads as follows:

§ 21.4237 Special assistance for the educationally disadvantaged; chapter 35 spouse or surviving spouse.

(a) *Enrollment.* Enrollment of an eligible spouse or surviving spouse may be approved in an appropriate course or courses at the secondary school level in a State if the spouse or surviving spouse:

* * * * *

(d) *Entitlement charge.* No charge will be made against the period of the entitlement of the spouse or surviving spouse because of enrollment in courses under the provisions of this section (38 U.S.C. 1733).

* * * * *

(h) *Remedial course.* A special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study or to overcome a handicap, such as in speech.

(i) *Refresher course.* A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

5. In § 21.4272, paragraphs (f) and (g) are revised to read as follows:

§ 21.4272 Collegiate undergraduate; credit-hour basis.

* * * * *

(f) *Noncredit courses*—(1) *Measurement.* Except for courses leading to a high school diploma or the equivalent, noncredit courses given by an institution of higher learning shall be measured on a quarter- or semester-hour basis if considered by the institution to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the school. Other noncredit courses shall be measured under § 21.4270 (a), (b) or (i) as appropriate. Where the school requires the veteran or eligible person to pursue noncredit deficiency, remedial or refresher courses in order to meet certain scholastic or entrance requirements, the school will certify the credit-hour equivalent of such noncredit deficiency, remedial or refresher courses in addition to the credit hours for which the veteran or eligible person is enrolled. The course will be measured on the total credit hour and the credit-hour equivalency.

(2) *Entitlement charge.* For awards to eligible children under chapter 35, the entitlement charge for noncredit courses will be made on the same basis as measurement for payment purposes. For awards under chapter 34 and for spouses and surviving spouses, under chapter 35, no entitlement charge will be made for any noncredit deficiency, remedial or refresher course on a secondary school level.

(g) *Definitions* (1) *Deficiency Course.* A deficiency course is any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(2) *Remedial course.* A special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study or to overcome a handicap, such as in speech.

(3) *Refresher course.* A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

[FR Doc.77-20693 Filed 7-18-77;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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SELECT COMMITTEE ON EX PARTE COMMUNICATIONS IN RULEMAKING

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Ex parte Communications in Rulemaking of the Administrative Conference of the United States, to be held at 2 p.m. July 28, 1977, in the offices of the Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, D.C.

The Committee will meet to consider again Professor Nathanson's draft Committee report and a proposed recommendation on the subject of treatment of ex parte communications to agency officials in informal rulemaking.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least one day in advance. The Committee Chairman may, if he deems it appropriate, permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during, or after the meeting.

For further information concerning this Committee meeting contact Richard K. Berg: 202–254–7020. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

JULY 13, 1977.

[FR Doc.77–20696 Filed 7–18–77;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A490]

PENNSYLVANIA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or Aquaculture operations have been substantially affected in Erie County, Pennsylvania, as a result of a severe freeze April 29, 1977.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Public Law 94–68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Milton J. Shapp that such designation be made.

Applications for emergency loans must be received by this Department no later than August 29, 1977, for physical losses and March 30, 1978, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C. this 11th day of July, 1977.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc.77–20655 Filed 7–18–77;8:45 am]

Rural Electrification Administration

DEPUTY ADMINISTRATOR ET AL.

Delegation of Authority

Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.) and paragraphs 2.7 and 2.72, Title 7, Code of Federal Regulations, the following delegations of authority are made by the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank.

1. The Deputy Administrator, or the Acting Deputy Administrator, of the Rural Electrification Administration is delegated authority, to be exercised only during the absence or unavailability of the Administrator, to perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank.

2. The Assistant Administrator, Administration; the Assistant Administrator, Electric; the Assistant Administror, Telephone; and any other officer of the Rural Electrification Administration designated in writing by the Adminstrator, Deputy Administrator, or Acting Deputy Administrator, in the order listed, are authorized to serve as Acting Deputy Administrator, and as Acting Deputy Governor of the Rural Telephone Bank during the absence or unavailability of the Deputy Governor, or during vacancies in such offices.

These delegations shall be effective immediately and supersede all other delegations in conflict herewith.

Dated: July 13, 1977.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration, and Governor, Rural Telephone Bank.

[FR Doc.77–20654 Filed 7–18–77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77–7–43; Docket 27589; Docket 27590, EDR–282]

DOMESTIC BAGGAGE LIABILITY RULES INVESTIGATION

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of July, 1977.

I. *Introduction.* These proceedings, designed to provide additional protection for passenger baggage moving in interstate or overseas air transportation, were instituted by Order to Show Cause 75–3–18 and Notice of Proposed Rulemaking EDR–282, March 6, 1975.

THE ORDER TO SHOW CAUSE

Order 75–3–18 proposed action to: (1) increase the standard liability limitation for baggage to $750 from the present level of $500; (2) require carriers to assume liability for the consequential damages of mishandled baggage; (3) prohibit a carrier from imposing any limit on liability when it has not provided passengers with notice of the limits as required by section 221.176 of Part 221 of the Board's Economic Regulations (14 CFR § 221.176); and (4) provide relief for passengers who are denied compensation for fragile, liquid or perishable items on the ground that their baggage is "unsuitable" for air transportation. The issues of the standard liability limitation and liability for consequential damages were the subject of Order 77–2–9.[1] The proposed penalty for failure to provide the notice required by section 221.176 was adopted in Order 77–4–94.

On the fourth matter raised by Order 75–3–18, that of carrier responsibility for fragile, liquid or perishable items, we did not prescribe a tentative rule. Instead, we sought suggestions and comments from the industry and other interested parties. Having reviewed these comments and suggestions,[2] we are now ready to state our tentative conclusions on how best to balance the legitimate conflicting needs of the carriers and the traveling public.

THE NOTICE OF PROPOSED RULEMAKING

This order will also deal with the issue addressed by Notice of Proposed Rulemaking EDR–282, time limits imposed by carriers on the filing of passenger claims. The proposed rule would have created an absolute bar to such limits by amending section 221.38 of Part 221 of the Economic Regulations (14 CFR § 221.38).

[1] February 2, 1977.

[2] Numerous answers and comments have been received. See Appendix.

As indicated below, the comments on the proposal have persuaded us to modify it in significant respects. Moreover, since the rules we propose deal with substantive tariff matters, we will terminate the rulemaking proceeding and incorporate the record of that proceeding into Docket 27589 for determination here.

II. *Liability for Fragile, Liquid or Perishable Items.* One of the problems addressed by our original Order to Show Cause (Order 75-3-18) is that of liability for fragile, liquid and perishable items. In tariff Rule 340 the carriers state that they will not accept for transportation any baggage item whose "size, weight, or character renders it unsuitable for transportation" on the aircraft. Rule 370, "Liability—Baggage," then permits a carrier to disclaim liability for any baggage item which is "not acceptable" under these rules, even if the carrier has in fact accepted and transported the item.[3]

The problem here is one of balancing conflicting needs and interests. It is necessary to resolve the tension created by the carriers' duty to provide transportation on reasonable request, and their legitimate desire to avoid becoming an insurer against injuries caused by the passenger's own carelessness. At the same time, passengers need to know that the baggage they wish to carry will in fact be transported, as well as to have assurance that they will be compensated for injuries resulting from carrier fault. The problem is made more difficult by the fact that carriers do not ordinarily know the contents of the passenger's baggage or how it is packed; neither, on the other hand, is the passenger likely to have a clear understanding of the stresses that his baggage will undergo during the carrier's normal handling practices.

However, the present practice is an unsatisfactory response to the problem. As we stated in Order 75-3-18, the present tariff language is unreasonable on its face, in that, by its terms, it gives the carrier absolute immunity from liability for items falling into such undefined categories as "fragile" or "unsuitable." This immunity applies without regard to whether the carrier has notice of the nature of the article and indeed without regard to whether the nature of article is in any way related to the injury. It can thus be used to bar a claim even when the carrier knows that there is a high probability of damage and has had an opportunity to protect itself. Worse, carriers may, by the language of Rule 370, refuse to compensate passengers for fragile items, even when the damage results from gross abuse rather than the fragility of the item. In fact, liability can be disclaimed when fragile or perishable items are lost or stolen while in the carrier's possession.

[3] See also Rule 345. At the time this proceeding was instituted, the liability rules discussed herein were contained in Tariff Rules 340 and 365. This order is designed to encompass the substantive baggage liability provisions involved here, however described or numbered.

Having stated our provisional conclusion that the present tariff rules are unreasonable, Order 75-3-18 nevertheless declined to prescribe a tentative rule. While we stated that it might be that the only reasonable rule would be one imposing responsibility on the carrier for all items actually transported, we also recognized that there might be drawbacks to this aproach. We therefore invited interested persons to offer their comments on our tentative findings and to suggest alternative procedures. Upon a review of these comments, which are discussed below, and further consideration of the underlying problem and the conflicting needs of carriers and passengers, we are now ready to make specific proposals.

A number of carrier parties have defended a continuation of the existing system. They argue that it would be unfair to place the burden of risk on the carriers since the passenger has the best knowledge of the contents of his baggage. If carriers are made liable for all they transport, it is argued, they will refuse to carry many items; passengers would then have no choice but to abandon their possessions at the airport. Some carriers even envision extensive flight delays caused by the need to search every item of luggage tendered. We find these arguments unpersuasive.

As to the issue of burden, while it is true that the passenger knows the contents of his baggage, it is equally true that the carrier knows and has control over its baggage handling practices. This fact, combined with the carrier's obligations under section 404(a) to provide transportation upon reasonable request, justifies placing this burden—at least presumptively—on the airline. Furthermore, we do not believe that the parade of horribles suggested must necessarily follow any change in the present system. Indeed, certain carriers already appear to recognize that the existing rules are unfair. Thus, for example, several carriers agree that it is improper for the carrier to disclaim liability for the loss of a fragile or perishable article. Similarly, Braniff Airways says it does not apply the disclaimer except in "questionable" cases. Delta Air Lines admits liability for damage claims when there is external damage to the baggage. And Trans World Airlines has undertaken a substantial modification of its baggage liability rules in order to meet certain of our objections to the usual practices. TWA asks that we endorse its procedures.[4]

The TWA rules draw a distinction between concealed and unconcealed items. A passenger whose "unsuitable" baggage is identifiable as such is required to execute a form releasing the carrier from injuries related to the alleged unsuitable characteristic (such as damage to a fragile item). The carrier does assume liability for other injuries, such as loss or pilferage, and for all injuries to unconcealed items in cases where it has failed to obtain a release. On the other hand, TWA's tariff rules assume no liability whatsoever for damage to or by fragile items, liquids, or perishables "unsuitably packed" inside the passenger's baggage (such as items in a suitcase); nor does it assume any liability for delay in delivery of perishables.

[4] TWA's position is supported by American and Ozark.

We regard the TWA practice as an improvement over the usual carrier practice, but we believe that even this system does not provide adequate protection for passengers, particularly with regard to items contained inside the passenger's luggage. Mindful of the legitimate concerns of both the passengers and the carriers as outlined above, we tentatively conclude that the lawful baggage liability rules should be based on the following principles:

1. A distinction should be drawn between items packed in baggage and those which are unconcealed or are in containers not customarily used for clothing and personal effects.

2. With regard to items packed in baggage, the carrier should bear the burden of showing inadequate care in packing on the part of the passenger.

3. For other items, the carrier may protect itself through a positive disclaimer system along the lines of that employed by TWA.

4. Carriers should be required to publish and maintain a list of items they deem unsuitable for air transportation, along with an indication of what care in packing would be necessary to make other items acceptable.

5. Disclaimers of liability for delay in delivery of perishable items should be limited to claims related to spoilage of the item.

Air carriers are obligated under the Federal Aviation Act to honor reasonable requests for transportation. We regard the request for carriage of ordinary and useful items—e.g. toilet articles or photography equipment etc.—as per se reasonable, since the practice is so common and the need so obvious. Yet we recognize that some of these items of ordinary usage may present more than average risks of breakage even under normal baggage handling procedures. However, the identity of this type of item is better known to air carriers than to passengers. The carriers have knowledge arising out of a full understanding of transfer and loading systems and, through their claims personnel, the carriers also have repeated exposure to the effects of loading systems on passenger baggage. Consequently, we think the primary rule should be that the carriers be required to carry ordinary baggage, but this rule should be tempered by permitting the carrier to disclaim liability for clearly unsuitable articles or for damage resulting from lack of care on the passenger's part. To effectuate this conditional disclaimer, we tentatively believe that the carriers should be permitted to file tariffs governing "fragile" items, specifying those items deemed unsuitable and the packing precautions required for items which, when precautionary steps are not taken, also pre-

sent an unusual risk of damage under normal handling. These tariffs should apply to both checked and unchecked luggage, and should also provide a positive disclaimer system to govern obviously fragile items where the identity of the item is known to the carrier due to carriage in other than normal passenger luggage. We recognize that, if adopted, this plan will place great importance on the contents of tariff lists and packing instructions and we fully expect to review these lists for reasonableness and, further, to take whatever actions are necessary to insure widespread passenger knowledge concerning their existence and content.

The basis for distinguishing between items inside luggage and other items is simple. When the passenger tenders a suitcase for transportation, the carrier ordinarily has no reason to assume that it contains anything other than clothing and the usual personal items. Since there is no way the carrier can tell in advance whether the passenger was careless in packing, there is no simple way for it to protect itself. On the other hand, it is clearly unreasonable for carriers to attempt to disclaim in advance all liability for damage to items packed inside the passenger's baggage. Rather, we have tentatively determined that the carrier should bear the burden of showing lack of care by the passenger. Accordingly, we have tentatively concluded that carrier acceptance of any item should constitute prima facie evidence of its suitability for transportation.[5] The presumption created by this rule would, of course, be rebuttable by evidence of a lack of adequate care by the passenger, but the burden in the first instance would be on the carrier.

As noted, in order to facilitate the resolution of disputes regarding injuries to "unsuitable" baggage, as well as to provide additional information to passengers, we tentatively concluded that carriers should be required to publish in their tariffs a list of items they regard as unsuitable for air transportation and some indication of how an otherwise unsuitable item can be made acceptable.[6] This list would govern all baggage accompanying the passenger whether in luggage or otherwise, and whether checked or not.

We believe that it is patently unreasonable for passengers to be denied recovery on the basis that their baggage is "fragile" or "perishable" or "unsuitable for transportation on the particular aircraft"[7] without a more exact definition of what these terms mean and what items are included under these headings. It is our tentative view that there are no items of personal property (other than perishables) which cannot be made suitable for transportation by reasonable passenger care. If this view is correct (and we will consider any evidence to the contrary) then it is important to indicate what precautions the passenger should undertake. If there are in fact fragile or liquid items of personal property which can not be safely transported under any circumstances, the tariffs should state what these items are.[8]

Items which are not contained inside a suitcase present a somewhat simpler problem. When the carrier is confronted with a baggage item which is unconcealed or is presented for transportation in a cardboard box or other container not ordinarily used for clothing, it may be deemed to be on notice that the package may well contain fragile, perishable or liquid items. It can then inquire as to the nature of the item, and can take steps to relieve itself of liability by requiring the passenger to execute a release of the type used by TWA. Of course, the carrier may not use a release to deny liability in cases of gross abuse, and the release must be restricted to damages related to the fragile or perishable nature of the item. If the carrier takes no action to protect itself, it should be strictly liable (up to the $750 limit) for any injuries that ensue.

Finally, carriers now disclaim all liability for delay in delivery of perishable items. This, we tentatively conclude, is unnecessarily broad. The limitation on liability should include only damage caused by spoilage of the perishable item. In other respects, delay in delivery of a perishable item can create the same sort of problems as delay in delivery of a nonperishable item,[9] and we can perceive no valid reason for a carrier to disclaim liability in such a case.

A summary of the proposed rule regarding carrier liability for fragile and perishable items is set out in the tentative findings below. Objections to these proposals should identify specific areas of concern and, where possible, recommend constructive alternatives. In particular, carriers basing their objections on anticipated cost increases are directed to specify and substantiate these objections. Much of the argument over the companion issues in this proceeding (an increase in the standard liability limit to $750 and carrier responsibility for consequential damages) has centered about the question of costs—the Board's alleged failure to consider the costs involved and the carriers' failure to detail them. Consequently, we once again admonish the carriers that vague and unsupported claims of increased expenses will not suffice as evidence for this record. If it appears that data cannot be accumulated in any meaningful way prior to experience under a new rule, the carriers should so state and explain, so that we may consider what form of review will be necessary to ensure the continued reasonableness of any new rule that may be adopted herein.

III. *Time Limits on Filing Claims.* Contemporaneously with Order 75-3-18, the Board issued a Notice of Proposed Rulemaking, EDR-282.[10] We proposed to amend Part 221 of the Economic Regulations so as to prohibit the filing of tariffs containing time limits on the filing of claims for lost, damaged or delayed baggage. Presently, virtually all carriers require passengers to present formal claims within 45 days after the incident.[11] In addition, the majority require some preliminary written notice within four hours of the arrival of the flight.[12]

As we observed in EDR-282: "The vice of the time limit is its ability to trap passengers who are unaware of its existence, much less its precise requirements."[13] Thus, as one particularly harsh example, we noted that an unwary passenger could be barred from recovery for failure to submit a formal claim to the carrier, even when he has given notice of his loss to carrier personnel at the airport and subsequently engaged in correspondence about the matter with the carrier.

The carriers generally oppose our proposal, complaining that it would increase the amount of time for bringing a baggage claim to two years.[14] They argue that requiring carriers to retain unclaimed baggage for this length of time would

[5] See corresponding freight rule, Rule 14, C.A.B. No. 96, Airline Tariff Publishing Co., Agent. Rule 14 provides in pertinent part that a carrier's acceptance of a shipment is prima facie evidence that it is properly packed for transportation. We are aware that the freight tariffs prohibit the transportation of fragile items in containers with wearing apparel. Whatever justification there may be for such a prohibition in freight shipments, we can perceive no valid carrier need to apply this prohibition to baggege.

[6] Since these lists, including reasonable packaging instructions, may bear on the extent of consumer recovery, widespread notice of their existence is essential. Therefore, if our proposals here are made final, we contemplate amending the notice provisions of Part 221.176 to include a statement regarding the packaging of fragile items.

[7] See Rules 340 and 370.

[8] Continental, in its response to Order 75-3-18, has submitted a list of items it regards as fragile for baggage purposes (p. 6). However, it fails to indicate how fragile items (other than bicycles) can be made acceptable, and it is simply overbroad. Thus, for example, it would disclaim liability for all "garment bags of plastic or vinyl" and for all "glass items" (presumably including eyeglasses in their case).

[9] For example, if the carrier misroutes a bag which contains perishable medicine, forcing the passenger to purchase an interim supply, the carrier should be required to provide compensation for the interim supply, regardless of whether the medicine has spoiled when it finally arrives at the passenger's destination. The interim injury stems from the fact that the carrier failed to deliver an item needed by the passenger upon his arrival. It is therefore much like any other problem of delayed delivery, and is unrelated to the perishable nature of the medicine.

[10] 40 FR 11602

[11] Air New England has a limit of 30 days.

[12] See Rule 40 (B) and (C), CAB No. 142, Airline Tariff Publishing Co., Agent. Notably, Allegheny, American, Piedmont, TWA, United, and Western do not participate in the four-hour rule.

[13] EDR-282, p.2.

[14] Under Rule 40(B), all actions on baggage claims must be commenced within two years.

cause extensive unnecessary expense and administrative burden. Thy also state that it would complicate the operation of the Airlines Computerized Baggage Tracing System (ACTS) used by a number of carriers to match claims with recovered unclaimed bags. This system is designed to store data for only 90 days. Finally, the opposing carriers argue, a passenger with a legitimate claim is unlikely to delay presenting it beyond the present time limits.

Upon consideration of the comments, we have determined to revise our proposal. While the problems and abuses which led us to issue EDR-282 are still foremost in our mind, and we continue in the view that the present procedure is unjust, we tentatively conclude that these problems can be corrected by lesser measures than those originally proposed. In addition, since our proposal involves requiring carriers to amend their tariffs, we will terminate the proceeding instituted by our Notice of Proposed Rulemaking, and proceed instead by this Order to Show Cause.

To begin with, we have been persuaded that it is not inherently unreasonable for carriers to ask passengers to present their baggage claims within 45 days. We agree that few passengers would ordinarily delay making their claim beyond that length of time.[15] The heart of the problem is that the time limit, coupled with the necessity of filing a formal claim, can serve as a trap. We therefore now propose to allow carriers to retain the general rule requiring notice within 45 days, as long as two additional measures are taken to protect the legitimate interests of consumers. We tentatively find any lesser period for notice, including the four-hour rule, unreasonable on its face.

First, we tentatively conclude that the notice requirement should be deemed satisfied if the carrier receives any writing within the 45-day period sufficient to apprise it of the fact that there was a problem with the passenger's baggage. Recovery should not be barred for failure to file a formal claim within the specified period if the carrier has received written notice of the existence of the claim. The carrier's legitimate interest in a time limitation extends only as far as is necessary for it to have the opportunity to minimize the damage to the passenger and to itself (such as by locating the mishandled bags). The formal claim requirement, to the extent that it bars recovery on baggage claims about which the carrier has substantive notice, is a totally unreasonable procedural obstacle. It goes without saying that the carrier may require additional information from the passenger if it is needed to identify the baggage. But we believe that once a passenger has informed the carrier in writing of his claim, the carrier should not be permitted to allege lack of notice.[16]

Second, we have tentatively concluded that the requirement for filing claims within 45 days should not serve as a bar when the passenger can show good cause for failure to file within the required period. At present, the tariffs provide that the time limit is not applicable "if the claimant establishe(s) to the satisfaction of the carrier that he was unable to give" the required notice on time.[17] In the Liability and Claims Rules and Practices Investigation [18] we held that freight shippers are entitled to recover, even if they have failed to make their claim within the specified 15 days, when they can show good cause for their failure to do so. We tentatively conclude that passengers should be accorded similar protection. This rule will further serve to prevent unreasonable application of the time limitations.

In consideration of the foregoing it is tentatively found that:

1. Any tariff rule applicable to the interstate or overseas air transportation of persons, is and will be unlawful to the extent:

(a) That it disclaims liability for loss of, damage to, or delay in delivery of personal property, including baggage, other than for damage resulting from the fragile or perishable nature of a particular item, or

(b) That is fails to provide:

(i) With respect to items of personal property, including carry-on luggage, contained within a suitcase or other container customarily intended for use in the personal transportation of clothing, that carrier acceptance of any item for air transportation is and will be prima facie evidence of its suitability for transportation, and that the carrier accepts liability for such items except to the extent that it can demonstrate lack of adequate care on the part of the passenger;

(ii) With respect to other items of personal property, that the carrier is and will be liable for any item actually transported: *Provided, however,* That the carrier may require the execution of a document releasing the carrier from liability for damage resulting from the fragile or perishable nature of a particular item.

2. The lawful tariff rule in interstate and overseas air transportation concerning limitations on carrier liability for personal property, including baggage, shall be one that:

(a) Assumes liability for loss, damage, or delay in delivery of any item of personal property which the carrier has actually transported, other than for damage resulting from the fragile or perishable nature of a particular item;

(b) Provides, with respect to items of personal property including carry-on luggage, contained within a suitcase or other container customarily intended for use in the personal transportation of clothing, that carrier acceptance of any item constitutes prima facie evidence of its suitability for transportation, and that the carrier accepts liability for such items except to the extent that it can demonstrate lack of adequate care on the part of the passenger; and

(c) Provides, with respect to other items of personal property, that the carrier is and will be liable for any item actually transported, unless the passenger has executed a document releasing the carrier from liability for damage resulting from the fragile or perishable nature of a particular item.[19]

3. All certificated air carriers engaged in the interstate or overseas air transportation of persons should be required to include in any tariff rule concerning limits on their liability for passengers' personal property or baggage, a list of items which the carrier deems fragile, perishable, or otherwise unsuitable for air transportation, or unsuitable without particular care in packing. For those items requiring particular care in packing, the tariff should indicate what packing precautions are necessary. Failure on the part of the passenger to comply with packing precautions specified by lawful tariff rule shall be evidence of a lack of adequate care.

4. Rule 40(B), Airline tariff Publishers, C.A.B. No. 142, and any other tariff applicable to the interstate or overseas air transportation of persons is and will be unjust to the extent that it (a) embodies a time limitation on the filing of baggage claims of less than 45 days; (b) fails to waive such time limitation when the passenger can show good cause for failure to comply with this 45-day limit; or (c) fails to provide that any written communication received by the carrier within the time limit which is sufficient to inform the carrier of the nature of the claim is and will be sufficient to meet the requirements for timely notice.

5. The lawful rule in interstate and overseas air transportation concerning limitations on the time for filing claims for loss, damage or delay in delivery of personal property, including baggage, shall be one that:

(a) Provides a period of not less than 45 days following the occurrence of the events giving rise to the claim for the filing of claims;

(b) Waives the time limitation when the passenger can show good cause for failure to bring his claim within the provided period; and

(c) Provides that any written notice received by the carrier within the time limit which is sufficient to inform the

[15] In the survey of baggage claims data filed pursuant to Order 75-3-18, only 1.7% of all claims were denied because of the passenger's failure to present his claim in a timely manner.

[16] United expressed this conclusion as follows: "United proposes industry adoption of United's practice of accepting any written notice of a loss or damage as satisfying the forty-five day time limit for filing a claim for the reason that it is the notice of loss that is important and not the formality of filling out a form entitled 'claim'." See comments of United Air Lines.

[17] See Rule 40(B), supra, note 12.

[18] Order 76-3-139.

[19] The form of the "release" shall be included in the tariff filing.

carrier of the nature of the claim is and will be sufficient to meet the requirements for timely notice.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, 407(a), 416(a), and 1002 thereof;

It is ordered, That: 1. All air carriers certificated to engage in interstate or overseas air transportation of persons, and all other interested persons, are hereby directed to show cause why the Board should not make final its tentative findings and conclusions herein;

2. Objections filed pursuant to paragraph 1 shall set forth in detail any facts upon which the objection is based and shall contain any economic data or other material which it is desired that the Board officially notice. Such objections shall be filed within 30 days after the service of this order. Any interested person may within 15 days thereafter file an answer to any of the objections. Answers shall set forth any economic data or other material upon which they are based.

A list of all persons filing objections will be prepared by the Docket Section and sent to the persons named thereon. Those persons filing answers should serve any person whose objection is dealt with in their answer.

Those persons planning to file objections and/or answers who wish to be served with the objections and answers filed by others, and who are willing to undertake service of their own filings on others, shall file with the Docket Section by July 22, 1977, a request to be placed on the service list in Docket No. 27589. The service list will be prepared by the Docket Section and sent to the persons named thereon. The persons on the service list are to serve each other with their objections and/or answer at the time of filing, and to include appropriate proof of service (Rule 3(e), 14 CFR 302.8(e)) with each filing. Those persons already on the service list in Docket 27589 need not file another request.

Parties requesting an evidentiary on-the-record hearing in this matter shall set forth in detail the reasons therefor, accompanied by a statement of the facts which they intend to develop in a hearing;

3. Any carrier submitting an objection to the tentative conclusions based on whole or part on the added cost of the proposed findings will include in its responses a detailed estimate of (1) the added costs that would be incurred in the event that the proposals contained in this show cause order were made final; (2) data indicating the carrier's current claims cost, including insurance and the costs associated with in-house processing of baggage claims; and (3) such other financial and statistical data as in the opinion of the carrier are necessary for a complete factual record. Carrier responses should explicitly set forth all sources, procedures and allocation methods needed for a proper understanding of their submissions;

4. The matters raised in Docket 27590 relating to time limits on filing baggage liability claims in interestate and overseas air transportation be and they hereby are consolidated into the Domestic Baggage Rules Investigation, Docket 27589.

5. The motions of United Air Lines and the Department of Health, Education and Welfare are granted.

6. This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[*]

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX

PARTICIPANTS

The following persons filed comments in Docket 27590 to Notice of Proposed Rulemaking EDR-282. For a list of participants in Docket 27589, see Order 77-2-9, Attachment A.

Air Canada
Air Jamaica
Alaska Airlines
Alitalia Linee Aeree Italiano
Allegheny Airlines
American Airlines
Aspen Airways
Aviation Consumer Action Project
Braniff Airways
Compagnie Nationale Air France
Continental Air lines
Delta Air Lines
Department of Health, Education, and Welfare
Eastern Air Lines
Frontier Airlines
Hughes Airwest
KLM Royal Dutch Airlines
National Air Carrier Association
National Airlines
National Industrial Traffic League
Office of the Consumer Advocate
Ozark Air Lines
Pacific Western Airlines
Scandinavian Airline System
Trans World Airlines
United Air Lines
Western Air Lines

[FR Doc.77-20540 Filed 7-18-77;8:45 am]

CIVIL SERVICE COMMISSION

FEDERAL EMPLOYEES PAY COUNCIL

Cancellation of Meeting

Notice is given of the cancellation of the meeting of the Federal Employees Pay Council of July 20, 1977, which was announced in the FEDERAL REGISTER on June 28, 1977 (42 FR 32823).

Dated: July 15, 1977.

For the President's agent.

RICHARD H. HALL,
Committee Management Officer for the President's agent.

[FR Doc.77-20792 Filed 7-18-77;8:45 am]

[*] All members concurred except Chairmen Kahn who did not participate.

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

IMPORTERS' TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975) notice is hereby given that a meeting of the Importers' Textile Advisory Committee will be held on August 4, 1977 at 10:30 a.m. in Room 1434, Federal Office Building, 26 Federal Plaza, New York, New York 10007.

The Committee was established by the Secretary of Commerce on August 13, 1963 to advise U.S. Government officials of the effects on import markets of cotton, wool and man-made fiber textile agreements.

The agenda for the meeting will be as follows:

1. Review of import trends.
2. Implementation of textile agreements.
3. Report on conditions in the domestic market.
4. Other business.

A limited number of seats will be available to the public on a first-come basis. The public may file written statements with the Committee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the DIBA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: July 13, 1977.

ARTHUR GAREL,
Director, Office of Textiles.

[FR Doc. 77-20592 Filed 7-18-77;8:45 am]

Maritime Administration

[Docket No. S-563]

Amended Notice of Multiple Applications

In FR Doc. 77-19209, appearing in the FEDERAL REGISTER on July 6, 1977 (42 FR 34542) notice was given that several Applicants (eight in number), holders of long-term operating-differential subsidy contracts in the worldwide bulk trades had filed applications to amend their respective contracts to include the transportation of liquid bulk cargo under the cargo preference laws of the United States, including, but not limited to, 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a. Interested parties were given until close of business July 18, 1977 to offer

views and comments thereon for consideration by the Maritime Subsidy Board.

Upon request made and good cause shown by counsel for American Maritime Association, the date for submission of comments is hereby extended to close of business on July 26, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidities (ODS))

By Order of the Maritime Subsidy Board/Maritime Administration.

Date: July 13, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-20653 Filed 7-18-77;8:45 am]

National Oceanic and Atmospheric Administration

FISHERY MANAGEMENT PLAN FOR TANNER CRAB FISHERY OFF ALASKA

Availability of Draft Environmental Impact Statement and Fishery Management Plan and Notice of Public Hearings

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Oceanic and Atmospheric Administration, Department of Commerce, and the North Pacific Fishery Management Council have jointly prepared a draft environmental impact statement for the proposed implementation of the fishery management plan for Tanner Crab Fishery off Alaska.

In accordance with provisions of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), the plan has been prepared by the North Pacific Fishery Management Council and requires approval by the Secretary of Commerce prior to its implementation.

The environmental statement concerns a proposal to adopt and implement a fishery management plan for the Gulf of Alaska Groundfish Fishery pursuant to the Fishery Conservation and Management Act of 1976, which extends U.S. jurisdiction over marine fishery resources to 200 nautical miles and establishes a program for their management. Upon approval, the plan will serve to manage Tanner Crab fishery resources in the Gulf of Alaska for optimum yield and to determine foreign surplus. The plan recommends certain conservation measures designed to prevent overfishing and to maintain an orderly fishery. These proposed measures include time-area closures, gear restrictions, and quotas.

Individuals or organizations wishing to comment on the draft environmental impact statement/fishery management plan may also do so at public hearings to be held at the times and locations located below:

(a) Petersburg, Alaska, Wednesday, August 3d, 9 a.m. Petersburg City Council Chambers.

(b) Seattle, Wash., Friday and Saturday, August 5th and 6th, 9 a.m., Seatac Hilton Hotel, 17620 Pacific Highway, South, Seattle, Wash.

(c) Anchorage, Alaska, Monday, August 22d, 8:30 a.m. State Supreme Court Chambers, Sate Court Bldg., 3d and K Sts.

(d) Sand Point, Alaska, Tuesday, August 23d, 9 a.m., City Hall.

(e) Kodiak, Alaska, Wednesday, August 24th, 9 a.m., Elks Lodge, Marine Way.

Copies of the DEIS/DFMP's are available for public review at the following locations:

ANCHORAGE

Department of Fish and Game, 333 Raspberry Rd., Anchorage, Alaska 99502.
National Marine Fisheries Service, room 408, Hill Bldg., 632 West 6th Ave., Anchorage, Alaska 99501.
Z. J. Loussac Public Library, 427 First St., Anchorage, Alaska 99501.
North Pacific Fishery Management Council, suite 32, 333 West 4th Ave., Post Office Mall Bldg., Anchorage, Alaska 99501.

BETHEL

Department of Fish and Game, Bethel, Alaska 99559.
Bethel Public Library, Bethel, Alaska 99559.

CORDOVA

Department of Fish and Game, Cordova, Alaska 99574.
Cordova Public Library, Cordova, Alaska 99574.

DILLINGHAM

Department of Fish and Game, Dillingham, Alaska 99576.
Dillingham Public Library, Dillingham, Alaska 99576.

FAIRBANKS

Department of Fish and Game, 1300 College Rd., Fairbanks, Alaska 99701.
Fairbanks North Star Borough Public Library 901 1st Ave., Fairbanks, Alaska 99701.

HOMER

Department of Fish and Game, Homer, Alaska 99603.
Homer Public Library, Homer, Alaska 99603.

JUNEAU

Department of Fish and Game, Southeast Regional Office, 210 Ferry Way, Juneau, Alaska 99801.
Department of Fish and Game, Commissioner, Subport Bldg., Juneau, Alaska 99801.
National Marine Fisheries Service, room 453, Federal Bldg., Juneau, Alaska 99801.
Juneau Memorial Library, 114 West 4th St., Juneau, Alaska 99801.

KETCHIKAN

Department of Fish and Game, 208 State Court and Office, Bldg., 415 Main St., suite 208, Ketchikan, Alaska 99901.
Ketchikan Public Library, 629 Dock St., Ketchikan, Alaska 99901.

KODIAK

Department of Fish and Game, Kodiak, Alaska 99615.
A. Holmes Johnson Memorial Library, Kodiak, Alaska 99615.
National Marine Fisheries Service, Gibson Cove, Kodiak, Alaska 99615.

KOTZEBUE

Kotzebue Public Library, Kotzebue, Alaska 99752.

PETERSBURG

Department of Fish and Game, Swanson Bldg., Petersburg, Alaska 99833.
Petersburg Public Library, Petersburg, Alaska 99833.

SAND POINT

Department of Fish and Game, Sand Point, Alaska 99661.
Sand Point Community/Scholl Library, Sand Point, Alaska 99661.

SEWARD

Department of Fish and Game, Seward Court Bldg., Seward, Alaska 99664.

SITKA

Department of Fish and Game, State Office Bldg., Sitka, Alaska 99835.
Kedelson Memorial Library, Sitka, Alaska 99835.

UNALASKA

Department of Fish and Game, c/o Standard Oil Dock, Dutch Harbor, Alaska 99695.
Unalaska/School/Community Library, Unalaska, Alaska 99685.

VALDEZ

Department of Fish and Game, Valdez, Alaska 99686.
Valdez Public Library, Valdez Alaska 99686.

WRANGELL

Department of Fish and Game, Wrangell, Alaska 99929.
Wrangell Public Library, Wrangell, Alaska 99929.

YAKUTAT

Department of Fish and Game, Yakutat, Alaska 99689.

Limited numbers of the DEIS/DFMP's will be available from the Executive Director, North Pacific Fishery Management Council, Suite 32, 333 West 4th Avenue, Post Office Mall Building, Anchorage, Alaska 99510, and the Director, Regional Office, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802. Written comments on the DEIS/DFMP's from members of the public may be submitted not later than September 1, 1977, to the North Pacific Fishery Management Council, P.O. Box 3136 DT, Anchorage, Alaska 99510.

This Notice of Availability is being published at the request of and in cooperation with the North Pacific Fishery Management Council.

Dated this 14th day of July 1977 at Washington, D.C.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-20709 Filed 7-18-77;8:45 am]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL AND ITS SCIENTIFIC AND STATISTICAL COMMITTEE

Public Meeting

Notice is hereby given of meetings of the Mid-Atlantic Fishery Management Council established by Section 302, and the Council's Scientific and Statistical Committee established by Section 302(g) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Mid-Atlantic Fishery Management Council has authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the States of New York, New Jersey, Del-

aware, Pennsylvania, Maryland, and Virginia. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fisheries within its area of authority, prepare comments on foreign fishing applications, and conduct public hearings.

The Scientific and Statistical Committee assists the Council in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of fishery management plans.

The meeting of the Scientific and Statistical Committee will be held on August 8 and 9, 1977, from 10 a.m. to 4 p.m. and 9 a.m. to 3 p.m. respectively, at the Hotel Hershey, Hershey, Pennsylvania 17033. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

1. Mackerel Management Plan.
2. Administrative Matters.
3. Other Business.

This meeting is open to the public and there will be seating for approximately 20 public members available on a first-come, first-served basis.

The meeting of the Council will be held on August 10 and 11, 1977, 9 a.m. to 3 p.m., at the Hotel Hershey, Hershey, Pennsylvania 17033. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

1. Surf Clam/Ocean Quahog Management Plan.
2. Mackerel Plan.
3. Report of Foreign Fishing Activity.
4. Status of Squid Plan.
5. Status of Other Management Plans.
6. Other Management Business.

This meeting is open to the public and there will be seating for approximately 30 public members available on first-come, first-served basis.

Members of the public having an interest in specific items for discussion are also advised that agenda changes are, at times, made prior to the meetings. To receive information on changes, if any, made to the agenda, interested members of the public should contact on or about July 29, 1977:

Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, North and New Streets, Dover, Delaware 19901.

At the discretion of the Council and its Committee, interested members of the public may be permitted to speak at times which will allow the orderly conduct of business. Interested members of the public who wish to submit written comments should do so by addressing Mr. John C. Bryson at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the meetings.

Dated: July 14, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-20708 Filed 7-18-77;8:45 am]

COMMISSION OF FINE ARTS

MEETING

The Commission of Fine Arts will meet in open session on Tuesday, July 26, 1977 at 10 a.m. in the Commission offices at 708 Jackson Place NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

This notice confirms notice given in the FEDERAL REGISTER on January 11, 1977, 42 FR 2337.

Inquires regarding the agenda and/or requests to submit written or verbal statements should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C., July 14, 1977.

CHARLES H. ATHERTON,
Secretary.

[FR Doc.77-20672 Filed 7-18-77;8:45 am]

COMMITTEE FOR PURCHASE FROM BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1977 ADDITION

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1977 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 19, 1977.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On April 11, 1977, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (42 FR 18883) of proposed additions to Procurement List 1977, November 18, 1976 (41 FR 50975).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Government under 41 U.S.C. 46-48(c), 85 Stat. 77.

Accordingly, the following service is hereby added to Procurement List 1977:

SIC 7349

Janitorial/Custodial Service, Federal Building, 400 S. Clinton, Iowa City, Iowa.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-20815 Filed 7-18-77;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

REGULAR COMMISSION MEETINGS

Public Participation

The Commission has approved a policy of allowing representatives of the public and industry an opportunity to address the Commission during its regular open meetngs. As approved, the policy is:

1. Following publication of the Commission agenda in the FEDERAL REGISTER, any member of the public or industry wishing to address the Commission on a specific agenda item will notify the Office of the Secretariat three days in advance of the meeting. Such notification must include a brief reason for the request to appear.

2. As soon as the request is received, the Secretariat will advise the Commissioners. At the discretion of the Chairman or the presiding Commissioner, such requests will be honored unless an objection to the appearance and testimony is raised by a member of the Commission.

3. The Secretariat will advise the individual of the disposition of the request at least 24 hours prior to the scheduled meeting.

Issued in Washington, D.C., on July 14, 1977.

By the Commission.

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

[FR Doc.77-20682 Filed 7-18-77;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that closed meetings of the DIA Scientific Advisory Committee will be held at the Pentagon, Washington, D.C., on Monday and Tuesday, September 19-20, 1977.

The entire meetings commencing at 0900 hours are devoted to the discussion of classified information as defined in Section 552(b)(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the

Director, DIA on related scientific and technical intelligence matters.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JULY 14, 1977.

[FR Doc.77-20701 Filed 7-18-77;8:45 am]

Department of the Navy

MICROWAVE OVEN SURVEY

Memorandum of Understanding With the Food and Drug Administration

CROSS REFERENCE: For a document giving notice of a memorandum of understanding between the Bureau of Medicine and Surgery and the Food and Drug Administration regarding certain related objectives in carrying out a microwave oven survey program, see FR Doc. 77-20574 appearing in the notices section of this FEDERAL REGISTER.

Office of the Secretary

CHEMICAL PROPULSION ADVISORY COMMITTEE

Meeting

JULY 11, 1977.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463) announcement is made of the following committee meeting:

NAME: JANNAF Advisory Working Group on Safety and Environmental Protection, Hazard Evaluation Committee.

DATE: August 2-4, 1977.

PLACE: Ballistic Research Laboratory, Bldg 330, Aberdeen Proving Ground, Md. 21005.

TIME: Initial meeting 9 a.m., August 2.

PROPOSED AGENDA: The Hazard Evaluation Committee will conduct a review of CPIA/194, Hazard of Chemical Rockets and Propellants Handbook, to estimate the magnitude of updating this manual and the conversion to metric units. A revised outline of CPIA/194 will be considered. Working sessions for the subcommittees, Incident Analysis, Criteria Evaluation and Test Evaluation will consider preparation of reports on past work and plans for future work. Topics of papers and preparation of draft papers for presentation at the Specialist Sessions of the JANNAF Annual Propulsion Meetings will be discussed.

PURPOSE OF THE MEETING: The working group endeavors to define the nature and extent of hazards to personnel and to the environment of all aspects of propulsion systems from manufacture to launch; the goal is to provide guidelines for safe management of those activities and processes and for the prevention of catastorphic incidents.

Meeting of the Advisory Working Group is open to the public. Public attendance, depending on available space, may be limited to those persons who have notified the Advisory Working Group chairman in writing at least three (3) days prior to the meeting, of their intention to attend.

Any member of the public may file a written statement with the Working Group chairman before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentation of oral statements at the meeting.

All communication regarding this Advisory Working Group should be addressed to:

Mr. J. F. Voeglein, Jr., Chemical Systems Laboratory, Attn: DRDAR-CLF, Aberdeen Proving Ground, Md. 21010.

MR. J. F. VOEGLEIN, JR.,
Chemical Systems Laboratory Chairman, Incident Analysis Subcommittee of Hazard Evaluation Committee.

[FR Doc.77-20567 Filed 7-18-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50305; FRL 763-3]

AGRICULTURE DEPARTMENT, ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 11312-EUP-21. U.S. Department of Agriculture, Hyattsville, Maryland 20782. This experimental use permit allows the use of 1.83 pounds of the insecticide N-[[(4-Chlorophenyl) amino] carbonyl]-2,6-difluorobenzamide on forest areas to evaluate control of Gypsy moth. A total of 24 acres is involved; the program is authorized only in the State of Pennsylvania. The experimental use permit is effective from May 6, 1977, to May 6, 1978. This permit and permit No. 11312-EUP-22, which appears in another Federal Register document, will use the same active ingredient, but different formulations.

No. 35963-EUP-3. North Dakota State University, Fargo, North Dakota 58102. This experimental use permit allows the use of 154.1 pounds of the insecticide malathion on flax to evaluate control of grasshoppers. A total of 150 acres is involved; the program is authorized only in the State of North Dakota. The experimental use permit is effective from May 6, 1977, to May 6, 1978. This permit is being issued with the condition that flax meal derived from treated flax will be destroyed or used for research purposes only, and that flax straw from treated flax will be plowed under and not grazed or cut for forage.

No. 4581-EUP-16. Penwalt Corporation, King of Prussia, Pennsylvania 19406. This experimental use permit allows the use of 8,842 pounds of the insecticide methyl parathion on apples, artichokes, barley, beans, corn, cotton, grapes, oats, onions, pasture, pears, peas, rangeland, rice, soybeans, stone fruits, tomatoes, and wheat to evaluate control of various insects. A total of 14,015 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisina, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. The experimental use permit is effective from May 5, 1977, to May 5, 1978. Permanent tolerances for residues of all the items listed above have been established (40 CFR 180.169).

No. 359-EUP-54. Rhodia, Inc., Monmouth Junction, New Jersey 08852. This experimental use permit allows the use of 360 pounds of the herbicide oxadiazon and 585 pounds of the herbicide alachlor in a tank mixture to evaluate control of various weeds. A total of 420 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, and Michigan. The experimental use permit is effective from May 5, 1977, to May 5, 1978. This permit is being issued with the condition that soybeans treated under this permit will be used for seed production or research purposes only.

No. 38338-EUP-3. Idaho Agricultural Experiment Station, University of Idaho, Moscow, Idaho 83843. This experimental use permit allows the use of 30 pounds of microencapsulated methyl parathion used as an insecticide on rape seed to evaluate the residual hazard of the material to the honey bee. A total of 40 acres is involved; the program is authorized only in the State of Idaho. The experimental use permit is effective from May 9, 1977, to May 9, 1978. A tolerance for residues of the active ingredient in or on rape seed has been established (40 CFR 180.121).

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated July 8, 1977.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc.77-20560 Filed 7-18-77;8:45 am]

[OPP-50309; FRL 763-5]

AMERICAN CYANAMID CO., ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and sub-

ject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 241-EUP-67. American Cyanamid Company, Princeton, New Jersey 08540. This experimental use permit allows the use of 180 pounds of the insecticide O,O-dimethyl O-p-(dimethylsulfamoyl) phenyl phosphorothioate to evaluate control of lice on cattle. Approximately 1,800 head of cattle are involved; this program is authorized only in the States of California, Indiana, Nebraska, Pennsylvania, South Dakota, and Texas. The experimental use permit is effective from May 26, 1977, to May 26, 1978. A permanent tolerance for residues of the active ingredient in or on the fat, meat and meat byproducts of cattle has been established (40 CFR 180.233).

No. 1239-EUP-20. Nor-Am Agricultural Products, Inc., Woodstock, Illinois 60098. This experimental use permit allows the use of 110 pounds of the herbicides phenmedipham and desmedipham in a tank mixture on sugarbeets to evaluate control of various weeds by aerial application. A total of 120 acres is involved; the program is authorized only in the States of California, Idaho, Nebraska, Texas and Washington. The experimental use permit is effective from May 25, 1977, to May 25, 1978. Permanent tolerances for residues of the active ingredient in or on sugarbeets have been established (40 CFR 180.278 and 180.353).

No. 2139-EUP-21. Nor-Am Agricultural Products, Inc., Woodstock, Illinois 60098. This experimental use permit allows the use of 100 pounds of the herbicide desmedipham on sugarbeets to evaluate control of redroot pigweed, and other weeds. A total of 60 acres is involved; the program is authorized only in the States of California, Idaho, Nebraska, Texas and Washington. The experimental use permit is effective from May 25, 1977, to May 25, 1978. A permanent tolerance for residues of the active ingredient in or on sugarbeets has been established (40 CFR 180.353).

No. 11312-EUP-19. U.S. Department of Agriculture, Hyattsville, Maryland 20782. This experimental use permit allows the use of 32 pounds of the insecticide carbaryl to evaluate control of Gypsy moth larvae. A total of 24 acres in involved; the program is authorized only in Clinton County, Pennsylvania. The experimental use permit is effective fro June 4, 1977, to June 4, 1978.

Interested parties, wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. S.W., Washington, D.C. 20460. It is suggested that such interested person call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4.00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: July 8, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-20562 Filed 7-18-77;8:45 am]

[PF74; FRL 763-1]

CHEVRON CHEMICAL CO.

Pesticide and Food Additive Petitions; Filing

The Environmental Protection Agency has received the following petitions for consideration:

PP 7F1962. Chevron Chemical Co., Ortho Div., 940 Hensley St., Richmond, CA 94804. Proposes that 40 CFR 180.267 be amended by the establishing of a tolerance for residues of the fungicide captafol, cis-N-[(1,1,2,2-tetrachloroethyl)thio]-4-cyclohexene-1,2-dicarboximide in or on the raw agricultural commodities soybeans at 1 part per million (ppm), soybean forage at 15 ppm and soybean hay at 45 ppm. Proposed analytical method for determining residues is gas chromatography with flame photometric and electron capture detectors. PM21 (202/426-2454)

FAP 7H5166. Chevron Chemical Co., Ortho Div., 940 Hensley St., Richmond, CA 94804. Proposes amending 21 CFR 561 by establishing a regulation permitting the use of the fungicide captafol, cis-N-[(1,1,2,2-tetrachlorethyl) thio]-4-cyclohexene-1,2-dicarboximide, on growing soybeans with a tolerance limitation of 3 ppm in soybean hulls. PM21 (202/426-2454)

Interested persons are invited to submit written comments on the petitions to the FEDERAL REGISTER Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning specific petitions may be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the number of the petition to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments received will be available for public inspection in the office of the FEDERAL REGISTER Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: July 8, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-20589 Filed 7-18-77;8:45 am]

[OPP-50311; FRL 763-7]

GAF CORP., ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 1529-EUP-2. GAF Corporation, New York, New York 10020. This experimental use permit allows the use of 1000 pounds of the plant regulator ethephon on pineapples. A total of 600 acres is involved; the program is authorized only in the State of Hawaii. The experimental use permit is effective from May 27, 1977, to May 27, 1978. Permanent tolerances for residues of the active ingredient in or on pineapples have been established (40 CFR 180.300).

No. 2224-EUP-11. Mobil Chemical Company, Richmond, Virginia 23261. This experimental use permit allows the use of 812.5 pounds of the herbicide bifenox on rice to evaluate control of duck salad, redstem and water hyssop. A total of 325 acres is involved; the program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, and Texas. The experimental use permit is effective from May 27, 1977, to May 27, 1978. Temporary tolerances for residues of the active ingredient in or on rice have been established.

No. 1706-EUP-2. Nalco Chemical Company, Oak Brook, Illinois 60521. This experimental use permit allows the use of 900 pounds of the fungicide n-alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides and n-alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides in drip irrigation systems to control biological slimes. A total of 80 acres is involved; the program is authorized only in the State of California. The experimental use permit is effective from May 27, 1977, to May 27, 1978.

No. 11273-EUP-12. Sandoz, Inc., Homestead, Florida 33030. This experimental use permit allows the use of 2,074 pounds of the herbicide elemental copper in water reservoirs, lakes and ponds to evaluate control of American elodea, Brazilian elodea, chara, coontail, Eurasian watermilfoil, and southern malan, widegeongrass. A total of 283 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Mississippi, Missouri, New Jersey, North Carolina, Oregon, South Carolina, Texas, and Washington. The experimental use permit is effective from May 27, 1977, to May 27, 1978.

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: July 8, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-20564 Filed 7-18-77;8:45 am]

[OPP-50312; FRL 763-8]

HOFFMAN-LA ROCHE, INC., ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and sub-

ject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 35977-EUP-3. Hoffman-La Roche, Inc., Nutley, New Jersey 07110. This experimental use permit allows the use of 4.96 pounds of the plant growth regulator 1 - (3,7-dimethyloctyl)-1-(2-propenyl) piperidenium bromide to evaluate shortening and strengthening of chrysanthemums and certain other ornamental plants. A total of 6.5 acres is involved; the program is authorized only in the States of California, Florida, North Carolina, Ohio, and Texas. The experimental use permit is effective from June 6, 1977, to June 6, 1978.

No. 379-EUP-1. Creative Sales, Inc., Fremont, Nebraska 68025. This experimental use permit allows the use of 186 pounds of the insecticide acephate in ornamental trees to evaluate control of ornamental tree insect pests. Approximately 5,400 trees are involved; the program is authorized only in the States of Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Connecticut, Georgia, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Massachusetts, Mississippi, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Wyoming, Wisconsin, and Washington. The experimental use permit is effective from June 3, 1977, to June 3, 1978.

No. 2224-EUP-4. Mobil Chemical Company, Richmond, Virginia, 23261. This experimental use permit allows the use of 3,265 pounds of the herbicide bifenox on barley, oats, rice, wheat, corn and sorghum to evaluate control of various weeds. A total of 1,633 acres is involved; the program is authorized only in the States of Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from June 3, 1977, to May 16, 1978. Temporary tolerances for residues of the active ingredient in or on barley, oats, rice, wheat, and sorghum have been established. A permanent tolerance for residues of the active ingredient in or on corn has been established (40 CFR 180.351).

No. 2224-EUP-5. Mobil Chemical Company, Richmond, Virginia 23261. This experimental use permit allows the use of 4,877.5 pounds of the herbicide bifenox on barley, oats, rice, wheat, corn and sorghum to evaluate control of various weeds. A total of 2,640 acres is involved; the program is authorized only in the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, and Washington. The experimental use permit is effective from June 3, 1977, to May 16, 1978. Temporary tolerances for the residues of the active ingredient in or on barley, oats, rice, wheat, and sorghum have been established. A permanent tolerance for residues of the active ingredient in or on corn has been established (40 CFR 180.351).

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: July 8, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-20565 Filed 7-18-77;8:45 am]

[OPP-50310; FRL 763-6]

ICI UNITED STATES INC., ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10182-EUP-5. ICI United States Inc., Wilmington, Delaware 19897. This experimental use permit allows the use of 28.52 kilograms of the insecticide (3-phenoxyphenyl) methyl (±)-*cis, trans*-3-(2,2-dichloroethenyl) - 2,2 - dimethylcyclopropanecarboxylate on cattle, horses, sheep, hogs, and poultry to evaluate control of flies, ticks, lice, mites and keds. A total of 690 animals is involved; the program is authorized only in the States of Arizona, California, Florida, Kansas, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, New Mexico, New York, Oklahoma, South Carolina, Texas, and Virginia. The experimental use permit is effective from May 27, 1977, to May 27, 1978. This permit is being issued under the condition that all treated animals are destroyed or used for research purposes only.

No. 10182-EUP-6. ICI United States Inc., Wilmington, Delaware 19897. This experimental use permit allows the use of 1,900 pounds of the insecticide (3-phenoxyphenyl) methyl (±) - *cis, trans* - 3 - (2,2-dichloroethenyl) - 2,2 - dimethylcyclopropanecarboxylate on various raw agricultural commodities to evaluate control of leafhoppers, aphids, lygus bugs, stink bugs, lepidopterous insects, pear psylla, leafminers, tobacco budworms, Colorado potato beetles, apple maggots, and tomato pinworms. A total of 890 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Kansas, Kentucky, Louisiana, Maine, Nebraska, New Hampshire, New Jersey, New Mexico, Pennsylvania, South Carolina, South Dakota, and Tennessee. The experimental use permit is effective from May 27, 1977, to May 27, 1978. This permit is being issued under the condition that all treated alfalfa, apple, broccoli, cabbage, cauliflower, lettuce, pear, potato, soybean, sweet corn, tobacco and tomato crops will be destroyed or used for research purposes only.

No. 10182-EUP-7. ICI United States Inc., Wilmington, Delaware 19897. This experimental use permit allows the use of 2.3 kilograms of the insecticide (3-phenoxyphenyl) methyl (+)-*cis, trans*-3-(2,2-dichloroethenyl) -2,2-dimethylcyclopropanecarboxylate on cattle, horses, poultry and hogs to evaluate control of flies, lice, mites, and ticks. A total of 200 animals is involved; the program is authorized only in the States of Arizona, California, Florida, Kansas, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, New Mexico, New York, Oklahoma, South Carolina, Texas, and Virginia. The experimental use permit is effective from May 27, 1977, to May 27, 1978. This permit is being issued under the condition that all treated animals are destroyed or used for research purposes only.

No. 10182-EUP-8. ICI United States Inc., Wilmington, Delaware 19897. This experimental use permit allows the use of 24 kilograms of the insecticide (3-phenoxyphenyl) methyl (+)-*cis trans*-3-(2,2- dichlorethenyl) - 2,2-dimethylcyclopropanecarboxylate on building surfaces and insect breeding sites to evaluate control of flies. A total of 240,000 square feet is involved; the program is authorized only in the States of Arizona, California, Florida, Kansas, Nebraska, Minnesota, New York, Texas, and Virginia. The experimental use permit is effective from May 27, 1977, to May 27, 1978.

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202-755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: July 8, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-20563 Filed 7-18-77;8:45 am]

[OPP-50307; FRL 763-4]

NEW JERSEY AGRICULTURAL EXPERIMENT STATION, RUTGERS UNIVERSITY, ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are inaccordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 38573-EUP-1. New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, New Jersey 08903. This experimental use permit allows the use of 1,740 pounds of the fungicide Captafol on blueberries to evaluate control of anthracnose fruit fungus and phomopsis twig blight fungus. A total of 100 acres is involved; the program is authorized only in the State of New Jersey. The experimental use permit is effective from May 16, 1977, to May 16, 1978. A permanent tolerance

for residues of the active ingredient in or on blueberries has been established (40 CFR 180.267). The permit is issued with the limitation that any portion of the crop having residues higher than the currently established tolerance will be destroyed.

No. 40458-EUP-1. University of Massachusetts, East Wareham, Massachusetts 02538. This experimental use permit allows the use of 33 pounds of the plant growth regulator 1,2-dihydro-3,6-pyridazinedione to evaluate control of wild beans in cranberry bogs. A total of 2 acres is involved; the program is authorized only in the State of Massachusetts. The experimental use permit is effective from May 16, 1977, to May 16, 1978. The permit is issued with the limitation that the crop harvested from the treated area will be destroyed.

No. 11312-EUP-4. U.S. Department of Agriculture, Byron, Georgia 31008. This experimental use permit allows the use of 1,025 pounds of the insecticide Aldicarb on pecans as part of a pest management pilot test for control of aphids, spittlebugs, mites, phylloxera, leafminers, and nematodes. A total of 115 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Mississippi, New Mexico, South Carolina, and Texas. The experimental use permit is effective from May 16, 1977, to May 16, 1978. A temporary tolerance for residues of the active ingredient in or on pecans has been established. The permit is issued with the limitations that grazing will not be allowed and cover crops grown in treated orchards will not be used as feed.

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202-755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: July 8, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-20561 Filed 7-18-77;8:45 am]

[OPP-30000/13A; FRL 763-2]

PESTICIDE PROGRAMS

Rebuttable Presumption Against Registration and Continued Registration of Certain Pesticide Products Containing Toxaphene; Extension of Period for Submission of Rebuttal Evidence and Comments

On May 12, 1977, the Environmental Protection Agency (EPA) issued a notice of rebuttal presumption against registration and continued registration of pesticide products containing toxaphene. This notice was published in the FEDERAL REGISTER on May 25, 1977 (42 FR 26861). The regulations governing rebuttal presumptions provide that the applicant or registrant of such pesticide products shall have forty-five (45) days from the date such notice is sent to submit evidence in rebuttal of the presumption. However, for good cause shown, an additional sixty (60) days may be granted in which such evidence may be submitted (40 CFR 162.11(a)(1)(i)).

Requests for an additional 60 days in which to present evidence to the Agency have been received from many of the applicants and registrants who were affected by the notice of presumption as well as by other interested parties. Requestors have specified a need for additional time to respond to the risk presumptions set forth in the May 25 notice (i.e., acute hazard to aquatic organisms, oncogenic effects in test animals, other chronic or delayed toxic effects, and population reduction in nontarget organisms), to address the additional potential adverse effects identified in the notice, and to properly assess the environmental fate and benefits of toxaphene.

The Agency agrees that additional time would be beneficial to ensure the submission of complete and accurate responses to this notice of presumption. Therefore, because good cause has been shown for an extension of time by those wishing to respond to the notice of presumption, all registrants, applicants for registration, and other interested persons shall have until September 13, 1977, to submit rebuttal evidence and other comments or information. Such evidence, comments, or other information relevant to the presumption against registration and continued registration should be submitted to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the efforts of the Agency and of others interested in inspecting them. All comments should bear the identifying notation "OPP-30000/13A." Comments and information received on or before September 13, 1977, shall be considered before it is determined whether a notice shall be issued in accordance with 40 CFR 162.11(a)(5)(ii) and 7 U.S.C. 136(a)(c)(6) or 7 U.S.C. 136(d)(b)(1). Comments received after September 13, 1977, shall be considered only to the extent feasible consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii). All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section at the above address from 8:30 a.m. to 4 p.m. on normal business days. The file supporting the Agency's presumption against this pesticide is available for public inspection in the Office of Special Pesticide Reviews, Room 447, East Tower, during the same time period.

Dated: July 8, 1977.

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

[FR Doc.77-20558 Filed 7-18-77;8:45 am]

[PP 7G1891/T119; FRL 764-3]

ESTABLISHMENT OF TEMPORARY TOLERANCES

(3-Phenoxyphenyl) methyl (±) cis-trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate

ICI United States, Inc., Wilmington DE 19897, has submitted a pesticide petition (PP 7G1891) to the Environmental Protection Agency (EPA). This petition requests that temporary tolerances be established for residues of the insecticide (3-phenoxyphenyl) methyl (±) *cis-trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities cottonseed at 0.5 part per million (ppm); in the meat, fat, and meat byproducts of cattle, horses, and sheep at 0.25 ppm and in milk at 0.06 ppm.

Establisment of these temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerances were adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerances would protect the public health. The temporary tolerances have been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. ICI United States, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire May 24, 1978. Residues not in excess of 0.5 ppm remaining in or on cottonseed; 0.25 ppm in the meat, fat, and meat byproducts of cattle, horses, and sheep; and 0.06 ppm in milk after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to the Special Registrations Section, Registration Division (WH-567), Office of Pesticide Programs, Room 315, East Tower, 401 M St. SW., Washington, D.C. 20460, 202-755-4851.

(Sec. 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)).)

Dated: July 8, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Regisration Division.

[FR Doc.77-20749 Filed 7-18-77;8:45 am]

[OPP-180131; FRL 764-5]

INTERIOR DEPARTMENT

Issuance of Specific Exemption To Use M-44 and Sodium Cyanide To Eradicate Arctic Foxes on Agattu Island in the Aleutians

The Environmental Protection Agency (EPA) has granted a specific exemption to the Fish and Wildlife Service, U.S. Department of the Interior (hereafter referred to as the "Applicant") to use approximately 22.5 grams sodium cyanide in the M-44 device to control Arctic Foxes (*Alopex lagopus*) on Agattu Island in order to protect an endangered species, the Aleutian Canada Goose (*Branta canadensis leucopareia*). This exemption was granted in accordance with, and is subject to, provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State Agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460.

According to the Applicant, a remnant breeding population of Aleutian Canada Geese was confirmed on Buldir Island in the Aleutians in 1962. Today this tiny island supports the only known population, estimated at about 1,000 birds. The population decline in Aleutian Canada Geese and their breeding range is largely attributed to predation by introduced fox. The Applicant stated that the practice of introducing fox, not native to the islands, was initiated for private fur farming. This practice was discontinued in the late 1930's and all permits revoked. The past control program of trapping and shooting has proven ineffective. The Applicant requested use of the M-44 device for control of the fox population so that a recovery program on Agattu Island for the endangered Aleutian Canada Goose may be successfully completed. It is anticipated that this emergency control program will remove the fox from Agattu Island this year; however, if complete control is not attained, a similar project may be necessary next year.

The Applicant proposed that the M-44, a spring-loaded device, containing sodium cyanide be used. A maximum of 50 sodium cyanide capsules (equivalent to an approximate total of 22.5 grams active ingredient) will be exposed on Agattu Island over a 120-day period. The program began on May 1. The M-44 devices will be placed by authorized personnel only on Agattu Island, Aleutian Islands National Wildlife Refuge, Alaska. All unused capsules of sodium cyanide will be recovered.

EPA has determined that removal of the foxes will create a much healthier environment for re-establishing the Aleutian Canada Goose. In addition, it is anticipated that other elements of the Aleutian avian fauna will flourish in the long run. However, some mortality to glaucous-winged gulls and raven may occur; this should not have any serious long term effects on the breeding populations. Overall, the hazards to nontarget species through this use of the M-44 appear to be minimal

It should be noted that, in 1972, the President issued an executive order which banned the use of chemical toxicants on Federal lands, except in emergency conditions. One of these conditions was the use of chemical toxicants for the preservation of one or more wildlife species threatened with extinction or likely within the forseeable future to become so threatened. The Aleutian Canada Goose falls within this provision. Further, in 1975, the EPA issued a registration to the Fish and Wildlife Service for the use of sodium cyanide-loaded M-44 devices to control coyote, fox, and feral dogs which prey upon livestock; the EPA has determined that the sodium cyanide/M-44 device will also be effective in removing the Arctic Fox from Agattu Island. If the introduced fox cannot be removed, a successful breeding colony of the Aleutian Canada Goose may not be achieved and this species will continue to be in jeopardy. As previously mentioned, other methods such as trapping and shooting have not been successful in eradicating the Arctic fox. Before using any chemical toxicant on Federal land, the President's 1972 order required that the agency involved in using these toxicants must consult with the Secretaries of the Interior, Agriculture, and Health, Education, and Welfare, and the Administrator of the EPA; the Applicant stated that this requirement has been met.

Since Agattu Island is uninhabited by man, there should be no danger to humans as a result of this use of the sodium cyanide-loaded M-44 devices.

After reviewing the application and other available information, EPA has determined that (a) an emergency situation involving an endangered species exists; (b) there are no alternative means of control, taking into account the efficacy and hazard; (c) significant environmental problems may result if the Arctic fox is not eradicated from Agattu Island; and (d) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until August 31, 1977, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Sodium cyanide as used in the M-44 device is authorized. A maximum of 50 sodium cyanide capsules (equivalent to an approximate total of 22.5 grams active ingredient) may be used;
2. The M-44 devices are to be placed only on Agattu Island, Aleutian Islands National Wildlife Refuge, Alaska;
3. Only personnel of the Fish and Wildlife Service will hand place the M-44 devices;
4. All unused capsules of sodium cyanide will be recovered;
5. All precautions will be taken to avoid or minimize any hazard to nontarget species that may result from the use of M-44 on Agattu Island;
6. A full report of this eradication program must be submitted to EPA by the end of 1977; and
7. The EPA shall be immediately informed of any adverse effects resulting from the use of this pesticide in connection with this exemption.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: July 13, 1977.

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

[FR Doc.77-20750 Filed 7-18-77;8:45 am]

[OPP-42003C; FRL 764-4]

IOWA

Extension of Contingency Approval of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (85 Stat. 973; 7 U.S.C. 136) and 40 CFR Part 171 (39 FR 36445 (October 9, 1974) and 40 FR 11698 (March 12, 1975)), the Honorable Robert D. Ray, Governor of the State of Iowa, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On August 28, 1975, the Regional Administrator, EPA, Region VII, approved the plan on a contingency basis for a 9-month period. Notice of the approval was published in the FEDERAL REGISTER on September 16, 1975 (40 FR 42774). A 12-month extension of the contingency approval was requested on May 20, 1976, by the State of Iowa and granted by the Regional Administrator, EPA, Region VII, on May 27, 1976. Notice of the approval of the 12-month extension was published in the FEDERAL REGISTER on July 19, 1976.

Amendments to the 1974 Pesticides Act of Iowa have necessitated changes in the proposed implementing rules and regulations. As a result, on May 16, 1977, the State of Iowa requested a 6-month extension of the Iowa contingency approval pending final implementation of

regulations. The Agency finds that there is good cause for approving the request and as such has granted Iowa a 5-month extension which will expire October 21, 1977.

Dated: May 20, 1977.

CHARLES V. WRIGHT,
Acting Regional Administrator, Region VII.

[FR Doc.77-20748 Filed 7-18-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

CANADA-U.S.A. FM BROADCASTING AGREEMENT OF 1947

Amendment of Table A

JUNE 30, 1977.

Supplement No. 4 to the Table of Canadian FM Broadcasting Channel Assignments and Allocations within 250 Miles of the Canada-U.S.A. border, dated June 24, 1977, as revised April 12, 1977.

Pursuant to exchange of correspondence between the Department of Communications of Canada and the Federal Communications Commission, Table A of the Canada-U.S.A. FM Broadcasting Agreement has been amended as set forth in the attached list. It is to be noted that those representing assignments will indicate call signs plus parameters.

Further additions, changes, and deletions will be issued as reported to the Commission by the Canadian Department of Communications.

Copies of the basic Table of Allocations may be obtained from Downtown Copy Center, 1730 K Street NW., Washington, D.C. 20036, telephone 202-452-1422.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau, Federal Communications Commission.

FM engineering data base listing—index key State, city, frequency, Federal Communications Commission—Broadcast Bureau, unofficial secondary source. Use primary sources for official information, June 24, 1977

Halifax, Nova Scotia	213C	44-38-53.0	United States	770512
	90.05	63-35-31.0		

[FR Doc.77-20495 Filed 7-18-77;8:45 am]

FM AND TV TRANSLATOR APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: July 1, 1977.

Released: July 8, 1977.

By the Chief, Broadcast Bureau.

Notice is hereby given pursuant to §§ 1.572(c) and 1.573(d) of the Commission's rules, that on September 2, 1977, the TV and FM translator applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.519(b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on September 1, 1977, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on September 1, 1977.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

UHF TV TRANSLATOR APPLICATIONS

BPTT-3235 (K61AN), Sterling, Soldotna and Kasilof, Alaska, State of Alaska. Req: Change principal community to Kasilof, Cohoe & Kalifonsky, Alaska.

BPTT-3236 (K64AN), Sterling, Soldotna and Kasilof, Alaska, State of Alaska. Req: Change principal community to Kasilof, Cohoe and Kalifonsky, Alaska.

BPTT-3247 (new), Eastlake and surrounding area, Ohio, Ohio Educational Television Network Commission. Req: Change frequency to Channel 67, 788-794 MHz.

BPTT-3248 (new), Lancaster, Palmdale and Quartz Hill, California, International Panorama TV Inc. Req: Channel 62, 758-764 MHz, 100 watts. Primary: KLXA-TV, Fontana, California.

BPTT-3252 (new), Hanalei and Princeville, (Kauai), Hawaii, Hawaii Public Broadcasting Authority. Req: Channel 68, 794-800 MHz, 100 watts. Primary: KHET-TV, Honolulu, Hawaii.

BPTT-3253 (K80CJ), Anahola, Hawaii, Hawaii Public Broadcasting Authority. Req: Change frequency to Channel 63, 764-770 MHz.

BPTT-3254 (new), Santa Cruz and Environs, California, Monteray-Salinas Television, Inc. Req: Channel 57, 728-734 MHz, 100 watts. Primary: KMST-TV, Monterey, California.

BPTT-3255 (new), Manchester, California, Point Arena Television, Inc. Req: Channel 59, 740-746 MHz, 100 watts. Primary: KQED-TV, San Francisco, California.

BPTT-3256 (new), Point Arena, California, Point Arena Television, Inc. Req: Channel 68, 794-800 MHz, 100 watts. Primary: KQED-TV, San Francisco, California.

BPTT-3258 (new), Guymon, Oklahoma, Oklahoma Educational Television Authority. Req: Channel 16, 482-488 MHz, 1,000 watts. Primary: KETA-TV, Cheyenne, Oklahoma.

BPTT-3259 (new), Altus, Oklahoma, Oklahoma Educational Television Authority. Req: Channel 19, 500-506 MHz, 1000 watts. Primary: KETA-TV, Cheyenne, Oklahoma.

BPTT-3260 (new), Lawton, Oklahoma, Oklahoma Educational Television Authority. Req: Channel 36, 602-608 MHz, 1,000 watts. Primary: KETA-TV, Oklahoma City, Oklahoma.

BPTT-3261 (new), Boise City, Oklahoma, Oklahoma Educational Television Authority. Req: Channel 55, 716-722 MHz, 100 watts. Primary: KETA-TV, Cheyenne, Oklahoma.

BPTT-3262 (new), Beaver City, Oklahoma, Oklahoma Educational Television Authority. Req: Channel 56, 722-728 MHz, 100 watts. Primary: KETA-TV, Cheyenne, Oklahoma.

BPTT-3263 (new), Frederick, Oklahoma, Oklahoma Educational Television Authority. Req: Channel 57, 728-734 MHz, 100 watts. Primary: KETA-TV, Cheyenne, Oklahoma.

BPTT-3264 (new), Buffalo, Oklahoma, Oklahoma Educational Television Authority. Req: Channel 58, 734-740 MHz, 100 watts. Primary: KETA-TV, Cheyenne, Oklahoma.

BPTT-3265 (K77CH), Grangeville, Cottonwood, Craigmont and Nezperce, Idaho, Central Idaho TV, Inc. Req: Change frequency to Channel 59, 740-746 MHz, increase output power to 20 watts.

BMPTT-959 (W67AI), Gates Mills, Ohio, Educational Television Association of Metropolitan Cleveland. Req: Change frequency to Channel 66, 782-788 MHz.

BPTT-3246 (new), Greeneville, Tennessee, Holston Valley Broadcasting Corp. Req: Channel 39, 620-626 MHz, 1,000 watts. Primary: WKPT-TV, Kingsport, Tennessee.

VHF TV TRANSLATOR APPLICATIONS

BPTTV-5816 (new), Wanship, Utah, Summit County. Req: Channel 10, 192-198 MHz, 1 watt. Primary: KSL-TV, Salt Lake City, Utah.

BPTTV-5817 (new), Wanship, Utah, Summit County. Req: Channel 12, 204-210 MHz, 1 watt. Primary: KUED-TV, Salt Lake City, Utah.

BPTTV-5818 (K08DX), Prescott, Washington, Prescott TV System, Inc. Req: Change primary TV station to KVEW, Channel 42, Kennewick, Washington and to delete via K74BZ, Milton-Free-water, Oregon.

BPTTV-5823 (K06GE), Riley, Oregon, Countywide TV, Inc. Req: Add Alkali Lake, Oregon to present principal community, increase output power to 10 watts.

BPTTV-5824 (new), Montreat, North Carolina, Wometco Skyway Broadcasting Company. Req: Channel 6, 82-88 MHz, 1 watt. Primary: WLOS-TV, Asheville, North Carolina.

BPTTV-5825 (new), Manitou Springs, Colorado, University of Southern Colorado. Req: Channel 7, 174-180 MHz, 10 watts. Primary: KTSC-TV, Pueblo, Colorado.

BPTTV-5827 (new), Elk and Rural Area Along U.S. Highway 1, California, Point Arena Television, Inc. Req: Channel 8, 180-186 MHz, 10 watts. Primary: KQED-TV, San Francisco, California.

BPTTV-5828 (new), Mendocino, Albion and Little River, California, Point Arena Television, Inc. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KQED-TV, San Francisco, California.

BPTTV-5829 (new), Greenwood Ridge area, Navarro Head area and Albion Ridge area, California, Point Arena Television, Inc. Req: Channel 12, 204–210 MHz, 10 watts. Primary: KQED-TV, San Francisco, California.

BPTTV-5830 (KØ6EB), Sand Springs Community, Lodge Pole and Calf Creek Community, Montana, Garfield TV Club. Req: Change principal community to Brusett, North Rural & West Rural Area Montana, increase output power to 10 watts, Change primary TV station to KRTV, Ch-3, Great Falls, Montana.

BPTTV-5833 (K13HW), Camas Valley, Oregon, Camas Valley Grange No. 521, Req: Change frequency to Channel 12, 204–210 MHZ.

Application deleted from Public Notice release August 4, 1976 (Mimeo No. 68379, 41 FR 33584).

BPTT-3027 (new), Eastlake and Surrounding Area, Ohio, Ohio Educational Television Network Commission, Req: Channel 61, 1000 watts. Primary: WVIZ-TV, Cleveland, Ohio. (Assigned new file number BPTT-3247.)

[FR Doc.77-20494 Filed 7-18-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Cases Filed Week of June 10 Through June 17, 1977

Notice is hereby given that during the week of June 10 through June 17, 1977, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be July 19, 1977, or the date of receipt of an aggrieved person of actual notice, whichever occurs first.

ERIC J. FYGI,
Acting General Counsel.

JULY 12, 1977.

APPENDIX.—*List of cases received by the office of exceptions and appeals, week of June 10 through June 17, 1977*

Date	Name and location of applicant	Case No.	Type of submission
June 13, 1977	Bowerman, R. D. d.b.a. Executive Center Gulf Station, San Antonio, Tex. (If granted: The FEA's May 23, 1977 remedial order would be rescinded and R. D. Bowerman would not be required to refund overcharges made in sales of motor gasoline during the period Nov. 1, 1973, through July 24, 1974).	FRA-1354 FRS-1354	Appeal of FEA region VI's remedial order dated May 23, 1977.
Do	Commonwealth Oil Refining Co., Inc., Washington, D.C. (If granted: Commonwealth Oil Refining Co., Inc. would be permitted to import crude oil and naphtha as refinery and petrochemical feedstock on a license fee free basis.)	FPI-0122	Exception from base fee requirements (§ 213.35).
Do	Halliburton Co./Vessels Gas Processing Co., Denver, Colo. (If granted: The Halliburton Co./Vessels Gas Processing Co. would receive an extension of the exception relief granted in the FEA's Mar. 17, 1977 decision and order which would permit the firm to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the Irondale plant.)	FXE-4341	Extension of exception relief granted in Halliburton Co./Vessels Gas Processing Co., case No. FXE-3699 (decided Mar. 17, 1977) (unreported decision).
Do	Sabre Refining, Inc., Bakersfield, Calif. (If granted: The FEA's May 20, 1977 supplemental order issued to Sabre Refining, Inc. would be amended to review the appropriateness of the entitlements exception relief granted to the firm during 1976 based on financial results beginning with April 1976.)	FEX-0164	Supplemental order to decision and order in Sabre Refining, Inc., 5 FEA par. ---- (May 20, 1977).
Do	Suburban Propane Gas Corp., Whippany, N.J. (If granted: The May 25, 1977 stay which was granted to the Suburban Propane Gas Corp. would be rescinded.)	FRX-0165	Supplemental order to decision and order in Suburban Propane Gas Corp., 5 FEA par. ---- (May 25, 1977).
June 14, 1977	Estates of Inez Phillips and Loyce Phillips, Austin, Tex. (If granted: The estates of Inez Phillips and Loyce Phillips would be permitted to increase their prices for natural gas liquid products produced at the Nan-Su-Gail plant to reflect nonproduct cost increases in excess of $0.005/gal.)	FEE-4342	Price exception (§ 212.165)
Do	Indiana Farm Bureau Cooperative Association Inc., Indianapolis, Ind. (If granted: Indiana Farm Bureau Cooperative Association, Inc. would be granted an exception which would permit it to recalculate the passthrough of increased nonproduct costs on a proportional basis for the period Jan. 1, 1975, through Jan. 31, 1976.)	FEE-4319	Exception to sequential nonproduct cost passthrough.
Do	Taylor Gas, Inc., Fairburn, Ga. (If granted: The FEA's May 25, 1977 remedial order would be rescinded and Taylor Gas, Inc. would not be required to refund overcharges made on its sales of propane.)	FRA-1355	Appeal of FEA region IV's remedial order dated May 25, 1977.
Do	Texaco, Inc., Houston, Tex. (If granted: Texaco, Inc. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $.005/gal for natural gas liquid products produced at the following natural gas plants: Coalinga Nose, Humble, Paradis, and Pledger.)	FEE-4343—FEE-4346	Price Exception (§212.165).

Date	Name and location of applicant	Case No.	Type of submission
Do	Texaco, Inc. (Pegasus) Houston, Tex. (If granted: Texaco, Inc. would receive an extension of the relief granted in the FEA's Nov. 19, 1976 decision and order which would permit it to increase its prices for natural gas liquid products produced at the Pegasus plant to nonproduct cost increases in excess of $.005/gal.)	FXE-4347	Extension of relief granted in Texaco, Inc., 4 FEA par. 83,201 (Nov. 19, 1976).
Do	W. E. Shrider Co., Columbus, Ohio. (If granted: The FEA's June 2, 1977 stay decision granted to the W. E. Shrider Co. would be modified and the firm would not be reqired to establish an escrow account pending the FEA's final determination of Shrider's appeal.)	FMR-0110	Modification of decision and order in W. E. Shrider Co., 5 FEA par. ---- (June 2, 1977).
June 15, 1977	BTA Oil Producers, Midland, Tex. (If granted: BTA Oil Producers would receive an extension of the relief granted in the FEA's Jan. 27, 1977 decision and order which would permit it to sell all of the crude oil produced and sold for the benefit of the working interest owners from the JV-D Teeters lease located in Hockley County, Tex., at upper tier ceiling prices as specified in 10 CFR pt. 212, subpt. D.	FXE-4348	Extension of relief granted in BTA Oil Producers, 5 FEA par. 83,047 (Jan. 27, 1977).
Do	Evangeline Refining Co., Inc., Jennings, La. (If granted: Evangeline Refining Co., Inc. would be granted a stay of its March 1977 entitlement purchase obligations.)	FRS-0101	Stay request.
Do	Seward, Johnny d.b.a. Johnny's Super Shell, Chicago, Ill. (If granted: A remedial order which was issued to Johnny Seward d.b.a. Johnny's Super Shell would be rescinded and Seward would not be required to refund overcharges made on sales of motor gasoline.)	FRA-1356	Appeal of FEA region V's remedial order
June 16, 1977	Adams Oil Co., Charlottesville, Va. (If granted: The FEA's May 25, 1977 stay decision granted to the Adams Oil Co. would be modified and the firm would not be required to establish an escrow accouht pending the FEA's final determination of Adams' appeal.)	FMR-0111	Modification of dicision and order in Adams Oil Co., 5 FEA par. ---- (May 25, 1977).
Do	Hamilton Bros. Oil Co./Tesoro Petroleum Corp., Washington, D.C. (If granted: The Hamilton Bros. Oil Co. would receive various types of administrative relief from the mandatory petroleum allocation and price regulations in connection with its acquisition of the Newcastle refinery from the Tesoro Petroleum Corp.)	FEE-4349	Exception to mandatory petroleum and price Regulations (pt. 211 and pt. 212).

[FR Doc.77-20477 Filed 7-13-77;1:02 pm]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of May 31 Through June 3, 1977

Notice is hereby given that during the week of May 31 through June 3, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Buck Drilling & Exploration; Oklahoma City, Okla.; FRA-1185; Crude oil

Buck Drilling & Exploration filed an Appeal from a Remedial Order which was issued to the firm by the Deputy Regional Administrator of FEA Region VI on January 25, 1977. The Remedial Order found that Buck has sold crude oil at prices that were in excess of the lower tier ceiling price specified in 10 CFR 212.73. The firm was therefore directed to refund these excessive revenues which accrued interest through a reduction in its selling price for the crude oil. The present Appeal, if granted, would result in the rescission of the Remedial Order and would relieve the firm of its refund obligation. In its Appeal, Buck contended that the Remedial Order incorrectly utilized the preceding calendar year of 1974 as a reference period and improperly computed the production from the Buck properties in determining that the firm had erroneously classified the leases as stripper well properties in 1975. In considering Buck's Appeal, the FEA rejected Buck's view that the term preceding calendar year included any completed 12 month period and further found that Region VI had properly calculated the production of crude oil from the two leases during the 1974 calendar year measurement period. The FEA also determined that there was no merit to the firm's additional contention that the Notice of Probable Violation which had been issued to the firm was procedurally defective. Since Buck had failed to demonstrate that the Remedial Order was erroneous in fact or law or was arbitrary or capricious, the firm's Appeal was denied.

Fort Howard Paper Company; Greenbay, Wisc.; FEA-1158; Reporting requirements

Fort Howard Paper Company filed an Appeal from a Notice which the FEA published in the FEDERAL REGISTER on December 16, 1976 (41 FR 54977) in which it identified Fort Howard as a corporation that consumed at least one trillion Btu's of energy in SIC Code 26 during 1975 and was among the 50 most energy consumptive firms in that industry. As a result of that Notice, Fort Howard has been required to participate in a reporting program under the provisions of Section 375 of Part D of the Energy Policy and Conservation Act (EPCA), Pub. L. No. 94-163 (December 22, 1975). In its Appeal Fort Howard raised significant questions concerning the accuracy and consistency of the data which the FEA collected and used in implementing Part D, Section 375 of the EPCA. However, during the pendency of the Appeal proceeding, the Office of Exceptions and Appeals received a memorandum from the FEA Office of Conservation which indicated that the Office of Conservation intended to implement procedures to verify the accuracy and consistency of the data received from all firms in SIC Code 26. That memorandum also indicated that the Office of Conservation would review its earlier determination with respect to Fort Howard's inclusion in the December 16, 1976 Notice. In view of the actions being taken by the Office of Conservation, the FEA concluded that the consideration of Fort Howard's Appeal at this time would be somewhat premature. The Appeal was therefore dismissed without prejudice to a resubmission at a later date.

Husky Oil Co. of Delaware; Denver, Colo.; FXA-1162; Refiner

Husky Oil Company of Delaware filed an Appeal from a Decision and Order which the Federal Energy Administration issued to Husky on December 15, 1976. "Husky Oil Co. of Delaware," 4 FEA Par. 83,244 (December 15, 1976). In the December 15 determination the FEA granted Husky an exception from the provisions of 10 CFR 211.67 (the Entitlements Program) and thereby relieved the firm of any of its entitlement purchase obligations during the period December 1976 through May 31, 1977. In its Appeal, Husky contended that the historical financial data that the FEA utilized in calculating the level of exception relief was unreasonably low. Husky asserted that unless it is permitted to receive exception relief on the basis of a higher profit margin it will be unable to maintain the viability of its refining operations in future years. In considering Husky's arguments, the FEA noted that the historical financial results which a firm reports can vary to a significant extent depending upon the accounting methods which a firm utilized. The FEA found that in view of the overall profitability of the firm and the nature of its continuing operation of its refining and marketing divisions, the firm failed to show that any adjustment to its historical profit margin was necessary to ensure the continued viability of its refining operations. The Appeal was accordingly denied.

Pasco Liquidating Trust; New York, N.Y.; FXA-1160; Crude oil

Pasco Liquidating Trust (formerly Pasco, Inc.) filed an Appeal from a Decision and Order which the FEA issued to it on December 15, 1976. "Pasco, Inc.," 4 FEA Par. 87,034 (December 15, 1976). In the December 15 Decision and Order, the FEA determined that on the basis of financial and operating data which Pasco had submitted, the firm had been afforded an excessive measure of exception relief from its fiscal 1976 entitlement purchase obligations. The December 15 Order accordingly required Pasco to purchase entitlements valued at $2,747,000 during the period January through December 1977 in order to offset the excessive benefits which the firm had received. The Appeal, if granted, would result in certain adjustments being made to the firm's previously reported profitability thereby decreasing the amount of the repayment obligations. Pasco specifically contended that the FEA should not have included the profits which it realized in the months of April and May 1976 in its review of the appropriateness of the exception relief granted to Pasco in 1976. According to Pasco the inclusion of the firm's financial results in the April to May period effectively reduced from six to four months the period of the small refiner exemption under Special Rule No. 6. In rejecting this assertion the FEA observed that since Pasco and other small refiners were exempted from purchasing entitlements which would have been specified in the Entitlement Notice issued in the months of December 1975 and January through May 1976 it is apparent that Pasco and other small refiners did in fact receive a benefit for a period of six months. Therefore, the FEA concluded that there was no reasonable basis for accepting Pasco's contention that its profits for the months of April and May 1976 should be excluded from the FEA's review of the exception relief

granted to the firm in the entire 1976 fiscal year. Pasco also contended that its reported profitability should be adjusted to reflect certain additional expenses which Pasco stated were directly related to its refining and marketing operations, but which were not determinable until after Pasco's sale of those operations on July 1, 1976. In considering this argument the FEA determined that the expenses represented estimates of anticipated expense items which would be incurred by the purchaser of Pasco's refining and marketing operations after June 30, 1976 and which were reflected in the selling price of the refinery. Consequently, the FEA concluded that since these expense items were actually incurred subsequent to June 30, 1976, they were not related to the firm's refining and marketing operations during the period in which Pasco received exception relief and were instead a part of the cost of the liquidation of Pasco's operations. Accordingly, since Pasco failed to establish that the December 15 Decision and Order was erroneous in fact or law or was arbitrary or capricious, its Appeal was denied.

REQUESTS FOR EXCEPTION

Alexander-Loop Oil Properties, Inc., Tulsa, Okla.; FXE–4092; Crude oil

Alexander-Loop Oil Properties, Inc. (Loop) filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would have resulted in the extension of exception relief previously granted to Loop and would have permitted the firm to continue to sell a portion of the crude oil produced from the Dicey-McIntosh Lease, Section 12, at upper tier ceiling prices. "Paul R. Loop," 5 FEA Par. 83,010 (December 23, 1976). In considering the exception application, the FEA found that Loop continued to incur increased operating expenes at the Lease and that, in the absence of exception relief, the working interest owners would lack an economic incentive to continue to produce crude oil from the property. In view of this situation, and on the basis of the operating data presented by Loop for the Dicey-McIntosh Lease, the FEA concluded that the working interest owners should be permitted to sell 37.4595 percent of the crude oil produced from the Lease at upper tier ceiling prices.

T & F Oil Co.; Long Beach, Calif.; FEE–3968; Crude Oil

The T & F Oil Company filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D, which, if granted, would permit T & F to sell the crude oil produced from the El Segundo No. 1 well (the El Segundo well) at upper tier ceiling prices. In considering the exception application, the FEA found that the El Segundo well had been operated in a profitable manner during the past four years and the data submitted by the firm indicated that the well would continue to generate a substantial operating profit during the current fiscal year. Since T & F had not demonstrated that it had an economic incentive to terminate its production activities at the El Segundo well, the FEA concluded that the firm had failed to establish that the application of the lower tier ceiling price adversely affected it in any significant manner or caused it to experience a gross inequity. Accordingly, the exception application was denied.

REQUEST FOR STAY

Petroleum Management, Inc.; Wichita, Kans.; FRS–1311; Crude oil

Petroleum Management, Inc. (PMI) requested that a Remedial Order which the Director of the Compliance Division of the Federal Energy Administration Region VII issued to the firm on April 27, 1977 be stayed pending a final determination of the firm's Appeal. On the basis of findings that PMI had erroneously classified 12 leases as stripper well properties and had improperly sold the crude oil from these leases at exempt price levels, the Remedial Order directed PMI to refund the revenues which it had improperly received. On the basis of the principles set forth in "General Crude Oil Co.," 3 FEA Par. 85,040 (June 25, 1976), modified 3 FEA Par. 85,040 (July 8, 1976), the FEA determined that a stay should be granted since PMI demonstrated that it would raise substantial issues in its Appeal and that it would encounter an undue burden in recovering the refunds required by the Remedial Order if it ultimately succeeded on the merits of its Appeal. The FEA also found that if PMI were required to place the full amount of the disputed funds in an escrow account as generally required under the criteria set forth in the "General Crude Oil Co." Decision, its operating cash position would be impaired to such an extent that its continued, essential business activities would be significantly jeopardized. However, the FEA determined that the firm's financial condition would permit the establishment of a partial escrow account. The FEA therefore stayed the Remedial Order on the condition that PMI place one-third of the disputed funds in escrow pending a final determination of its Appeal.

Powerine Oil Co.; Santa Fe Springs, Calif.; FES–0096; Petroleum products

The Powerine Oil Company requested that a Special Report Order which was issued to the firm on February 17, 1977 by FEA Region IX be stayed pending a final determination on a Petition for Special Redress which it filed. In considering Powerine's request, the FEA noted that Powerine had failed to follow the administrative review procedure set forth in 10 CFR 210.91(c) and had also delayed filing its present submission until the date upon which the Special Report was due. Under customary procedures these submissions would therefore have been denied. However, the FEA noted that due procedure set forth in § 210.91(c) was relatively new, and Powerine had raised legal issues of first impression concerning the propriety of the Special Report Order. Moreover, the firm was subject and would continue to be subject to civil and criminal sanctions which would increase substantially every day that Powerine failed to comply with the Special Report Order. Under these circumstances, the FEA exercised its discretion to consider the Petition in spite of Powerine's actions and reviewed the firm's request for stay. In evaluating the stay request, the FEA found that unless a stay were granted the FEA might be placed in a situation in which it would be unable to provide appropriate relief even if Powerine prevailed on the merits of its Petition for Special Redress. In addition, the FEA determined that Powerine had raised substantial issues of law in its Petition which warranted further consideration. Accordingly, Powerine's Application for Stay was granted and the FEA agreed to review the firm's Petition for Special Redress.

W. E. Shrider Co.; Newark, Ohio; FRS–1336; Crude oil

W. E. Shrider Company (Shrider) filed an Application for Stay of a Remedial Order which FEA Region V issued to the firm on May 9, 1977. The Remedial Order directed Shrider to reduce the prices which it charges for crude oil produced from the Mary B. Griggs lease in order to refund revenues which the firm realized by charging excessive prices for crude oil produced from that property. Approval of a stay would relieve Shrider of the obligation to comply with the provisions of the Remedial Order pending a final determination of an Appeal of the Remedial Order. On the basis of the principles established in "General Crude Oil Co.," 3 FEA Par. 85,040 (June 25, 1976), modified 3 FEA Par. 85,040 (July 8, 1976), the FEA concluded that a stay should be granted since Shrider had raised substantial issues in its Appeal and might experience an irreparable injury if it were required to refund the revenues involved prior to a determination on the Appeal. The FEA further concluded however, that in accordance with the considerations discussed in "General Crude" the stay should be conditioned upon Shrider's placing the funds in question into an escrow account.

PETITION FOR SPECIAL REDRESS

Gas Del Oro, Inc., Gas Del Oro International, Inc., El Dorado Marketing Co. of Laredo; Houston, Tex.; FSG–0043; Natural gas liquid products

Gas del Oro, Inc., Gas del Oro International, Inc. and El Dorado Marketing Co. of Laredo (Gas del Oro) filed a Petition for Special Redress relief. The Gas del Oro submission related to a dispute as to the proper application of the "export sale exemption" set forth in 10 CFR 212.53(a) to certain natural gas liquid products which are produced in the Ozona Gas Processing Plant in Crockett County, Texas and sold to Gas del Oro by the Suburban Propane Gas Corporation. On June 29, 1976, Suburban filed a Request for Interpretation with the FEA in which it sought a determination that its sales to Gas del Oro have been within the scope of the export sale price exemption in § 212.53(a). This issue had been raised previously in two formal Complaints which Gas del Oro had filed with the FEA Office of Compliance, and in a lawsuit which Gas del Oro initiated against Suburban in the United States District Court for the Southern District of Texas. The District Court entered an Order staying the judicial proceedings until the litigants had exhausted their administrative remedies within the FEA. In its Petition, Gas del Oro contended that until the fundamental legal issue as to the proper applicability of § 212.53(a) is determined by the Office of General Counsel in the context of the Suburban Interpretation Request, the compliance proceedings and the lawsuit between the parties cannot go forward. Accordingly, Gas del Oro requested that the Office of Private Grievances and Redress (1) direct the Office of General Counsel to take immediate action with respect to the Interpretation Request; or (ii) issue an order declaring that the issues presented are incapable of resolution by the FEA and that the parties have therefore exhausted their administrative remedies. While the Gas del Oro petition was under consideration, the Office of General Counsel indicated that a formal Interpretation could be issued in response to the Suburban request within 30 days. In view of the action which the Office of General Counsel has indicated that it will take to advance the related FEA proceedings, the FEA Office of Private Grievances and Redress determined that the Gas del Oro Petition should be dismissed without prejudice.

SUPPLEMENTARY ORDER

Buck's Butane and Propane Service, Inc.; San Jose, Calif.; FRX–0161; Propane

Buck's Butane and Propane Service, Inc. filed an Appeal from a Remedial Order which the Director of the Compliance Division of the Federal Energy Administration Region IX Office issued to the firm on April 21, 1977. The Remedial Order found that Buck's had sold certain quantities of propane at prices which were in excess of the maximum allowable selling prices computed pursuant to the provisions of 6 CFR 150.359 and 10 CFR

212.93. In addition, the Remedial Order found that Buck's had improperly received overcharges from its customers as a result of the prices it charged for propane tank rentals. On the basis of these findings, the Remedial Order directed Buck's to make refunds to its customers through a combination of prospective price reductions and direct refunds. During the course of the Appeal proceeding, Buck's requested that the FEA issue subpeonas to five individuals who were involved in one or more of a number of FEA audits of the fuel costs records of Buck's. According to its request the evidence which Buck's would obtain from the testimony of the auditors is an essential element of the firm's Appeal. In considering the Buck's request, the FEA observed that a firm is generally able to formulate an adequate Appeal from a Remedial Order on the basis of the documents referred to in the Notice of Probable Violation issued to the firm and the Remedial Order, and on the basis of other written information readily available to the firm. However, the FEA also stated that when essential factual issues are involved in an Appeal proceeding, and when those factual issues involve the arguments which the firm may properly raise on Appeal, then the FEA will take measures to ensure that the necessary factual material is made available to the firm in an appropriate manner. After reviewing the record in the Appeal proceeding, the FEA concluded that unusual factors exist in the present case which necessitate taking measures which would permit Buck's to obtain certain factual data. In order to advance the proceeding in an expeditious manner while at the same time permitting Buck's to assemble the information necessary to formulate its Appeal, the FEA determined that a hearing should be convened and that the witnesses which Buck's identified should be required to testify.

Requests for Exception Received From Natural Gas Processors

The Office of Exceptions and Appeals of the Federal Energy Administration has issued Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The exceptions granted permit the firms involved to increase the prices of the production of the gas plants listed below to reflect certain non-product cost increases:

Company	Case No.	Plant	Amount of price increase (dollars per gallon)
Indian Wells Oil	FXE-4158	Indian Wells	0.0572
Superior Oil Co	FXE-4081	Rio Bravo	.0107
	FXE-4136	Portilla	.0124
	FXE-4143	Cymric	.0454
	FXE-4144	Kettleman Hills	.0326

Dismissals

The following submissions were dismissed following a statement by the applicant that the relief requested was no longer needed:

Oxnard Refinery; Los Angeles, Calif.; FES-1333

Montara Petroleum Co.; Palo Alto, Calif.; FEE-4113

The following submission was dismissed after the applicant repeatedly failed to respond to requests for additional information:

Universe Oil Co.; Carteret, N.J.; FEE-3649

The following submission was dismissed at the firm's request without prejudice to a refiling within 14 days of a new Appeal:

Midland Cooperatives, Inc.; Washington, D.C.; FXA-1103

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except Federal holidays. They are also available in "Energy Management: Federal Energy Guidelines", a commercially published loose leaf reporter system.

Eric J. Fygi,
Acting General Counsel.

July 12, 1977.

[FR Doc.77-20478 Filed 7-13-77;1:02 pm]

SECOND ANTHRACITE COAL CONFERENCE

Conference

Notice is hereby given that the second Anthracite Coal Conference will be held on July 26, 1977, at 10:30 a.m. at 1421 Cherry Street, Philadelphia, Pennsylvania. This meeting will be a followup to the first Anthracite Coal Conference held on June 28, 1977, at FEA Headquarters in Washington, D.C.

At the first conference it was determined that the conferees would be divided into five subgroups to facilitate the analysis of specific issues and to advise the parent conference about those matters affecting the consideration of anthracite production and utilization. Accordingly, notice is also hereby given that the subgroups of the Anthracite Coal Conference will hold meetings before the second conference.

The urgency of convening both the subgroup meetings and the July 26 conference stems from a priority commitment made by the President to find ways of improving coal production and utilization. In support of this commitment the FEA was charged with the responsibility for studying ways to improve the production of anthracite coal.

The study of the utilization of anthracite coal must be completed and presented to Mr. Schlesinger by October 15, 1977, closely coinciding with the formation of the proposed Department of Energy. As a result and in order to adequately address all of the important issues facing anthracite improvements in such a short time period, it is essential to call these meetings immediately and as a result the customary advance period of notice normally given in such instances has not been provided.

The agenda and schedule of subgroup meetings is as follows:

Production Subgroup

July 14, 1977, 10 a.m., The Riveredge Motel, Route 183, Reading, Pennsylvania.

Agenda: Development of study plan to be followed in analyzing ways of enhancing anthracite production.

July 26, 1977, 9 a.m., FEA—Region III Office, 1421 Cherry Street, Philadelphia, Pennsylvania.

Agenda: Summarize analysis of production issues and recommendations developed to date, and prepare for presentation of this subject matter to the full conference.

Utilization Subgroup

July 12, 1977, 10 a.m., Pennsylvania Power and Light Company, 2 North Ninth Street, Allentown, Pennsylvania.

Agenda: Development of study plan to be followed in analyzing potential markets and alternative uses for an increase in anthracite supply.

July 26, 1977, 9 am., FEA—Region III Office, 1421 Cherry Street, Philadelphia, Pennsylvania.

Agenda: Summarize analysis of utilization issues and recommendations developed to date, and prepare for presentation of this subject matter to the full conference.

Marketing Subgroup

July 8, 1977, 11:30 a.m., ConRail, 1838 Six Penn Center Plaza, Philadelphia.

Agenda: Development of study plan to be followed in analyzing the availability and cost of transportation facilities used by the anthracite industry.

July 26, 1977, 9 a.m., FEA—Region III Office, 1421 Cherry Street, Philadelphia, Pennsylvania.

Agenda: Summarize analysis of transportation issues and recommendations developed to date, and prepare for presentation of this subject matter to the full conference.

Technology Subgroup

July 13, 1977, 1 p.m., FEA Headquarters Room 3000-B, 12th and Pennsylvania Avenue NW., Washington, D.C.

Agenda: Development of study plan to be followed in analyzing the current and near term availability of technological improvements in the production and utilization of anthracite.

July 26, 1977, 9 a.m., FEA—Region III Office, 1421 Cherry Street, Philadelphia, Pennsylvania.

Agenda: Summarize analysis of technology issues and recommendations developed to date, and prepare for presentation of this subject matter to the full conference.

Environmental Subgroup

July 7, 1977, 10:30 a.m., Pennsylvania Environmental Council, 225 South 15th Street; Mezzanine, Philadelphia, Pennsylvania.

Agenda: Development of study plan to be followed in analyzing the environmental factors which will determine the acceptability of increases in both anthracite production and utilization.

July 26, 1977, 9 a.m., FEA—Region III Office, 1421 Cherry Street, Philadelphia, Pennsylvania.

Agenda: Summarize analysis of environmental issues and recommendations developed to date, and prepare for presentation of this subject matter to the full conference.

The agenda for the July 26 conference is as follows:

1. In succession, each subgroup will present a summary of their respective areas of study and initial findings. The subgroups will also overview their projected activities and specific issues to be addressed at future conferences.
2. Discussion of how the full conference will develop policy recommendations and implement a decision-making process which will ensure that each member has adequately reviewed all proposals under consideration.

These meetings will be open to the public. The Chairman is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement will be permitted to do so, either before or after the meeting.

Further information concerning this meeting may be obtained from Stephen T. Minihan, Room 3518, FEA Headquarters, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202–566–7575.

Transcripts of the conference will be available for public review and copying at the Freedom of Information Public Reading Room, Room 2107, FEA, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. between the hours of 8 and 4:30 p.m., Monday through Friday except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on July 13, 1977.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc.77–20593 Filed 7–18–77;8:45 am]

ENVIRONMENTAL ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given that the Environmental Advisory Committee will meet Friday, August 5, 1977, at 9 a.m., Room 5041, FEA Headquarters, 12th and Pennsylvania Avenue NW., Washington, D.C.

The Committee was established to provide advice and information to FEA concerning environmental aspects of FEA policies and programs.

The agenda for the meeting is as follows:

1. Status report on existing FEA commitments to EAC.
2. Report and recommendations from coal policy subcommittee: Draft report on design of underground mines to minimize long-term environmental problems; degasification of coal seams; other.
3. Report and recommendations from air quality subcommittee: Clarification of applicability of NSPS/BACT to conversion of existing oil- or gas-fired power plants to coal; status report on White House advisory group focusing on impact of increased coal use; (a) charter, (b) suggested appointees; other.
4. Report and recommendations from energy conservation subcommittee: Draft recommendations on calculation of replacement cost re: energy pricing; draft recommendations re: co-generation; energy-efficiency standards for appliances proposed by FEA; industrial conservation goals proposed by FEA; other.
5. Discussion with FEA administrator: Status report on actions called for in President's energy message; status of DOE legislation; future of EAC.
6. Report and recommendations from nuclear policy subcommittee.
7. Report and recommendations from OCS/energy facility siting subcommittee.
8. New business.
9. Comments from public (10 minute rule).

Subcommittees may meet informally in Washington the preceding evening, at the discretion of the subcommittee chairment; the meetings will be open to the public. For further information on subcommittee activities, call Lois G. Weeks, Director, Advisory Committee Management, at 202–566–9996.

The Committee meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform the Director, Advisory Committee Management, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 2107, FEA, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C. on July 14, 1977.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc.77–20670 Filed 7–18–77;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. AC–40]

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF FRESNO

Approval of Conversion (Final Action)

JULY 14, 1977.

Notice is hereby given that on July 13, 1977, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation by Resolution No. 77–436, approved the application of First Federal Savings and Loan Association of Fresno, Fresno, Calif., for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 320 First Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, Calif. 94120.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77–20688 Filed 7–18–77;8:45 am]

[No. AC–41]

HOMESTEAD SAVINGS AND LOAN ASSOCIATION

Post Approval Amendment of Conversion Application (Final Action)

JULY 14, 1977.

Notice is hereby given that on June 22, 1977, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 77–392, approved the amendment to the application of The Homestead Savings and Loan Association, Salina, Kans., for permission to convert to the stock form of organization. The application to convert was approved on May 11, 1977, by Resolution No. 77–300. Copies of the application and the amendment are available for inspection at the Office of the Secretary of said Corporation, 320 First Street NW., Washington, D.C. 20552 and the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, No. 3 Townsite Plaza, 120 East Sixth Street, Topeka, Kans. 66601.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77–20686 Filed 7–18–77;8:45 am]

[No. AC–39]

OLYMPIC FEDERAL SAVINGS AND LOAN ASSOCIATION

Approval of Conversion (Final Action)

JULY 14, 1977.

Notice is hereby given that on July 13, 1977, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation by Resolution No. 77–435, approved the application of Olympic Federal Savings and Loan Association, San Francisco, Calif., for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 320 First Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan

Bank of San Francisco, 600 California Street, San Francisco, Calif. 94120.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77-20687 Filed 7-18-77;8:45 am]

FEDERAL MARITIME COMMISSION

FAR EAST CONFERENCE, ET AL.

Agreement Filed

Notice is hereby given that the following agreement, accompanied by a statement of justification, has been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the statement of justification at the Washington office of the Federal Maritime Commission, 1100 L St. NW., room 10126; or may inspect the agreement and the statement of justification at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. on or before August 8, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

VARIOUS COMMON CARRIERS PARTIES TO (1) FAR EAST CONFERENCE; (2) PACIFIC WESTBOUND CONFERENCE; (3) JAPAN/KOREA-ATLANTIC & GULF FREIGHT CONFERENCE; (4) TRANS-PACIFIC FREIGHT CONFERENCE OF JAPAN/KOREA; (5) NEW YORK FREIGHT BUREAU; AND/OR (6) TRANS PACIFIC FREIGHT CONFERENCE OF HONG KONG

Notice of agreement filed by:

H. P. Breed, Vice President, U.S. Lines, One Broadway, New York, N.Y. 10004.

Agreement 10305 would permit various common carriers parties to the various Conferences enumerated above to (explanatory language italicized), " * * * meet and discuss and exchange written communication, and make rceommendations to the Agreements (*Conferences*), regarding and limited to (a) the compensation paid to the Neutral Body (*self-policing entity, now Freight Conferences Services, Inc.*) of other self policing agencies * * * as it relates to staffing, services, and costs of operation, and (b) the manner in which such compensation shall be apportioned between the participating conferences and/or agreements."

By Order of the Federal Maritime Commission.

Dated: July 13, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc. 77-20710 Filed 7-18-77;8:45 am]

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 (Stat. 522 and 46 U.S.C. 841(b)).

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.

Air Van Lines, Inc., 8151 Occidental Ave. South, P.O. Box 3725, Seattle, Wash. 98124. Officers: Beth Thompson, Treasurer; A. N. Thompson, Jr., Vice President; L. A. Howard, Secretary; Thomas N. Chewning, President.

East Coast Warehouse & Distribution Corp., 2210 McLester St., Elizabeth Port Authority Marine Terminal, Elizabeth, N.J. 07201. Officers: Roy A. Lebovitz, President/Treasurer; Samuel Weber, Vice President/Secretary.

Marine & Industrial Distributors, Inc., 3826 Fourth Ave. South, Seattle, Wash. 98134. Officers: Richard Zurinsky, President; Laurie J. Zurinsky, Vice President; Douglas E. Minnis, Secretary/Treasurer.

Tomas J. Faz, 1800 NW. 24th Avenue, Miami, Fla. 33125.

By the Federal Maritime Commission.

Dated: July 14, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-20712 Filed 7-18-77;8:45 am]

PUERTO RICO PORTS AUTHORITY AND PUERTO RICO MARITIME SHIPPING AUTHORITY

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 8, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

William Karas, Esquire, Galland, Kharasch, Calkins & Short, Canal Square, 1054 Thirty-First Street NW., Washington, D.C. 20007.

Agreement No. T-3453-A, between the Puerto Rico Ports Authority (Port) and the Puerto Rico Maritime Shipping Authority (PRMSA), provides for PRMSA's thirteen-year sublease (with two consecutive five-year renewal options) and exclusive use of 1,703,460 square feet located adjacent to the berths and apron areas preferentially assigned PRSMA under Agreement No. T-3453. As compensation, the Port is to receive $391,616.35 annually as ground rental. The agreement provides that non-PRMSA users calling at the Isla Grande facility pursuant to the secondary berthing rights retained by the Port under Agreement No. T-3453 will be allowed to cross such portions of the facility subleased to PRMSA under Agreement No. T-3453-A as are designated by PRMSA for such a purpose.

By Order of the Federal Maritime Commission.

Dated: July 13, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc. 77-20711 Filed 7-18-77;8:45 am]

[Docket No. 77-37]

SERGIO E. VASQUEZ

Independent Ocean Freight Forwarder License; Order of Investigation and Hearing

On August 25, 1975, Sergio E. Vasquez, 1215 West Sixth Street, Los Angeles, California 90017, was issued independent ocean freight forwarder license FMC 1685.

Information acquired by the Commission's Pacific District Office disclosed that Mr. Vasquez is apparently under the control of a seller of export shipments in the foreign commerce of the United States. More specifically, (1) Mr.

Vasquez is an officer, Secretary/Treasurer, since at least May 25, 1976, of P–K International, Inc. (P–K), a seller of goods in the export commerce of the United States; (2) Mr. Vasquez shares common office space, employees and telephone service with P–K; (3) the Licensee's only account is P–K; (4) the Licensee does not solicit other accounts; and (5) the Licensee does not maintain its own freight forwarding files but rather uses P–K's files to perform forwarding work.

The association between Mr. Vasquez and P–K appears to place the Licensee, Sergio E. Vasquez, under the control of a seller of export shipments and as a result of such association, the Licensee does not appear to meet the definition of an independent ocean freight forwarder as defined in Section 1, Shipping Act, 1916.[1]

When an export shipper possesses the ability to control the actions of an independent ocean freight forwarder, regardless of whether this control is actually exercised, the statutory requirement of independence is not met and the forwarder is disqualified from being licensed. See Application for Freight Forwarder License—York Shipping Corporation, 9 FMC 72, 75–76 (1965), and Application for Freight Forwarder License—William V. Cady, 8 FMC 352, 359 (1964). Consequently, if P–K can directly or indirectly control Mr. Vasquez's forwarding activities, the Licensee would no longer qualify as an independent ocean freight forwarder pursuant to sections 1 and 44 of the Shipping Act, 1916, and sections 510.2(a) and 510.9(d) of the Commission's General Order 4.

Therefore, *It is ordered,* Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821, 841(c)), that a proceeding is hereby instituted to examine the details of the Licensee's forwarding operation to date, including all brokerage received by it, and to determine whether P–K International, Inc., directly or indirectdly controls the forwarding activities of Sergio E. Vasquez, and if so, whether Sergio E. Vasquez continues to qualify for an independent ocean freight forwarder license, or whether its license as such should be suspended or revoked pursuant to sections 1 and 44 of the Shipping Act, 1916, (46 U.S.C. 801, 841(b)), and Section 510.9(d) of the Commission's Rules.

It is further ordered, That Sergio E. Vasquez shall be the respondent in this hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, shall commence on or before January 14, 1978. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That notice of this Order be published in the FEDERAL REGISTER and a copy thereof and notice of hearing be served upon Sergio E. Vasquez.

It is further ordered, That any person other than respondent and the Commission's Bureau of Hearing Counsel having an interest and desiring to participate in this proceeding, shall file a petition for leave to intervene in accordance with Rule 72 (46 CFR 502.72) of the Commission's Rules of Practice and Procedure.

It is further ordered, That all future notices issued by or on behalf of the Commission, including notice of time and place of hearing, or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77–20714 Filed 7–18–77;8:45 am]

[1] An independent ocean freight forwarder is a "person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, *nor directly or indirectly controls or is controlled by such shipper or consignee* or by any person having such a beneficial interest." (Emphasis supplied) 46 U.S.C. 801.

FEDERAL POWER COMMISSION

[Docket No. CI76–358]

ALMA ORINGDERFF

Proposed Settlement Agreement

JULY 12, 1977.

Take notice that on June 29, 1977, Presiding Administrative Law Judge Samuel Kanell certified to the Commission a proposed settlement of the issues raised in the proceedings in Docket No. CI76–358 supported by all parties including the Commission Staff. The record of the proceedings was also certified for the Commission's use in reviewing the proposed settlement.

The proposed settlement seeks to resolve the issues surrounding the January 27, 1976 application filed by Alma Oringderff (Oringderff) pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon a sale of casinghead gas to Northern Natural Gas Company (Northern) from the R. H. F. Morrow and Horizon Cleveland Fields, Ochiltree County, Texas, R.R. District No. 10 made under a contract dated June 19, 1964. Service from Oringderff to Northern had terminated in 1970 when Oringderff concluded that continued operations would be uneconomical as a result of the amount of gas needed to operate the compressor equipment that was required to deliver the gas into Northern's high pressure transmission system.

Under the terms of the proposed settlement agreement Oringderff would resume service to Northern by means of an exchange agreement executed by Northern and Phillips Petroleum Company (Phillips). Oringderff would deliver gas into Phillips' low pressure gathering system and Phillips would redeliver equivalent volumes of gas to a point on Northern's pipeline system. This arrangement would obviate the need for compression of Oringderff's gas.

The settlement proposal provides that all parties will accept whatever the Comisssion determination is as to the applicable price to be paid under Oringderff's June 24, 1977 contract with Northern. Oringderff states that the applicable price is 68.9 cents per Mcf pursuant to the Commission's replacement contract policy.

All comments on the proposed settlement agreement shall be filed on or before July 22, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–20733 Filed 7–18–77;8:45 am]

[Docket No. RP77–105]

COLORADO INTERSTATE GAS. CO.

Proposed Changes in FPC Gas Tariff

JULY 11, 1977.

Take notice that Colorado Interstate Gas Company (CIG), on June 30, 1977, tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1. The proposed base rates would increase revenues from jurisdictional sales and service by approximately $20 million over rates presently being collected subject to refund in Docket No. RP76–76, inclusive of all PGA adjustments which became effective on or before April 1, 1977 (excluding surcharges). The proposed increase is based on the twelve-month period ended March 31, 1977, adjusted for known and measurable changes which will become effective within the nine months subsequent to that date, as provided for in the Commission's Regulations. The proposed effective date is August 1, 1977.

CIG states that the jurisdictional rates filed herewith are designed to enable CIG to recover increases in its jurisdictional cost of service attributable primarily to additional facilities, increased labor and other operating costs, increased depreciation rates, and increased return and related income tax requirements.

Also included in the filing is a requested change in CIG's Purchased Gas Adjustment (PGA) tariff provision which will allow CIG to include certain estimated net unrecovered gas purchase costs in its annual PGA filing. Such change will allow CIG to recover or refund on a more timely basis the net unrecovered gas purchase cost accumulated in FPC Account 191 as of the end of each fiscal year.

Copies of CIG's filing have been served on CIG's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol

Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commissions Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 22, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20720 Filed 7-18-77;8:45 am]

[Docket No. CP77-476]

COLUMBIA GAS TRANSMISSION CORP.

Application

JULY 13, 1977.

Take notice that on June 30, 1977, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue SE., Charleston, W. Va. 25314, filed in Docket No. CP77-476 an application pursuant to Section 7 of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas for General Motors Corporation (GM) for two years, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport up to 5,000 Mcf of natural gas per day for GM, which volumes would be received at an agreed point on Applicant's Line FV-341 in Newton Township, Trumbull County, Ohio, and redelivered for the account of GM at existing points of delivery near Dayton, Ohio, to Dayton Power & Light Company (DP&L) and to existing points of delivery near Cincinnati, Ohio, to Cincinnati Gas & Electric Company (CG&E), both wholesale customers of Applicant.

It is stated that GM has been advised by both DP&L and CG&E that curtailment is expected in the 1977-78 winter period. It is stated that DP&L provides gas service for the following five divisions of GM's in the vicinity of Dayton, Ohio:

Frigidaire: Manufacturers household appliances such as ranges, refrigerators, washers, and dryers. This plant employs about 3,000 people and without a gaseous fuel would be shut down.

Delco Products: Manufactures automotive components and industrial motors and generators. This plant employs about 5,500 people and without a gaseous fuel would be shut down and would essentially shut down corporate car production.

Delco Moraine: Manufactures automotive parts, including brake linings, clutch plate and bands for automatic transmissions, oil pump gears, rocker arm supports, and engine bearing strips. This plant employs about 5,700 people and without a gaseous fuel many of the operations would be shut down.

Inland: Manufactures automotive parts, including brake linings, ball joints, foam seat cushions, door and deck weather stripping, and engine and transmission mounts. This plant employs about 8,500 people and without a gaseous fuel many of the operations would shut down.

Delco Air: Manufactures automotive components including air conditioning compressors, valves, and controls. This plant employs about 6,600 people and without a gaseous fuel would be shut down.

It is stated that CG&E provides gas service to GM plants in Norwood Ohio, and that during the winter period, these plants were curtailed at a minimum of 30 percent. It is further stated that the GM plant at Norwood, Ohio, which is served by CG&E is a passenger car assembly plant employing about 4,400 people. Without a gaseous fuel this plant would be shut down, it is said.

Applicant states that the gas transported by it and delivered to DP&L and CG&E would be made available to GM through existing distribution facilities by DP&L and CG&E.

It is stated that the gas proposed to be transported would be produced by GM from a gas field which it owns and operates in Lordstown, Ohio, and that Applicant would not need to construct any additional facilities to perform the proposed transportation service. Applicant states that it would charge GM its average system-wide unit gathering, storage and transmission costs exclusive of company-use and unaccounted-for gas, which is 24.75 cents per Mcf, and that it would retain for company-use and unaccounted-for gas a percentage of the total volumes received for the account of GM which percentage is currently 3.1 percent.

It is indicated that during the winter period (November 1 through April 30), Applicant would transport no gas for GM on a peak day, up to 1,100 Mcf on an average day and up to 165,000 Mcf for the winter period. Applicant would transport during the summer period (May 1 through October 30) on a best efforts basis, it is said.

Applicant asserts that the gas to be transported would supply the curtailed volumes which GM is experiencing in its "high priority" uses. It is stated that all the contemplated uses for the transported gas are uses designated under Priority 2 uses (process gas, plant protection gas or deedstock gas) or Priority 3 where the gas is purchased from the gas distributor under an interruptible contract that would be Priority 2 if purchased from the distributor under a firm contract.

It is stated that the gas transported is subject to diversion to Applicant in emergency periods when, in Applicant's sole judgment, such gas is required for the protection of Priority 1 requirements on its system.

Although no proposed commencement date for service is given in the application, the application does state that GM desires to obtain specific assurance from the Commission prior to November 1, 1977, that its own production would be available for its use.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20747 Filed 7-18-77;8:45 am]

[Docket No. CP77-475]

COLUMBIA GAS TRANSMISSION CORP.

Application

JULY 13, 1977.

Take notice that on June 30, 1977, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, W. Va. 25314, filed in Docket No. CP77-475 an application pursuant to Section 7 of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretation (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas for Harshaw Chemical Company (Harshaw), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to transport up to 600 Mcf of natural gas per day for Harshaw for use at its Elyria, Ohio Plant pursuant to a transportation contract dated March 10, 1977, between the parties. Applicant states that it would transport natural gas for Harshaw, which gas would be received by Applicant into its Line O in Valley Town-

ship, Guernsey County, Ohio, at a specific point to be mutually agreed upon and delivered to Columbia Gas of Ohio, Inc. (Columbia Ohio), a wholesale customer of Applicant, at an existing point of delivery in Carlisle Township, Lorain County, Ohio.

It is indicated that during the 1976–77 winter heating season, Harshaw was curtailed from 10 to 85 percent of its authorized volumes by Columbia Ohio, and that from April 1 through October 31, 1977, Columbia Ohio does not anticipate that it would be necessary to curtail any of Harshaw's authorized volumes. Consequently, Applicant proposes to commence the transportation service November 1, 1977. It is further indicated that Harshaw's Priority 2 requirements would be curtailed at the 10 percent level for the winter of 1977–78.

It is stated that Harshaw's Elyria plant is one of the largest producers of ceramic colors and catalysts in the United States and competes in the international market. The catalysts produced by Harshaw in the Elyria plant are used by many industries ranging from food processing to oil refining, it is said. It is stated that the final step in the production of the ceramic colors and catalysts require either drying and/or high temperature gas-fired calcination for which processes alternate fuels are not feasible because of product contamination from the products of combustion.

Applicant states that the gas it proposes to transport would be purchased by Harshaw from O'Neal Production Inc. (O'Neal) for wells located in Valley Township, Guernsey County, Ohio. Applicant further states that Harshaw would pay O'Neal $2.25 per Mcf, and that every six months the price shall be increased or decreased in the same amount per Mcf as any increase or decrease after the date hereof in the field market price paid by East Ohio Gas Company for gas produced by wells placed in service at the same time as the wells which produced the gas sold to Harshaw hereunder; provided that the price would never be less than $2.25 per Mcf. It is indicated that if Harshaw drills wells in addition to those 3 wells provided for in Section 5.01 hereof or acquires gas from a third party due to the inability of the wells to produce the volumes of gas requested by Harshaw, the price that Harshaw would pay O'Neal for gas from such wells or third parties would be $0.80 per Mcf above the field market price of East Ohio Gas Company applicable to gas produced from such wells.

It is stated that the gas proposed to be transported by Applicant is subject to diversion to Applicant in emergency periods when, in Applicant's sole judgment, such gas is required for the protection of Priority 1 requirements on its system.

Applicant states that in order to deliver the gas into its Line O it would be necessary for O'Neal to construct approximately 3,300 feet of 2-inch pipeline at an estimated cost of $6,675, which amount would be reimbursed by Harshaw.

Applicant indicates that it would redeliver the gas it would transport to an existing point of delivery from Applicant to Columbia Ohio, and that Columbia Ohio would make such gas available to Harshaw's Elyria plant through existing distribution facilities.

It is indicated that Applicant would retain for company-use and unaccounted-for gas a percentage of the total volumes received for the account of Harshaw, which percentage is currently 3.1 percent effective November 1, 1976. Applicant states that it would charge Harshaw its average system-wide unit storage and transmission costs exclusive of company-use and unaccounted-for gas which price is currently 22.21 cents per Mcf, for the proposed transportation service.

Any person desiring to be heard or to to make any protest with reference to said application should on or before July 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20746 Filed 7-18-77;8:45 am]

[Docket No. CP77-200]

COLUMBIA GAS TRANSMISSION CORP.

Application

JULY 13, 1977.

Take notice that on June 30, 1977,[1] Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue SE., Charleston, W. Va. 25314, filed in Docket No. CP77-200 an application pursuant to Section 7 of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience authorizing the transportation of up to 1,100 Mcf of natural gas per day for Quaker State Oil Refining Corporation (Quaker) for two years, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport the proposed volumes of gas for Quaker, which volumes would be received by Applicant into its Line FO-1776 in Jackson Township, Guernsey County, Ohio, at a specific point to be mutually agreed upon. Applicant indicates that it would redeliver 75 percent of the gas so received for the account of Quaker to Columbia Gas of West Virginia, Inc. (Columbia, W. Va.) at an existing point of delivery in Hancock County, W. Va., and the remaining 25 percent of the gas so received would be redelivered for the account of Quaker to Columbia Gas of Pennsylvania, Inc. (Columbia Pa.) at existing points of delivery located in Butler County, Pa. It is stated that Columbia, W. Va., and Columbia, Pa., would make the transported gas available to Quaker through existing distribution facilities. It is asserted that Columbia, W. Va. and Columbia, Pa. are wholesale customers of Applicant.

It is stated that Quaker was advised by Columbia, W. Va., and Columbia, Pa., that its gas supply for the months of February and March 1977 would be curtailed to the point that only plant protection volumes would be supplied to its Newell, W. Va., and Emlenton, Pa., facilities. It is indicated that pursuant to this information Columbia requested and received temporary authorization to transport up to 1,100 Mcf of gas per day for Quaker, which authorization was granted by the Commission on February 17, 1977, at Docket No. CP77-200. It is stated that no gas was transported by Applicant for Quaker under this temporary authorization. Applicant indicates that gas was not available for transportation due to the fact that the producer was unable to install a line necessary

[1] The application was initially tendered for filing on June 30, 1977; however, the fee required by Section 159.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until July 5, 1977; thus, filing was not completed until the later date.

for a connection to Applicant's facilities in a timely fashion.

It is indicated that Quaker manufactures automotive lubricants and fuels, including No. 2 fuel oil, gasoline, and kerosine, and that most of the fuel are marketed to home heating and commercial customers in Pennsylvania, Ohio, West Virginia, and Western New York. Quaker uses in-plant fuel in the refining process wherever possible and natural gas is used in relatively small quantities as processed gas and to maintain safety blanketing devices for which uses an alternate fuel is not possible, it is said.

Applicant states that during the 1977 summer period neither the Emlenton nor the Newell plants are being curtailed. However, it is estimated that the Newell plant would be curtailed approximately 10 percent of its high priority use during the 1977–78 winter period, it is said. Applicant states that at the present time it is not projected that the high priority uses at the Emlenton plant would be curtailed during the 1977–78 winter period.

It is indicated that Enterprise Gas & Oil, Inc. (Enterprise) had contracted to sell gas to Quaker with deliveries that would commencing at approximately 1,000 Mcf per day from certain wells located on oil and gas leases owned by Enterprise in Guernsey County, Ohio. It is indicated that subject gas has never been sold in interstate commerce and that the gas would not be sold in the interstate market. Applicant states that it would pay Enterprise $1.95 per Mcf during the first contract year and $2.03 per Mcf during the second contract year. In order to deliver the gas to be transported to Applicant's lines, Enterprise must construct approximately three miles of 4-inch pipeline at an estimated cost of $52,050, it is said. Applicant states that it would be required to construct any additional facilities to perform the proposed transportation service.

Applicant indicates that it would charge Quaker its average system-wide unit gathering, storage and transmission costs exclusive of company-use and unaccounted for gas, which is 24.75 cents per Mcf for the proposed transportation service. Applicant further indicates that it would retain for company-use and unaccounted-for gas a percentage of the total volumes received for the account of Quaker which percentage is currently 3.1 percent.

It is stated that the gas transported hereunder is subject to diversion to Applicant in emergency periods when, in Applicant's sole judgment, such gas is required for the protection of Priority 1 requirements on its system. It is further stated that the term of the subject gas sales and purchase agreement between Enterprise and Quaker shall be for 2 years, but in no event would the contract term commence later than April 1, 1977. Quaker would take the proposed volumes of gas on a take-or-pay basis it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426 a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20742 Filed 7-18-77;8:45 am]

[Dockt No. RP77-17]

EASTERN SHORE NATURAL GAS. CO.

Rate Settlement Proposal

JULY 11, 1977.

Take notice that on June 10, 1977, Eastern Shore Natural Gas Company (ESN) filed with the Commission in Docket No. RP77-17 a settlement proposal, which, if approved, will resolve all issues raised in this proceeding.

ESN states that the settlement proposal was served on all parties on the official service list.

Any person wishing to do so may submit comments in writing concerning ESN's settlement proposal. All comments should be addressed to the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and should be mailed or filed on or before July 28, 1977. ESN's settlement proposal is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20723 Filed 7-18-77;8:45 am]

[Docket No. ER77-488]

EL PASO ELECTRIC CO.

Tariff Change

JULY 11. 1977.

Take notice that El Paso Electric Company (El Paso), on July 1, 1977, tendered for filing proposed changes in its rates for wholesale service to customers served under its FPC Rate Schedules 17, 18, and 19. El Paso requests that these changes be made effective August 1, 1977. El Paso indicates that the proposed changes would increase revenues from jurisdictional sales and service by $853,272 based on the 12-month period ending July 31, 1977.

El Paso states that the proposed increases are necessitated by the ever increasing discrepancy between the costs of providing service under these schedules and the revenues derived therefrom. Citing a down-grading of the Company's bonds experienced during 1975, El Paso states that the proposed rate increases are necessary to assure continued confidence in its financial integrity by providing earnings which will attract capital at reasonable cost necessary to finance its present and projected electrical construction programs.

According to El Paso copies of the filing were served upon Community Public Service Company and Rio Grande Electrical Cooperative, Inc., El Paso's customers under these schedules, and upon the New Mexico Public Service Commission and the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10), All such petitions or protests should be filed on or before July 20, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20727 Filed 7-18-77;8:45 am]

[Docket No. CP77-471]

EL PASO NATURAL GAS CO.

Application

JULY 13, 1977.

Take notice that on June 29, 1977, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP77-471 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to

abandon one 1,068 horsepower compressor station in Reeves County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that by order issued March 13, 1970, at Docket No. CP69-348 (43 FPC 418) Applicant was granted, inter alia, certificate authorization for the construction and operation, at the Waha Compression Station (Waha Station), of four 1,068 horsepower gas turbine-driven centrifugal compressor units and necessary appurtenances, such station to be located adjacent to Applicant's existing Waha Treating Plant in Reeves County, Texas. Applicant states that the horsepower installed at the Waha Station was a part of system expansion project designed to provide sufficient capacity to accommodate the sale and delivery of a total additional 200,000 Mcf of gas daily to distributors in the State of California. It is indicated that of the four units installed, two units are primarily utilized to compress gas from the Keystone Mainline station and two units are utilized to compress gas from the Mobil Coyanosa and Waha Plants. Applicant states that as a result of the gas supply decline experienced in sources supplying the Mobil Coyanosa and Waha Plants, Applicant has determined that one 1,068 horsepower compressor unit would provide sufficient capacity for the compressor of gas supplies projected to be available from said plants.

Consequently, Applicant proposes to abandon by removal and to place in stock, pending a future need therefor, one unit installed at the Waha Station. Applicant indicates that after the proposed compressor abandonment, it would have sufficient remaining capacity necessary to compress those gas supplies forecasted to be available. The total estimated cost of the proposed abandonment is $6,050.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20716 Filed 7-18-77;8:45 am]

[Docket No. RP77-104]

FT. BRANCH NATURAL GAS CO. v. TEXAS EASTERN TRANSMISSION CORP.

Complaint

JULY 11, 1977.

Take notice that on June 22, 1977, Ft. Branch Natural Gas Co. of Ft. Branch, Indiana (Ft. Branch), filed with the Commission a letter and related attachments requesting the Commission to grant Ft. Branch relief from a daily overrun penalty charge by its supplier Texas Eastern Transmission Corporation. The Commission has determined that Ft. Branch's submittal should be treated as a complaint against Texas Eastern pursuant to section 13 of the Natural Gas Act and section 1.6 of the Commission's Regulations thereunder.

Ft. Branch states that the overrun penalty charge amounts to $29,600, which is greatly in excess of Ft. Branch's total net income. Ft. Branch further states that its gas consumption which resulted in the overrun penalty was due to the record cold weather experienced during the 1976-77 winter, and that it could not cut back its demands because all gas purchased by Ft. Branch is sold for high priority uses. Ft. Branch further states that it has not added any new customers for several years.

Ft. Branch has refused to pay the charge and states that it intends to continue to withhold payment until the mater is considered by the Commission.

Any person wishing to be heard or to make any protest with reference to Ft. Branch's complaint should file with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426 on or before August 11, 1977, a petition to intervene or protest in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the complaint are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20719 Filed 7-18-77;8:45 am]

[Docket No. RI77-104]

KENNEDY & MITCHELL, INC.

Petition for Declaratory Order and for Waiver of Provision for Carrying Charge Credit in Opinion No. 770-A

JULY 12, 1977.

Take notice that on June 8, 1977, Kennedy & Mitchell, Inc. (Petitioner), 750 West Hampden Avenue, Englewood, Colorado 80110, filed in Docket No. R177-104 a petition for a declaratory order pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 1.7(c)).

Petitioner holds a small producer certificate issued March 24, 1976 in Docket No. CS76-199. Petitioner requests the Commission to issue a declaratory order interpreting the provisions of Opinion No. 770-A providing for a carrying charge credit as not applicable to a small producer where the producer receives advance payments after 1 p.m., e.s.t., November 5, 1976, for wells spudded prior to that date.

In addition, Petitioner asks the Commission to waive the provisions of Opinion No. 770-A which reduce the rates of a small producer in the amount of a carrying charge credit where (1) the small producer accepts advance payments after 1 p.m., e.s.t., November 5, 1976, for wells spudded after that date; and where (2) the small producer has a valid contract with an interstate pipeline executed prior to December 31, 1975, providing for advance payments.

On December 30, 1975, Petitioner entered into an advance payment agreement with Michigan Wisconsin Pipe Line Company (Mich Wisc) under which Petitioner agreed to drill or have drilled prior to December 31, 1977 sufficient wells in Oklahoma, so that all gas reserves from not less than 20 net wells would be committed to Mich Wisc under its contract. On December 31, 1975, as amended on February 27, 1976, the Commission terminated the advance payment program with respect to contracts entered into subsequent to that date.

Prior to the date Opinion No. 770-A was issued, namely November 5, 1976, Petitioner spudded seven wells, transferred their title to Mich Wisc, and received a total of $1,209,375 in advance payments from Mich Wisc.

Petitioner's first claim for relief from Opinion No. 770-A involves three wells which were spudded prior to November 5, 1976, but for which advance payments were not paid to Petitioner until after November 5, 1976. Petitioner states that although its requests for these advance payments were made prior to November 5, 1976, Mich Wisc made two of the three advance payments on November 5, 1976, and the third one on December 10, 1976. Petitioner, in its first claim, submits that Opinion No. 770-A should not apply to impose a carrying charge credit on advance payments received after November 5, 1976, where Petitioner has spudded the well, given title to Mich Wisc and "completely performed its re-

quirements under the contract" prior to November 5, 1976, and moreover had no control as to when Mich Wisc would pay the advance.

In its second claim for relief from Opinion No. 770–A, Petitioner states that a carrying charge credit should not be imposed on advance payments received after November 5, 1976 on two wells spudded after November 5, 1976, but where the lease acquisition dates for the two wells occurred prior to November 5, 1976. In addition to lease acquisition, Petitioner had bought supplies and machinery, contracted for labor and had leased drilling rigs, all in advance of November 5, 1976. Petitioner avers that issuance of Opinion No. 770–A placed it in a bind, in that it had already expended considerable sums of money in reliance on the validity of its advance payment agreement, and that cancellation of the drilling of these two wells would have subjected it to "considerable financial loss."

Regarding Petitioner's third claim for relief from Opinon No. 770–A, it requests that the Commission waive the requirement in Opinion No. 770–A instituting a carrying charge credit on the executory portions of Petitioner's advance payment agreement so as to allow Petitioner to complete the agreement according to its terms, namely to spud, transfer title to, and receive advance payments for, ten net wells, none of which has been spudded to date.

Any person desiring to be heard or to make any protest with reference to said petition should on or before July 27, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petiton to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–20735 Filed 7–18–77;8:45 am]

[Docket No. ER77–482]

MICHIGAN POWER CO.

Tariff Change

JULY 12, 1977.

Take notice that Michigan Power Company, on June 30, 1977, filed with the Commission pursuant to Section 205 of the Federal Power Act, proposed changes in Service Schedule B (Concurrent Exchange Service) of the Agreement between MPCo and Indiana & Michigan Electric Company (I&M), heretofore designated by the Commission as I&M Rate Schedule FPC No. 25. According to MPCo the proposed two-step rate increase would increase MPCo revenue for the service by $185,595 and $34,358, respectively. MPCo proposes that step one become effective August 1, 1977 and that step two become effective December 1, 1977.

MPCo states that copies of the filing were served upon the Indiana & Michigan Electric Company, the Michigan Public Service Commission and the Indiana Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 20, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–20724 Filed 7–18–77;8:45 am]

[Docket No CP77–483]

MISSISSIPPI RIVER TRANSMISSION CORP.

Application

JULY 13, 1977.

Take notice that on July 1, 1977, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP77–483 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing October 8, 1977, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers and other similar sellers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $1,000,000 with no single project to exceed $250,000. Applicant states that the proposed facilities would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 3, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necesesity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessay for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–20745 Filed 7–18–77;8:45 am]

[Docket No. RM77–13]

NATURAL GAS

National Rates for Jurisdictional Sales; Extension of Time

JULY 12, 1977.

In the matter of national rates for jurisdictional sales of natural gas from wells commenced on or after January 1, 1977, for the period January 1, 1977, to December 31, 1978.

On June 23, 1977, United Distribution Companies (UDC) filed a motion to extend the time for filing a proposed rate structure and cost study and an explanation of the components thereof, pursuant to Commission Order issued March 1, 1977, in the above designated docket.

On June 23, 1977, the Office of Consumer Advocate of the Commonwealth of Pennsylvania and the American Public Gas Association, et al., joined in the UDC motion for an extension of time. Producer respondents filed responses to the UDC motion June 30, 1977, and July 1, 1977, which state that they do not

oppose the requested extension even though it would delay the proceedings. On July 5, 1977, Associated Gas Distributors filed a statement in support of the UDC motion. Based on these responses, the Commission feels that an extension of time will allow the parties to compile higher quality data for submittal in this proceeding.

Notice is hereby given that an extension of time is granted to and including October 3, 1977, within which any party to this proceeding may file a proposed rate structure and cost study and an explanation of the components thereof. Accordingly, the date for filing comments on these submittals is extended to and including December 5, 1977.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20718 Filed 7-18-77;8:45 am]

[Docket No. CP77-473]

NORTHERN NATURAL GAS CO.

Application

JULY 13, 1977.

Take notice that on June 29, 1977, Northern Natural Gas Company (Application), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP77-473 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 300 Mcf of natural gas per day for Libbey-Owens-Ford Company (LOF), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to transport natural gas for LOF pursuant to a gas transportation agreement dated June 9, 1977, between Applicant and LOF. It is indicated that LOF owns and would produce certain natural gas reserves located in the Fritzlen field, Woods County, Okla., and that it has requested Northern to aid in the transportation of its gas, which gas would be used in its Mason City, Iowa, plant.

Applicant proposes to transport up to 300 Mcf of natural gas per day, on a best-efforts basis, for LOF from an existing point of interconnection with Panhandle Eastern Pipe Line Company (Panhandle) near Mullinville, Kans. Applicant states that it would deliver such volumes, less 4 percent for fuel and unaccounted-for-gas, to Interstate Power Company (Interstate) at the Mason City town border station located in Cerro Gordon County, Iowa, and that Interstate would deliver such gas to LOF's Mason City, Iowa, plant.

It is stated that LOF would pay Applicant 23.94 cents per Mcf for all gas transported and delivered to Interstate. The term of the proposed transportation arrangement is for eight years or until terminated on six-month written notice by either party, it is said.

Applicant indicates that the gas proposed to be transported in required for for Priority 2 uses in the manufacturing of Thermopane insulating glass with GlasSeal edge and that the edge fusion process requires the precise temperature control flame characteristics of a clean-burning, gaseous flame.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 3, 1977, file with the Federal Power Commission, Washington, D. C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdication conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20743 Filed 7-18-77;8:45 am]

[Docket No. ER77-481]

NORTHERN STATES POWER CO.

Proposed Cancellation

JULY 11, 1977.

Take notice that Northern States Power Company (Northern States) on June 27, 1977, tendered for filing a notice of cancellation of the Manitoba-United States Winnepeg-Grand Forks 230 Kv Interconnection Transactions Agreement, dated January 16, 1969, between the Manitoba Hydro-Electric Board, Minnkota Power Cooperative, Inc., Northern States Power Company, and Otter Tail Power Company. Northern States indicates that the Transactions Agreement is designated in the Commission's files as Northern States Power Company Rate Schedule FPC No. 360 and Otter Tail Power Company Rate Schedule FPC No. 160.

Northern States indicates that notice of the proposed cancellation has been served upon the Manitoba Hydro-Electric Board, Minnkota Power Cooperative, Inc., and Otter Tail Power Company.

Northern States requests a waiver of the Commission's notice requirements to allow an effective date of June 1, 1977, for the proposed cancellation.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 20, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20722 Filed 7-18-77;8:45 am]

[RP77-109]

NORTHWEST PIPELINE CORP.

Proposed Changes in FPC Gas Tariff

JULY 13, 1977.

Take notice that Northwest Pipeline Corporation ("Northwest") on July 1, 1977, tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1. The proposed change in the jurisdictional rate is 1.123¢ per therm comprised of a surcharge of 0.470¢ per therm for twenty-four months and an adjustment to base rates of 0.653¢ per therm, above the rates presently in effect. The proposed effective date is October 1, 1977.

The proposed change will be applied uniformly to the commodity charges of all of Northwest's jurisdictional rates. The proposed change will produce additional jurisdictional revenues of $45,890,800 annually based upon the jurisdictional settlement test period sales volumes in Docket No. RP76-115, as adjusted

Northwest asserts that the rate increase is required to compensate Northwest for increases in the unit amount per Mcf which Northwest pays to owners of special overriding royalty interests. Under twelve lease agreements, executed by Northwest's predecessor in the 1950's the overriding royalty interest owners are paid by Northwest an amount per Mcf of gas produced, with periodic price adjustments. The instant rate increase covers price adjustments including those Northwest is obligated to make from February 1, 1974.

Copies of the filing were served upon the Company's jurisdictional customers, all special overriding royalty interest

owners and affected state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.81, 1.10). All such petitions or protests should be filed on or before July 27, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20740 Filed 7-18-77;8:45 am]

[Project No. 2105]

PACIFIC GAS AND ELECTRIC CO.

Application for Change in Land Rights

JULY 11, 1977.

Public notice is hereby given that an application for a change in land rights was filed on March 17, 1977, under the Federal Power Act, 16 U.S.C. § 791a–825r, by Pacific Gas and Electric Company (Correspondence to: Mr. W. M. Gallavan, Vice President—Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, Calif. 94106) for the constructed North Fork Feather River Project, P–2105, located on the North Fork Feather River in Plumas County, Calif.

According to its application, PG&E proposes to lease, for a period of 50 years, two parcels of project lands to Chester Sanitary District (District) to facilitate expansion of the District's sewage treatment facilities. The subject lands are adjacent to Lake Almanor and are now used for water storage when the water level of Lake Almanor reaches the maximum water level of 4,500 feet.

The first parcel, measuring 1.44 acres, would be utilized by the District to expand the surface area of stabilization ponds, one of several proposed improvements to the existing treatment facilities. The second parcel, a strip of land 10 feet wide and 3,500 feet long, would be used to locate a two-foot deep by four-foot wide drainage canal connecting the treatment facilities to Lake Almanor. Effluent from the existing treatment facilities is discharged onto the flood plain and is allowed to meander through the meadows to Lake Almanor.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 29, 1977, file with the Fedeal Power Commission, Washington, D. C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 C.F.R. § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20730 Filed 7-18-77;8:45 am]

[Docket No. ES77-45]

PACIFIC POWER & LIGHT CO.

Application

JULY 13, 1977.

Take notice that on July 1, 1977, Pacific Power & Light Company (Applicant), a corporation organized under the laws of the state of Maine and qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office at Portland, Oregon, filed an application with the Federal Power Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing it to issue and sell to its employees not to exceed 500,000 shares of its authorized but unissued shares of Common Stock of the par value of $3.25 per share, and exempting the issuance and sale thereof from the competitive bidding requirements of Section 34.1a of the Commission's Regulations.

Applicant proposes to issue and sell such shares of Common Stock pursuant to an Employees' Stock Purchase Plan (the Plan). The Plan provides for periodic offering of not less than 10 and not more than 400 shares or Applicant's authorized but unissued Common Stock to every regular full-time employee of any subsidiary corporation of Applicant, but not more than 1,350,000 shares in the aggregate, at a price equal to 90% of the fair market value on the date of an offering. Payments are to be made in cash or through payroll deductions over a period of not more than 27 months from the date of offering.

Applicant states that the purposes of the Plan are to encourage employees to become stockholders of Applicant, to stimulate increased interest on their part in affairs of Applicant, to afford them an opportunity to share in the profits and growth of Applicant and to promote systematic savings by them.

Any person desiring to be heard or to make any protest with reference to this application should, on or before July 25, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20738 Filed 7-18-77;8:45 am]

[Docket No. CP77-479]

PANHANDLE EASTERN PIPE LINE CO. AND TRUNKLINE GAS CO.

Application

JULY 12, 1977.

Take notice that on June 30, 1977, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Applicants), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-479 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transporation of natural gas for Libby-Owens-Ford Company (LOF), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants seek authorization to transport for LOF on a firm basis 450 Mcf of gas per day to Transcontinental Gas Pipe Line Corporation (Tranco), 300 Mcf of gas per day to Northern Natural Gas Company (Northern), 500 Mcf of gas per day to Transwestern Pipeline Company (Transwestern) and 550 Mcf of gas per day to Columbia Gas Transmission Corporation (Columbia). Applicants indicate that they would deliver such volumes less 6 percent fuel reduction for fuel usage for volumes delivered to Transco and less 8 percent for fuel usage for volumes delivered to Columbia. Because of the relatively short distances involved, there is no reduction for fuel usage for volumes delivered to Northern and Transwestern, it is said. Applicants state that they would transport on a best efforts basis up to 1,200 Mcf of gas per day to be nominated on a monthly basis for delivery to Northern, Transco, Transwestern and Columbia.

It is stated that the transportation between Applicants and LOF would be pursuant to an agreement dated March 31, 1977. It is further stated that LOF would pay to Applicants a monthly transportation charge of $7,650, such charge being subject to increase or decrease by an amount equal to 15.43 cents for those volumes delivered to Cow Island, Louisiana; 4.30 cents for those delivered to Mullinville, Kansas; 23.10 cents for those delivered to Maumee, Ohio; and 8.40 cents for those volumes delivered in Hansford County, Texas. It is indicated that the transportation agreement is for a term of 8 years from the date of first delivery, and that the term of the agreement is based upon the period of time those gas reserves in Woods

County, Oklahoma, would be available to LOF.

It is indicated that the subject gas would be used for Priority 2 purposes. Applicants states that the gas it would transport is for use in the operation of 4 LOF plants in three locations, Laurinburg, North Carolina, Toledo, Ohio, and Mason City, Iowa. These plants are national suppliers of automotive and architectural glass, and in the production of both types of gas precise temperature control and precise flame characteristics of a clean-burning gaseous flame is required, it is said. It is stated that LOF has advised Applicants that curtailment by its various suppliers has necessitated its acquiring its own natural gas reserves and arranging for the transportation.

Applicants states that no new facilities are proposed to be constructed to perform the proposed transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to interevent or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20744 Filed 7-18-77;8:45 am]

[Docket No. CP77-477]

PANHANDLE EASTERN PIPE LINE CORP.

Application

JULY 12, 1977.

Take notice that on June 30, 1977, Panhandle Eastern Pipe Line Corporation (Applicant), 300 Bissonnet Street, Houston, Texas, and 3444 Broadway, Kansas City, Missouri, filed in Docket No. CP77-477 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Ohio Gas Company (Ohio Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 8,000 Mcf of natural gas per day for Ohio Gas on a firm basis, pursuant to a transportation agreement dated April 29, 1977. It is stated that Ohio Gas has available volumes of gas purchased from National Petroleum Corporation (National) in Ashtabula County, Ohio, for delivery to East Ohio Gas Company (East Ohio) and by displacement to Applicant. It is further stated that said gas would be received by Applicant at the existing interconnection of the facilities of East Ohio and Applicant in Sec. 35, T. 2 N., R. 6 E., Lucas County, Ohio, and Applicant would deliver such volumes to Ohio Gas at the existing points of interconnection of the facilities of Applicant and Ohio Gas at Paulding, Wauseon, Ridgeville Corners and Swanton, Ohio.

Applicant asserts that it would charge Ohio Gas a monthly transportation charge of $4,400 for the firm transportation service and 1.80 cents per Mcf for volumes transported in excess of the firm volumes of 8,000 Mcf per day. It is further asserted that the transportation agreement provides for a term of five years and from year to year thereafter. Applicant further states that it has sufficient available capacity to transport the subject quantities of gas as well as those it provides for its direct customers and transports on behalf of others.

It is stated that Ohio Gas, an existing resale customer of Applicant purchasing gas pursuant to Applicant's Rate Schedule G-1, has embarked on a "self-help" program wherein it has arranged to purchase certain gas supplies which are unavailable to the interstate market, and has requested Applicant to assist by transporting these volumes. It is further stated that such volumes would partially offset a shortfall in deliveries from Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20726 Filed 7-18-77;8:45 am]

[Docket No. CP77-478]

PANHANDLE EASTERN PIPE LINE CO. AND TRUNKLINE GAS CO.

Application

JULY 12, 1977.

Take notice that on June 30, 1977, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77001 (Applicants), filed in Docket No. CP77-478 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas for Central Illinois Public Service Company (CIPSCO) and the construction and operation of certain minor facilities to transport such natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for CIPSCO for 5 years pursuant to an exchange agreement dated April 1, 1977 between the parties during the period April 1 through October 31, (Summer Period) of each year of the term of the agreement, certain volumes of gas available to CIPSCO from its Southern Service Area to its Northern Service Area for injection into CIPSCO's fields. It is stated that at such time, Trunkline would receive at the outlet of a measuring and regulating station to be constructed in Williamson County, Illinois, and transport to Panhandle and Panhandle would transport and deliver to CIPSCO at existing points of interconnection of Panhandle and CIPSCO in Milton (Pike County), Illinois or Canton (Fulton County), Illinois, or Paris (Edgar County) Illinois, up to 500,000 Mcf, at a daily rate not to exceed 10,000 Mcf, less 1 percent reduction of the volumes delivered at the point of receipt for fuel usage. Such deliveries would be on an interruptible basis, it is said.

It is stated that during the succeeding winter period (November 1 through the succeeding March 31) these volumes of

gas would be withdrawn by CIPSCO from its storage fields and transported and redelivered by Applicants to CIPSCO for use in its Southern Service Area. It is indicated that at such time, Panhandle would receive at the point or points of delivery and transport to Trunkline, and Trunkline would transport and deliver to CIPSCO at the point of receipt certain volumes which CIPSCO has in their storage fields at a daily rate not to exceed 20,000 Mcf.

Applicants state that for the transportation during the summer period, CIPSCO would pay 5.15 cents per Mcf, plus 1 percent fuel, and that CIPSCO would also pay 5.15 cents per Mcf for volumes transported during the winter period, with no fuel reimbursement.

Trunkline also proposes to construct and operate certain minor facilities required to receive the transportation volumes from CIPSCO. These facilities consist of a side tap and connecting piping on Trunkline's pipeline in Williamson County, Illinois and are estimated to cost $12,700, it is said. It is stated that CIPSCO would reimburse Trunkline for the cost of these facilities, and that Trunkline proposes to finance this project from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20725 Filed 7-18-77;8:45 am]

[Docket No. CP77-480]

PANHANDLE EASTERN PIPE LINE CO. AND TRUNKLINE GAS CO.

Application

JULY 13, 1977.

Take notice that on June 30, 1977, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company Trunkline), P.O. Box 1642, Houston, Texas 77001 (Applicants), filed in Docket No. CP77-480 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation for two years of natural gas for Owens-Corning Fiberglas Corporation (Owens-Corning), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Owens-Corning has arranged to purchase for high priority use at its plant in Anderson, South Carolina certain gas supplies which are unavailable to the interstate market from Alpar Resources, Inc. (Alpar) at a point situated in Ellis County, Oklahoma. It is indicated that Owens-Corning would pay Alpar $2.20 per billion Btu's for the subject gas, and that Owens-Corning desires to have such volumes received, transported and delivered by Applicants to Transcontinental Gas Pipeline Corporation (Transco) for the account of Owens-Corning.

Applicant proposes to transport for Owens-Corning on a firm basis up to 1,200 Mcf of gas per day and on a best-efforts basis up to 800 Mcf of gas per day with redelivery to Transco for the account of Owens-Corning. It is stated that Owens-Corning has entered into an agreement for the purchase of gas from Alpar to be delivered to Panhandle in Ellis County, Oklahoma, or at another mutually agreeable point on Panhandle's system. It is further stated that Panhandle would receive and transport the gas to the point of interconnection of Panhandle's and Trunkline's facilities in Tuscola, Illinois, and Panhandle and Trunkline at that point, would exchange equivalent volumes of gas less 7 percent for fuel usage, with redeliveries to be made to Transco by Trunkline at a point of interconnection of Transco's and Trunkline's facilities near Cow Island, Louisiana.

Applicants indicate that no new facilities would be required to effectuate the proposed transportation service.

It is stated that for the transportation on a firm basis, Owens-Corning would pay a monthly charge of $6,516 based upon daily volume level of 1,200 Mcf, and that Owens-Corning would pay 17.84 cents per Mcf for volumes transported on a best-efforts basis.

It is indicated that Owens-Corning would use the subject gas for Priority 2 uses at its plant located in Anderson, South Carolina, and that Owens-Corning has represented to Transco that because of the anticipated severe curtailments of Owens-Cornings' Priority 2 requirements at this plant approximately 1,500 employees at this locations face layoff.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 27, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20737 Filed 7-18-77;8:45 am]

[Docket No. FR77-472]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Filing of Agreement

JULY 11, 1977.

Take notice that Public Service Company of New Hampshire (PSNH) on June 23, 1977, tendered for filing as an initial rate schedule a Transmission Contract with the City of Holyoke, Massachusetts, Gas and Electric Department (the Buyer).

PSNH indicates that under the Contract, PSNH will transmit through its system entitlements of power which the Buyer will be purchasing from Vermont Electric Power Company, Inc., and Green Mountain Power Corporation.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of April 1, 1977.

According to PSNH, a copy of the filing was served upon the Buyer.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 22, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20729 Filed 7-18-77;8:45 am]

[Project No. 298]

SOUTHERN CALIFORNIA EDISON CO.

Application for Major License for Constructed Project

JULY 13, 1977.

Public notice is hereby given that an application was filed on May 2, 1973, under the Federal Power Act, 16 U.S.C. §§ 791a–825r, by Southern California Edison Company (Correspondence to: Mr. Rollin E. Woodbury, Vic President and General Counsel, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770) for a major license for the constructed Kaweah Project, FPC No. 298, located on the Kaweah River and its tributaries near the Towns of Lemoncove, Three Rivers, and Harmond in Tulare County, California. The Kaweah Project affects lands within Sequoia National Forest and public lands of the United States.

The Kaweah Project, with a total installed capacity of 8,800 kW, was formerly licensd as a minor-part project. The minor-part license expired on August 6, 1974. The project consists of four storage reservoirs to regulate flows in the East Fork of the Kaweah River and three hydroelectric developments. The various portions of the project are described in greater detail as follows:

A. Storage Reservoirs including: (1) Crystal Lake, with a usable storage capacity of 153 acre-feet at maximum water surface elevation 10,785.3 feet msl, formed by Crystal Lake dam, a masonry structure 93.6 feet long and 16.8 feet high on Crystal Creek; (2) Upper Monarch Lake, with a usable storage capacity of 285 acre-feet at maximum water surface elevation 10,634.0 feet msl, formed by Upper Monarch Lake dam, a masonry structure 261.5 feet long and 22 feet high on Monarch Creek; (3) Lady Franklin Lake, with a usable storage capacity of 521 acre-feet at maximum water surface elevation 10,315.0 feet msl, formed by Lady Franklin Lake dam, a masonry structure 393.6 feet long and 21 feet high on Franklin Creek; and (4) Eagle Lake, with a usable storage capacity of 124 acre-feet at maximum water surface elevation 9,995.8 feet msl, formed by Eagle Lake dam, a masonry structure 280.2 feet long and 15 feet high on Eagle Creek.

B. Kaweah No. 1 Development consisting of: (1) a small concrete diversion dam across the East Fork of the Kaweah River; (2) a six-foot-high, three-foot-wide, unlined tunnel approximately 50 feet long; (3) a 30,723-foot-long steel flume; (4) a 24-foot-diameter steel forebay tank; (5) a 3,340-foot-long steel penstock varying in diameter from 48 to 19 inches; (6) a 22.5-foot by 26.3-foot reinforced concrete powerhouse; and (7) a generating unit with a capacity of 2,250 kW.

C. Kaweah No. 2 Development consisting of: (1) a masonry diversion dam 161 feet long and seven feet high on the Middle Fork of the Kaweah River; (2) a flowline comprised of 16,738 feet of concrete ditch, 3,822 feet of steel flume, and 1,047 feet of 50-inch steel syphon; (3) a 1,012-foot-long steel penstock varying in diameter from 60 to 40 inches; (4) a 34-foot by 62-foot wood-frame powerhouse; (5) a generating unit with a capacity of 2,050 kW; and (6) a tailrace canal extending approximately one-third mile to the Kaweah River.

D. Kaweah No. 3 Development consisting of: (1) a 2,580-foot-long section of concrete-lined flume; (2) a forebay reservoir with a capacity of approximately 11 acre-feet; (3) a 3,151-foot-long steel penstock varying in diameter from 42 to 36 inches; (4) a 50-foot by 50-foot reinforced concrete powerhouse; and (5) two generating units with capacities of 2,100 kW and 2,400 kW, respectively.

Facilities appurtenant to the project which are located in Sequoia National Park and which are not subject to the Commission's licensing authority include concrete dams on the Marble and Middle Forks of the Kaweah River and a conduit system approximately five miles long leading to the forebay reservoir of the Kaweah No. 3 Development.

The power generated at Project No. 298 is marketed in Applicant's service area.

Applicant states that the project area provides limited recreation potential, and that it does not intend to develop any recreation facilities in the area.

Any person desiring to be heard or to make any protest with reference to said application should, on or before September 19, 1977, file with the Federal Power Commission, 825 N. Capitol St. NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1976). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20717 Filed 7-18-77;8:45 am]

[Docket No. RP77-108]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Proposed Changes in FPC Gas Tariff

JULY 11, 1977.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco), on July 1, 1977, tendered for filing certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FPC Gas Tariff. The proposed changes would increase revenues from jurisdictional sales, transportation and storage services by approximately $50.8 million based upon the 12-month period ending March 31, 1977, as adjusted. The proposed effective date is August 1, 1977.

Transco states that the principal reasons which caused the rate increase are (1) an increase in depreciation rate, (2) increases in costs related to new plant for the attachment of new gas supplies, and (3) increases in transportation costs for new gas supplies transported by others. Transco also states that these increased costs have been partially offset by decreased unit transmission costs due to increases in sales and transportation volumes.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 22, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20731 Filed 7-18-77;8:45 am]

[Docket No. RP77-106]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Tariff Filing

JULY 11, 1977.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on June 30, 1077, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 2.

Transco states that these tariff sheets provide for an increase in the rate charged for interruptible transportation service under each of the agreements involved in this filing up to the levels approved by Order issued January 31, 1977 in Docket No. RP77–26 (28.2¢ per dt, 29.8¢ per dt, and 31.5¢ per dt in Zones 1, 2 and 3, respectively). The proposed effective date of such increased rates is June 30, 1977 and it is requested that the Commission suspend the use of such tariff sheets for one (1) day and provide that the sheets become effective July 1, 1977, subject to refund pending the outcome of the consolidated proceedings in Docket Nos. RP76–136 and RP77–26.

Transco also states that the purpose of this filing is to increase the interruptible transportation rates under the affected agreements from 21.55¢ per dt to the particular zone level in effect in Docket No. RP77–26 as spelled out above in order that all interruptible transportation customers will pay the same rate for the same type of service pending the outcome of said docket. The instant agreements were not changed in Docket No. RP77–26 because they were not in effect at the time of that filing.

The Company states that copies of the filing have been mailed to each of the customers receiving service under the affected rate schedules.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 22, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20732 Filed 7-18-77;8:45 am]

[Docket No. CP77-469]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

JULY 12, 1977.

Take notice that on June 27, 1977, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP77–469 and application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of up to 10,000 dekatherms equivalent of natural gas per day on an interruptible basis for Mid Louisiana Gas Company (Mid Louisiana), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport up to 10,000 dekatherms equivalent of natural gas per day for Mid Louisiana pursuant to an agreement between the parties dated March 11, 1977. It is stated that such agreement would continue in effect for a period ending March 21, 1978, to coincide with the term of a gas purchase arrangement between Mid Louisiana and certain producers.

Applicant states that Mid Louisiana has purchased from South Louisiana Production Company, Inc., CRA Oil Exploration Company, Carpenter Oil & Gas Co., W. A. Moncrief, Jr., and Reidy International (SLAPCO, et al.), the proposed volumes of gas produced from the Morris Heirs No. 1 well located in the False River Field, West Baton Rouge Parish, La. Such purchase commenced on March 27, 1977, and would continue through July 31, 1977, pursuant to Section 6 of the Emergency Natural Gas Act of 1977; thereafter purchases from this source would continue for a limited-term period beginning August 1, 1977, and extending through the 360th day following the March 27, 1977, date on which the emergency purchase began, i.e. through March 21, 1978, it is said.

Applicant indicates that Mid Louisiana has arranged for the delivery of such quantities to Texas Eastern Transmission Corporation (Texas Eastern), which makes equivalent quantities available to Transco at an existing authorized interconnection between the two companies located near St. Francisville, East Feliciana Parish, La., and that Transco in turn would deliver thermally equivalent quantities less 0.6 percent retained by Transco for fuel, to Mid Louisiana at an existing authorized interconnection between the two companies known as the Ethel Exchange Point, also in East Feliciana Parish, La., or at any other mutually agreeable existing authorized exchange point between Applicant and Mid Louisiana. No additional facilities are required by Applicant to render the proposed service, it is said.

It is stated that the combined total daily quantities of gas delivered to Applicant for transportation or for exchange under this agreement and under the existing agreement between Applicant and Mid Louisiana, dated June 29, 1972, would not exceed the maximum quantities of gas Applicant would transport or exchange under the agreement dated June 29, 1972. Applicant would make no additional charge for its service hereunder, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commision's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20733 Filed 7-18-77;8:45 am]

[Docket No. RP77-107]

UNITED GAS PIPE LINE CO.

Proposed Changes in FPC Gas Tariff

JULY 11, 1977.

Take notice that United Gas Pipe Line Company (United), on June 30, 1977, tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. The proposed changes are based on the twelve-month period ending February 28, 1977, as adjusted, and would increase jurisdictional sales and transportation revenues by $55,964,530. The proposed effective date is August 1, 1977.

United states that the proposed rate increase is necessary to permit it to recover its jurisdictional cost of service for the test period of twelve months ended February 28, 1977, as adjusted. The cost of service reflects increases in all levels of cost except gas costs which are reflected in the cost of service on the basis of the average unit cost of gas purchased as contained in United's PGA rate change which will become effective July 1, 1977. United also states that its jurisdictional sales volume for the test period has declined 7.3 million Mcf from the volumes included in United's last rate increase filing at Docket No. RP76–84.

Copies of the filing have been served upon United's jurisdictional customers and the public service commissions in the states of Alabama, Florida, Louisiana, and Mississippi, and the Texas Railroad Commission.

Any person desiring to be heard or to protest said filing should file a petition

to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 22, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20721 Filed 7-18-77;8:45 am]

[Docket No. CP77-468]

UNITED GAS PIPE LINE CO.

Application

JULY 13, 1977.

Take notice that on June 24, 1977, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Tex. 77001, filed in Docket No. CP77-468 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission General Policy and Interpretation (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of up to 40 Mcf of natural gas per day for Davsco, Inc. (Davsco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that under the terms and conditions of an agreement between Applicant and Davsco dated May 25, 1977, Applicant has agreed to transport up to 40 Mcf of natural gas per day for Davsco. Applicant indicates that it would transport such volumes from a point of receipt on its Bruni-Pettus 14-inch line located in the Sam Allen Survey A-71, Bee County, Tex., and would redeliver such volumes of gas for the account of Davsco, to Transcontinental Gas Pipe Line Corporation (Transco) at mutually agreeable existing points of interconnection near Victoria, Victoria County, Tex.; near Cameron Parish, La.; at Egan Plant in Acadia Parish, La.; near Gueydan, Acadia Parish, La.; at Gibson Plant Nos. 1 and 2 in Terrebonne Parish La.; near Magnolia and Holmesville, Pike County, Miss.; near Walthall, Walthall County, Miss.; or at Harmony Plant, Clarke County, Miss.

It is stated that the gas proposed to be transported has been acquired by Davsco from Samedan Oil Corporation (Samedan), that such gas would be produced from Samedan Carl Unit No. 1 located in Bee County, Tex., and would be consumed for high priority end-use in Davsco's plant in Gastonia, N.C. It is indicated that Davsco would pay Samedan for all gas delivered hereunder, or if available and not taken, $2.25 per million Btu's (at 14.65 psia), and that Davsco would pay Samedan 8.4 cents per Mcf for gathering and transporting gas to the delivery point.

Applicant states that it would redeliver to Transco for the account of Davsco, a volume of gas equal to the quantity of gas delivered by Samedan to Applicant, for the account of Davsco, less 1.5 percent of the said volume so delivered by Samedan as a charge for fuel and company used gas. It is stated that Transco, in turn, would cause said quantity of gas to be delivered, to Public Service Company of North Carolina, inc., for redelivery to Davsco for high priority end-use at its Gastonia, N.C. Plant.

It is stated that Davsco has purchased such gas in an effort to offset the loss of its gas supply because of curtailed deliveries by its supplier, and that all natural gas purchased would qualify for Priority 2 end-uses at the old Bulb Avenue plant or at the new Tulip Drive plant. The only way gas would be used at these plants would be for drying process, it is said.

Applicant states that the proposed transportation service is for a term of 2 years beginning with the date of first deliveries or for a lesser period as may be required by governmental authorization. It is stated that Davsco has agreed to pay Applicant for the proposed transportation service a price equal to Applicant's average jurisdictional transmission cost of service in its southern or northern rate zone, less any amount included in such average jurisdictional cost of service which is attributable to gas consumed in the operation of Applicant's pipeline system. The current average jurisdictional transmission cost of service, exclusive of the cost of gas consumed in Applicant's operation, is 20.04 cents per Mcf in the Northern rate zone and 17.92 cents per Mcf in the Southern rate zone, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20739 Filed 7-18-77;8:45 am]

[Docket No. CP77-467]

UNITED GAS PIPE LINE CO.

Application

JULY 12, 1977.

Take notice that on June 24, 1977 United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP77-467 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of up to 125 Mcf of natural gas per day for Aikman Corporation (Corporation), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to transport up to 125 Mcf of natural gas per day for Corporation pursuant to a transportation agreement dated May 24, 1977 between Applicant and Corporation. Applicant states that it would transport such volumes from a point of receipt on its Bruni-Pettus 14-inch line located in the Sam Allen Survey A-71, Bee County, Texas, and would redeliver such volumes of gas, for the account of Corporation, to Transcontinental Gas Pipe Line Corporation (Transco) at mutually agreeable existing points of interconnection near Victoria, Victoria County, Texas; near Cameron, Cameron Parish, Louisiana; at Egan Plant in Acadia Parish, Louisiana; near Gueydan, Acadia Parish, Louisiana; at Gibson Plant Nos. 1 and 2 in Terrebonne Parish, Louisiana; near Magnolia and Holmesville, Pike County, Mississippi; near Walthall, Walthall County, Mississippi or at Harmony Plant, Clarke County, Mississippi.

It is stated that the gas proposed to be transported by Applicant has been acquired by Corporation from Samedan Oil Corporation (Samedan), and that such gas would be produced from the Samedan Carl Unit No. 1 located in Bee County, Texas and would be consumed for high priority end use in Corporations' plant in Roxboro, North Carolina. It is indicated that Corporation would pay Samedan for all delivered hereunder, or if available and not taken by Corporation, $2.25 per million Btu's (at

14.65 psia), and that Corporation would also pay Samedan 8.4 cents per Mcf for gathering and transporting gas to the delivery point.

Applicant states that it would redeliver to Transco, for the account of Corporation, a volume of gas equal to that quantity of gas delivered by Samedan to Applicant, for the account of Corporation, less 1.5 percent of the said volume so delivered by Samedan as a charge for fuel and company used gas, and that Transco, in turn, would cause said quantities of gas to be delivered for the account of Corporation to Public Service Company of North Carolina, Inc. for redelivery to Corporation for high priority end-use at its Roxboro, North Carolina plant. It is stated that Corporation would only use the gas to fire one textile fabric dryer/tenter frame, and that natural gas is an essential component in the textile manufacturing process. Natural gas is required in the dryer/tenter frame to produce precise temperatures through a direct flame application, it is said. Applicant indicates that there exists no other technically alternate fuel for use at the Collins & Aikman Roxboro facility.

It is stated that the term of the proposed transportation agreement is for two years beginning with the date of first deliveries hereunder or for a lesser period as may be required by governmental authorization. It is further stated that Corporation would pay Applicant for gas transported a price equal to Applicant's average jurisdictional transmission cost of service in its southern or northern rate zone, less any amount included in such average jurisdictional cost of service which is attributable to gas consumed in the operation of Applicant's pipeline system. The current average jurisdictional transmission cost of service, exclusive of the cost of gas consumed in Applicant's operations is 20.04 cents per Mcf in the Northern rate zone and 17.92 cents per Mcf in the Southern rate zone.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 25, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20741 Filed 7-18-77;8:45 am]

[Docket No. ER76-689]

WEST PENN POWER CO.

Conformance Filing of Tariff Sheets Pursuant to Settlement Agreement

JULY 8, 1977.

Take notice that on July 5, 1977, Allegheny Power System (Allegheny) on behalf of West Penn Power Company tendered for filing revised Sheet Nos. 11 and 12 to FPC Electric Tariff, Original Volume No. 1 of West Penn Power Company. Allegheny states that the revised sheets are being filed in conformance with the settlement agreement approved in the above docket.

Allegheny states that a copy of the filing was sent to West Penn's wholesale customer, Allegheny Electric Cooperative, Inc.

Any person desiring to be heard or to protest said filing on whether the filing conforms to the Commission's decision approving the settlement agreement should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 26, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20734 Filed 7-18-77;8:45 am]

[Docket No. ER77-489]

WISCONSIN PUBLIC SERVICE CORP.

Filing of Initial Rate Schedule

JULY 11, 1977.

Take notice that Wisconsin Public Service Corporation ("Company") on July 1, 1977, tendered for filing an initial Primary Resale Service Agreement, dated March 18, 1977, with Alger-Delta Electric Association, of Gladston, Michigan, which is proposed to be effective August 31, 1977. The Company states that the Agreement provides for wholesale electric service to be furnished by it to Alger-Delta Electric Association under the Company's present standard W-1 form of tariff for Primary Resale Service, which rate was most recently revised pursuant to the Commission's Order of January 10, 1977, in Docket No. ER76-150.

The Company indicates that an estimate of quantities of service and revenues during the twelve months immediately following the month in which this service is expected to commence, was submitted with the filing.

The Company states that there are no customers receiving service under a similar schedule except those now being served under the present W-1 form of tariff.

Any persons desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 20, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20728 Filed 7-18-77;8:45 am]

FEDERAL RESERVE SYSTEM

[H.2, 1977 No. 26]

ACTIONS OF THE BOARD; APPLICATIONS AND REPORTS RECEIVED DURING THE WEEK ENDING JUNE 25, 1977

ACTIONS OF THE BOARD

Statement by Chairman Arthur F. Burns before the Senate Subcommittee on Financial Institutions on S. 1664, concerning distortions caused by the spread of payment of interest by depository institutions on transactions balances (NOW accounts, etc.) and the withdrawal of banks from Federal Reserve membership.

Statement by Chairman Arthur F. Burns before the House Subcommittee on Domestic Monetary Policy, on H.R. 6273, the bill provides that, beginning on February 1, 1982, and at four-year intervals thereafter, the Chairman and Vice Chairman of the Board of Governors of the Federal Reserve System shall be appointed by the President with the advice and consent of the Senate, it further provides that if a vacancy occurs in either of these offices, any portion of the term remaining shall be filled only for that unexpired portion.

Report on bills H.R. 2733 and H.R. 3928, bills that involve reporting requirements and restrictions on certain Federal employees and officers, letter of response to request for Board's comments sent to Congressman Robert N. C. Nix, Chairman of the House Committee on Post Office and Civil Service.

The Board has decided to take under consideration proposals by four bank holding companies to have a subsidiary engage in the business of acting as a futures commission merchant to execute futures contracts covering gold and silver bullion and coins, the Board will receive comment through July 13, 1977.

Sumitomo Bank, Limited, Osaka, Japan, extension of time to July 29, 1977, within which to purchase shares of Central Pacific Bank, Honolulu, Hawaii.[1]

Cass City State Bank, Cass City, Michigan, to make an investment in bank premises.[1]

Long Island Trust Company, Garden City, New York, to make an investment in bank premises.[1]

Manistee Bank & Trust Co., Manistee, Michigan, to make an investment in bank premises.[1]

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Union Trust Company of Maryland, Baltimore, Maryland, Branch to be established at the intersection of Fairmont Avenue and York Road, Towson, Baltimore County.[2]

State Bank of St. Charles, St. Charles, Illinois. Branch to be established at the southeast corner of Oak Street and Randall Road, St. Charles.[2]

The First State Bank of Decatur, Indiana. Branch to be established at Yorkshire Drive, Decatur, Adams County.[2]

* * * * *

International Investments and Other Actions Pursuant to Sections 25 and 25 (a) of the Federal Reserve Act and Sections 4(c) (9) and 4(c) (13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Boston Overseas Financial Corporation: Investment—additional shares of International Factors Belgium, Societe Anonyme.

Citibank, N.A.: Investment—to acquire through Grindlays Bank Limited, London, England, special purpose insurance brokerage companies.

Marine Midland International Corporation: Investment—to acquire indirectly, additional shares of Sociedad Financiera Union C.A., Caracas, Venezuela, in order to maintain its 20 percent interest.

Bamerical International Financial Corporation: For Bamerical Financial Corporation Ltd., Thailand, to issue debt obligations.

To Form a Bank Holding Company Pursuant to Section 3(a) (1) of the Bank Holding Company Act of 1956.

APPROVED

Banbogota, Inc., New York, New York, for approval to acquire 100 percent (less directors' qualifying shares) of the voting shares of Banco de Bogota Trust Company, New York, New York, a proposed new bank.

Banco de Bogota, Bogota, Colombia, for approval to acquire 100 percent of the voting share (less directors' qualifying shares) of Banco de Bogota Trust Company, New York, New York, a proposed new bank.

Trade Development Finance (Netherlands Antilles), N.V., Curacao, The Netherlands Antilles and Trade Development Holland Holding B.V., Amsterdam, The Netherlands for approval to directly acquire 68.63 per cent of the voting shares of Republic New York Corporation, New York, New York and to indirectly acquire 99.9 percent of the voting shares of Republic National Bank of New York, New York, New York.

Preferred Management Company, Omaha, Nebraska, for approval to acquire an additional 60 percent of the voting shares of North Side Bank, Omaha, Nebraska.

* * * * *

To Expand a Bank Holding Company Pursuant to Section 3(a) (3) of the Bank Holding Company Act of 1956.

RETURNED

J. R. Montgomery & Co., Inc., Lawton, Oklahoma, for approval to acquire an additional five percent of the voting shares of The City National Bank and Trust Company of Lawton, Oklahoma, Lawton, Oklahoma (See H.2 No. 21, 1977.)

APPROVED

The Royal Trust Company, Montreal, Quebec, Canada and Royal Trust Bank Corp., Miami, Florida, for approval to acquire 100 percent of the voting shares of Royal Trust Bank of South Dade, N.A., Dade County, Florida a proposed new bank.

Republic of Texas Corporation, Dallas, Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to Midway National Bank of Grand Prairie, Grand Prairie, Texas.

DENIED

Republic of Texas Corporation, Dallas, Texas for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to Preston State Bank, Dallas, Texas.

* * * * *

To Retain Bank Shares Acquired in a Fiduciary Capacity Pursuant to Section 3 of the Bank Holding Company Act of 1956.

APPROVED

First United Bancorporaton, Inc., Fort Worth, Texas and The First National Bank of Fort Worth, Fort Worth, Texas, for approval to retain 9,960 shares of Everman National Bank, Fort Worth, Texas.[2]

Texas American Bancshares Inc., Fort Worth, Texas, for approval to retain 575 shares of Riverside State Bank, Fort Worth, Texas.[2]

* * * * *

To Expand a Bank Holding Company Pursuant to Section 4(c) (8) of the Bank Holding Company Act of 1956.

WITHDRAWN

Industrial National Corporation, Providence, Rhode Island, notification of intent to engage in *de novo* activities (insurance agency for any insurance sold as a matter of convenience to the purchaser) at 1443 West Schaumburg Road, Schaumburg, Illinois, through a subsidiary, Mortgage Associates, Inc. (6/8/77).[3]

DELAYED

Union Trust Bancorp, Baltimore, Maryland, notification of intent to engage in de novo activities (acting as agent in the sale of insurance protecting collateral held against the extensions of credit) at 852-854 Terry Road, Jackson, Mississippi; 132 East Pine Street, Hattiesburg, Mississippi; and 283 West Evans Street, Florence, South Carolina, through its subsidiaries, Landmark Finance Corporation of Mississippi and Landmark Finance Corporation of South Carolina (wholly-owned subsidiaries of Landmark Financial Services, Inc.) (6/23/77).[3]

PERMITTED

First Bancorp of N.H., Inc., Manchester, New Hampshire, notification of intent to engage in de novo activities (origination, selling and servicing both residential and commercial mortgages; originating and servicing construction loans; and as an incident to the real estate lending activities, providing advice and appraisal services for self and others) at 156 Main Dunstable Road, Nashua, New Hampshire, through its subsidiary, Firstbank Mortgage Corp. (6/26/77).[3]

Industrial National Corporation, Providence, Rhode Island, notification of intent to relocate de novo activities (organization and sale of residential mortgages; servicing of residential mortgage loans; insurance agency for any insurance directly related to an extension of credit or provision of other financial services) from 5335 66th Street North, St. Petersburg, Florida to 3601 Central Avenue, St. Petersburg, Florida, through its subsidiary, Mortgage Associates, Inc. (6/22/77).[3]

Industrial National Corporation, Providence, Rhode Island, notification of intent to engage in de novo activities (origination and sale of residential mortgages; servicing of residential mortgage loans; and the offering of credit life/accident and health insurance directly related to an extension of credit) at 1000 Quintard Avenue, Suite 410, Anniston, Alabama, through its subsidiary, Mortgage Associates, Inc. (6/22/77).[3]

Industrial National Corporation, Providence, Rhode Island, notification of intent to engage in de novo activities (insurance agency for credit life/accident and health insurance directly related to an extension of credit) at 1443 West Schaumburg Road, Schaumburg, Illinois, through a subsidiary, Mortgage Associates, Inc. (6/26/77).[3]

Citicorp, New York, New York, notification of intent to engage in de novo activities (making loans for the account of others such as one-to-four family unit mortgage loans) at 117 S. Air Depot Boulevard, Midwest City, Oklahoma, 2507 N.W. 23rd Street, Oklahoma City, Oklahoma, The Crossroads, 7000 Crossroads Boulevard, Oklahoma City, Oklahoma and North Penn Plaza, 5641 N. Pennsylvania Avenue, Oklahoma City, Oklahoma, respectively, through its subsidiary, Nationwide Financial Services Corporation (6/19/77).[3]

Citicorp, New York, New York, notification of intent to relocate de novo activities (making of consumer installment personal loans, purchasing consumer installment sales finance contracts; sale of credit related life/accident and health insurance; sale by a licensed agent of insurance which protects personal property subject to a security agreement with Nationwide Financial Corporation of Oklahoma, Inc.) from 2808 N. Pennsylvania Avenue, Oklahoma City, Oklahoma, 4800 S. Western Avenue, Oklahoma City, Oklahoma and 4520 N.W. 50th, Oklahoma City, Oklahoma to 2507 N.W. 23rd Street, Oklahoma City, Oklahoma, The Crossroads, 7000 Crossroads Boulevard, Oklahoma City, Oklahoma and

[1] Application processed on behalf of the Board of Governors under delegated authority.

[2] Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

North Penn Plaza, 5641 N. Pennsylvania Avenue, Oklahoma City, Oklahoma, respectively, through its subsidiary, Nationwide Financial Corporation (6/19/77).*

Citicorp, New York, New York, notification of intent to relocate de novo activities (making of consumer installment personal loans, purchasing consumer installment sales finance contracts; sale of credit related life/accident and health insurance; sale by a licensed agent of insurance which protects personal property subject to a security agreement with Nationwide Financial Corporation of Oklahoma) and to engage de novo in the following additional activity (making loans for the account of others such as one-to-four family unit mortgage loans) from 1531 Gore Boulevard, Lawton, Oklahoma to 3130 Cache Road, Suite 2, Lawton, Oklahoma, through its subsidiary, Nationwide Financial Services Corporation (6/20/77).*

Citicorp, New York, New York, notification of intent to engage in de novo activities (making loans for the account of others such as one-to-four family unit mortgage loans) at 2702 N.E. Broadway, Portland, Oregon; 4240 N.E. 122nd Street, Portland, Oregon; 1543 Hawthorne Avenue, N.E., Salem, Oregon; 615 S.W. Park Avenue, Portland, Oregon; 939 River Road, Eugene, Oregon; and 10615 S.E. Cherry Blossom Drive, Portland, Oregon, through its subsidiary, Nationwide Financial Corporation of Oregon (6/24/77).*

Citicorp, New York, New York, notification of intent to engage in de novo activities (making loans for the account of others such as one-to-four family unit mortgage loans) at 5567 D Memorial Drive, Stone Mountain, Georgia; 2096 N. Decatur Plaza, Decatur, Georgia; 4471 Jonesboro Road, Forest Park, Georgia; 3355 Lenoc Road N.E., Atlanta, Georgia; 204 Spring Street, Macon, Georgia; and 5067 Austell Road, Austell, Georgia, through its subsidiary, Nationwide Financial Corporation of Georgia (6/24/77).*

Citicorp, New York, New York, notification of intent to engage in de novo activities (making loans for the account of others such as one-to-four family unit mortgage loans) at 314 Gold S.W., Albuquerque, New Mexico; 3416 Central Avenue, S.E., Albuquerque, New Mexico; 2203 Central Avenue, N.W., Albuquerque, New Mexico; 1501 Eubank Boulevard, N.E., Albuquerque, New Mexico; 3601 San Mateo, N.E., Albuquerque, New Mexico; 10701 Lomas Boulevard, N.E., Suite 106, Albuquerque, New Mexico; and 3157 Cerrillos Road, Santa Fe, New Mexico, through its subsidiary, Nationwide Financial Corporation of New Mexico (6/24/77).*

Midlantic Banks Inc., West Orange, New Jersey, notification of intent to engage in de novo activities (leasing and financing personal property and equipment, all such leases to be on a full pay-out basis) at 95 Old Short Hills Road, West Orange, New Jersey and 9 South Centre Street, Merchantville, New Jersey, through its subsidiary, Midlantic Commercial Leasing Corp. (6/20/77).*

Barnett Banks of Florida, Inc., Jacksonville, Florida, notification of intent to engage in de novo activities (performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company including activities of a fiduciary, agency or custodial nature in the manner authorized by Federal and State law; provided however, that loans and investments will be made and deposits accepted only in conformity with the Regulations of the Board of Governors of the Federal Reserve System) at 1001 East Atlantic Avenue, Delray Beach, Florida, through a subsidiary, Barnett Banks Trust Company, N.A. (6/25/77).*

American Fletcher Corporation, Indianapolis, Indiana, notification of intent to relocate de novo activities (the making of loans and extending of credit, and providing services incident to such loans and extensions of credit such as would be made or provided by a finance company including, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, extending credit secured by real or personal property; and acting as agent or broker for the sale of credit related life insurance in connection with such financing activities) from 209 East Liberty Street, Ann Arbor, Michigan to 2261 West Liberty Street, Ann Arbor, Michigan, through its subsidiary, Local Finance Corporation (6/23/77).*

BankAmerica Corporation, San Francisco, California, notification of intent to engage in de novo activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by an industrial loan company and servicing loans and other extensions of credit; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by personal property, issuing certificates of indebtedness under the authority of the Minnesota Industrial Loan and Thrift Company Act; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance in connection with extensions of credit made or acquired by FinanceAmerica Plan, Inc.) at 413 South Broadway, Rochester, Minnesota, through its subsidiary, FinanceAmerica Plan, Inc. (6/19/77).*

BankAmerica Corporation, San Francisco, California, notification of intent to engage in de novo activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by an industrial loan company and servicing loans and other extensions of credit; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by personal property, issuing certificates of indebtedness under the authority of the Minnesota Industrial Loan and Thrift Company Act; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance in connection with extensions of credit made or acquired by FinanceAmerica Plan, Inc.) at 200 Woolworth Building, St. Cloud, Minnesota, through its subsidiary, FinanceAmerica Plan, Inc. (6/19/77).*

BankAmerica Corporation, San Francisco, California, notification of intent to engage in de novo activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by an industrial loan company and servicing loans and other extensions of credit; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by personal property, issuing certificates of indebtedness under the authority of the Minnesota Industrial Loan and Thrift Company Act; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance in connection with extensions of credit made or acquired by FinanceAmerica Plan, Inc.) at 108 Oakland Avenue, West, Austin, Minnesota, through its subsidiary, FinanceAmerica Plan, Inc. (6/19/77).*

APPROVED

Preferred Management Company, Omaha, Nebraska, for permission to continue to act as agent or broker with respect to the sale of decreasing term credit life insurance, credit accident and health disability insurance and property damage insurance directly related to extensions of credit by North Side Bank, Omaha, Nebraska.

To Expand a Bank Holding Company Pursuant to Section 4(c)(12) of the Bank Holding Company Act of 1956.

PERMITTED

The Sperry and Hutchinson Co., New York, New York, notification of intent to acquire Harlan, Incorporated, Houston, Texas (6/24/77).*

APPLICATIONS RECEIVED

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

The Farmers Trust Company of Lebanon, Pennsylvania, Lebanon, Lebanon County, Pennsylvania. Branch to be established as a branch office at the southeast corner of Eighth Street and Reading Railroad, Lebanon County.

Citizens Bank, Hartford, Kentucky. Branch to be established at Spinks Shopping Center, Highway 231 (Main Street) Hartford, Ohio County.

Citizens Bank, Batesville, Arkansas. Branch to be established in the Wal-Mart Shopping Center on Harrison Street, Batesville, Independence County.

Tyler Bank & Trust Company, Tyler, Texas. Branch to be established on the northeast corner of College and Locust Streets.

• • • • •

To Establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

New Jersey National Bank: Branch—George Town, Grand Cayman, Cayman Islands. (H.2 No. 20, which was originally omitted.)

Security Pacific National Bank: Branch—Manama, Bahrain. (H.2 No. 22, page 11 correction made.)

• • • • •

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Lake View Bancorp, Inc., Northbrook, Illinois, for approval to acquire 99.9 per cent of the voting shares of Lake View Trust and Savings Bank, Chicago, Illinois.

Brentwood Bancshares Corporation, St. Louis, Missouri, for approval to acquire 80 per cent or more of the voting shares of The Brentwood Bank, Brentwood, Missouri, Brentwood, Missouri.

First Guthrie BancShares, Inc., Guthrie, Oklahoma, for approval to acquire 80 per cent or more of the voting shares of The First National Bank of Guthrie, Guthrie, Oklahoma.

Twin Lakes Financial Corporation, Wichita, Kansas, for approval to acquire 98.9 per cent of the voting shares of Twin Lakes State Bank, Wichita, Kansas.

New Parent Company, Cincinnati, Ohio, for approval to acquire D. H. Baldwin Company, Cincinnati, Ohio and indirectly acquire Central Colorado Bancorp, Inc., Cincinnati, Ohio; Nordenco, Inc., Denver, Colorado; Central Bank of Denver-Trade name for The Central Bank and Trust Company, Denver, Colorado; Central Bank of Aurora-Trade name for Peoples Bank of Arapahoe County, Aurora, Colorado; Central Bank of North Denver-Trade name for North Denver Bank, Denver, Colorado; Central

Bank of Colorado-Trade name for The Central Colorado Bank, Colorado Springs, Colorado; Central Bank of Academy Boulevard-Trade name for The Academy Boulevard Bank, Colorado Springs, Colorado; Central Bank of Greeley-Trade name for State Bank of Greeley, Greeley, Colorado; The Rocky Ford National Bank, Rocky Ford, Colorado; First National Bank in Aspen, Aspen, Colorado; The First National Bank of Glenwood Springs, Colorado; First National Bank in Grand Junction, Grand Junction, Colorado; First National Bank-North in Grand Junction, Grand Junction, Colorado; First National Bank in Craig, Craig, Colorado.

Sandy Holding Company, Salt Lake City, Utah, for approval to acquire 100 per cent (less directors' qualifying shares) of the voting shares of Sandy State Bank, Sandy, Utah, a proposed new bank.

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

First National Boston Corporation, Boston, Massachusetts, for approval to acquire 100 per cent of the voting shares of the successor by merger to Blackstone Valley National Bank, Whitinsville, Massachusetts.

United Bank Corporation of New York, Albany, New York, for approval to acquire 100 per cent of the voting shares of the successor by merger to Hempstead Bank, Hempstead, New York.

K & B Producers, Inc., Wichita, Kansas, for approval to acquire 24.9 per cent of the voting shares of Twin Lakes Financial Corporation, Wichita, Kansas and indirectly acquire Twin Lakes State Bank, Wichita, Kansas.

Sierra Petroleum Co., Inc., Wichita, Kansas, for approval to acquire 24.9 per cent of the voting shares of Twin Lakes Financial Corporation, Wichita, Kansas and indirectly acquire Twin Lakes State Bank, Wichita, Kansas.

Daniels Insurance Agency, Inc., Hobbs, New Mexico, for approval to acquire direct or indirect control of 5,777 shares of First National Bank of Lea County, Hobbs, New Mexico.

Republic of Texas Corporation, Dallas, Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of First Bank & Trust, Carrollton, Texas.

* * * * *

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

Chemical New York Corporation, New York, New York, notification of intent to relocate de novo activities (making of direct loans and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a finance company; acting as agent for the sale of credit life insurance and credit accident and health insurance issued in connection with extensions of credit and making available to its borrowers, credit related property and casualty insurance) from 221 West Main Street, P.O. Box 373, Lakeland, Florida to 4404 South Florida Avenue, Lakeland, Florida, through its subsidiary, Sentry Acceptance Company—802, Inc. (6/24/77).[3]

Chemical New York Corporation, New York, New York, notification of intent to engage in de novo activities (making "large" loans in excess of $1,500 and not exceeding $7,500 under the N.C. Gen. Stat. Sec. 24-1.2 (a) and Secs. 24-12 through 17) at 4010 Oleander Drive, Wilmington; Suite 213, Executive Park Building, Asheville; 104 W. Trade Street, Forest City; 533 Marion Plaza, Marion; 2224 North Church Street, Burlington; 332 Highway 64-70, S.W., Hickory; 320 West Dixon Boulevard, Shelby; 255 Charlois Boulevard, Winston-Salem; 897 Peters Creek Parkway, Winston-Salem; 175 Northport Avenue, High Point; 143 West Franklin, Chapel Hill; 225 Green Street, Fayetteville; #5 Woodlawn Green, Suite 154, Charlotte; 4801 E. Independence Boulevard, Charlotte; 600-B South Main Street, Laurinburg; 415 West Meadowview Road, Greensboro; 1100 East Wendover Avenue, Greensboro; all located in North Carolina, through its subsidiary, Sun Mortgage Acceptance Corporation (6/23/77).[3]

Union Trust Bancorp, Baltimore, Maryland, notification of intent to engage in de novo activities (making installment loans to individuals for personal, family or household purposes; purchasing sales finance contracts executed in connection with the sale of personal, family or household goods or services; acting as agent in the sale of credit life and credit accident and health insurance directly related to its extensions of credit; and acting as agent in the sale of insurance protecting collateral held against the extensions of credit) at 852-854 Terry Road, Jackson, Mississippi; 122 East Pine Street, Hattiesburg, Mississippi; and 283 West Evans Street, Florence, South Carolina, through its subsidiaries, Landmark Finance Corporation of Mississippi and Landmark Finance Corporation of South Carolina (wholly-owned subsidiaries of Landmark Financial Services, Inc.) (6/23/77).[3]

Landmark Banking Corporation, Fort Lauderdale, Florida, notification of intent to engage in de novo activities (engage in providing data processing services and storing and processing banking, financial, or related economic data for Landmark Banking Corporation and its subsidiaries and affiliates, their correspondent banks, and other banking institutions and their respective customers) at Central at Ninth, St. Petersburg; 4640 South Orange Blossom Trail, Orlando; and 225 East Las Olas Boulevard, Fort Lauderdale, all located in Florida, through its subsidiary, Landmark Data Services Corporation (6/24/77).[3]

Southeast Banking Corporation, Miami, Florida, notification of intent to engage in de novo activities (the business of acting as agent or broker for the sale of credit life/accident and health insurance pursuant to Section 225.4(a)(9)(ii)(a) of Regulation Y directly related to extensions of credit by the bank holding company and/or its banking and nonbanking subsidiaries) at 1001 N.W. 7th Street, Miami; Suite 211, 231 E. Forsyth Street, Jacksonville; Suite 204, 201 E. Pine Street, Orlando; and Suite 202, 403 N. Morgan Street, Tampa, all located in Florida, through its subsidiary, Southeast Credit Insurance Agency, Inc. (6/20/77).[3]

Brentwood Bancshares Corporation, St. Louis, Missouri, for approval to engage de novo as agent or broker in the sale of credit life and credit accident and health insurance sold in connection with extensions of credit by The Brentwood Bank, Brentwood, Missouri, Brentwood, Missouri.

First Bank System, Inc., Minneapolis, Minnesota, notification of intent to engage in de novo activities (mortgage banking business including the origination, purchase, sale and servicing of real estate mortgage loans) at 8801 West Center Road, Omaha, Nebraska, through FBS Homes Inc., a mortgage banking and sales finance subsidiary of FBS Financial, Inc. (6/21/77).[3]

First Guthrie BancShares, Inc., Guthrie, Oklahoma, for approval to acquire the beneficial interest in First Guthrie Business Trust, Guthrie, Oklahoma and to acquire shares of First Guthrie Insurance Agency, Guthrie, Oklahoma.

New Parent Company, Cincinnati, Ohio, for approval to acquire Baldwin Finance Company, Cincinnati, Ohio; C.C. Fletcher Mortgage Company, Cincinnati, Ohio; Computer Congenerics Corporation of Colo.; Denver, Colorado; FMC-Baldwin Leasing Co., Chicago, Illinois; Louisville Mortgage Service Company, Louisville, Kentucky.

First Security National Corporation, Beaumont, Texas, for approval to acquire 100 per cent of the voting shares of FSN Life Insurance Company, Beaumont, Texas (engaged in underwriting credit life and credit accident and health insurance that is directly related to extensions of credit by the bank holding company system)

BankAmerica Corporation, San Francisco, California, notification of intent to relocate de novo activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by a finance company; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance and credit related property insurance in connection with extensions of credit made or acquired by FinanceAmerica Corporation of Ohio and FinanceAmerica Discount Company of Ohio) from 128 East Sixth Street, Cincinnati, Ohio to 1594 Goodman Avenue, North College Hill, Ohio, through its indirect subsidiaries, FinanceAmerica Corporation of Ohio and FinanceAmerica Discount Company of Ohio (6/16/77).[3]

* * * * *

REPORTS RECEIVED

None.

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PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, July 13, 1977.

RUTH A. REISTER,
Assistant Secretary of the Board.

[FR Doc.77-20660 Filed 7-18-77;8:45 am]

ANITA BANCORPORATION

Formation of Bank Holding Company

Anita Bancorporation, Newton, Iowa, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company through acquisition of 100 per cent (less directors' qualifying shares) of the voting shares of Anita State Bank, Anita, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board

of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than August 12, 1977.

Board of Governors of the Federal Reserve System, July 13, 1977.

RUTH A. REISTER,
Assistant Secretary of the Board.

[FR Doc.77-20658 Filed 7-18-77;8:45 am]

ROSE CREEK, INC.

Formation of Bank Holding Company

Rose Creek, Inc., Hubbell, Nebraska, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company through acquisition of 100 per cent (less directors' qualifying shares) of the voting shares of Hubbell Bank, Hubbell, Nebraska. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than August 10, 1977.

Board of Governors of the Federal Reserve System, July 13, 1977.

RUTH A. REISTER,
Assistant Secretary of the Board.

[FR Doc.77-20659 Filed 7-18-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice No. 34]

TEXAS ELECTRIC SERVICE COMPANY

Proposed Intervention in Utility Rate Application

The General Services Administration seeks to intervene in a proceeding before the Texas Public Utility Commission concerning an application of the Texas Electric Service Company for authority to increase its electric operating revenues by $79,000,000 annually. GSA represents the interests of the executive agencies of the U.S. Government, as users of utility services.

The Texas Electric Service Company furnishes a significant amount of electric service to the Federal executive agencies.

Persons desiring to make inquiries concerning this case to GSA should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, telephone: 202-566-0750, on or before August 18, 1977, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(44), Federal Property and Administrative Services Act, 40 U.S.C. 481 (a)(4).)

Dated: July 8, 1977.

JOEL W. SOLOMON,
Administrator of General Services.

[FR Doc.77-20683 Filed 7-18-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DOCKET NO. 75P-0014]

GENERAL ELECTRIC CO.

Extension of Variance for Diagnostic X-Ray Systems and Their Various Components

AGENCY: Food and Drug Administration.

ACTION: Notice of extension of variance.

SUMMARY: This notice announces the extension of Variance No. 75002 from August 15, 1977 to August 15, 1979. The General Electric Co. applied for the 2-year extension of Variance No. 75002, using as a basis the documentation accompanying the original variance petition. The Director of the Bureau of Radiological Health has determined that those arguments and data previously submitted are still valid and therefore grants the extension of variance for the requested time period.

DATES: Variance No. 75002 expires August 15, 1979, unless written objections and supporting information are filed on or before August 18, 1977 requesting that the extension not be granted.

ADDRESS: Objections to this action should be sent to: Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Harvey Rudolph, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857. (301-443-3426).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 14, 1975 (40 FR 34181), notice was given that a variance from the minimum half value layer (HVL) requirements of § 1020.30 (m)(1) (21 CFR 1020.30(m)(1)) of the performance standard for diagnostic X-ray systems and their major components was granted to General Electric Co., Medical Systems Division, P.O. Box 414, Milwaukee, WI 53201, under § 1010.4 (21 CFR 1010.4) which concerns the granting of variances for electronic products for which there are performance standards promulgated under section 358 of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f). This variance applies to the MMX-II Mammographic X-ray System, a diagnostic X-ray system marketed by that company. Under the variance, these X-ray systems have been allowed to deviate from § 1020.30(m)(1) in that they are manufactured such that the X-ray beam HVL at 50 kilovolts peak tube potential (kVp) is at least 0.7 millimeter (mm) rather than 1.2 mm of aluminum and at 60 kVp is at least 0.8 mm rather than 1.3 mm of aluminum.

The General Electric Co. has petitioned the Food and Drug Administration for an extension of Variance No. 75002 from the original expiration date of August 15, 1977, for a period of 2 years. The request is based upon the claim that the data and information used in support of the original request for variance still apply and therefore that suitable radiation protection will be provided. The Director of the Bureau of Radiological Health has determined that the arguments which led to the granting of Variance No. 75002 are still valid and that under the provisions of the original variance the product will utilize suitable means for providing radiation protection. He, therefore, is granting an extension of the variance to August 15, 1979, unless written objections and supporting information are filed with the Hearing Clerk, Food and Drug Administration, on or before August 18, 1977, requesting that the extension be modified or not granted. Upon receipt of such objections and supporting documentation, the effective date of the variance will be stayed until the Director, Bureau of Radiological Health, rules on them. Pursuant to § 1010.4(c)(3), the applicant shall be notified by certified mail, and a notice of the stay shall be published in the FEDERAL REGISTER. The ruling on the objections shall be made within 60 days, shall be published in the FEDERAL REGISTER, and shall constitute final agency action subject to judicial review under section 358(d) of the act.

The application for this variance extension and all related correspondence, except information covered by the confidentiality provisions of section 360A(e) of the act (42 U.S.C. 263i(e)), have been placed on public display in the office of the Hearing Clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen Monday through Friday from 9 a.m. to 4 p.m. except on legal holidays.

Dated: July 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-20586 Filed 7-18-77;8:45 am]

Food and Drug Administration

[Docket No. 76N-0014; DESI 7819]

DIAMTHAZOLE DIHYDROCHLORIDE

Withdrawal of Approval of New Drug Applications for Topical Preparations Containing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice withdraws approval of the new drug applications for

topical diamthazole dihydrochloride. The products have been used for the prophylaxis and treatment of athlete's foot.

DATES: Effective date: July 19, 1977.

ADDRESSES: Request for opinion concerning applicability of notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

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 (DESI 7819, Docket No. 76N-0014) published in the FEDERAL REGISTER of October 29, 1976 (41 FR 47578), the Director of the Bureau of Drugs offered an opportunity for a hearing on a proposal to issue an order withdrawing approval of the new drug applications for the drug products described below. The basis of the proposed action was that the drugs are not shown to be safe for use.

1. Asterol Powder (NDA 7-821),
2. Asterol Ointment (NDA 7-819), and;
3. Asterol Tincture (NDA 7-820), all containing diamthazole dihydrochloride; formerly marketed by Roche Laboratories, Division of Hoffmann-La Roche, Inc., 340 Kingsland Ave., Nutley, NJ 07110.

All drug products that are identical, related or similar to a drug product named above, not the subject of an approved new drug application, are covered by the new drug applications reviewed and are subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Neither the holder of the applications nor any other person filed a written appearance of election as provided by said notice. The failure to file such an appearance constitutes election by such persons not to avail themselves of the opportunity for a hearing.

The Director of the Bureau of Drugs, 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 him (21 CFR 5.31), finds that new evidence, not contained in the applications or not available until after the applications were approved, evaluated together with the evidence available when the applications were approved, reveals that the drug is not shown to be safe for use under the conditions of use upon the basis of which the applications were approved. Therefore, pursuant to the foregoing finding, approval of new drug applications numbers 7-819, 7-820, 7-821, and all amendments and supplements applying thereto, is withdrawn effective July 19, 1977.

Shipment in interstate commerce of the above listed products or of any identical, related, or similar product not the subject of an approved new drug application, is now unlawful.

Dated: June 27, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.77-20580 Filed 7-18-77;8:45 am]

[FDA-225-77-1001]

MICROWAVE OVEN SURVEY

Memorandum of Understanding With the Department of the Navy/Bureau of Medicine and Surgery

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces that a memorandum of understanding has been executed with the Department of the Navy/Bureau of Medicine and Surgery. The purpose of the memorandum is to establish a cooperative program between the agencies in monitoring the safety of microwave ovens.

DATES: The memorandum of understanding became effective May 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary Dykstra, Compliance Coordination and Policy Staff (HFC-13), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3470.

SUPPLEMENTARY INFORMATION: Pursuant to the announcement published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697) that future memoranda of understanding between the Food and Drug Administration and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs is issuing the following:

MEMORANDUM OF UNDERSTANDING NO. 229-53 BETWEEN THE DEPARTMENT OF THE NAVY/BUREAU OF MEDICINE AND SURGERY AND THE FOOD AND DRUG ADMINISTRATION

I. *Purpose.* To provide for the participation of the U.S. Navy, Bureau of Medicine and Surgery, in the microwave oven survey program conducted by the Food and Drug Administration.

II. *Background.* The Bureau of Radiological Health of the Food and Drug Administration has responsibility for the enforcement of the Radiation Control for Health and Safety Act of 1968. This includes the monitoring of compliance of microwave ovens with the applicable performance standard, 21 CFR 1030.10. To achieve this objective, the Bureau of Radiological Health (BRH) has a survey program. The U.S. Navy has a microwave oven hazard survey program (BUMEDINST 6470.-16) which directs quarterly inspection of ovens and semiannual Calibration of instruments.

III. *Substance of Agreement.* A. The Food and Drug Administration/Bureau of Radiological Health shall:

1. Supply forms and manuals containing the procedures for collecting data. Forms to be stocked by BRH.

2. Provide BUMED reports on: (a) Naval activities submitting reports, quarterly.

(b) Repairs required of instruments submitted for calibration semiannually and as required.

(c) Summary of BUMED test results of microwave ovens, annually.

3. Calibrate instruments in survey program on semiannual basis. Date of calibration period to be supplied to BUMED two months in advance, for publication by BUMED. Instruments to be calibrated at 2450 MHz.

4. Minor repairs will be accomplished by BRH. Major repairs will be accomplished by returning survey meters to the submitting activity, with notice of discrepancy to BUMED.

B. The Department of the Navy/Bureau of Medicine and Surgery shall:

1. Inform FDA of changes in the instructions and notes pertaining to the Navy microwave oven survey program.

2. Promulgate dates of calibration through its information system.

3. Promulgate existence of this agreement through the BUMED directives system.

IV. *Name and Address of Participating Activity:*

Bureau of Medicine and Surgery, Code 5321, Department of the Navy, Washington, DC 20372.

V. *Liaison Officers:*

A. LCDR LaMarr G. Beuchler, MSC, USN, Bureau of Medicine and Surgery, Undersea Medicine Division (Code 5321), Washington, DC 20372, (202-254-4224).

B. Mays L. Swicord, Bureau of Radiological Health, Division of Electronic Products, Rockville, MD 20852, (301-443-3840).

Stuart A. Carlow, Bureau of Radiological Health, Division of Compliance, Rockville, MD 20852, (301-443-4396).

VI. *Period of Agreement:* This agreement, when accepted by both parties, will have an effective period of performance from date of signature for an indefinite period, and may be modified by mutual consent of both parties or may be terminated by either party upon a thirty (30) day advance written notice.

Approved and accepted for the Food and Drug Administration.

Date: May 11, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

Approved and accepted for the Bureau of Medicine and Surgery/Department of the Navy.

Date: December 20, 1976.

R. C. LANING,
Assistant Chief for Operational Medical Support.

Effective date: This memorandum of understanding became effective May 11, 1977.

Dated: July 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-20574 Filed 7-18-77;8:45 am]

[Docket No. 77P-0169]

XRE CORP.

Approval of Variance for Special Procedures Table

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the approval of a variance from the performance standard for diagnostic X-ray systems and their major components for the Model 104C Radial Travel Special Procedures table manufactured by the XRE Corp., 227 Baker Ave., West Concord, MA 91781. The Director of the Bureau of Radiological Health has determined that the table top designed with a maximum aluminum equivalent thickness of 2.0 millimeters (mm) rather than the 1.5 mm limit set by the standard will provide suitable radiation protection within the scope of its intended use.

DATES: Effective August 18, 1977; objections by August 18, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Harvey Rudolph, Bureau of Radiological Health (HFX–460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTAL INFORMATION: Section 1020.30(n) (21 CFR 1020.30(n)) of the performance standard for diagnostic X-ray systems and their major components sets limits on the amount of material allowable between the patient and the image receptor. For movable tabletops, the limit, expressed as an aluminum equivalent thickness, is 1.5 mm. This provision in the standard assures that the maximum number of X-ray photons that have passed through the patient will be available for production of the diagnostic image.

The Model 104C Radial Travel Special Procedures table is a four-way moving top design of cantilever construction that is also capable of rotating about a pivot in the base structure. The petitioner has stated that this product is intended for use with parallelogram or C-arm type fluoroscopic imaging assemblies for either fluoroscope or cineradiographic (multiple frame X-ray) cardiac visualization. In these modes of operation, the table is not in the exit beam. However, because the table may be used with film-changing devices, in which situation the table may be positioned between the patient and the image receptor, it must be certified as meeting the requirements of § 1020.30(n).

The petitioner notes that to properly certify the product and take into account unavoidable measurement errors, the table thickness design criterion must be somewhat less than 1.5 mm aluminum equivalent. However, this leads to poorer structural stability and consequent difficulty in perfoming emergency procedures such as cardiac massage. The petitioner claims that a limit of 2.0 mm aluminum equivalence for his product will allow the production of a unit with a sufficient safety factor so that emergency cardiac procedures can be performed and therefore has requested a variance from § 1020.30(n).

The Director has determined that even if the full 2.0 mm aluminum equivalence were used for this product, the increased radiation dose to the patient would be negligible. Less than 5 percent of an X-ray beam generated at 90 kilovolts peak or above and passed through material equivalent in thickness to the human chest is absorbed by 0.5 aluminum. Because the table is designed for procedures where it will be positioned between the patient and the image receptor only a small fraction of the time, the likely increase in patient radiation dose resulting from the additional table thickness requested would be minimal. Further, the product performs a function similar to that of currently manufactured table and cradle combinations that, under § 1020.30(n), are allowed a total thickness equivalent of 3.5 mm aluminum. Thus, a table manufactured at 2.0 mm or less could actually effect a net dose savings to the population.

The Director agrees that the added structural stability that would be obtained is a necessary safety feature and there should be little radiation dose increase from use of the product. In accordance with § 1010.4 (21 CFR 1010.4), he has concluded that the special procedures table to be marketed under the variance is intended for a special purpose that cannot be performed or accomplished with equipment meeting all requirements of § 1020.30, but utilizes suitable means for providing radiation safety protection. Therefore, the Director has approved the requested variance from § 1020.30(n) provided radiographic tables manufactured under this variance shall have movable tops whose thickness shall not exceed 2.0 mm aluminum equivalent. The variance is granted for the production of a maximum of 50 units, as requested by the applicant.

The applicant has been directed to modify, in accordance with § 1010.4(d), the tags, labels, or other certification required by § 1010.2 (21 CFR 1010.2), which are premanently affixed to or inscribed upon products marketed under this variance, to state the following: "This product complies with Variance No. 77002, effective on August 18, 1977."

The Commissioner of Food and Drugs has reviewed the potential environmental impact of this variance and has concluded that the action will not significantly affect the quality of the human environment and that an environmental impact statement is not required. A copy of the environmental impact analysis report is on file in the office of the Hearing Clerk, Food and Drug Administration.

Variance No. 77002 shall become effective on August 18, 1977, and shall be effective for the manufacture of 50 product units, unless written objections and supporting documentation are filed with the Hearing Clerk, Food and Drug Administration, on or before August 18, 1977, requesting that the variance be modified or not granted. Upon receipt of such objections and supporting documentation, the effective date of the variance will be stayed until the Director, Bureau of Radiological Health, rules on them. Pursuant to § 1010.4(c)(3), the applicant shall be notified by certified mail, and a notice of the stay shall be published in the FEDERAL REGISTER. The ruling on the objections shall be made within 60 days, shall be published in the FEDERAL REGISTER, and shall constitute final agency action subject to judicial reveiw under section 358(d) (42 U.S.C. 263f(d)) of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968.

The application for this variance and all related correspondence, except information covered by the confidentiality provisions of section 360A(e) of the act (42 U.S.C. 263i(e)), have been placed on public display in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, and may be seen Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Dated: July 11, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-20575 Filed 7-18-77;8:45 am]

Health Care Financing Administration

ARKANSAS

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Arkansas Foundation for Medical Care as a conditional Professional Standards Review Organization (PSRO) for the State of Arkansas which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Arkansas Foundation for Medical Care is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Arkansas as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of Arkansas.

The principal officers of the Arkansas Foundation for Medical Care are:

NAME AND OFFICE HELD

1. C. C. Long, M.D., President.
2. William S. Orr, Jr., M.D., Vice President.
3. H. Elvin Shuffield, Secretary.
4. K. R. Duzan, M.D., Treasurer.

The official address of the corporation is 220 North 12th Street, P.O. Box 1512, Fort Smith, Arkansas 72901.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20620 Filed 7-18-77;8:45 am]

CALIFORNIA; PSRO AREA I

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Redwood Coast Region PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area I of California which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Redwood Coast Region PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of California as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine for osteopathy engaged in active practice in PSRO Area I of California.

The principal officer of the Redwood Coast Region PSRO are:

NAME AND OFFICE HELD

1. Paul Jepson, M.D., President.
2. George Jutila, M.D., Vice President
3. Jens Vindings, M.D., Secretary.
4. Claytor Taylor, M.D., Treasurer.

The official address of the corporation is 3416 Mendocino Avenue, Santa Rosa, California 95401.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20615 Filed 7-18-77;8:45 am]

CALIFORNIA; PSRO AREA III

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated North Bay PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area III of California which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the North Bay PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of California as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area III of California.

The principal officers of the North Bay PSRO are:

NAME AND OFFICE HELD

1. John McGee, M.D., President.
2. James L. Grisez, M.D., Vice President.
3. James E. Brown, M.D., Secretary.
4. K. M. Kressenberg, M.D., Treasurer.

The official address of the corporation is 4460 Redwood Highway, Suite 9, P.O. Box 4344, San Rafael, California 94903.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20614 Filed 7-18-77;8:45 am]

CALIFORNIA; PSRO AREA IV

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Greater Sacramento PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area IV of California which area is designated a Professional Standard Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Greater Sacramento PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of California as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area IV of California.

The principal officers of the Greater Sacramento PSRO are:

NAME AND OFFICE HELD

1. James O. Farley, M.D., Chairman.
2. Julian J. Fisher, M.D., Vice Chairman.
3 Neil C. Andrews, M.D., Secretary
4. F. Harold Johnson, M.D., Treasurer

The official address of the corporation is 650 University Avenue, Sacramento, California 95813.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20673 Filed 7-18-77;8:45 am]

CALIFORNIA; PSRO AREA XII

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Monterey Bay Area PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XII of California which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Monterey Bay Area PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of California as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XII of California.

The principal officers of the Monterey Bay Area PSRO are:

NAME AND OFFICE HELD

1. C. Ken Miura, M.D., President.
2. James Telfer, M.D., Vice President.
3. John Brazinsky, M.D., Secretary.
4. John Hays, M.D., Treasurer.

The official address of the corporation is 19040 Portola Drive, P.O. Box 308, Salinas, California 93901.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20012 Filed 7-18-77;8:45 am]

CALIFORNIA; PSRO AREA XXIV

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Area XXIV PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XXIV of California which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Area XXIV PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of California as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XXIV of California.

The principal officers of the Area XXIV PSRO are:

NAME AND OFFICE HELD

1. Arthur J. Riesenfeld, M.D., Chairman.
2. Tirso Del Junco, Vice Chairman.
3. Robert Lee, Secretary/Treasurer.

The official address of the corporation is 3200 Wilshire Boulevard, Suite 906, Los Angeles, California 90010.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20611 Filed 7-18-77;8:45 am]

CALIFORNIA; PSRO AREA XXVII

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Riverside County PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XXVII of California which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Riveside County PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of California as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XXVII of California.

The principal officers of the Riverside County PSRO are:

NAME AND OFFICE HELD

1. Robert L. Jaspan, M.D., President.
2. Donald L. Dickerson, Vice President.
3. Harrison E. Silber, Secretary/Treasurer.

The official address of the corporation is 6833 Indiana Avenue, Riverside, California 92506.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20622 Filed 7-18-77;8:45 am]

CONNECTICUT; PSRO AREA I

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated PSRO of Fairfield County, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area I or Connecticut which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the PSRO of Fairfield County, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Connecticut as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area I of Connecticut.

The principal officers of the PSRO of Fairfield County, Inc., are:

NAME AND OFFICE HELD

1. Stewart A. King, M.D., President.
2. Andrew F. Owens, M.D., Vice President.
3. Bertram Grossman, M.D., Secretary.
4. Rector T. Davol, M.D., Treasurer.

The official address of the corporation is 60 Katona Drive, Fairfield, Connecticut 06430.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20643 Filed 7-18-77;8:45 am]

CONNECTICUT; PSRO AREA II

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Connecticut Area II PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area II of Connecticut which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Connecticut Area II PSRO, Inc. is qualified to continue to assume the duties and responsibilities of a Professional Standard Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Connecticut as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of Connecticut.

The principal officers of the Connecticut Area II PSRO, Inc., are:

NAME AND OFFICE HELD

1. David A. Grendon, M.D., President.
2. John J. Mendillo, M.D., Vice President.
3. Romeo A. Vidone, M.D., Secretary.
4. George A. Bonner, M.D., Treasurer.

The official address of the corporation is 8 Lunar Drive, P.O. Box 3907, Woodbridge, Connecticut 06525.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20642 Filed 7-18-77;8:45 am]

CONNECTICUT; PSRO AREA III

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Hartford County PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area III of Connecticut which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Hartford County PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Connecticut as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area III of Connecticut.

The principal officers of the Hartford County PSRO, Inc., are:

NAME AND OFFICE HELD

1. Andrew J. Canzonetti, M.D., President.
2. Monroe Himelstein, M.D., Vice President.
3. John N. Bohannon, Jr., M.D., Secretary.
4. Joseph L. Gordon, Treasurer.

The official address of the corporation is 1000 Asylum Avenue, Hartford, Connecticut 06105.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20641 Filed 7-18-77;8:45 am]

CONNECTICUT; PSRO AREA IV

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Eastern Connecticut PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area IV of Connecticut which area is designated a fessional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Eastern Connecticut PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Connecticut as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area IV of Connecticut.

The principal officers of the Eastern Connecticut PSRO, Inc. are:

NAME AND OFFICE HELD

1. Howard G. Abbot, M.D., President.
2. Robert S. Gillcash, M.D., Vice President.
3. Neil C. Andrews, M.D., Secretary
4. David G. Rousseau, M.D., Treasurer.

The official address of the corporation is Bridge Street Plaza, 41 Bridge Street, Willimantic, Connecticut 06226.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20613 Filed 7-18-77;8:45 am]

DISTRICT OF COLUMBIA

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated National Capital Medical Foundation, Inc., as a conditional Professional Standards Review Organization (PSRO) for the District of Columbia which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the National Capital Medical Foundation, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the District of Columbia as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the District of Columbia.

The principal officers of the National Capital Medical Foundation, Inc., are:

NAME AND OFFICE HELD

1. Irving Burka, M.D., President.
2. Barrington Barnes, M.D., Vice President.
3. Norman Fuller, Ph. D., M.P.H., Secretary/Treasurer.

The official address of the corporation is 1828 L Street, N.W., Suite 401, Washington, D.C. 20036.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20629 Filed 7-18-77;8:45 am]

FLORIDA; PSRO AREA XII

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Dade Monroe PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XII of Florida which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Dade Monroe PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Florida as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XII of Florida.

The principal officers of the Dade Monroe PSRO, Inc., are:

NAME AND OFFICE HELD

1. James B. Byrne, M.D., President
2. Roland J. Kohen, M.D., Vice President
3. Louis B. Chaykin, M.D., Secretary
4. Jay M. Cohen, D.O., Treasurer

The official address of the corporation is 2701 S. Bayshore Drive, Suite 500, Miami, Florida 33133.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20645 Filed 7-18-77;8:45 am]

IDAHO

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Idaho Professional Standards Review Organization, Inc., as a conditional Professional Standards Review Organization (PSRO) for the State of Idaho which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Idaho Professional Standards Review Organization, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Idaho as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of Idaho.

The principal officers of the Idaho Professional Standards Review Organization, Inc., are:

NAME AND OFFICE HELD

1. John B. Meyer, M.D., President.
2. Ward E. Dickey, M.D., Vice President.
3. Richard F. McClure, M.D., Secretary/Treasurer.

The official address of the corporation is 427 N. Curtis Road, Boise, Idaho 83704.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20626 Filed 7-18-77;8:45 am]

ILLINOIS; PSRO AREA IV

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Quad River Foundation for Medical Care as a conditional Professional Standards Review Organization (PSRO) for PSRO Area IV of Illinois which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Quad River Foundation for Medical Care is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Illinois as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area IV of Illinois.

The principal officers of the Quad River Foundation for Medical Care are:

NAME AND OFFICE HELD

1. Earnest F. Kruetzer, M.D., President.
2. Preston W. Sawyer, M.D., Vice President.
3. Bruce Hamburger, R. Ph., Secretary/Treasurer.

The official address of the corporation is 3033 W. Jefferson St., Suite 220, Joliet, Illinois 60435.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20647 Filed 7-18-77;8:45 am]

MAINE

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Pine Tree Organization for Professional Standards Review, Inc., as a conditional Professional Standards Review Organization (PSRO) for the State of Maine which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Pine Tree Organization for Professional Standards Review, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Maine as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of Maine.

The principal officers of the Pine Tree Organization for Professional Standards Review, Inc., are:

NAME AND OFFICE HELD

1. Richard T. Chamberlain, M.D., President.
2. J. Chase Rand, D.O., Vice President.
3. Harry A. Bliss, M.D., Secretary/Clerk.
4. Donald K. McFadden, D.O., Treasurer.

The official address of the corporation is 99 Western Avenue, P.O. Box 706, Augusta, Maine 04330.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20602 Filed 7-18-77;8:45 am]

MARYLAND; PSRO AREA II

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Baltimore City Professional Standards Review Organization, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area II of Maryland which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Baltimore City Professional Standards Review Organization, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Maryland as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of Maryland.

The principal officers of the Baltimore City Professional Standards Review Organization, Inc., are:

NAME AND OFFICE HELD

1. Emidio A. Bianco, M.D., President.
2. Carol Johns, M.D., Chairman of the Board.
3. John B. Isboden, M.D., Treasurer.
4. Edward O. Hunt, M.D., Secretary.

The official address of the corporation is 2 Hamill Road, Suite 339, Baltimore, Maryland 21210.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20651 Filed 7-18-77;8:45 am]

MARYLAND; PSRO AREA III

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Montgomery County, Maryland Medical Care Foundation, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area III of Maryland which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Montgomery County, Maryland Medical Care Foundation, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Maryland as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area III of Maryland.

The principal officers of the Montgomery County, Maryland Medical Care Foundation, Inc., are:

NAME AND OFFICE HELD

1. G. Stewart Scott, M.D., President.
2. John P. Hason, M.D., Vice President.
3. Donald Lewis, M.D., Secretary.
4. Mark H. Eichler, M.D., Treasurer.

The official address of the corporation is 11141 Georgia Avenue, Suite 510, Wheaton, Maryland 20902.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20639 Filed 7-18-77;8:45 am]

MARYLAND, PSRO AREA V

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Central Maryland PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area V of Maryland which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Central Maryland PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Maryland as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area V of Maryland.

The principal officers of the Central Maryland PSRO, Inc., are:

NAME AND OFFICE HELD

1. Lawrence Missanik, M.D., Chairman of the Board.
2. Marce Clayton, M.D., President of Executive Committee.
3. Park W. Espenselade, M.D., Vice Chairman.

The official address of the corporation in 8635 Lock Raven Blvd., Suite 5, Baltimore, Maryland 21204.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20617 Filed 7-18-77;8:45 am]

MARYLAND, PSRO AREA VI

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Southern Maryland PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area VI of Maryland which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Southern Maryland PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Maryland as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area VI of Maryland.

The principal officers of the Southern Maryland PSRO, Inc., are:

NAME AND OFFICE HELD

1. R. Bruce Helmly, M.D., Chairman of the Board.
2. David S. O'Brien, M.D., Treasurer.

The official address of the corporation is P.O. Box 445, Edgewater, Maryland 21037.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20616 Filed 7-18-77;8:45 am]

MARYLAND; PSRO AREA VII

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Delmarva Foundation for Medical Care, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area VII of Maryland which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Delmarva Foundation for Medical Care,

Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Maryland as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area VII of Maryland.

The principal officers of the Delmarva Foundation for Medical Care, Inc., are:

NAME AND OFFICE HELD

1. Joseph H. Chutchin, M.D., President.
2. John A. Hawkins, M.D., Vice President.
3. James C. Gieske, M.D., Secretary/Treasurer.

The official address of the corporation is 108 N. Harrison Street, Easton, Maryland 21601.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20618 Filed 7-18-77;8:45 am]

MASSACHUSETTS; PSRO AREA I

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Western Massachusetts PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area I of Massachusetts which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Western Massachusetts PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Massachusetts as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area I of Massachusetts.

The principal officers of the Western Massachusetts PSRO, Inc., are:

NAME AND OFFICE HELD

1. Norman B. Pike, M.D., President.
2. Robert K. Davis, M.D., Vice President.
3. Bernard St. John, D.O., Secretary.
4. Ms. Ruth W. Rheaume, Treasurer.

The official address of the corporation is 103 Van Deene Avenue, West Springfield, Massachusetts 01089.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20601 Filed 7-18-77;8:45 am]

MASSACHUSETTS; PSRO AREA V

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Southeastern Massachusetts PSRO, Inc., as a conditional Professional Standards Review Organizaion (PSRO) for PSRO Area V of Massachusetts which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Southeastern Massachusetts PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Massachusetts as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area V of Massachusetts.

The principal officers of the Southeastern Massachusetts PSRO, Inc., are:

NAME AND OFFICE HELD

1. Samuel K. Stuart, M.D., President.
2. David E. Marcello, M.D., Vice President.
3. Edward A. Pollard, M.D., Secretary.
4. Gilbert L. Shapiro, M.D., Treasurer.

The official address of the corporation is 91 S. Main Street, P.O. Box 676, Middleboro, Massachusetts 02346.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20609 Filed 7-18-77;8:45 am]

MICHIGAN; PSRO AREA I

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Upper Peninsula Quality Assurance Association as a conditional Professional Standards Review Organization (PSRO) for PSRO Area I of Michigan which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Upper Peninsula Quality Assurance Association is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Michigan as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in Area I of Michigan.

The principal officers of the Upper Peninsula Quality Assurance Association are:

NAME AND OFFICE HELD

1. Henry Barsth, M.D., President.
2. William LeMire, M.D., Treasurer.

The official address of the corporation is 420 West Magnetic St., Marquette, Michigan 49855.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20643 Filed 7-18-77;8:45 am]

MICHIGAN; PSRO AREA V

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Professional Review Organization, GLSC as a conditional Professional Standards Review Organization (PSRO) for PSRO Area V of Michigan which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Professional Review Organization-GLSC is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Michigan as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area V of Michigan.

The principal officers of the Professional Review Organization-GLSC are:

NAME AND OFFICE HELD

1. F. W. Van Duyne, M.D., President.
2. Glenn D. Blankenhorn, D.O., Vice President.
3. Robert Roty, M.D., Secretary.
4. Raymond M. Engelman, M.D., Treasurer.

The official address of the corporation is 920 Metropolitan Building, 432 N. Saginaw St., Flint, Michigan 48502.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20625 Filed 7-18-77;8:45 am]

MISSOURI; PSRO AREA III

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social

Security Act, has redesignated Central Eastern Missouri Professional Review Organization Committee, CEMPROC as a conditional Professional Standards Review Organization (PSRO) for PSRO Area III of Missouri which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Central Eastern Missouri Professional Review Organization Committee, CEMPROC is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Missouri as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area III of Missouri.

The principal officers of the Central Eastern Missouri Professional Review Organization Committee—CEMPROC are:

NAME AND OFFICE HELD

1. John L. Borroughs, D.O., President.
2. Sam L. Farrell, M.D., Vice President.
3. David L. Berg, D.O., Vice President.
4. Falls B. Hershey, M.D., Vice President.
5. Herbert E. Rosenbaum, M.D., Secretary-Treasurer.

The official address of the corporation is 4625 Lindell Blvd., Suite 212, St. Louis, Missouri 63108.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20621 Filed 7-18-77;8:45 am]

MONTANA

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Montana Foundation for Medical Care as a conditional Professional Standards Review Organization (PSRO) for the State of Montana which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Montana Foundation for Medical Care is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Montana as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of Montana.

The principal officers of the Montana Foundation for Medical Care are:

NAME AND OFFICE HELD

1. Sterlinger Hayward, M.D., President.
2. John A. Ross, M.D., Vice President.
3. Richard W. Beighle, M.D., Secretary.
4. John A. Newman, M.D., Treasurer.

The official address of the corporation is 2717 Airport Way, P.O. Box 5117, Helena, Montana 59601.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20628 Filed 7-18-77;8:45 am]

NEW HAMPSHIRE

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated New Hampshire Foundation for Medical Care as a conditional Professional Standards Review Organization (PSRO) for the State of New Hampshire which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the New Hampshire Foundation for Medical Care is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New Hampshire as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of New Hamphire.

The principal officers of the New Hampshire Foundation for Medical Care are:

NAME AND OFFICE HELD

1. Alberto Miyara, M.D., President.
2. Paul C. Young, M.D., Vice President.
3. Raymond W. Lawrence, M.D., Secretary.
4. James C. Pilliod, M.D., Treasurer.

The official address of the corporation is The Durham Road, Durham, New Hampshire 03824.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20610 Filed 7-18-77;8:45 am]

NEW JERSEY; PSRO AREA II

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Passaic Valley PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area II of New Jersey which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Passaic Valley PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New Jersey as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of New Jersey.

The principal officers of the Passaic Valley PSRO are:

NAME AND OFFICE HELD

1. William Dwyer, M.D., President.
2. Roberta Rubin, M.D., Vice President.
3. Edward Healey, M.D., Secretary.
4. John Pellosis, D.O., Treasurer.

The official address of the corporation is 573 Valley Road, Wayne, New Jersey 07470.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator Health Care Financing Administration.

[FR Doc.77-20631 Filed 7-18-77;8:45 am]

NEW MEXICO

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated New Mexico PSRO as a conditional Professional Standards Review Organization (PSRO) for the State of New Mexico which area is designated as Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the New Mexico PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New Mexico as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of New Mexico.

The principal officers of the New Mexico PSRO are:

NAME AND OFFICE HELD

1. Neil I. Kaminsky, M.D., President.
2. Robert C. Lehmer, M.D., Vice President
3. Ralph Marshall, Secretary.
4. John Seibel, M.D., Treasurer.

The official address of the corporation is 2650 Yale, SE., Albuquerque, New Mexico 87106.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20599 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA I

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Erie Region PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area I of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Erie Region PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area I of New York.

The principal officers of the Erie Region PSRO, Inc., are:

NAME AND OFFICE HELD

1. George Fugitt, M.D., Chairman.
2. Ervin Selfen, M.D., Vice Chairman.
3. Maria Crea, M.D., Secretary.
4. Duane Tucker, D.O., Treasurer.

The official address of the corporation is 560 Delaware Avenue, Suite 300, Buffalo, New York 14202.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20634 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA II

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Genesee Region PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area II of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Genesee Region PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of New York.

The principal officers of the Genesee Region PSRO, Inc., are:

NAME AND OFFICE HELD

1. James Flanagan, M.D., President.
2. Donald Raines, M.D., Vice President.
3. William Dean, M.D., Secretary.
4. Mr. Thomas Cardillo, Treasurer.

The official address of the corporation is 109 South Union Street, P. O. Box 1939, Rochester, New York 14603.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20635 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA V

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Adirondack PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area V of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Adirondack PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area V of New York.

The principal officers of the Adirondack PSRO are:

NAME AND OFFICE HELD

1. Henry Freedman, M.D., President.
2. Franklin Peters, M.D., Vice President.
3. Gerry Greene, M.D., Secretary.
4. Alexander Yvars, M.D., Treasurer.

The official address of the corporation is 52 Park Street, Glen Falls, New York 12801.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20606 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA IX

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Area IX PSRO of New York, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area IX of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et. seq.

The Secretary has determined that the Area IX PSRO of New York, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area IX of New York.

The principal officers of the Area 9 PSRO of New York, Inc., are:

NAME AND OFFICE HELD

1. Daniel Sherber, M.D., President.
2. John Dubois, M.D., Vice President.
3. Stewart Blauner, M.D., Secretary.
4. Paul Spierling, M.D., Treasurer.

The official address of the corporation is Purchase Street, Purchase, New York 10577.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20633 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA X

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated PSRO of Rockland as a conditional Professional Standards Review Organization (PSRO) for PSRO Area X of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the PSRO of Rockland is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active

practice in PSRO Area X of New York.

The principal officers of the PSRO of Rockland are:

NAME AND OFFICE HELD

1. Howard Goldstein, M.D., President.
2. Robert Sher, M.D., Vice President.
3. Lawrence Simon, M.D., Secretary.
4. Bernard Derson, M.D., Treasurer.

The official address of the corporation is 20 Squadron Blvd., New York City, New York 10956.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20636 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA XI

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated New York County Health Services Review Organization as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XI of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the New York County Health Services Review Organization is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XI of New York.

The principal officers of the New York County Health Services Review Organization are:

NAME AND OFFICE HELD

1. Erwin Cohen, M.D., President.
2. Richard Nolen, M.D., Vice President.
3. Lawrence Essenson, M.D., Secretary.
4. George Melcher, Jr., M.D., Treasure.

The official address of the corporation is 345 E. 47th Street, New York, New York 10017.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20637 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA XIII

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Kings County Health Care Review Organization as a conditional Professional Standards Review Organization (PSRO) Area XIII of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Kings County Health Care Review Organization is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XIII of New York.

The principal officers of the Kings County Health Care Review Organization are:

NAME AND OFFICE HELD

1. Stanley Fishman, M.D., Chairman.
2. Julius Stolfi, M.D., Vice Chairman.
3. Ms. Ann Allen-Ryan, Secretary.
4. Adrian Lamos, M.D., Treasurer.

The official address of the corporation is 1313 Bedford Avenue, Brooklyn, New York 11216.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20605 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA XV

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Nassau Physicians Review Organization as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XV of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Nassau Physicians Review Organization is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XV of New York.

The principal officers of the Nassau Physicians Review Organization are:

NAME AND OFFICE HELD

1. Joseph Chiramonte, M.D., President.
2. George Pollock, M.D., Vice President.
3. Arnold Behrer, M.D., Secretary.
4. Thomas Fheehy, Jr., M.D., Treasurer.

The official address of the corporation is 990 Westbury Rd., Westbury, New York 11590.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20604 Filed 7-18-77;8:45 am]

NEW YORK; PSRO AREA XVI

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated The Bronx PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XVI of New York which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Bronx PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XVI of New York.

The principal officers of the Bronx PSRO, Inc., are:

NAME AND OFFICE HELD

1. Anthony Altieri, M.D., President.
2. Morris Rubin, M.D., Vice President.
3. Harry Delaney, M.D., Secretary.
4. Bernard Kamer, M.D., Treasurer.

The official address of the corporation is The Bronx PSRO, Inc., 1165 Morris Park Avenue, Bronx, New York 10461.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20607 Filed 7-18-77;8:45 am]

OHIO; PSRO AREA I

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Medco Peer Review, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area I of Ohio which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Medco Peer Review, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is in-

corporated, according to the laws of the State of Ohio as a nonprifit professional whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area I of Ohio.

The principal officers of the Medco Peer Review, Inc., are:

NAME AND OFFICE HELD

1. Milton W. Gwimmer, M.D., President.
2. Neal Early, M.D., Vice President.
3. John R. Donohoo, M.D., Secretary.
4. William B. Selnick, D.O., Treasurer.

The official address of the corporation is 204 Lytle Towers, 405 Broadway, Cincinnati, Ohio 45202.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20644 Filed 7-18-77;8:45 am]

OHIO; PSRO AREA IV

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Fourth Ohio Area PSR Council as a conditional Professional Standards Review Organization (PSRO) for PSRO Area IV of Ohio which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Fourth Ohio Area PSR Council is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Ohio as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area IV of Ohio.

The principal officers of the Fourth Ohio Area PSR Council are:

NAME AND OFFICE HELD

1. John Kramer, M.D., Chairman of the Board.
2. Donald Cameron, M.D., Vice Chairman.
3. Michael McNamera, M.D., Secretary/Treasurer.

The official address of the corporation is 3550 Secor Road, Suite 202, Toledo, Ohio 43606.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20624 Filed 7-19-77;8:45 am]

OREGON; PSRO AREA II

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Greater Oregon PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area II of Oregon which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Greater Oregon PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Oregon as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of Oregon.

The principal officers of the Greater Oregon PSRO are:

NAME AND OFFICE HELD

1. Kenneth B. Robertson, M.D., President.
2. Doug M. Beath, M.D, Vice President
3. Robert S. Miller, M.D., Treasurer.
4. Daniel B. Bond, M.D., Secretary.

The official address of the corporation is 5210 Southwest Corbett, Portland, Oregon 97201.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator Health Care Financing Administration.

[FR Doc.77-20632 Filed 7-18-77;8:45 am]

PENNSYLVANIA; PSRO AREA VI

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Allegheny PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area VI of Pennsylvania which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Allegheny PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Pennsylvania as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO AOrea VI of Pennsylvania.

The principal officers of the Allegheny PSRO are:

NAME AND OFFICE HELD

1. James R. Dornenburg, M.D., Chairman.
2. Donald J. Valentine, Secretary.
3. David R. Hirsch, Treasurer.

The official address of the corporation is One Allegheny Square, Suite 630, Pittsburgh, Pennsylvania 15212.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20600 Filed 7-18-77;8:45 am]

PENNSYLVANIA; PSRO AREA VII

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Southwestern Pennsylvania PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area VII of Pennsylvania which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Southwestern Pennsylvania PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Pennsylvania as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area VII of Pennsylvania.

The principal officers of the Southwestern Pennsylvania PSRO are:

NAME AND OFFICE HELD

1. Donald C. Brown, M.D., Chairman.
2. Thomas Whalen, M.D., Vice Chairman.
3. Jack G. Hallisey, M.D., Secretary/Treasurer.

The official address of the corporation is 825 North Main Street, Greensburg, Pennsylvania 15601.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20649 Filed 7-18-77;8:45 am]

PENNSYLVANIA; PSRO AREA IX

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Southcentral Pennsylvania PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area IX of Pennsylvania which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Southcentral Pennsylvania PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social

Security Act. The aforementioned organization is incorporated, according to the laws of the State of Pennsylvania as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area IX of Pennsylvania.

The principal officers of the Southcentral Pennsylvania PSRO are:

NAME AND OFFICE HELD

1. James V. Appel, M.D., President.
2. Joseph E. Green, III, M.D., Vice President.
3. Jay R. Miller, D.O., Secretary.
4. Robert G. Edmiston, M.D., Treasurer.

The official address of the corporation is Medical Arts Building, Suite 201, 890 Poplar Church Rd., Camp Hill, Pennsylvania 17011.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20650 Filed 7-18-77;8:45 am]

PENNSYLVANIA; PSRO AREA XI

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Montgomery/Bucks PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XI of Pennsylvania which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Montgomery/Bucks PSRO, Inc., is qualified to continue to assume the duties and responsiiblities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Pennsylvania as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XI of Pennsylvania.

The principal officers of the Montgomery/Bucks PSRO, Inc., are:

NAME AND OFFICE HELD

1. John L. Steigerwalt, M.D., President.
2. John J. Choby, M.D., Vice President.
3. Charles Lichtenwalner, D.O., Secretary.
4. Frans J. Vosenberg, M.D., Treasurer.

The official address of the corporation is 650 Blue Bell West, Suite 209, Skippack Pike, Blue Bell, Pennsylvania 19422.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care, Financing Administration.

[FR Doc.77-20688 Filed 7-18-77;8:45 am]

PENNSYLVANIA; PSRO AREA XII

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Philadelphia PSRO as a conditional Professional Standards Review Organization (PSRO) for PSRO Area XII of Pennsylvania which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Philadelphia PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Pennsylvania as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XII of Pennsylvania.

The principal officers of the Philadelphia PSRO are:

NAME AND OFFICE HELD

1. Edward C. Leonard, Jr., M.D., Chairman.
2. Avery W. Beverly, M.D., Vice Chairman.
3. Jonathan E. Rhodes, Sr., M.D., President.
4. Jerome Miller, D.O., Vice President.
5. George R. Fisher, M.D., Secretary.
6. Mark Mishlin, M.D., Treasurer.

The official address of the corporation is 2100 Spring Garden St., Philadelphia, Pennsylvania 19130.

Dated July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care, Financing Administration.

[FR Doc.77-20603 Filed 7-18-77;8:45 am]

RHODE ISLAND

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Rhode Island PSRO, Inc., as a conditional Professional Standards Review Organization (PSRO) for the State of Rhode Island which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Rhode Island PSRO, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Rhode Island as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of Rhode Island.

The principal officers of the Rhode Island PSRO, Inc., are:

NAME AND OFFICE HELD

1. Alton M. Paull, M.D., President.
2. Joseph Caruolo, M.D., Vice President.
3. J. Jerry Rodos, D.O., Secretary.
4. John J. Walsh, M.D., Treasurer.

The official address of the corporation is 40 Westminster Street, Suite 1730, Providence, Rhode Island 02903.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20603 Filed 7-18-77;8:45 am]

SOUTH CAROLINA

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Eduction, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated South Carolina Medical Care Foundation as a conditional Professional Standards Review Organization (PSEO) for the State of South Carolina which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the South Carolina Medical Care Foundation is qualified to continue to assume the duties and responsibilities of a Profesisonal Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of South Carolina as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of South Carolina.

The principal officers of the South Carolina Medical Care Foundation are:

NAME AND OFFICE HELD

1. Kenneth N. Owens, M.D., President.
2. Halsted H. Stone, M.D., Vice President.
3. Randolph D. Smoak, Jr., M.D., Secretary/Treasurer.

The official address of the corporation is 3325 Medical Park Road, P.O. Box 21667, Capital Station, Columbia, South Carolina 29221.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20646 Filed 7-18-77;8:45 am]

WASHINGTON

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare,

pursuant to Section 1154 of the Social Security Act, has redesignated Washington State PSRO as a conditional Professional Standards Review Organization (PSRO) for the State of Washington which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Washington State PSRO is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Washington as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of Washington.

The principal officers of the Washington State PSRO are:

NAME AND OFFICE HELD

1. Robert J. Hoxsey, M.D., President.
2. Robert Hunter, M.D., Vice President.
3. E. Harold Laws, M.D., Secretary.
4. Donald Hesch, M.D., Treasurer.

The official address of the corporation is 2150 North 107th Street, Suite 202, Seattle, Washington, 98133 .

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20630 Filed 7-18-77;8:45 am]

WEST VIRGINIA

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act has redesignated West Virginia Medical Institute, Inc., as a conditional Professional Standards Review Organization (PSRO) for the State of West Virginia which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the West Virginia Medical Institute, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of West Virginia as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in the State of West Virginia.

The principal officers of the West Virginia Medical Institute, Inc., are:

NAME AND OFFICE HELD

1. Harry S. Weeks, M.D., President.
2. (Vacant), Vice President.
3. Joseph T. Skaggs, M.D., Secretary.
4. Richard G. Star, M.D., Treasurer.

The official address of the corporation is 4701 MacCorkle Avenue, S.E., Charleston, West Virginia 25304.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20619 Filed 7-18-77;8:45 am]

WISCONSIN; PSRO AREA I

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated Wisconsin Professional Review Organization as a conditional Professional Standards Review Organization (PSRO) for PSRO Area I of Wisconsin which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Wisconsin Professional Review Organization is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Wisconsin as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Madison, Wisconsin 53701.

The principal officers of the Wisconsin Professional Review Organization are:

NAME AND OFFICE HELD

1. John K. Scott, M.D., Chairman of the Board.
2. Russell L. Lewis, M.D., Vice Chairman.
3. Ansil Freiburghouse, D.O., Secretary.
4. Robert Cullen, M.D., Treasurer.

The official address of the corporation is 330 East Lakeside St., P.O. Box 1109, Madison, Wisconsin 53701.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc. 77-20627 Filed 7-18-77;8:45 am]

WISCONSIN: PSRO AREA II

Redesignation of Conditional Professional Standards Review Organization

Notice is hereby given that the Secretary of Health, Education, and Welfare, pursuant to Section 1154 of the Social Security Act, has redesignated The Foundation for Medical Care Evaluation of Southeastern Wisconsin, Inc., as a conditional Professional Standards Review Organization (PSRO) for PSRO Area II of Wisconsin which area is designated a Professional Standards Review Organization area in 42 CFR 101.1 et seq.

The Secretary has determined that the Foundation for Medical Care Evaluation of Southeastern Wisconsin, Inc., is qualified to continue to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B, of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Wisconsin as a non-profit professional organization whose membership is voluntary and comprises at least 25 percent of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of Wisconsin.

The principal officers of the Foundation for Medical Care Evaluation of Southeastern Wisconsin, Inc., are:

NAME AND OFFICE HELD

1. Michael J. Mally, M.D., President.
2. Albert J. Motzel, Jr., M.D., Vice President
3. Thomas F. Jennings, M.D., Treasurer.
4. Kenneth O. Johnson, M.D., Secretary.

The official address of the corporation is 756 North Milwaukee St., Milwaukee, Wisconsin 53202.

Dated: July 13, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-20623 Filed 7-18-77;8:45 am]

Public Health Service

ADMINISTRATOR, HEALTH SERVICES ADMINISTRATION AND DIRECTOR, NATIONAL INSTITUTES OF HEALTH

Genetic Diseases; Delegation of Authority

Notice is hereby given that, pursuant to the authority delegated by the Acting Secretary of Health, Education, and Welfare to the Assistant Secretary for Health (41 FR 37143), the Acting Assistant Secretary for Health has made the following delegations under Part A, Title XI of the Public Health Service Act, as amended by Section 403 of Pub. L. 94-278, providing for the establishment of a national program for basic and applied research, research training, testing, counseling, and information and education programs with respect to genetic diseases:

1. Delegation to the Administrator, Health Services Administration, with authority to redelegate, of authorities under Section 1101 (42 U.S.C. 300b) for testing and counseling programs and information and education programs; and Section 1105 (42 U.S.C. 300b-4) for a voluntary testing, diagnosis, counseling, and treatment program through Public Health Service facilities, provided that where such authority is exercised in Public Health Service facilities not under the jurisdiction of the Health Services Administration, it must be exercised pursuant to an intra-agency agreement between the Public Health Service agencies concerned. This delegation excludes the authority to issue regulations.

2. Delegation to the Director, National Institutes of Health, with authority to redelegate, of authorities under Section 1102 (42 U.S.C. 300b-1) for research

project grants and contracts concerning genetic diseases, excluding the authority to issue regulations, and Section 1106 (42 U.S.C. 300b-5) for reports, excluding the authority to submit to the President a comprehensive report on the administration of Part A, Title XI of the Public Health Service Act.

The above delegations were effective July 7, 1977.

The August 18, 1976, delegation by the Assistant Secretary for Health to the Administrator, Health Services Administration (41 FR 37143) for authorities under Sections 1101, 1105, and 1106 of the Public Health Service Act has been superseded.

Dated: July 7, 1977.

RUPERT MOURE,
Executive Officer,
Public Health Service.

[FR Doc. 77-20707 Filed 7-18-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 23972-A]

COLORADO

Pipeline Application; IGC Production Co.

JULY 11, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), IGC Production Company, Box 7608, Boise, Idaho 83707, has applied for a right of way for a 2 inch o.d. natural gas pipeline, approximately 1230 feet long, across the following National Resource Lands:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 1 N., R. 101 W.
Sec. 6: Lot 14, SE¼NE¼.

The facility will enable applicant to supply natural gas needed in the area through which the pipeline will go and to transport it to applicant's customers.

The purposes of this notice are: To inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application, and to allow any persons asserting a claim to the lands or having bona fide objections to the proposed natural gas pipeline right of way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

THOMAS HARDIN,
Chief, Branch of Adjudication.

[FR Doc.77-20568 Filed 7-18-77;8:45 am]

[NM 30991]

NEW MEXICO

Application

JULY 12, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 29 N., R. 6 W.,
Sec. 10, NE¼NW¼.

This pipeline will convey natural gas across 0.252 miles of public land in Rio Arriba County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc.77-20684 Filed 7-18-77;8:45 am]

[Group 410]

CALIFORNIA

Filing of Plat of Dependent Resurvey and Survey

JULY 11, 1977.

1. A plat of survey of the following described land, accepted May 12, 1977, will be officially filed in the California State Office, Bureau of Land Management, Sacramento, Calif., effective at 10 a.m. on August 29, 1977.

SAN BERNARDINO MERIDIAN, CALIFORNIA

T. 16 S., R. 20 E., Sec. 60, Lots 1, 2, 3 and 4, N½N½.

The area described totals 327.94 acres.

2. The plat also represents a dependent resurvey of portions of the Fourth Standard Parallel South, the west boundary and the subdivisional lines designed to restore the corners in their true original locations according to the best available evidence, and the survey of a portion of the Public Reserve Boundary, extension of the subdivisional lines, subdivision of section lines, a connecting line and a portion of the easterly right-of-way of the Coachella Canal of T. 16 S., R. 20 E., San Bernardino Meridian.

3. The lands described in Paragraph 1 are withdrawn in the Yuma Reclamation Project and are, therefore, not subject to disposition under the Public Land Laws or to location under the General Mining Laws. In addition, they are included in the area designated as the Imperial San Dunes Recreation Lands.

4. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E-2841, 2800 Cottage Way, Sacramento, Calif. 95825.

ELEANOR K. WILKINSON,
Chief, Branch of Records
and Data Management.

[FR Doc.77-20697 Filed 7-18-77;8:45 am]

[Wyoming 53097]

WYOMING

Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Mountain Fuel Supply Company of Salt Lake City, Utah, filed an application for a right-of-way to construct a 10¾ inch pipeline for the purpose of transporting gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 112 W.,
Sec. 10.
T. 19 N., R. 112 W.,
Secs. 2 and 10.
T. 20 N., R. 112 W.,
Secs. 4, 10, 22, and 26.
T. 21 N., R. 112 W.,
Secs. 3, 14, 24, and 36
T. 22 N., R. 112 W.,
Secs. 24, 26, and 34.

The pipeline will transport gas from a point in sec. 19, T. 22 N., R. 111 W., Lincoln County, to a point in sec. 15, T. 18 N., R. 112 W., where it will tie in to Mountain Fuel's Transmission Mainline Nos. 1 and 13 in Uinta County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc.77-20698 Filed 7-18-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the

National Register were received by the National Park Service before July 11, 1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by July 29, 1977.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ARKANSAS

Benton County

Rogers, *St. Louis–San Francisco Passenger Depot*, 1st and Cherry Sts.

Pulaski County

Scott, *All Souls Church*, off AR 130.

COLORADO

Clear Creek County

Idaho Springs, *Argo Tunnel and Mill*, 2517 Riverside Dr.

Denver County

Denver, *Denver Dry Goods Company Building*, 16th and California Sts.
Denver, *Equitable Building*, 730 17th St.
Denver, *Foster, A. C., Building*, 912 16th St.
Denver, *Ghost Building*, 500–518 15th St.
Denver, *Kittredge Building*, 511 16th St.
Denver, *Tramway Building*, 1100 14th St.

Douglas County

Sedalia vicinity, *Indian Park School*, 10 mi. W of Dedalia on CO 67.

Larimer County

Fort Collins, *Spruce Hall*, Colorado State University campus.

Prowers County

Lamar, *Davies Hotel*, 122 N. Main St.

Pueblo County

Pueblo, *Bowen Mansion*, 229 W. 12th St.
Pueblo, *Pitkin Place Historic District*, 300 block W. Pitkin (south side).

Rio Blanco County

Meeker, *St. James Episcopal Church*, 368 4th St.

Weld County

Greeley, *Weld County Courthouse*, 9th St. and 9th Ave.

IDAHO

Elmore County

Atlanta, *Atlanta Historic District*, Quartz Creek, Pine, and Main Sts.
Atlanta vicinity, *Atlanta Dam and Power Plant*, W of Atlanta on Boise River.

Jerome County

Jerome, *Jerome National Bank*, 100 E. Main St.

Latah County

Moscow, *Lieuallen, Almon Asbury, House*, 101 S. Almon St.

Nez Perce County

Lewiston, *Fix and Moxley Buildings*, 200 block Main St.

Owyhee County

Homedale vicinity, *Poison Creek Stage Station*, S of Homedale off Jump Creek Rd.

Washington County

Weiser, *Galloway, Thomas C., House*, 1120 E. 2nd St.

KENTUCKY

Breckinridge County

Falls of Rough, *Falls of Rough Historic District*, KY 110 (also in Grayson County).

Clark County

Winchester vicinity, *Archeological Site 15 Ck 2*, N of Winchester.

Fayette County

Lexington, *Morton, Will, Tavern Stand*, 137 S. Limestone St.

Henderson County

Henderson, *Barret House*, 204 S. Elm St.

Hickman County

Oakton vicinity, *McLeod Bluff Archeological Site*, W of Oakton.

Mercer County

Harrodsburg, *St. Phillip's Episcopal Church*, Short and Chiles Sts.

Washington County

Springfield vicinity, *St. Rose Roman Catholic Church Complex*, 1 mi. W of Springfield off U.S. 150.

MASSACHUSETTS

Hampden County

East Longmeadow, *First Congregational Church of East Longmeadow*, 7 Somers Rd.
Springfield, *Republican Block*, 1365 Main St.

Middlesex County

Cambridge, *Harvard Square Subway Kiosk*, Massachusetts Ave. and Boylston St.
Cambridge, *Hasty Pudding Club*, 12 Holyoke St.

MICHIGAN

Calhoun County

Marshall, *National House*, 102 S. Parkview.

Wayne County

Detroit, *Engine House No. 11*, 2737 Gratiot Ave.
Detroit, *St. Albertus Roman Catholic Church*, 4231 St. Aubin St.

MINNESOTA

Ramsey County

St. Paul, *Hinkel–Sullivan House*, 531 Brainerd Ave.

NEVADA

Carson City County

Carson City, *Roberts, James D., House*, 1217 N. Carson St.
Carson City, *St. Peter's Episcopal Church*, 312 N. Division St.
Carson City, *Virginia and Truckee Railroad Shop Building*, between Stewart and Plaza St.
Carson City vicinity, *Lakeview House*, 4 mi. NW of Carson City on U.S. 395.

Lincoln County

Pioche, *Lincoln County Courthouse*, Lacour St.

Washoe County

Reno, *Glendale School*, S. Virginia St. and Lietzke Lane.

NEW HAMPSHIRE

Sullivan County

Newport, *Nettleton House*, 26–30 Central St.

NEW JERSEY

Gloucester County

Bridgeport vicinity, *Salisbury Farm*, W. of Bridgeport.

NEW YORK

Dutchess County

Poughkeepsie, *Collingwood Opera House and Office Building*, 31–37 Market St.

SOUTH CAROLINA

Georgetown County

Georgetown vicinity, *Mansfield Plantation*, 5 mi. N of Georgetown off U.S. 701.
Georgetown vicinity, *Prospect Hill Plantation (Arcadia Plantation)*, 5 mi. E of Georgetown off U.S. 17.

TEXAS

Dallas County

Dallas, *DeGolyer Estate*, 8525 Garland Rd.

[FR Doc.77-20312 Filed 7-18-77;8:45 am]

Office of Hearings and Appeals

[Docket No. M77-193]

PLATEAU MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Plateau Mining Company, P.O. Drawer PMC, Price, Utah 84501, has filed a petition to modify the application of 30 CFR 77.214(a), refuse piles; general, to its Star Point No. 2 Mine, located in Carbon County, Utah.

The substance of Petitioner's statement is as follows:

1. Petitioner states that compliance with the mandatory standard would create a much more hazardous condition than simply pushing the material over the hillside without compaction.

2. Material is being placed in the head of a very large and steep canyon rather than hauling the material to active refuse piles.

3. The reason for this is that it is 3.3 miles from the No. 2 Mine to the refuse piles. The road is a narrow winding road of which 1.9 miles varies from 10 to 20 percent grade (see enclosed map[1]). This creates a severe hazard especially during inclement weather.

4. The road to the active refuse piles passes the Star Point No. 1 Nine portals and, if the mandatory standard were to be applied, this situation would create a traffic hazard because of man-trips and material going into that mine.

5. The material that is being dumped into this refuse pile is rock from faults and rock slopes. It has very little com-

[1] The enclosed map is available for inspection at the address listed in the last paragraph of this petition.

bustible material in it and poses no hazard of a spontaneous ignition.

6. The canyon is several hundred feet deep. It is not possible to compact the refuse material by mechanical means without extensive road building to the bottom of the canyon and, since the entire head of the canyon is fill material, the road building and compaction operations would be exposed to several hundred feet of potential loose fill and loose refuse material.

7. At present, there is no access to the bottom of the canyon which would expose anyone to possible sliding of the refuse material.

8. The head of the conveyor belt is 200 feet from the belt portal. The material discharged from the belt is being pushed over the face of the fill by a dozer. To insure that all of the material is pushed to a point in excess of 300 feet from the portal would require the dozer to work further down the slope and would expose the operation to loose fill material.

9. A copy of this petition has been sent to the Office of the Solicitor, Division of Mine Health and Safety, U.S. Department of the Interior. A copy of this petition has been served to the representative of the miners at the mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 18, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JULY 5, 1977.

[FR Doc.77-77-20569 Filed 7-18-77;8:45 am]

[Docket No. M77-194]

PLATEAU MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Plateau Mining Company, P.O. Drawer PMC, Price, Utah 84501, has filed a petition to modify the application of 30 CFR 77.215(a), refuse piles; construction requirements, Star Point No. 2 Mine, located in Carbon County, Utah.

The substance of Petitioner's statement is as follows:

1. Petitioner states that compliance with the mandatory standard would create a much more hazardous condition than simply pushing the material over the hillside without compaction.

2. Material is being placed in the head of a very large and steep canyon rather than hauling the material to active refuse piles.

3. The reason for this is that it is 3.3 miles from the No. 2 Mine to the refuse piles. The road is a narrow winding road of which 1.9 miles varies from 10 to 22 percent grade (see enclosed map).[1] This creates a severe hazard especially during inclement weather.

4. The road to the active refuse piles passes the Star Point No. 1 Mine portals and, if the mandatory standard were to be applied, this situation would create a trac hazard with man-trips and material handling into that mine.

5. The material that is being dumped into this refuse pile is rock from faults and rock slopes. It has very little combustible material in it and poses no hazard of a spontaneous ignition.

6. The canyon is several hundred feet deep. It is not possible to compact the refuse material by mechanical means without extensive road building to the bottom of the canyon and, since the entire head of the canyon is fill material, the road building and compaction operations would be exposed to several hundred feet of potential loose fill and loose refuse material.

7. At present, there is no access to the bottom of the canyon which would expose anyone to possible sliding of the refuse material.

8. The head of the conveyor belt is 200 feet from the belt portal. The material discharged from the belt is being pushed over the face of the hill by a dozer. To insure that all of the material is pushed to a point in excess of 300 feet from the portal would require the dozer to work further down the slope and would expose the operation to loose fill material.

9. A copy of this petition has been sent to the Office of the Solicitor, Division of Mine Health and Safety, U.S. Department of the Interior. A copy of this petition has been served to the representative of the miners at the mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 18, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JULY 5, 1977.

[FR Doc.77-20570 Filed 7-18-77;8:45 am]

[Docket No. M 77-195]

PLATEAU MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Plateau Mining Company, P.O. Drawer PMC, Price, Utah 84501, has filed a petition to modify the application of 30 CFR 77.215(h), refuse piles; construction requirements, to its Star Point No. 2 Mine, located in Carbon County, Utah.

The substance of Petitioner's statement is as follows:

1. Petitioner states that compliance with the mandatory standard would create a much more hazardous condition than simply pushing the material over the hillside without compaction.

2. Material is being placed in the head of a very large and steep canyon rather than hauling the material to active refuse piles.

3. The reason for this is that it is 3.3 miles from the No. 2 Mine to the refuse piles. The road is a narrow winding road of which 1.9 miles varies from 10 to 22 percent grade (see enclosed map[1]). This creates a severe hazard especially during inclement weather.

4. The road to the active refuse piles passes the Star Point No. 1 Mine portals and, if the mandatory standard were to be applied, this situation would create a traffic hazard with man-trips and material handling into that mine.

5. The material that is being dumped into this refuse pile is rock from faults and rock slopes. It has very little combustible material in it and poses no hazard of a spontaneous ignition.

6. The canyon is several hundred feet deep. It is not possible to compact the refuse material by mechanical means without extensive road building to the bottom of the canyon and, since the entire head of the canyon is fill material, the road building and compaction operations would be exposed to several hundred feed of potential loose fill and loose refuse material.

7. At present, there is on access to the bottom of the canyon which would expose anyone to possible sliding of the refuse material.

8. The head of the conveyor belt is 200 feet from the belt portal. The material discharged from the belt is being pushed over the face of the fill by a dozer. To insure that all of the material is pushed to a point in excess of 300 feet from the portal would require the dozer to work further down the slope and would expose the operation to loose fill material.

9. A copy of this petition has been sent to the Office of the Solicitor, Division of Mine Health and Safety, U. S. Department of the Interior. A copy of this petition has been served to the representative of the miners at the mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 18, 1977. Such requests or comments must be filed with the Office of Hearings and

[1] The enclosed map is available for inspection at the address listed in the last paragraph of this petition.

[1] The enclosed map is available for inspection at the address listed in the last paragraph of this petition.

Appeals, Hearings Division, U. S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JULY 5, 1977.

DAVID TORBETT,
Acting Director, Office of Hearings and Appeals.

[FR Doc.77-20571 Filed 7-18-77;8:45 am]

[Docket No. M 77-190]

PREECE ENTERPRISES, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Preece Enterprises, Inc., Route 2, Box 5, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 cabs or canopies; electrical face equipment, to its No. 1 Mine, located in Pike County, Kentucky.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that the installation of canopies on its equipment is creating a hazard to the equipment operators.

2. Petitioner's haulage equipment consists of 1 Long Airdox coal drill; 1 15RU cutting machine; 3 6SC shuttle cars; 1 D2 Acme roof bolter; 1 968 Goodman loading machine and 1 AR95 Elkhorn scoop.

3. The No. 1 Mine is in the Pond Creek Seam and ranges from 46 to 48 inches in height. The coal seam has consistent ascending and descending grades which create dips in the coal bed. As a result of these dips, the canopies have to be installed in such a manner as to prevent them from getting against the roof and possibly destroying roof support. This only allows a 23-inch vertical operating compartment which limits the vision of the equipment operators and creates a hazard to them as well as to the other employees in the mine.

4. Petitioner feels that since the equipment operators' vision is limited and because of the position required in order to be seated in the decks, the installation of canopies could be a contributing factor in any accidents which may arise.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 18, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

July 5, 1977.

DAVID TORBETT,
Acting Director, Office of Hearings and Appeals.

JULY 5, 1977.

[FR Doc.77-20572 Filed 7-18-77;8:45 am]

[Docket No. M 77-181]

RANGER FUEL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Ranger Fuel Corporation, c/o Robert C. Kota, Attorney, Lebanon, Virginia 24266, has filed a petition to modify the application of 30 CFR 75.316, ventilation system and methane and dust control plan, to its Beckley No. 1 Mine, located in Wyoming County, West Virginia.

The substance of Petitioner's statement is as follows:

1. Beckley No. 1 Mine is operated in the Beckley and Sewell coal beds and has been designed, ultimately, for 11 units, 8 in the Beckley coal bed and 3 in the Sewell coal bed. At the present time, there are 5 units in the Beckley and 1 in the Sewell. All units are planned to be either continuous or conventional and will be developed on the basis of six entries. Experience in the Beckley No. 1 Mine to date has shown that multiple entry development in excess of six entries creates problems with vertical and horizontal pressures; therefore, Petitioner plans to develop no more than six entries at a time.

2. Large quantities of methane in the coal bed and adjacent strata are forseen for the mine, based upon the present liberation rate (608, 345 CFM per 24 hours). This is based upon very limited initial development and the experience of adjacent mines in the area. Records of the Glen Rogers Mine of the Raleigh-Wyoming Coal Company, Glen Rogers, West Virginia, indicate a range of 1,200 to 2,700 cubic feet of methane per ton of coal mined. In addition, the methane ranged from 2,800,000 to 6,500,000 cubic feet per 24 hours. Thus, large volumes of air will be required to dilute and carry away the large amounts of methane expected to be liberated.

3. Inherent roof and bottom conditions and overburden, averaging about 1,100 feet, place strict limitation on the number of airways or entries that can be safely developed. Multi-purpose use of all entries that can be provided is required under the best known and accepted design parameters.

4. Due to expected methane liberation, Petitioner plans to utilize a split system of face ventilation and, in so doing, use of the air in the belt entry is imperative.

5. As a result of the foregoing, Petitioner submits this petition for modification so that it can use the air in the belt entries to assist in ventilating the faces with a split system of ventilation.

6. Maps for Beckley No. 1 Mine were submitted, most recently on January 17, 1977 (Sewell) and February 17, 1977 (Beckley), to James Krese, District Manager, District 4, Mount Hope, West Virginia.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 18, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director, Office of Hearings and Appeals.

JULY 5, 1977.

[FR Doc.77-20573 Filed 7-18-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

PRELIMINARY DRAFT OF PARTS OF AN ENUMERATION OF ARTICLES TO PROVIDE FOR COMPARABILITY AMONG U.S. IMPORT, PRODUCTION, AND EXPORT DATA

Release for Public Comment

Notice is hereby given that the United States Departments of the Treasury and Commerce and the United States International Trade Commission are releasing for public comment the following preliminary draft of parts of an enumeration of articles which will provide for comparability among U.S. import, production, and export data pursuant to section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), as amended by section 608(a) of the Trade Act of 1974 (19 U.S.C. 2101):

Paper, paperboard, and products thereof; books, pamphlets, and other printed and manuscript materials—schedule 2, parts 4 and 5, Tariff Schedules of the United States Annotated (TSUSA); release date: July 8, 1977.

Background.—The preparation of the draft by the three agencies has generally proceeded from recommendations made in a joint report of the Secretary of Commerce and the U.S. International Trade Commission, dated August 1, 1975, submitted to Congress and the President pursuant to section 608(b) of the Trade Act of 1974, and entitled "Principles and Concepts Which Should Guide the Organization and Development of an

Enumeration of Articles Which Would Result in Comparability of U.S. Import, Production, and Export Data."

The report noted that the principal advantages of achieving comparability among import, production, and export data are—

1. To permit the development and implementation of a more coordinated and efficient program for the administration, interpretation, and maintenance of national systems;
2. To improve and facilitate the publication of trade data most useful for international economic analysis;
3. To permit more reliable analysis of the impact of external trade on domestic industry.

In making specific recommendations concerning the organization and development of an enumeration of articles which would result in comparability, the report recognized various prerequisites to achieving comparability, such as adhering to sound nomenclature principles, employing identical descriptive techniques and product definitions, using compatible standards of valuation and measurement, and providing for centralized responsibility for interpretation and coordinated responsibility for maintenance. The report also acknowledged many of the practical considerations involved in achieving comparability among the three generally discordant classification systems presently used for the collection of import, production, and export data, including reconciling differences among the three existing systems, preserving statistical continuity, and achieving useful levels of product comparability with the least disruptive impact on current programs and reporting.

In summary, the specific recommendations provided that—

1. The organizational framework of the TSUS should be adopted as the basis for the enumeration of the export schedule.
2. The review and development of an enumeration should take into account the current import, production, and export product classes, with the primary aim of obtaining comparability at a common level.
3. Changes may be proposed to any system, including combinations, subdivisions, and modifications of existing language and content. In particular, consideration should be given to updating of definitions and terms to make them more reflective of current practice in the trade. It must be borne in mind that the TSUS structure and detail are legally based. Therefore, the enumeration should consist of individual TSUSA classifications, or combinations of individual TSUSA classifications (current or as proposed by this program), since this is the only way to attain comparability to the relatively rigid classifications of imports. Combinations may be made of commodities falling in difference TSUS classes, if necessary, as long as they consist of aggregations of individual TSUSA classifications.

Continuing program for statistical annotation.—The establisment of an enumeration for statistical purposes is, and should be looked upon as, a continuing program. It is intended that the initial modifications to the import, production, and export schedules will serve as a basis for further refinement and change. Modifications to each of the systems will be made from time to time to reflect changing statistical needs and also to improve the comparability of U.S. trade data with trade data reported by other countries on the basis of the Standard International Trade Classification (SITC). The publication of trade data by the Department of Commerce on the basis of the SITC will continue.

Modifications to the Tariff Schedules of the United States.—Any proposals to modify the TSUS (other than statistical annotations thereto) could not be implemented without legislative approval. After comments have been recovered and reviewed, consideration may then be given to the extent of, and need for, amendatory legislation.

Comments by interested parties.—Over the next several months further preliminary drafts will be released for public comment and consideration. Interested parties are invited to comment on all aspects of the comparability program. Specific recommendations and proposals are invited with respect to the extent to which the drafts would—

Recognize the specific needs of users of statistics;
Facilitate economic analysis;
Reflect sound principles of commodity identification and specifications; and
Impose undue reporting burdens for business establishments.

We would also welcome comments with respect to modifications which would provide greater comparability with the SITC (revision 2).

Copies of the drafts are available from the Chief, Industry and Commodity Classification Branch, Economic Surveys Division, U.S. Bureau of the Census, Washington, D.C. 20233.

Written comments should be submitted at the earliest practicable date, but, to be assured of consideration, not later than August 1, 1977. Such statements should be submitted to the Chief, Industry and Commodity Classification Branch, at the address shown above.

Issued: July 13, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-20675 Filed 7-18-77;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKER PROGRAMS

Funding of HEP and CAMP Projects

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Department of Labor (DOL) to continue to fund High School Equivalency Programs (HEP's) and College Assistance Migrant Programs (CAMP's) for another year under title III of the Comprehensive Employment and Training Act (CETA) of 1973 as amended. The next program year for HEP and CAMP projects will be September 1, 1977 to August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Paul A. Mayrand, Chief, Division of Farmworker Programs, Department of Labor/Employment and Training Administration, 601 D Street, N.W., Washington, D.C., 20213, phone 202-376-7288.

SUPPLEMENTARY INFORMATION: 1976 Amendments to the Higher Education Act directed the Department of Health, Education, and Welfare (DHEW) to conduct a study of these programs with a view towards providing recommendations as to whether the programs should be continued, and if so, which agency, DOL or HEW, would best administer them. The study has been conducted, and DOL will shortly have an opportunity to review and comment on the study. Thereafter, the study will be presented to Congress for its consideration. Since the HEP and CAMP programs are due for refunding August 31, 1977, DOL will refund the programs for an additional year. This will allow all interested parties sufficient time to evaluate the DHEW report and make appropriate arrangements for future funding.

Funds for the next program year of HEP and CAMP projects will be provided under title III, section 303 of the Comprehensive Employment and Training Act (CETA) of 1973 as amended. HEP and CAMP projects have been notified in writing of the decision to continue direct funding and instructed to submit the documents required to receive additional funds. Following is a list of grantees to be refunded and estimated funding amounts:

Grantee	Amount	Type of grant
Catholic University of Puerto Rico.	$289,227	HEP
University of Miami, Florida	334,840	HEP
University of Wisconsin	329,575	HEP
Eastern New Mexico University	400,927	HEP
New Mexico Technical/Vocational School.	238,865	HEP
Pan American University, Texas.	314,000	HEP
Do.	260,000	CAMP
St. Edwards University, Texas	322,000	CAMP
University of Houston, Texas	312,921	HEP
University of Texas at El Paso, Texas.	315,689	HEP
Nebraska Human Resources Foundation.	355,222	HEP
Adams State College, Colorado	225,618	CAMP
Southern Colorado State College.	321,397	CAMP
California Polytechnic State	376,240	HEP
San Diego State University, California.	271,614	CAMP
University of Pacific, California	297,860	HEP
University of Oregon	339,255	HEP
Washington State University	343,822	HEP

Signed at Washington, D.C., the 6th day of July, 1977.

PAUL A. MAYRAND,
Chief, Division of Farmworker Programs.

[FR Doc.77-20554 Filed 7-18-77;8:45 am]

Office of the Secretary

[TA-W-1672]

CONVERSE RUBBER CO.

Correction of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor issues the following correction of the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of Converse Rubber Company (TA-W-1672).

In FR Doc. 77-14457 appearing at page 25937 in the FEDERAL REGISTER on May 20, 1977, words were omitted. As a result the Detroit, Michigan regional sales office was not identified, the regional sales offices were listed as sales offices and the local sales offices were not identified in the certification. Accordingly, the following corrections should be made:

1. The 3rd column, 7th paragraph, 5th line, is corrected by adding the location "Detroit, Michigan;" immediately following the location "New York, New York;"

2. The 3rd column, 7th paragraph, 6th line, is corrected by adding the word "regional" immediately following the word "Georgia" and

3. The 3rd column, 7th paragraph, 7th line, is corrected by adding the phrase "and all local sales offices under their jurisdiction" immediately following the word "Company."

Signed at Washington, D.C., this 8th day of July 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc.77-20545 Filed 7-18-77;8:45 am]

[TA-W-1755]

SUSAN GARMENT CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1755: investigation regarding certification of eligibility to apply for workers adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 3, 1977 in response to a worker petition received on March 3, 1977 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing women's sportswear at the Philadelphia, Pennsylvania plant of the Susan Garment Company.

The notice of investigation was published in the FEDERAL REGISTER on March 22, 1977 (42 FR 15477). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the International Ladies' Garment Workers Union, the Susan Garment Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separted;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion two (2) has not been met.

Under the general category of women's sportswear, production at the Susan Garment Company in 1976 was divided into women's jackets (more than 80 percent), women's shirts and blouses (greater than 15 percent), and women's slacks and dresses (less than 5 percent). The production process involves the sewing of pre-cut materials into the above mentioned articles of women's clothing. Depending upon the style requirements, production workers sew pockets, sleeves, seams, zippers, collars, and buttons in the construction of the finished product. Jackets are made of either cotton, polyester, or a blend with 70 percent of these articles being knit and 30 percent being woven. These jackets are used in combination with slacks for casual use. Shirts and blouses are made of either a polyester or a blend with 50 percent of these articles being woven and 50 percent being knit. Slacks and dresses represent less than five percent of production. All products are retailed either in major chain stores or in specialty shops.

Production at the Susan Garment Company in value, adjusted to 1974 dollars, decreased 5.2 percent from 1974 to 1975 and then increased 27.2 percent from 1975 to 1976. Production in value, adjusted to 1974 dollars increased 16.6 percent in January of 1977 compared to January of 1976. From the third quarter of 1975 through the fourth quarter of 1976 production in value (unadjusted) increased in each quarter compared to the same quarter of the previous year. Sales equal production.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that sales or production or both at the Philadelphia, Pennsylvania plant of the Susan Garment Company have not declined absolutely as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of July 1977.

BRIAN TURNER,
Executive Assistant to the Deputy Under Secretary for International Affairs.

[FR Doc.77-20546 Filed 7-18-77;8:45 am]

[TA-W-1460]

TIMKEN CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1460: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 15, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers and former workers producing tapered roller bearings at the Canton, Ohio plant and the Gambrinus Steel plant at Canton, Ohio of the Timken Company, Canton, Ohio.

The Notice of Investigation was published in the FEDERAL REGISTER on January 7, 1977 (42 FR 1538). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Timken Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply fo radjustment assistance, each ofthe group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (4) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers declined 4.8 percent in 1976 compared to 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Using 1974 as a base year, production of tapered roller bearings declined 3.6 percent in 1975 and increased 0.8 percent in 1976. Production declined in the first, third and fourth quarters of 1976 compared to the same quarters of 1974.

INCREASED IMPORTS

Imports of tapered roller bearings increased from $14.7 million in 1972 to $21.0 million in 1973 to $25.9 million in 1974. Imports declined to $25.2 million in 1975 but increased in 1976 to $41.6 million. The import-production ratio increased from 3.5 in 1972 to 4.1 in 1973 to 4.4 in 1974. The ratio declined to 4.2 in 1975 but increased to 6.1 in 1976.

CONTRIBUTED IMPORTANTLY

Timken's major customers for tapered roller bearings are the major auto manufacturers and other major commercial vehicle producers that make trucks, construction and agricultural vehicles. Most of these customers increased purchases from Timken both in 1975 and in 1976. Only one customer surveyed decreased purchases from Timken while increasing purchases of imported bearings. These increased purchases of imported bearing amounted to less than one percent of Timkin's total sales to the firms surveyed. Customers stated that many factors affect purchases of bearings especially and price. At the present time, domestic bearing manufacturers supply most of their requirements.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with tapered roller bearings produced by the Canton, Ohio plant and the Gambrinus Steel plant at Canton, Ohio of The Timken Company did not contribute importantly to the decline in sales or production or separations of workers of that firm.

Signed at Washington, D.C. this 8th day of July 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc.77-20547 Filed 7-18-77;8:45 am]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 29, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 29, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of July 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/ workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Admiral Corp. (IBEW).	McHenry, Ill.	July 1, 1977	June 25, 1977	TA-W-2,196	TV tuners and yokes.
Dov Industries, Inc. (company).	So. Plainfield, N.J.	June 30, 1977	June 27, 1977	TA-W-2,197	Washable slippers for women and children.
Lambert Manufacturing Co. (workers).	Chillicothe, Mo.	July 6, 1977	June 30, 1977	TA-W-2,198	Woven cotton work gloves.
Rappahannock Sportswear Co. (workers).	Fredericksburg, Va.	July 5, 1977	June 29, 1977	TA-W-2,199	Men's dress trousers.

[FR Doc.77-20544 Filed 7-18-77;8:45 am]

LEGAL SERVICES CORPORATION

JUNE 1977, AUDIT AND ACCOUNTING GUIDE

Instruction on Use

JULY 14, 1977.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974 (the "Act"), Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-29961. Section 1009(c)(1) of the Act requires that recipients of financial support from the Corporation provide for an annual financial audit. Recently, the Corporation prepared and distributed a revised Audit and Accounting Guide (June 1977) for use by recipients and independent certified public accountants or other auditors who perform such audits. This revised Guide supersedes all previous such guides.

Pursuant to Section 1008(e) of the Legal Services Corporation Act, the Comptroller of the Legal Services Corporation hereby instructs recipients to use the revised Guide for all auditing and accounting functions required by the Corporation.

Effective date: This Instruction shall become effective July 19, 1977.

FABIO DE LA TORRE,
Comptroller.

[FR Doc.77-20685 Filed 7-18-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

PRIVACY ACT OF 1974

Additional System of Records

Pursuant to the requirements of section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(c)(4), notice is hereby given of the existence and character of a new system of records to be maintained by the National Science Foundation and of the routine uses thereof. Interested persons are invited to submit written data, views or arguments to the Director, National Science Foundation, ATTN: General Counsel, Washington, D.C. 20550, not later than August 18, 1977.

NSF-44

System name:

Visiting Women Scientists Roster.

System location:

Research Triangle Institute, P. O. Box 12194, Research Triangle Park, N.C. 27709.

Categories of individuals covered by the system:

Women scientists who have applied to visit high schools as part of NSF's Visiting Women Scientists Program.

Categories of records in the system:

Name, address, ID number, science field, present occupation, previous posi-

tions, degrees and year of award, race, marital status, and amount of time available for participation in the program.

Routine uses of record maintained in the system, including categories of users, and the purposes of such uses:

Information will be used by Research Triangle Institute project staff to select women scientists to visit a group of high schools.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Names, addresses, ID numbers, science fields and present occupations will be stored on computer disk; additional information will be on paper records maintained in file folders.

Retrievability:

Computer records retrievable by ID number, name, geographic location, science field, type of occupation; paper records retrievable by ID number.

Retention and disposal:

Maintained at the Research Triangle Institute until completion of program; then turned over to NSF for disposition.

Safeguards:

The records are kept secure in a locked vault-like room in a building which has controlled sign entry and is monitored by a security force.

Records service categories:

Information obtained from individuals and professional organizations.

System purpose:

The purpose of the system is to maintain a roster of women scientists who are interested in visiting high schools to encourage young women to consider careers in science and technology. The information in the system will be used to ensure that the group of women scientists who visit the schools includes a variety of ages, science fields, types of occupations, races, marital status, etc.

Protection against unauthorized access:

A password protection system for account codes and data sets will be used; only authorized project personnel will have access to the computer files. Paper records will be stored in locked file drawers; the building in which they are stored is locked during non-business hours.

RICHARD C. ATKINSON,
Director.

JULY 12, 1977.

[FR Doc.77-20681 Filed 7-18-77;8:45 am]

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

TRANSPORTATION ISSUE

Hearings Set

Conflicting views on national transportation issues will be aired at public hearings scheduled by the National Transportation Policy Study Commission for August 10, 1977, in Seattle, Wash.

The hearings, part of a nationwide series planned by the Commission, are intended to help determine the needs of our Nation's communities, the transportation industry, shippers, the traveling public, and the American taxpayer.

The Commission, composed of 19 members, including twelve Members of Congress and seven public representatives, was created by Congress to examine, evaluate, and analyze our Nation's transportation needs and resources through the year 2000. The Commission's final report and policy recommendations are due on December 31, 1978.

The Commission plans to organize testimony of witnesses to insure that it hears from all of the various interests with a stake in transportation, such as labor, management, shippers, consumers, state governments, and environmentalists.

The hearings will be held in the Federal Building, 915 Second St., rooms 370 and 380, Seattle, Wash.

Those interested in testifying personally or in submitting written statements should contact, no later than 6 p.m., August 1, 1977: Mr. John Crutcher, NTPSC, 1750 K St. NW., suite 800, Washington D.C. 20006. Telephone number: 202-254-7453.

Dated: July 14, 1977.

EDWARD R. HAMBERGER,
General Counsel.

[FR Doc.77-20702 Filed 7-18-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 11, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

VETERANS ADMINISTRATION

Evaluation of National Cemetery System, single time, funeral directors, clergy, representatives of veterans' organizations, Housing, Veterans and Labor Division, Raynsford, R., 395-3532.

TENNESSEE VALLEY AUTHORITY

TVA Home Insulation Program, TVA 6254 through 6254E, other (see SF-83), all residential consumers, Warren Topelius, 395-5872.

DEPARTMENT OF LABOR

Employment and Training Administration: Information needed for apple harvest recruitments, ETA 7-158, annually, growers who anticipate a need for temporary agriculture workers, Strasser, A., 395-5867.

Employment and Training Administration, Program monitoring system handbook, Handbook 355, weekly, State Employees agencies in ESAP program, Strasser, A., Lowry, R. L., 395-5867.

REVISIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, administrative review report—food distribution programs, FNS 168, on occasion, hospitals, schools, institutions for the elderly, Human Resources Division, Warren Topelius, 395-3532.

DEPARTMENT OF COMMERCE

Bureau of Census, School enrollment supplement—October 1976, CPS, CPS-1, annually, 53,000 households in CPS sample, Kathy Wallman, 395-6140.

DEPARTMENT OF LABOR

Employment and Training Administration, FSB and SUA—monthly activity report, ETA5-141, 142, 143, 158, weekly, State employment security agencies, Lowry, R. L., 395-3772.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service, licensee's application and personnel record, FV 292, on occasion, applicants for employment as F&V inspectors, Marsha Traynham, 395-4529.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary, annual housing survey—national sample, AHS 1, AHS 2, AHS 4-L1, ASH 4-L2, ASH 394, annually, households in 461 PSU design, Larry Haber, 395-5631.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration, project dawn—IV—drug abuse warning network, on occasion, physicians—medical personnel, Richard Eisinger, Reese B. F., 395-6140.

PHILIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-20661 Filed 7-18-77;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 12, 1977 (44 U.S.C. 3509). The purpose of publishing this

list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

NATIONAL SCIENCE FOUNDATION

Inquiry on uses of NSF Data and Studies, Single time. known and potential users of science resources data. Energy and Science Division, Raynsford, R. 395-3810.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Color Television Receivers and Subassemblies (Producers' Survey), quarterly, U.S. producers of color TV receivers, Evinger, S. K., 395-3710.

DEPARTMENT OF COMMERCE

Bureau of Census, Housing Energy Conservation, AHS-2, section IV, single time, Households in 461 PSU Design, Larry Haber, 395-5631.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Center for Education Statistics Survey of Programs and Enrollments in Postsecondary Schools, NCES 2358, 2358-1, 2358-2, single time, postsecondary noncollegiate career schools, Kathy Wallman, 395-6140.

Social Security Administration, Labor Force Participation Study, SSA-3141, single time, persons over 18 in urban Baltimore, Md. area, Strasser, A., 395-5867.

Office of Education Cumulative Report and Estimate of Federal Funds—U.S. Loan Program for Cuban Students, OE1141, annually, IHES, Lowrey, R. L. 395-3772.

REVISIONS

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service Bee and Honey Inquiries, other (see SF-83), beekeepers, Lowry, R. L., 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education:
- Application for Assistance Under Emergency School Aid Act Title VII, Public Law 92-318, as Amended by Public Law 93-380 (NPOS), OE-116, annually, nonprofit organizations, Budget Review Division, Lowry, R. L., 395-4775.
- Request for Collection Assistance Under Federal Insured Student Loan Program, OE-1249-1, 1249-2, on occasion, lenders, Lowry, R. L., 395-3772.
- Request for Institutional Eligibility for Programs Under the Higher Education Act of 1965, as amended, OE 1059, on occasion, postsecondary institutions, Lowry, R. L., 395-3772.

Social Security Administration, Laboratory Personnel Qualification Appraisal, SSA-3083, on occasion, individuals, Warren Topellus, 395-5872.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service, Data for Farm Reconstitution, ASCS-155, on occasion, farmers who sell, buy, or lease land, Lowry, R. L., 395-3772.

Statistical reporting Service:
- Weekly Hatchery and Chick Placement Report, weekly, chicken hatcheries, Lowry, R. L., 395-3772.
- Turkey Hatchery Report (Monthly and Weekly), monthly, turkey hatcheries, Lowry, R. L., 395-3772.

Agricultural Stabilization and Conservation Service Request to Graze or Harvest Hay, ASCS 100, on occasion farm producers desiring to graze and harvest hay, Lowry, R. L., 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Transfer Credit Letter for Education Directory, Part 3, Higher Education, De 1261, annually, institutions of higher education, Marsha Traynham, 395-4529.

PHILIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-20812 Filed 6-18-77;8:45 am]

PRIVACY ACT OF 1974

Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period June 27, 1977 through July 8, 1977 the Office of Management and Budget received the following reports on new (or revised) systems of records.

SMALL BUSINESS ADMINISTRATION

System Name:

Freedom of Information Act and Privacy Act Case Files.

Report Date:

June 27, 1977.

Point-of-Contact:

Mr. Nicholas Kalcounos, FOIA and Privacy Officer, Small Business Administration, Washington, D.C. 20416.

Summary:

The proposed system will maintain records of requests and appeals under the Freedom of Information and Privacy Acts.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

System Names:

(1) 1978 Survey of Widows without Benefits; (2) Direct Deposit Survey; (3) Professional Qualifications File; (4) Mortality of Dairymen; (5) Health Effects and Sulphur Oxides and Sulphuric Acid, Nitrogen Oxides, and Nitric Acid; (6) Potential and Actual Consultant, Field Reader, and Site Visitor Files, Indexex, and Lists HEW E OE; (7) PROPHET System Research Prospectuses.

Report Date:

June 29, 1977.

Point-of-Contact:

Mr. John D. Young, Department of Health, Education, and Welfare, Washington, D.C. 20201.

Summary:

The report includes five proposed new systems to be maintained by the Social Security Administration, the Center for Disease Control, and the National Institutes of Health; and two altered systems maintained by the Center for Disease Control and the Office of Education. The change to the CDC system increases the number of dairymen in the sample; the change to the OE system is computerization of the file.

AGENCY FOR INTERNATIONAL DEVELOPMENT

System Name:

Employees Automated Records.

Report Date:

July 1, 1977.

Point-of-Contact:

Mr. James L. Harper, Privacy Liaison Officer, Agency for International Development, Department of State, Washington, D.C. 20523.

Summary:

AID proposes to add a new category of records to the system for preparing reports required by the Equal Opportunity Act of 1972.

DEPARTMENT OF DEFENSE

System Name:

Accounting for Personal Money Allowances.

Report Date:

July 1, 1977.

Point-of-Contact:

Mr. William Cavaney, Defense Privacy Board, Room 5H-23 Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20301.

Summary:

The proposed system will maintain a record of the receipt and disposition of allowances, review expenditures annually, and report the results of the review to the Assistant Secretary of the Army for Financial Management.

FEDERAL COMMUNICATIONS COMMISSION

System Name:

Employee Locator System.

Report Date:

Undated.

Point-of-Contact:

Mr. Richard D. Lichtwardt, Federal Communications Commission, Washington, D.C. 20554.

Summary:

This proposed system will be used to contact employees in the case of emergencies.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77-20813 Filed 7-18-77;8:45 am]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

ADVISORY GROUP ON SPACE SYSTEMS

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Advisory Group on Space Systems.
Date, time, and place: August 5-6, 1977, 9 a.m. to 5 p.m., Naval Ocean Systems Center, 271 Catalina Boulevard, San Diego, California 92152.
Type of meeting: Closed.
Contact person: Mr. William Montgomery, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, Telephone 202-395-4692.
Purpose of advisory group: The Office of Science and Technology Policy, in accordance with the statutory mandate to analyse and interpret significant developments and trends in science and technology and relate these to their impact on achievement of national goals and objectives will be identifying and evaluating the implications of technological advances such as the availability of the reusable space shuttle and other supporting systems on future space applications programs, specifically those related to military systems.
Agenda: 9 a.m. to 5:00 p.m.—classified discussion of draft materials prepared as part of the policy review process for the President and the National Security Council.
Reason for closing: The committee will be reviewing sensitive classified national security information involving design and employment of space systems. These discussions come under exemption 1 of the Government in the Sunshine Act, Section 552b(c), Title 5, U.S.C.
Authority for closing: The Director, Office of Science and Technology Policy has determined that this meeting deals with matters classified for national security and therefore should be closed.

WILLIAM MONTGOMERY,
Executive Officer.

[FR Doc.77-20671 Filed 7-18-77;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS

Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (the Act), notice is hereby given that a meeting of the Advisory Committee for Trade Negotiations will be held Wednesday, August 17, 1977, from 1:30 p.m. to 5 p.m. in the Bank of America Board Room, Los Angeles, Calif.

The purpose of this meeting will be to review and discuss the status of, and the United States strategy and objectives for, the multilateral trade negotiations currently underway in Geneva.

In accordance with section 10(d) of the Act, the meeting will not be open to the public because information falling within the purview of 5 U.S.C. 552b(c)(1) (the exception to the Government in the Sunshine Act for matters specifically required by Executive order to be kept secret in the interest of foreign policy) will be reviewed and discussed.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Executive Director, Advisory Committee for Trade Negotiations, Office of the Special Representative for Trade Negotiations, 1800 G St., room 725, Washington, D.C. 20506.

PHYLLIS O. BONANNO,
Executive Director, Advisory Committee for Trade Negotiations.

[FR Doc.77-20700 Filed 7-18-77;8:45 am]

PRESIDENT'S COMMISSION ON MENTAL HEALTH

MEETING

In accordance with Section 10(A)(2) of the Federal Advisory Committee Act (5 USC Appendix I), announcement is made of the following Presidential Commission meeting scheduled to assemble during the month of August, 1977.

The President's Commission on Mental Health:

August 2, 1977; 9:30 a.m. to 4:45 p.m.; August 3, 1977; 9:30 a.m. to 4:45 p.m.; New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C.

OPEN MEETING

CONTACT:

Mary Ann Orlando, Special Assistant to the Chairperson, President's Commission on Mental Health, Room 121, Old Executive Office Building, Washington, D.C. 20500, 202-456-7100.

PURPOSE: The President's Commission on Mental Health is a policy recommendation commission composed of 20 members representing a broad spectrum of interested and informed private citizens. The Commission was created by the President by Executive Order #11973 and was directed to identity the mental health needs of the nation. In particular the Commission shall seek to identify: how the mentally ill, emotionally disturbed and mentally retarded are being served or underserved and who is affected by such underservice; projected needs for dealing with emotional stress during the next twenty-five years; ways the President, the Congress and the Federal Government may efficiently support the treatment of the underserved mentally ill, emotionally disturbed and mentally retarded; methods for coordinating a unified approach to all mental health services; types of research the Federal Government should support to further prevention and treatment of mental illness and mental retardation; roles of various educational systems, volunteer agencies and other people-helping institutions can perform to minimize emotional disturbance; and what programs will cost, when the money should be spent and how the financing should be divided among Federal, State and local governments, and the private sector. The Commission shall conduct such public hearings, inquiries and studies as may be necessary, and shall submit a preliminary report to the President by September 1, 1977. A final report with recommendations and priorities shall be submitted to the President by April 1, 1978.

AGENDA: This meeting will be open to the public. Agenda items include work sessions on task areas of the Commission.

Substantive program information may be obtained from: Mary Ann Orlando Special Assistant to the Chairperson, The President's Commission on Mental Health, Room 121, Old Executive Office Building, Washington, D.C. 20500. Tel: 202-456-7100.

Attendance by the public will be limited to space available.

Mary Ann Orlando will furnish upon request summaries of the meeting and a roster of the Commission. President's Commission on Mental Health, Room 121,Old Executive Office Building, Washington, D.C. 20500.

BENEDICT LATTERI,
Administrative Officer, President's Commission on Mental Health.

JULY 15, 1977.

[FR Doc.77-20901 Filed 7-18-77;10:12 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13740; SR-MCC-77-2 and SR-MSTC-77-6]

MIDWEST CLEARING CORP. AND MIDWEST SECURITIES TRUST CO.

Order Approving Rule Change Submitted Relating to Debt Securities

JULY 12, 1977.

In the Matter of Midwest Clearing Corporation, Midwest Securities Trust Company, 120 South LaSalle Street, Chicago, Illinois 60603.

On May 12, 1977, the Midwest Clearing Corporation and the Midwest Securities Trust Company submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act") proposed rule changes which would extend clearance and settlement and depository services to debt securities.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (42 FR 29989, June 10, 1977), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities and Exchange Act Release No. 34-13602, June 6, 1977. No letters of comment were received.

The Commission has reviewed the proposed rule changes and finds that they

are consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR-MCC-77-2 and SR-MSTC-77-6 be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-20662 Filed 7-18-77;8:45 am]

[Release No. 9846; 811-81]

PETROLEUM CORPORATION OF AMERICA

Filing of Application for Order Declaring that Applicant Has Ceased to be Investment Company

JULY 13, 1977.

In the Matter of Petroleum Corporation of America, 201 North Charles Street, Baltimore, Maryland 21201.

Notice is hereby given that Petroleum Corporation of America ("Petroleum"), a closed-end, diversified management investment company, registered under the Investment Company Act of 1940 ("Act"), filed an application on April 21, 1977, pursuant to Section 8(f) of the Act, for an order declaring that Petroleum has ceased to be an investment company. 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.

Petroleum, a Delaware corporation, registered under the Act on November 1, 1940. Petroleum represents that on February 10, 1977 the respective boards of directors of Petroleum and of Petroleum and Resources Corporation ("Maryland Corporation"), a wholly-owned subsidiary of Petroleum incorporated under the laws of Maryland, aprroved and adopted an Agreement and Articles of Merger ("Agreement") which provided for the merger of Petroleum into Maryland Corporation. Petroleum states that the Agreement was approved by the shareholders of Petroleum on March 30, 1977 and that the merger was consummated on April 13, 1977. Petroleum represents that pursuant to the terms of the Agreement, Maryland Corporation acquired all of the assets and assumed all of the obligations and liabilities of Petroleum; and that the former shareholders of Petroleum became shareholders of Maryland Corporation. Petroleum further represents that Maryland Corporation registered under the Act as a closed-end, diversified management investment company on March 10, 1977, and that since the date of the merger, Maryland Corporation has conducted the business previously conducted by Petroleum which no longer exists.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 8, 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 at the address stated above. Proof of such service (by affidavit or, in the 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.77-20663 Filed 7-18-77;8:45 am]

[Release No. 13638; SR-PHLX-77-3]

PHILADELPHIA STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JULY 12, 1977.

In the matter of Philadelphia Stock Exchange, Inc., 17th Street & Stock Exchange Place, Philadelphia, Pennsylvania 19103.

On May 24, 1977, the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change relating to its summary procedure for fining members and other employees for violations of Option Committee Regulations with respect to order, decorum, health, safety and welfare on the options trading floor.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13575, (May 27, 1977)) and by publication in the FEDERAL REGISTER (42 Fed. Reg. 39136, June 7, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on May 24, 1977, be, and it hereby is, approved.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-20664 Filed 7-18-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JULY 12, 1977.

In the matter of applications of the Philadelphia Stock Exchange, Inc., for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Falcon Seaboard, Inc., common stock—$1.50 par value, file No. 7-4959.

Upon receipt of a request, on or before July 28, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-20665 Filed 7-18-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JULY 12, 1977.

In the matter of applications of the Philadelphia Stock Exchange, Inc. for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Trans-World Airlines, Inc., $2 cumulative convertible preferred series A stock, no par value, file No. 7-4961.

Upon receipt of a request, on or before July 28, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-20666 Filed 7-18-77;8:45 am]

[Release No. 34-13737; File No. SR-MSE-77-24]

MIDWEST STOCK EXCHANGE, INC.

Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 20, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

MSE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Listing fees on the Midwest Stock Exchange, Inc.

	From	To
Maximum payable for additional listings per application	$1,500	$2,500
Maximum payable annually for additional listings	$5,000	7,500
The other fees listed below remain unchanged:		
Original listing	$5,000	
Annual maintenance	$0.04/1,000 shares	
Minimum	$250	
Maximum	$2,500	
Additional listing application	$0.005/share for 1st 100,000 shares	
	$0.0025/share for remainder	
Minimum per application	$250	

MSE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to increase the costs of listing fees in response to the legal and clerical expenses for processing applications and maintaining listing records.

The proposed rule change represents an equitable allocation of reasonable fees among listing companies as the fees are standardized.

MSE states that comments have neither been solicited nor received.

The Midwest Stock Exchange, Incorporated believes that no burdens will be placed on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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, 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 on or before August 8, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 12, 1977.

[FR Doc.77-20667 Filed 7-18-77;8:45 am]

[Release No. 34-13741; File No. SR-MSTC-77-9]

MIDWEST SECURITIES TRUST CO.

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 July 8, 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 proposed rule change involves the implementation of the MST Communications System (the "MST System") of the Midwest Securities Trust Company ("MSTC"). The MST System will provide a fast, flexible and cost effective communications link for broker/dealers and institutions. Development of this system is another step toward realization of a national securities processing system.

MST System terminal applications will include inquiry, input, report retrieval, and administrative message capability. Although the MST System will be phased in gradually and made available to all participants, it will not be required. MSTC plans to run the MST System at no cost for at least a month after receiving Commission approval. After the month, the initial fee has been set at $200 a month per participant.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to implement a communication linkage between MSTC, its participants, and other clearing agencies which will enable them to receive information via terminal—a CRT screen, keyboard, printer and optional card reader. Terminal receipt of information will reduce the necessity of preparation and physical delivery of many written instructions.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions by implementing an automated communications link with MSTC, its participants, and other clearing agencies that MSTC believes will reduce geographic disadvantages, improve cash and securities management (same day movement of cash and securities, timely confirmation of cash and security activity, reduced interest cost, reduced errors, and improved stock loan utilization), and provide more timely pay and collect notification.

The Midwest Securities Trust Company believes that the proposed fee represents an equitable allocation of reasonable fees among its participants.

Comments have neither been solicited nor received.

The Midwest Securities Trust Company believes that no burdens have been placed on competition.

On or before August 22, 1977, 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, 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 on or before August 8, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 12, 1977.

[FR Doc.77-20668 Filed 7-18-77;8:45 am]

[Release No. 34-13725; File No. SR-PSE-77-17]

PACIFIC STOCK EXCHANGE, INC.

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) (the "Act"), notice is hereby given that on June 29, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

PACIFIC STOCK EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change amends Section 10(c) of Rule II of the Pacific Stock Exchange Incorporated ("Exchange") to remove the prohibition contained in such section against persons who hold appointments as options market makers on the options floor of the Exchange, receiving appointments as alternate specialists with respect to equity trading on the Exchange.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change is designed to permit persons holding appointments as market makers on the options floor of the Exchange to be appointed as alternate specialists with respect to equity securities on the Exchange.

The proposed rule change, by removing a barrier to options market makers acting as alternate specialists in equity securities, contributes to the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system. Therefore, the Exchange concludes that Section 6(b)(5) of the Act provides a statutory basis for the proposed amendment.

Comments with respect to the proposed rule change were neither solicited nor received.

The Exchange asserts that the proposed rule change would impose no burden on competition. Rather it would remove a burden on competition by permitting options market markers to compete as alternate specialists with respect to equity securities.

On or before August 22, 1977, 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, 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 on or before August 8, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 7, 1977.

[FR Doc. 77-20669 Filed 7-18-77;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

PRIVACY ACT OF 1974

Addition of Category of Record

AGENCY: Agency for International Development.

ACTION: Amendment to systems of records.

SUMMARY: To add a new category of records to AID's system of records AID-3. The new category will be the Equal Opportunity Program Extract File.

EFFECTIVE DATE: August 18, 1977, unless the agency publishes notice to the contrary.

ADDRESS: Substantive comments should be addressed to Mr. James L. Harper, Privacy Liaison Office, Department of State, Agency for International Development, Washington, D.C. 20523.

FOR FURTHER INFORMATION CONTACT:

Same as in comments.

j. The Equal Opportunity Program Extract File—This file will contain information from the Master Data File and the Minority Group Designator File and consist of the following: position number; position title; occupational specialty code; position pay plan; position grade; GSA location code; employee name; SSAN; sex; employee pay plan; employee grade; employee step; minority group designator; work schedule; current civil service performance rating; date of last civil service performance rating; supervisory code; age; date of birth; handicap code; date appointed present grade; incumbent assigned date; date entered on duty with AID or predecessor; academic education level; degree Majors 1, 2 and 3; Agency occupational specialties 1, 2 and 3; Veteran's Preference.

JULY 1, 1977.

JOHN J. GILLIGAN,
Administrator.

[FR Doc.77-20588 Filed 7-18-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

STATEMENTS OF INCOME TAX WITHHELD ON WAGES

Proposed Forms Revision

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed forms revision.

SUMMARY: This document contains a proposed revision of Form W-2, Statement of Income Tax Withheld on Wages, and Form W-3, Transmittal Statement for Form W-2, as well as proposed requirements for the private printing of those forms. The changes result from the enactment of Pub. L. 94-202, pursuant to which consolidated annual wage reporting was established. The revised statements are published in proposed form in order to permit private printers of forms and other interested persons an opportunity to review the revisions and to offer comments with respect to them.

DATES: Written comments must be delivered or mailed by August 15, 1977. The revised form is for use beginning with forms to be filed for tax year 1978.

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: Forms Committee, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Ruth L. Hill of the Taxpayer Service Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: ACTS: T:C), 202-566-6666.

SUPPLEMENTARY INFORMATION: This document contains a proposed revision of Form W-2, Statement of Income Tax Withheld on Wages, and Form W-3, Transmittal Statement for Form W-2. These revisions are proposed as a result of the Act of January 2, 1976 (Pub. L. 94-202; 88 Stat. 1135).

The revised Form W-2 is expanded to incorporate information required by the Social Security Administration. Further, the format has been revised to accommodate certain administrative needs. The Form W-3 is modified to include additional data fields.

Under the revised procedures, beginning with forms with respect to tax year 1978, employers will no longer be required to itemize the quarterly earnings of each employee on Form 941, Schedule A. However, employers will still be required to file summary quarterly withholding and deposit statements on a revised Form 941 (which will be made available later).

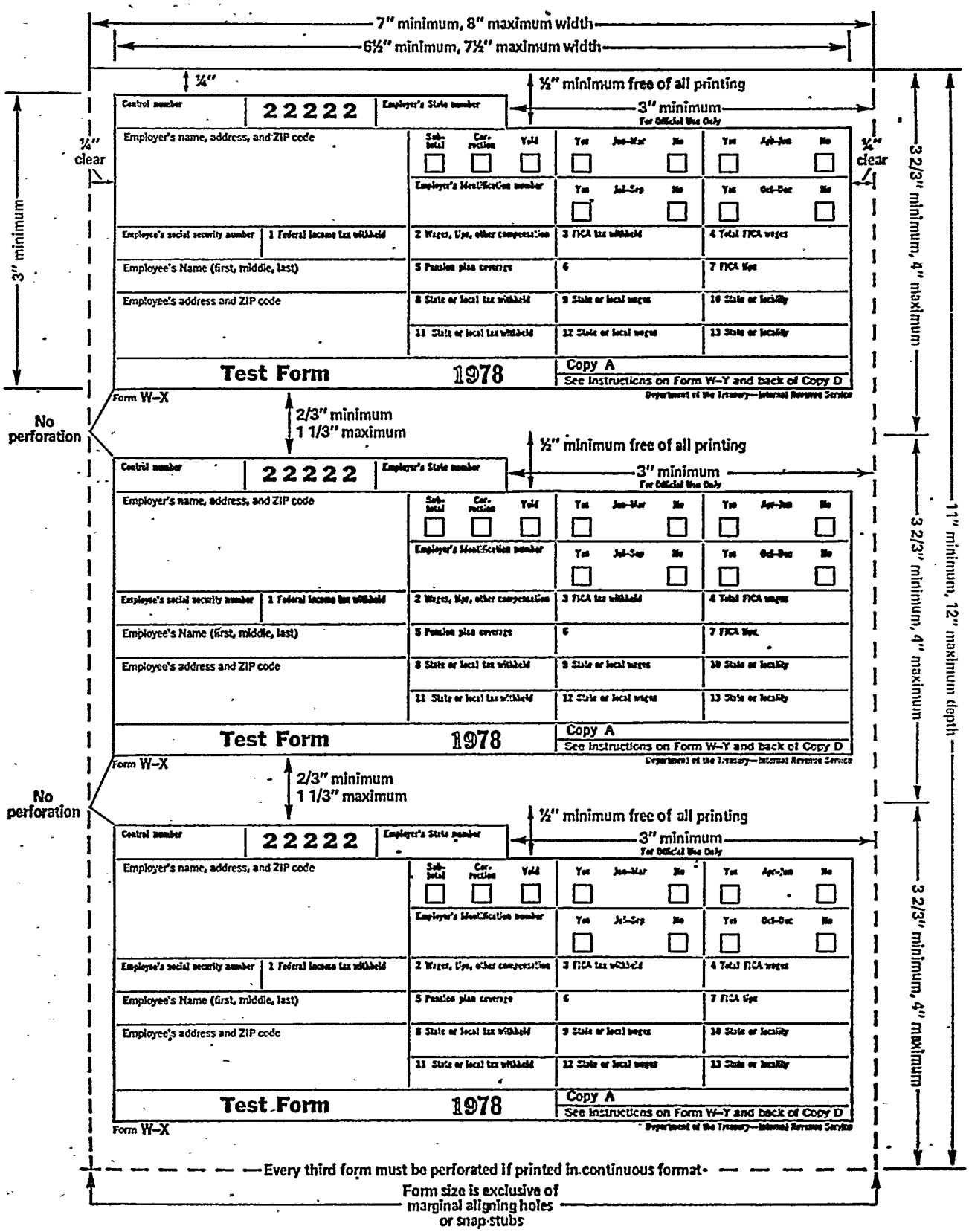
The printing specifications set forth in this document are proposed to be required for privately printed Forms W-2 (Copy A). Printers and employers are cautioned that these specifications may change and that they should not initiate any procurement activity until the official forms and printing specifications are promulgated. It is important to note that Forms W-2 published for use with respect to tax year 1977 and earlier tax years will not be acceptable by the Service after promulgation of the Form W-2 for tax year 1978 and of its private printing specifications.

PROPOSED REVISED FORMS AND SPECIFICATIONS

Forms W-2 and W-3 and the private printing specifications with respect to them are proposed to be revised as follows:

Copy A

Exhibit A



Copies 1, B, C, 2 and D as displayed with the official set

Exhibit B

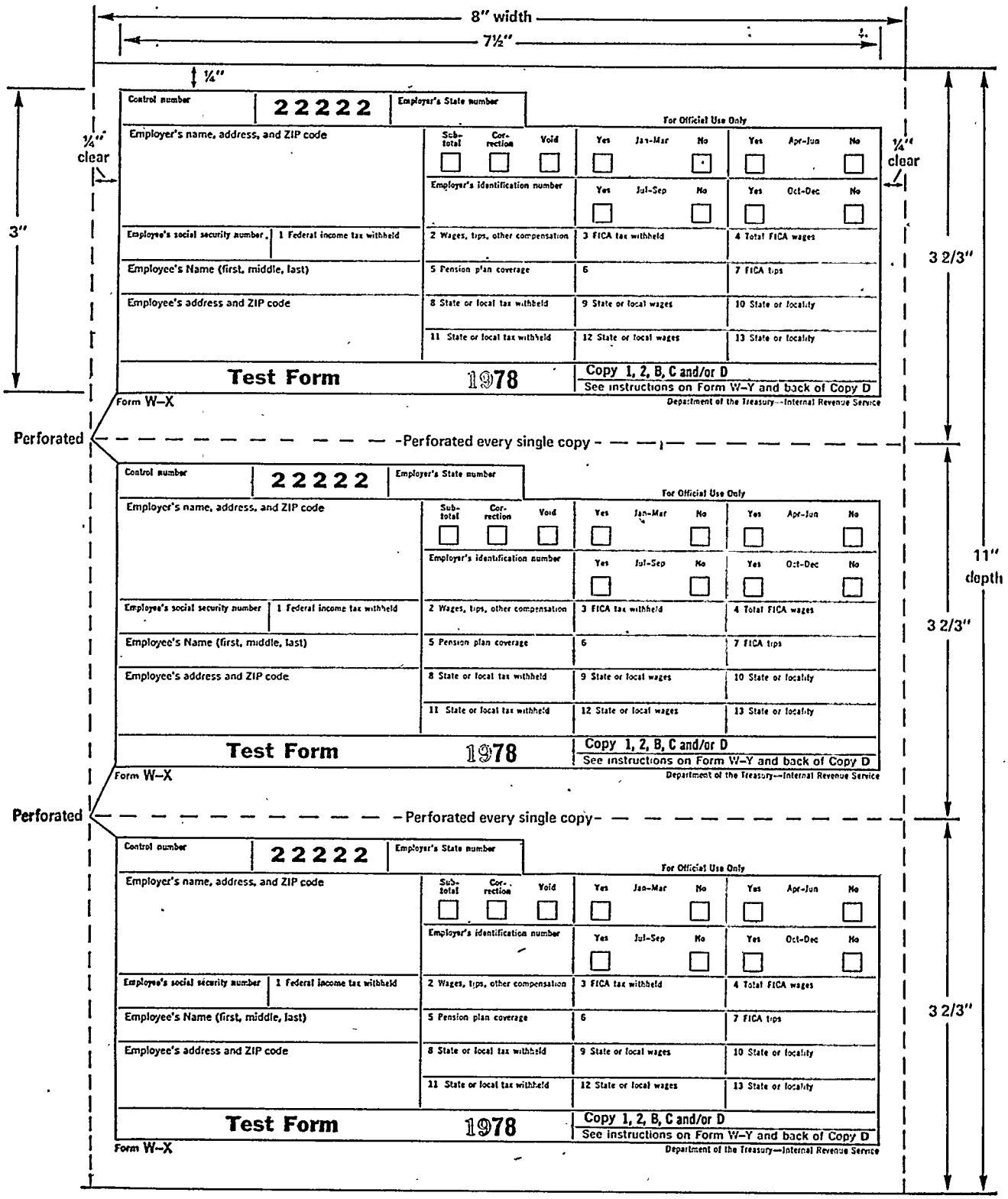


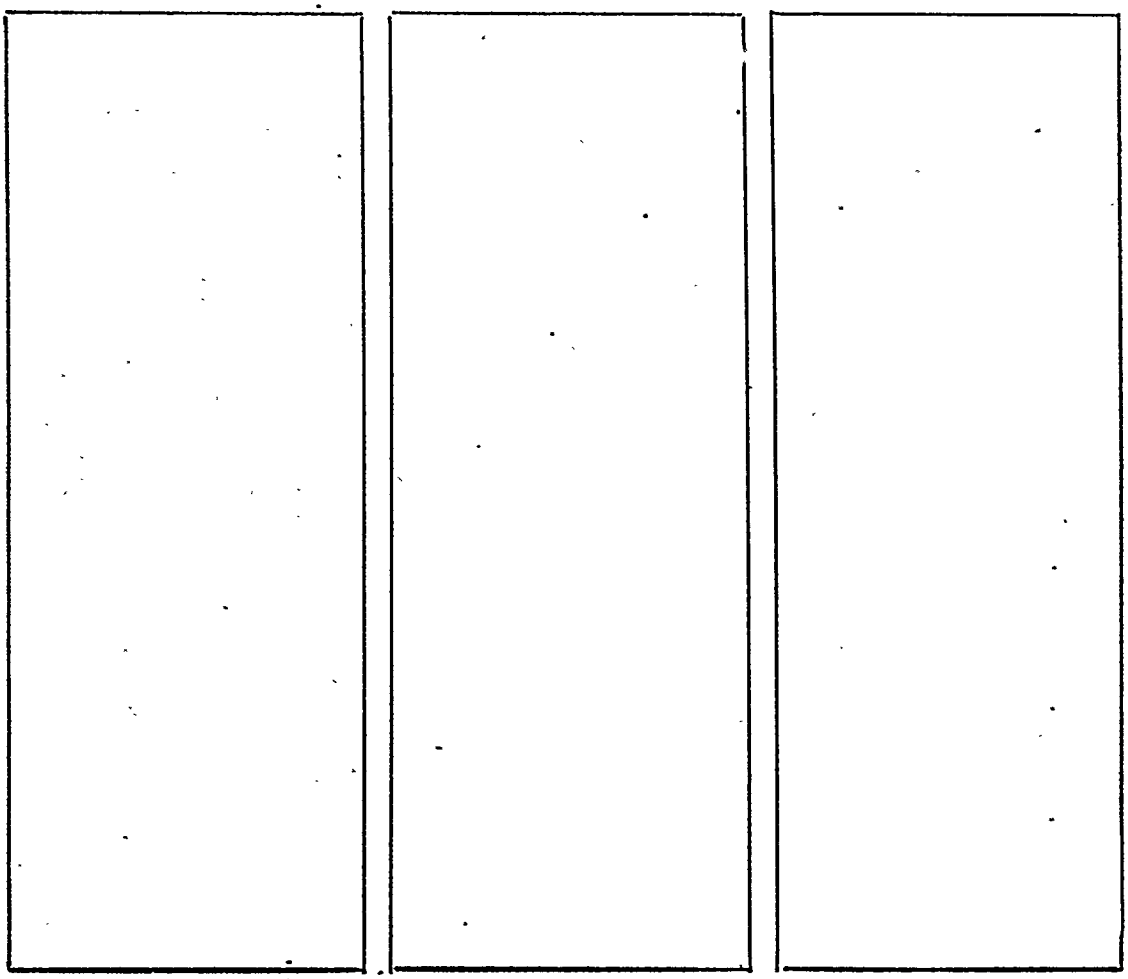
Exhibit C

Control Number	33333	Employer's State No.	For Official Use Only		
Type of Tax Statements Transmitted ▶	Official Use	Military	Agriculture	W-2	Original
	Official Use	State or Local Gov.	Household	W-2P	Corrections
Total FICA tax withheld		Total Federal income tax		Number of employees	
Total FICA wages		Total wages		Total FICA tips	
Employer identification number		Establishment number		Date of report	
Employer's Name, address and ZIP code		**Transmittal of Income and Tax Statements** Form W-3 Department of the Treasury—Internal Revenue Service 1978			

Under penalties of perjury, I declare that I have examined this return, including accompanying documents and to the best of my knowledge and belief, it is true, correct, and complete. In the case of documents without recipients' identifying numbers, I have complied with the requirements of the law by requesting such numbers from the recipients, but did not receive them.

Signature ..... Title ..... Date .....

Instructions



REQUIREMENTS FOR PRIVATE PRINTING

.01 A payer may file a substitute Form W-2 with Federal tax authorities (hereafter referred to as a substitute Copy A). The substitute forms must be an exact replica of the official government forms with respect to layout and contents. Only the dimensions of a substitute form may differ (see Section .05 below) and the printing of the Government Printing Office symbol must be deleted (see Section .08 below). The specifications and allowable tolerances for the Copy A of substitute Forms W-2 are provided in Exhibits A and B respectively.

.02 Color and quality of paper.

Paper for substitute, Copy A to be filed with the Federal tax authority must be: White 100% bleached chemical wood produced in accordance with the following specifications.

Optical Brighteners.—No optical brighteners may be added to the pulp or paper during manufacture, minimal trace amounts will be acceptable.

Weight.—Bond, 40 pound (basis 17 x 22–1000), tolerance plus/minus 5 percent.

Caliper (thickness).—.0040 inch, tolerance plus or minus .0007.

Finish (smoothness).—Between 100 to 200 when measured on a Sheffield smoothness tester.

Brightness.—The paper shall have a brightness value of 80 percent or more when measured on a brightness meter in accordance with TAPPI specification T-452.

Alternate.—Reflectance, when measured on a spectrophometer, using a matte black backing for one thickness of the test sample, the spectral reflectance characteristics of the paper must fall entirely above the minimum characteristics curve in the range of 3,000 to 10,000 Angstroms as follows: 3000 A., zero reflectance; 3250 A., 14 percent reflectance; 3500 A., 35 percent reflectance; 3750 A., 58 percent reflectance; 4,000 A., 62 percent reflectance; 6,000 A. and up, 69 percent reflectance. (the above curves are normalized to magnesium oxide representing 100 percent reflectance.)

Stiffness (minimum requirement).—Measured on Taber V-5 instrument, 2.5 machine direction, 1.2 cross direction; Gurley instrument, 150 machine direction, 72 cross direction. Grain must be long dimension on the 11" (or 12") depth of the page.

.03 All printing will be in a specified dropout non-read ink; the exact specification to be provided at a later date, except for the '22222' at the top of the form and the descriptive information at the bottom, which will be printed in a non-reflective black ink.

.04 Typography.—Type must be substantially identical in size and shape with corresponding type on the official form.

1. On Copy A, all rules must be 1-point (0.015 inch).

2. Vertical rules must be parallel to the left edge of the document; horizontal rules parallel to the top edge.

.05 Dimensions.—Three official Forms W-2 (Copy A) are contained on a single page whose dimensions are 8 inches wide (exclusive of any snap-stubs) by 11 inches deep.

1. The width of privately printed substitute pages will be a minimum of 7 inches and a maximum of 8 inches, exclusive of any left or right snap-stubs, although adherence to the size of the official page is preferred. If the width of the substitute page is reduced, the width of each field, except the left and right margins and the "For Official Use Only" area on each form on the substitute page must be reduced proportionately. The left and right margin must be a minimum of ¼ inch each and must be free of all printing and the width of the "For Official Use Only" area on each form must be 3 inches.

2. The depth of privately printed substitute forms on a page will be 3⅔ inches. It is permissible to increase the space between the individual forms on a page by ½ inch, provided the total depth of a single pages does not exceed 12 inches.

3. Privately printed continuous substitute Forms W-2 (Copy A), must be perforated at each 11" or 12" (3-on) page depth. No perforations are allowed between the 3⅔" forms on a page of Copies A.

NOTE.—Perforations are required between all the other individual copies (Copy B, C, D, 1 and 2) included in the set. See Exhibit B)

.06 The back of a substitute Copy A must be free of all printing.

.07 Carbonized. "Chemical transfer paper" and "spot carbons" are not permissible. Interleaved carbon, if used, must be of good quality to preclude smudging and should be black.

.08 Printer's symbol—The Government Printing Office symbol must not be placed on substitute copies of Forms W-2 and Forms W-2P. In place of the Government Printing Office symbol, the Employer Identification Number (EIN) of the forms printer must be printed on the face of each individual Copy A.

.01 Arrangement of assembly—Except as provided below, if magnetic tape is not filed with the Service, the substitute copies of the Form W-2 assembly shall be arranged in the same order as the official Form W-2—Copy A first, followed sequentially by perforated sets, (Copies 1, B, C, 2, and D). The substitute form to be filed with the Federal taxing authority and the substitute form to be filed by the payer with the state or local tax agency should carry the designation Copy A and Copy 1, respectively.

1. Copies 1 and 2 related to state and local taxes may be omitted from the assembly if not needed.

2. Copy D for Employer or Payer. It is not required that privately printed substitute forms contain a copy to be retained by payers although payers must be prepared to verify or replicate this information if it is requested by the Service.

3. Additional Copies.—Except as provided in the arrangement of the official assemblies, additional copies which may be prepared by payers shall not be placed ahead of the copy "For employee's records," Copy C (Form W-2). All copies of the form must be clearly labeled to indicate the purpose for which intended.

.02 Instructions on Form W-2—Instructions similar to those contained on the face of Copies A and B, both the face and back of Copy C of the official form must appear on the corresponding copies of substitute Forms W-2.

.03 All privately printed Forms W-2 must have the tax year printed in the identical place as that of the official format.

.04 The paper for all copies should be white. Paper for the substitute form (Copy 1) filed with the state or local agency must be white and at least 18-pound (basis 17 x 22–1000) plus or minus 5 percent. The substitute Copy B (or its equal), the payee is instructed to attach to his Federal income tax return must be at least 24-pound paper (basis 17 x 22–1000), while the other copies furnished the payee should be at least 16-pound paper (basis 17 x 22–1000).

INSTRUCTIONS FOR PAYERS

.01 Only originals or ribbon copies may be filed. Carbon copies and photocopies are not acceptable.

.02 The Service requests the cooperation of the payers in typing or machine printing whenever possible and in providing good quality data entries on the forms; i.e., using black ribbon, inserting data in the middle of blocks, well separated from other printing and guidelines, and taking any other measures that will guarantee a clear, sharp image. However, payers are not required to acquire equipment solely for the purpose of preparing these forms.

.03 Privately printed continuous feed substitute Forms W-2 (Copy A) must be burst and stripped (of marginal aligning strips) to conform to the acceptable minimum and maximum of width and depth of individual page sizes before submission.

.04 Form W-3, "Transmittal of Income and Tax Statements" will continue to be furnished by the Service for transmitting completed Copy A of Forms W-2 to their final destination. However, the Tax Year 1978 Form W-3 will require substantially more filled-in data. Some of the anticipated data fields are: (1) Employers State Number, (2) type of document, (3) originals or corrected, (4) Total FICA Tax Withheld, (5) Total FICA Wages, (6) Total Federal Income Tax Withheld, (7) Total Wages, (8) Number of Documents, (9) Employer Identification Number, (10) Date of Report and other data fields to be determined. (See Exhibit C.)

.05 State agencies.—The amounts of wages paid and employee contributions withheld under a State-Federal Agreement, entered into pursuant to Section 218 of the Social Security Act, may be shown in the spaces on Form W-2 for Federal Insurance Contribution Act Wages and Employee Tax, provided appropriate distinguishing captions are used to identify such amounts. In such cases, the identification number assigned by the Social Security Administration to the state (prefix 69) should be shown in the employer name and address area block. The employer identification number (EIN) assigned by the Internal Revenue Service for income tax withholding purposes must be shown in the block so labeled.

COMMENTS BY THE PUBLIC

Before adopting these proposed revised forms, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying.

DONALD J. PORTER,
Acting Assistant Commissioner of Internal Revenue (Accounts, Collection and Taxpayer Service).

[FR Doc.77-20433 Filed 7-18-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 438]

ASSIGNMENT OF HEARINGS

JULY 14, 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 127042 (Sub-No. 177), Hagen, Inc., now assigned July 14, 1977, at Chicago, Ill., is canceled, application dismissed.

MC 133095 (Sub-No. 125), Texas Continental Express, Inc., now assigned July 19, 1977, at Dallas, Tex., is canceled, application dismissed.

MC 138274 (Sub-No. 40), Shippers Best Express, Inc. now assigned July 20, 1977 at Washington, D.C. is canceled, application dismissed.

MC 107993 (Sub-No. 49), J. J. Willis Trucking Co., now assigned September 14, 1977, at Los Angeles, Calif., is canceled and reassigned for hearing on September 20, 1977 (2 days), at San Francisco, Calif., location of hearing room to be later designated.

MC 136828 (Sub-No. 14), Cook Transport, Inc., now being assigned September 6, 1977, for hearing at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 115730 (Sub-No. 23), The Mickow Corp., now assigned July 14, 1977, in Dallas, Tex., is canceled and application dismissed.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-20706 Filed 7-18-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JULY 14, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed by August 3, 1977.

FSA No. 43398—*Fibreboard, paperboard, and pulpboard to Group 19 (Los Angeles, Calif.)*. Filed by Pacific Southcoast Freight Bureau, Agent (No. 273), for interested rail carriers. Rates on fibreboard, paperboard, and pulpboard, in carloads, as described in the application, from Group 60 (Port Townsend) and Group 61 (Port Angeles), Washington, to Group 19 (Los Angeles, Calif.), on the Union Pacific railroad.

Grounds for relief—Market competition and rate relationship.

Tariff—Supplement 49 to Pacific Southcoast Freight Bureau, Agent, tariff 315-A, ICC No. 1974. Rates are published to become effective on August 14, 1977.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-20703 Filed 7-18-77;8:45 am]

[Section 5a Application No. 62 (Amendment No. 2)]

INTERMOUNTAIN TARIFF BUREAU, INC.

Agreement

JULY 7, 1977.

The Commission is in receipt of an application in the above-entitled proceeding for approval of amendments to the agreement therein approved.

Filed July 1, 1977 by:

Thomas M. Zarr, Nelson, Harding, Richards, Leonard & Tate, P.O. Box 2465, Salt Lake City, Utah 84110. (Attorney for Applicants.)

Collier L. Allen, Intermountain Tariff Bureau, Inc., P.O. Box 686, Salt Lake City, Utah 84110. (General Manager and Attorney-in-Fact.)

The Amendments involve: (1) Broadening the present 11 western state territorial scope by 17 additional states as folows: Alaska, Arkansas, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin and also between points in such states and points in Canada, insofar as movement takes place in the United States; (2) Substantive organizational and procedural changes including provisions to comply with Ex Parte No. 297, Rate Bureau Investigation, 349 I.C.C. 811 and 351 I.C.C. 437; (3) Revise the member participation fees; and (4) make other incidental organizational and procedural changes for clarification or made necessary by the foregoing changes.

The complete application may be inspected at the Office of the Commission, in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing within 30 days from the date of publication of this notice in the FEDERAL REGISTER. As provided by the General Rules of Practice of the Commission, persons other than applicants should fully disclose their interest and the position they intend to take with respect to the application. Otherwise, the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing.

H. G. Homme, Jr.,
Acting Secretary.

APPENDIX

Operating rights as modified and authorized to be acquired by Marlboro Transportation Co., Inc., are as follows:

Irregular routes: Passengers and their baggage in the same vehicle with passengers, in special operations, in nonscheduled service, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver thereof and not including children under 10 years of age who do not occupy a seat or seats, Between King of Prussia, Fort Washington and Willow Grove, Pa., on the one hand, and, on the other, New York, N.Y. Restriction: The authority granted above is restricted against service to or from John F. Kennedy International Airport and is also restricted against the transportation of persons having an immediately prior or immediately subsequent movement by water.

[FR Doc.77-20704 Filed 7-18-77;8:45 am]

[Notice No. 83T]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 13, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 13569 (Sub-No. 32TA), filed June 29, 1977. Applicant: THE LAKE SHORE MOTOR FREIGHT COMPANY,

1200 South State Street, Girard, Ohio 44420. Applicant's represetntative: John P. Tynan, P.O. Box 1409, 167 Fairfield Road, Fairfield, N. J. 07006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum sheet or strip*, between the plant site of Matthiessen & Hegeler Zinc Company at or near LaSalle, Ill., and the plant site of Ekco Products, Inc., at or near Clayton, N. J., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper Matthiessen & Hegeler Zinc Company, P. O. Box 463, 1375 Ninth Street, LaSalle, Ill. 61301. Send Protests to: James Johnson, District Supervisor, Interstate Commerce Commission,731 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 28060 (Sub-No. 37TA), filed June 27, 1977. Applicant: WILLER'S INC., doing business as WILLERS TRUCK SERVICE, 1400 North Cliff Avenue, Sioux Falls, S. Dak. 57101. Applicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Rd., N.E., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, ver irregular routes, transporting *Corn cribe, grain or feed bins and watering troughs*, from Sioux Falls, S. Dak., to points in Montana, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sioux Steel Company, 196½ East Sixth St., Sioux Falls, S. Dak. 57101. Terril TeSlaa, Traffic Manager. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, S. Dak. 57501.

No. MC 51146 (Sub-No. 507TA), filed June 29, 1977. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, Wis. 54304. Applicant's representative: Neil A. DuJardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clothing on hangers, and miscellaneous department store merchandise in cartons*, from Secaucus, N.J., to Columbus, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lazarus Stores, Columbus, Ohio 43206 (Jack Hessenauer). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wis. 53202.

No. MC 63417 (Sub-No. 105TA), filed June 29, 1977. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 13447, Roanoke, Va. 24034. Applicant's representative: William E. Bain (same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Incandescent bulbs*, from Cleveland, Ohio, to Newark, N.J.; (2) *Packaging material* for commodities in (1) above, from Newark, N.J., to Cleveland, Ohio, for 180 days. Supporting shipper: General Electric, 4504 Nela Park, Cleveland, Ohio 44112. Send protests to: Danny R. Beller, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoka, Va. 24011.

No. MC 82658 (Sub-No. 8TA), filed June 30, 1977. Applicant: ECONOMY FREIGHT LINES, INC., 6357 N. Normandy Avenue, Chicago, Ill. 60631. Applicant's representative: Donald S. Mullins, 4704 W. Irving Park Road, Chicago, Ill. 60641. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass bottles*, from Streator, Ill., to the plantsite of G. Heileman Brewing Company, Inc., at La Crosse, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: G. Heileman Brewing Company, Inc., George A. Dahnke, Traffic Manager, 925 S. Third Street, La Crosse, Wis. 54601. Send protests to: Transportation Assistant Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1386, Chicago, Ill. 60604.

No. MC 106674 (Sub-No. 241 TA), filed June 27, 1977. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, Ind. 47977. Applicant's representative: Linda J. Sundy, P.O. Box 123, Remington, Ind. 47977. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building and roofing materials* (except iron and steel articles and commodities in bulk), from the plantsite and warehouse facilities of GAF Corporation at Joliet, Ill., to points in the Lower Peninsula of Michigan, Restricted to the transportation of traffic originating at the above named origin and destined to the lower peninsula of Michigan, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: GAF Corporation 1361 Alps Rd., Wayne, N.J. 07470. Send protests to: J.H. Gray, District Supervisor, Interstate Commerce Commission, 343 West Sayne St., Suite 113, Fort Wayne, Ind. 46802.

No. MC 107515 (Sub-No. 1035TA), filed June 28, 1977. Applicant: REFRIGERATED TRANSPORT CO., INC., 3901 Jonesboro Rd., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Rd. N.E., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpet and tufted textile products*, from Dalton, Ga. to points in Kansas, Missouri, Nebraska and that portion of Iowa on and west of U.S. Highway 59, for 180 days. Supporting shipper: World Carpet, P.O. Box 1448, Dalton, Ga. 30720. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W. Rm. 546, Atlanta, Ga. 30309.

No. MC 110252 (Sub-No. 64TA), filed June 24, 1977. Applicant: JAMES J. WILLIAMS, INC., E. 5711 Third Avenue, Spokane, Wash. 99206. Applicant's representative: John D. Robertson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible flour*, From Spokane, Wash., to Lewiston, Idaho, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Centennial Mills Division of Univar, 1464 N.W. Front Ave., P.O. Box 3773, Portland, Oreg. 97208. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Building, Seattle, Wash. 98174.

No. MC 112520 (Sub-No. 342TA), filed June 22, 1977. Applicant: MCKENZIE TANK LINES, INC., P.O. Box 1200, 122 Appleyard Drive, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paints, varnishes, lacquers, resins, stains, and paint material*, in bulk, in tank vehicles, from Covington, Ga., to points in Cheraw, S.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mobil Chemical Co., Division of Mobil Oil Corp., 1024 South Avenue, Plainfield, N.J. 07062. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 112822 (Sub-No. 420TA), filed June 28, 1977. Applicant: BRAY LINES, INCORPORATED, 1401 N. Little, P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Charles D. Midkiff (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from Duluth, Minn. and Superior, Wis., to points in Colorado, restricted to the transportation of traffic originating at the plantsite and warehouse facilities of Jeno's, Inc., located at or near Duluth, Minn. and Superior, Wis. for 180 days. Supporting shipper: Jeno's, Inc., 525 Lake Ave., S. Duluth, Minn. 55802. Send protests to: District Supervisor Joe Green, Rm. 240, Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 113622 (Sub-No. 18TA), filed June 28, 1977. Applicant: SAMPSON HAULING CORP., Pavilion, N.Y. 14525. Applicant's representative: Kenneth T. Johnson, Bankers Trust Building, Jamestown, N.Y. 14701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *RIP-RAP*, from Middlebury Cen-

ter, Pa., and points within ten (10 miles thereof to all points and places in Steuben County, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Potter-DeWitt, Inc., Pavilion, N.Y. 14525. Send protests to: George M. Parker, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 910 Federal Building, 111 West Huron Street, Buffalo, N.Y. 14202.

No. MC 115092 (Sub-No. 62TA), filed June 24, 1977. Applicant: TOMAHAWK TRUCKING, INC. a Colorado corporation, P.O. Box O, Vernal, Utah 84078. Applicant's representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, Ill. 60174. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Montmorillonite clay* in bags, from the facilities of Industrial Mineral Ventures, Inc., near Lathrop Wells, Nev., to points in Arkansas, Colorado, Idaho, Illinois, Kansas Louisiana Minnesota, Mississippi, Missouri Montana, Nebrasks, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma Oregon, Texas, Washington, Wisconsin Wyoming and Utah (except Salt Lake City and 40 miles thereof). for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Industrial Mineral Ventures, Inc., 5920 McIntyre St., Golden, Colo. 80401. Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State St., Salt Lake City, Utah 84138.

No. MC 117068 (Sub-No. 81TA), filed June 23, 1977. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, North Highway 63, Rochester, Minn. 55901. Applicant's representative: Mr. A. I. Koenig (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Enameled steel silos, loading and unloading devices, waste storage tanks, livestock feed bunkers, forage metering devices, animal waste spreader tanks, livestock feeding systems, and parts and accessories* for the above named commodities from DeKalb and Eureka, Ill., to points in New York and Pennsylvania, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: A. O. Smith Corporation, P.O. Box 584, Milwaukee, Wis. 53201. Send protests to: Mrs. Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 117119 (Sub-No. 637TA), filed June 15, 1977. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: L. M. McLean (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Borden Foods, Division of Borden, Inc., at Wellsboro, Pa., to points in Oregon, Utah, and Washington, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Borden Foods, Division of Borden, Inc., 180 East Broad Street, Columbus, Ohio 43215. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 117119 (Sub-No. 638TA), filed June 20, 1977. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: Martin M. Geffon, P.O. Box 338, Willingboro, N.J. 08046. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as dealt in retail sewing centers, from Trumann, Ark.; to Albuquerque, N. Mex.; Denver, Colo.; Des Moines, Iowa; Los Angeles, Calif.; Minneapolis, Minn.; Phoenix, Ariz.; Portland, Oreg.; San Francisco, Calif.; and Seattle, Wash.; for 180 days. Supporting shipper: The Singer Company, 313 Underhill Blvd., Syossett, N.Y. 11791. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 117119 (Sub-No. 644TA), filed June 27, 1977. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: Gerald K. Gimmel, Suite 145, 4 Professional Drive, Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning and washing compounds, oven cleaners, sodium bicarbonate and sal soda* (except in bulk), from the plantsite and storage facilities of Church & Dwight Co., Inc., in Syracuse, N.Y.; to points in Colorado, Idaho, Montana, New Mexico, North Dakota, South Dakota, Utah & Wyoming, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days or operating authority. Supporting shipper: Church & Dwight Co., Inc., P.O. Box 369, Piscataway, N.J. 08554. Send protests to: District Supervisor William H. Land, Jr. 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 118831 (Sub-No. 151TA), filed June 28, 1977. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, N.C. 27264. Applicant's representative: Earlie O. Jones (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles and hopper-type trucks, from the plant site of Tennessee Eastman Company, Kingsport, Tennessee, to points in the U.S. in and east of Minnesota, Iowa, Nebraska, Kansas, Oklahoma and Texas. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tennessee Eastman Company, P.O. Box 511, Kingsport, Tenn. 37622. Send protests to: Archie W. Andrews, Dist. Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 120279 (Sub-No. 8TA), filed June 27, 1977. Applicant: McFARLAND AND HULLINGER, a Utah limited Partnership, 915 North Main St., P.O. Box 238, Tooele, Utah 84074. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unanium and vanadium ores or concentrates*, from the Waltman Mine located 1½ miles east of U.S. Highway 395 at a point 35 miles north of Reno, Nev. in Lassen County, Calif. to the Cotter Corporation Mill located approximately 4 miles south of Canon City, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: UOCO, Inc., 304 First Security Building, Salt Lake City, Utah 8311. Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, 5301 Federal Building, 125 South State St., Salt Lake City, Utah 84138.

No. MC 124813 (Sub-No. 175TA), filed June 22, 1977. Applicant: UMTHUN TRUCKING CO., 910 South Jackson St., P.O. Box 166, Eagle Grove, Iowa 50533. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Phosphatic feed ingredients*, (1) from Mediapolis, Iowa to points in Illinois, Indiana, Iowa, Kentucky, Ohio, Arkansas, Oklahoma and Michigan, and (2) from Eagle Grove, Iowa to points in Iowa, Kentucky, Ohio, Arkansas, Oklahoma and Michigan. Restriction: Restricted to traffic having a prior movement by rail for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Occidental Chemical Company, P.O. Box 1185, Houston, Tex. 77001. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 125433 (Sub-No. 103TA), filed June 23, 1977. Applicant: F-B TRUCK LINE COMPANY, a Utah corporation, 1945 South Redwood Rd., Salt Lake City, Utah 84104. Applicant's representative: Michael J. Norton, Suite 404, Boston Bldg., P.O. Box 2135, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled vehicles* under 15,000 lbs. used in farming or agricultural operation, (except automobiles, buses, and trucks as described by the ICC), from Portland,

Oreg., to California points and points in Oregon south of the 44th parallel, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Deere Company, 2100 NE (181st. Ave. Portland, Oreg. 97220. Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State St., Salt Lake City, Utah 84138.

No. MC 125433 (Sub-No. 104TA), filed June 23, 1977. Applicant: F-B TRUCK LINE COMPANY, a Utah corporation, 1945 South Redwood Rd., Salt Lake City, Utah 84104. Applicant's representative David J. Lister (same address as applicant), Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Montmorillonite clay* in bags, from the facilities of Industrial Mineral Ventures, Inc., near Lathrop Wells, Nev., to points in Arkansas, Colorado, Idaho, Illinois, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Texas, Utah (except Salt Lake City and 40 miles thereof), Washington, and Wyoming, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Industrial Mineral Ventures, Inc., 5920 McIntyre St., Golden, Colo. 80401. Send protests to: District Supervisor, Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State St., Salt Lake City, Utah 84138.

No. MC 127303 (Sub-No. 24TA), filed June 27, 1977. Applicant: ZELLMER TRUCK LINES, Box 343, Granville, Ill. 61326. Applicant's representative: E. Stephen Heisley, Suite 805, 666 11th St. N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials, equipment and supplies*, from St. Paul, Minn. to Paducah, Ky. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chief Paduke Dist. Co. Inc., George G. Jacobs, President, Corner of 12th and Flournoy St., Paducah, Ky. Send protests to: Transportation Assistant Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 129063 (Sub-No. 13TA), filed June 23, 1977. Applicant: JIMMY T. WOOD, P.O. Box 294, Route 6, Ripley, Tenn. 38063. Applicant's representative: Mr. Thomas A. Stroud, 5100 Poplar, Suite 2008, Memphis, Tenn. 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferro alloys* in dump vehicles, from the plantsite and facilities of Chromium Mining & Smelting Corp., located at or near Woodstock, Tenn., to points in the United States (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chromium Mining & Smelting Corp., P.O. Box 28538, Memphis, Tenn 38128. Send protests to. Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main St., 100 North Main Building, Suite 2006, Memphis, Tenn. 38103.

No. MC 133221 (Sub-No. 26TA), filed June 28, 1977. Applicant: OVERLAND CO., INC., 1991 Buford Highway, Lawrenceville, Ga. 30245. Applicant's representative: Alvin Button, 2477 N. Decatur Rd., Decatur, Ga. 30033. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ridgid polystyrene*, from the Southeastern Foam Products, Inc. plantsites at Conyers, Ga.; Adamstown, Md.; Bargersville, Ind.; Burlington, N.C.; Elkhorn, Wis.; Foglesville, Pa.; Jonesboro, Tenn.; New Middletown, Ohio; Ocala, Fla.; Petersburg, Va.; Wentzville, Mo. to points in the U.S. (except Alaska and Hawaii) for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southeastern Foam Products, P.O. Box 406, Conyers, Ga. 30207. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 135082 (Sub-No. 48TA), filed June 28, 1977. Applicant: BURSCH TRUCKING, INC., doing business as, ROADRUNNER TRUCKING, INC., Post Office Box 26748, 415 Rankin Rd. N.E., Albuquerque, N. Mex. 87125. Applicant's representative: D. F. Jones, President (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum, gypsum products and materials, and accessories* used in the installation thereof, from Rosario, N. Mex., to points in the States of Arizona, Colorado, Wyoming, Nebraska, and Kansas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Western Gypsum Company, Rosario, N. Mex. 87501, Pete Wupper, Manager. Send protests to: Darrell W. Hammonds, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Ave. SW, Albuquerque, N. Mex. 87101.

No. MC 135236 (Sub-No. 20TA), filed June 23, 1977. Applicant: LOGAN TRUCKING, INC., 801 Erie Avenue, Logansport, Ind. 46947. Applicant's representative: Donald W. Smith, One Indiana Square, Suite 2456, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Norfolk, Va., to points in Illinois, Indiana, Michigan, Wisconsin, Ohio and Arkansas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Champale, Inc., Trenton, N.J. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, Ind. 46802.

No. MC 135797 (Sub-No. 79TA), filed June 28, 1977. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, U.S. Hwy 71, Lowell, Ark. 72745. Applicant's representative: Paul A. Maestri (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Polystyrene food containers*, from the warehouse facilities utilized by Mobil Chemical Company, located at or near Dallas-Fort Worth, Tex., Metropolitan Zone, to Denver, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mobil Oil Corporation, 8350 N. Central Expressway, Suite 522, Dallas, Tex. 75206. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 136220 (Sub-No. 43TA), filed June 24, 1977. Applicant: ROY SULLIVAN, doing business as SULLIVAN TRUCKING CO., P.O. Box 2164, Ponca City, Okla. 74601. Applicant's representative: G. Timothy Armstrong, 6161 N. May Avenue, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fish meal* (in bulk, in open top dump trailers), from Empire, La., to Dardanelle, Fayetteville, Ft. Smith, Batesville, Springdale, Hope, North Little Rock, and Nashville, Ark., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority, Supporting shipper: Wilbur-Ellis Co., 1000 Plaza West Bldg., Little Rock, Ark. 72207. Send protests to: District Supervisor Joe Green, Rm. 240, Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 138742 (Sub-No. 9TA), filed June 28, 1977. Applicant: OSTERKAMP TRUCKING, INC., 1049 N. Glassell, Orange, Calif. 92667. Applicant's representative: Michael Eggleton, 67 Lakstone Court, Danville, Calif. 94526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated fibre cartons*, from the plantsite of Western Kraft Paper Group, Division of Willammette Industries, at Compton, Calif., to points in Saguache, Rio Grande, Alamosa Counties, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Western Kraft Paper Group, Division of Willammette Industries, Inc., 19615 South Susana Rd., Compton, Calif. 90221. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Rm. 1321 Federal Building, 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 140176 (Sub-No. 7TA), filed June 28, 1977. Applicant: RILEY WAYNE POWELL, doing business as POWELL TRUCKING COMPANY, Route 3, Box 13, Sumrall, Miss. 39482. Applicant's representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, Miss. 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Posts, poles and piling, treated or untreated*, from the facilities of Crown Zellerbach Corporation at Gulfport, Miss., and Mobile, Ala., to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Pennsylvania, and Wisconsin, under a continuing contract or contracts with Crown Zellerbach Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Crown Zellerbach Corporation, P.O. Box 1060, Bogalusa, La. 70427. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Rm. 212, 145 East Amite Building, Jackson, Miss. 39201.

No. MC 140452 (Sub-No. 5TA), filed June 22, 1977. Applicant: ROSE BROTHERS TRUCKING, INC., R.R. 31, Box 9, Terre Haute, Ind. 47803. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fertilizer and cullet*, from the Owensboro Riverport Authority at Owensboro, Ky., to Terre Haute, Ind., and (2) Salt, from the Owensboro Riverport Authority at Owensboro, Ky., to points in Indiana, on and south of U.S. Highway 40 and points in Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Owensboro Riverport Authority, P.O. Box 711, Owensboro, Ky. 42301. Send protests to: William S. Ennis, Interstate Commerce Commission, Federal Bldg. and U.S. Courthouse, 46 East Ohio St., Rm. 429 Indianapolis, Ind. 46204.

No. MC 140612 (Sub-No. 21TA), filed June 24, 1977. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, Iowa 52406. Applicant's representative: J. L. Kazimour (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty containers and closures*, from San Diego, Calif., to Davenport, Iowa and points in the Commercial Zones of Milan, and Rock Island, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63188. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 140682 (Sub-No. 3TA), filed June 22, 1977. Applicant: NEW (TRANS) PORT, INC., P.O. Box 188, US Highway 17 South, Riceboro, Ga. 31323. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Brooklet and Riceboro, Ga., to points in Florida, Alabama, North Carolina, and South Carolina, under a continuing contract, or contracts, with Amax Forest Products, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amax Forest Products, Box 268, Riceboro, Ga. 31323. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 141728 (Sub-No. 4TA), filed June 23, 1977. Applicant: WILMINGTON CORP., Northern Industrial Park, Wilmington, Mass. 01887. Applicant's representative: Donna Vitter Plott, 1 Center Plaza, Boston, Mass. 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are sold or used in retail stores (except commodities in bulk and commodities requiring the use of special equipment) for the account of Edison Brothers Stores, Inc. and its subsidiaries, between facilities owned or utilized by Edison Brothers Stores, Inc. and its subsidiaries in Wilmington, Mass., St. Louis, Mo., and Hoboken, N.J., under a continuing contract with Edison Brothers Stores, Inc. Applicant intends to tack authority applied for to authority in MC 141728 (Sub-No. 2) for 180 days. Supporting shipper: Edison Brothers Stores, Inc., 400 Washington Ave., St. Louis, Mo. 63178. Send protests to: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway St., Boston, Mass. 02114.

No. MC 141914 (Sub-No. 11TA), filed June 20, 1977. Applicant: FRANKS & SON, INC., P.O. Box 108A, Route 1, Big Cabin, Okla. 74332. Applicant's representative: Gary Brasel, Mezzanine Floor, Beacon Bldg., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Water* (not in bulk), and *return bottling machinery, glass bottles, plastic bottles, plastic pouches* to be filled with water, *corrugated cardboard, styrofoam, bottle caps, bottle seals, returned wood or plastic pallets, advertising and promotional material, machine repair parts, steel banding material* for palletizing purposes, *printed labels and any other items* used in the bottling and distribution of water, between Poland Spring, Maine, and all points in the U.S. (except Hawaii and Alaska), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Poland Spring Bottling Co., P.O. Box 19628, Las Vegas, Nev. 89119. Send protests to: District Supervisor Joe Green, Rm. 240, Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 143282 (Sub-No. 1TA), June 28, 1977. Applicant: EDWIN KRELL, doing business as KRELL TRUCK SERVICE, Plankinton, S. Dak. 57368. Applicant's representative: Edwin Krell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Carpet*, from Dalton, Eton, Chatsworth, Calhoun, Elijay, and Cartersville, Ga., to Plankinton, South Dakota, (2) *carpet accessories and supplies*, from Piqua, Ohio, to Plankinton, S. Dak., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Centennial Carpet, Inc., 209 North Main, Plankinton, S. Dak. 57368, Richard Cazer. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 455, Federal Building, Pierre, S. Dak. 57501.

No. MC 143338 (Sub-No. 1TA), filed June 23, 1977. Applicant: MAURICE GULLEMETTE, INC., St. Gregoire, Nicolet County, Quebec, Canada. Applicant's representative: Robert D. Schuler, 100 West Long Lake Rd., Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dog or cat food*, in cans or packages, from ports of entry on the International Boundary Line, between the United States and Canada on the St. Clair River to points in Michigan, (2) *inedible meat and by-products of meat*, from Plainwell, Mich. to ports of entry on the International Boundary Line between the United States and Canada on the St. Clair River. Restricted in paragraph 1 and 2 above to shipments originating at or destined to points in Canada, under a continuing contract or contracts with Jean Demers, Inc. of Gentilly, Quebec, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jean Demers, Inc., CP 150, Gentilly, Quebec, Canada GOX 1GO. Send protests to: District Supervisor David A. Demers, Interstate Commerce Commission, P.O. Box 548, 87 State St., Montpelier, Vt. 05602.

No. MC 143389TA, filed June 16, 1977. Applicant: MERCHANTS DUTCH EXPRESS, INC., P.O. Box 2525, 700 Pine St., Monroe, La. 71207. Applicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Rd. N.E., Atlanta, Ga. 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail discount stores, between Monroe, La. on the one hand, and, on the other, points in Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Texas, Oklahoma, Virginia, Missouri, Indiana, Illinois, North Carolina,

South Carolina, Ohio, and West Virginia, service to be performed under a contract or continuing contracts with Howard Bros. Discount Stores, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Howard Bros. Discount Stores, Inc., 801 Riverbarge, Monroe, La. 71202. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 143393TA, June 28, 1977. Applicant: C. C. ROBERTS CONCRETE CONSTRUCTION CO., INC., 3725 Gibbon Rd., Charlotte, N.C. 28213. Applicant's representative: Ralph McDonald, P.O. Box 2246, Raleigh, N.C. 27602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feed ingredients* in bulk in dump vehicles, from Gaston County, N.C.; to Sumter County, S.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority Supporting shipper: Carolina By-Products Company, Inc. P.O. Drawer 20687, Greensboro, N.C. 27420. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, 800 Briar Creek Rd., Mart Office Bldg., Rm. CC-516, Charlotte, N.C. 28205.

No. MC 143400 (Sub-No. 1TA), filed June 24, 1977. Applicant: NEIL J. MONAHAN AND LEILANI A. MONAHAN, doing business as MONAHAN TRANSPORTATION, Route 4, Box 305 Winona, Minn. 55987. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in packages, from Winona, Minn., to points in Wisconsin, under a continuing contract with Diamond Crystal Salt Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Diamond Crystal Salt Company, 916 S. Riverside Ave., St. Clair, Mich. 48079. Send portests to: Mrs. Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Couurt House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 143407 (Sub-No. 1TA), June 28, 1977. Applicant: MODERN TRANSPORT, INC., 30127 Austin, Warren, Mich. 48092. Applicant's representative: William B. Elmer, 21635 E. Nine Mile Rd., St. Clair Shores, Mich. 48080. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silica sand*, in bulk, in dump vehicles, from Rockwood, Mich., to Columbus, Toledo and Lancaster Ohio, for 180 days. Supporting shipper: Ottawa Silica Company, Richard Lawrence, Director of Physical Distribution, P.O. Box 577, Ottawa, Ill. Send protests to: Interstate Commerce Commission, Bureau of Operations, 604 Federal Building & U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, Mich. 48226.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-20705 Filed 7-18-77;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).

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1

CIVIL AERONAUTICS BOARD.

ADDITION OF ITEM TO JULY 15, 1977 MEETING AGENDA

REVISED AGENDA

TIME AND DATE: 10 a.m., July 15, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 1. Ratifications of Items Adopted by Notation.[1] 2. Docket 28915, Complaint of the City of Youngstown, Ohio regarding adequacy of service provided by Allegheny Airlines, Inc., Docket 28944, Application of Allegheny Airlines to delete Youngstown, Ohio and Docket 29085, Application of Alleghney Airlines for temporary suspension of service at Youngstown, Ohio. 3. Dockets 31053, 31054, 31055, 31058 "SimpleSaver" fares proposed by Allegheny.

STATUS: Open.

PERSON TO CONTACT:

Phillis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: On June 9, 1977, Allegheny filed a tariff proposing certain discount "SimpleSaver" fares in nine markets with a proposed effective date of July 15, 1977. Complaints and answers were filed by July 6, 1977. The Board's staff analyzed the tariff filing, the complaints and answers thereto and all other relevant matters and submitted a request for instructions to the Board on July 12, 1977. On July 13, 1977, Allegheny requested and received oral permission to postpone the proposed effective date of its tariff until July 22, 1977. If the Board desires to suspend the tariff pending investigation, then it must act by July 21, 1977, or lose the authority to do so under Section 1002(g) of the Federol Aviation Act of 1958. Because of the importance and complexity of the issues involved, and in order to give the Board sufficient time to consider the matter and instruct its staff to prepare an order implementing the Board's decision, it is the Board's view that it should meet to begin its consideration of this matter at the earliest possible time. Accordingly, the following Members have voted that agency business requires that this matter be added to the agenda for the Board's July 15, 1977, meeting and that no earlier announcement of the change was possible:

Chairman Alfred E. Kahn
Vice Chairman Richard J. O'Melia
Member G. Joseph Minetti

Member Lee R. West was not present and did not vote.

[S-918-77 Filed 7-15-77;9:35 am]

[1] The ratification process provides an entry in the Board's Minutes of items already adopted by the Board through the written Notation process (memoranda circulated to the Members sequentially). A list of items ratified at this meeting will be available in the Board's Public Reference Room (Room 710, 1825 Connecticut Avenue NW., Washington, D.C. 20428) following the meeting.

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, July 19, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

CHANGES IN THE MEETING: The following agenda item should be deleted:

Agenda, Item No., and Subject

Special—2—Briefing in International Telecommunications Proposals.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number 202-632-7260.

Issued: July 14, 1977.

[S-928-77 Filed 7-15-77;2:17 pm]

3

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, July 21, 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 for July 7, 1977.
III. Advisory opinions: AO 1977-16; AO1977-26; AO 1977-30.
IV. Policy memorandum on candidate status:
V. Appropriations and budget.
VI. Pending legislation.
VII. Liaison with other Federal agencies.
VIII. Report on pending litigation.
IX. Routine administrative matters.

Portions closed to the public: (Executive Session): Compliance; Personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-915-77 Filed 7-14-77;3:42 pm]

4

FEDERAL POWER COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published July 18, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 20, 1977, 10 a.m.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

P-11.—ER-77-487, Toledo Edison Company.
G-13.—RP73-107, RP74-90, and RP75-91, Consolidated Gas Supply Corporation.
G-14.—RP74-20 and RP74-83, United Gas Pipe Line Company.
G-15.—RP77-18, El Paso Natural Gas Company.
G-16.—RI76-35 and CI76-804, Continental Oil Company; RI76-51 and CI76-805, Cities Service Oil Company; RI76-42 and CI76-802, Getty Oil Company.
G-17.—CI77- , Gulf Oil Corporation.
G-18.—CI77-93, Monsanto Company, et al.
G-19.—CP71-68, Columbia LNG Corporation. CP71-153, Consolidated System LNG Company. CP71-151, Southern Energy Company.
G-20.—CP75-295, Texas Gas Transmission Corporation.
G-21.—CP74-322, Michigan Gas Storage Company; CP75-3, Trunkline Gas Company; CI74-738, Northern Michigan Exploration Company.

G-22.—RP77-103, Algonquin Gas Transmission Company.

KENNETH F. PLUMB,
Secretary.

[S-917-77 Filed 7-15-77;9:35 am]

5

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: Beginning at 9 a.m., July 28, 1977, and adjourning 12 noon, July 29, 1977.

PLACE: 1400 Walnut Street, Vicksburg, Mississippi.

STATUS: Open to the public for observation but not for participation.

MATTERS TO BE CONSIDERED:

Reports of the Commission staff on:

(1) Current river conditions;
(2) Inspection of the east shoreline of the Mississippi River south of Mayfield Creek, Kentucky;
(3) Inspection of the west bank of the Mississippi River near the SEMO grain elevator in Missouri;
(4) Marking dikes in the Mississippi River;
(5) Ground cover for levees and berms;
(6) Shaping of spoil banks and drainage of borrow pits;
(7) Drop structures and welts in streams;
(8) Upper Pointe Coupe Flood Control Project;
(9) Incorporation of the East Bank Levee below Pointe-a-la-Hache into the Mississippi River Levee system;
(10) Inspection of the riverbank near River Ridge, Louisiana, with regard to high-water mark and Corps of Engineers' jurisdiction;
(11) Mitigation report for Tensas-Cocodrie Pumping Plant in Louisiana.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rodger D. Harris, telephone 601-636-1311, extension 2705.

[S-919-77 Filed 7-5-77;9:35 am]

6

PAROLE COMMISSION.

TIME AND DATE: Tuesday, July 26, 1977, 9 a.m.

PLACE: U.S. Tax Court, 400 2nd St. N.W., Washington, D.C., Ceremonial Courtroom, 3rd floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Consideration by the Commission of approximately 20 cases determined to be Original Jurisdiction pursuant to a reference under 28 CFR § 2.17 and/or appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Case Analyst, 202-724-3094.

[S-920-77 Filed 7-15-77;11:29 am]

7

PAROLE COMMISSION.

TIME AND DATE: Wednesday, July 27, 1977, at 9 a.m.

PLACE: U.S. Tax Court, 400 2nd St. NW., Washington, D.C., Ceremonial Courtroom, 3rd floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of closed meetings of May 27 and June 23, 1977.
2. Consideration and approval or further modification of fiscal year 1979 budget submission for Office of Management and Budget and the Congress; and for such other elements of fiscal planning and action as may be required including any remaining open items connected with the 1978 supplemental budget.
3. Consideration of internal personnel rules, practices and policies as impacting on specific employees.
4. Consideration of two applications for exemptions from a bar imposed by 29 U.S.C. 1111 against the employment of applicants by certain employee benefit plans; following hearings held pursuant to the Administrative Procedures Act and recommended decisions based thereon and/or no objection from the Labor Department to granting the exemption.

CONTACT PERSON FOR MORE INFORMATION:

Peter B. Hoffman, 202-724-3097.

[S-921-77 Filed 7-15-77;11:29 am]

8

PAROLE COMMISSION.

TIME AND DATE: Thursday, July 28, 1977, 9 a.m.

PLACE: U.S. Tax Court, 400 2nd St. NW., Washington, D.C., Ceremonial Courtroom, 3rd floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open meeting held on May 25, 1977 and adjourned to the morning of May 27, 1977.
2. Consideration of public comment for following proposed amendments to rules in 28 CFR Part 2:
a. § 2.54(b)—Allowing review of any decision by the full Commission.
b. § 2.25—Expanding upon present grounds for administrative appeals and directing appellants to merits of case.
c. Sections regarding holding hearings—Holding hearings and setting presumptive release dates within 120 days of each inmate's confinement.
3. Revision of greatest severity guideline category to provide subcategories.
4. Revision of 28 CFR Sec. 2.1(c)(d) to designate Vice Chairman as Chairman of the NAB and the National Commissioners.
5. Original Jurisdiction Cases.
a. Clarification of procedure for reopening such cases.
b. Clarification of procedure for designating and declassifying such cases.
c. Suggested referral format—general.
6. Referrals under 28 CFR 2.24.
a. Suggested referral format—general.
b. Procedure regarding referral of revocations and preparation of Notices of Action.
7. New offense severity table—proposed prospective or retroactive application.
8. Clarify procedures and Commission action to be taken regarding misconduct reports.
9. Procedures regarding service of summonses.
10. Proposed unified disclosure system as a new Alternate Means of Access under the Privacy Act and related statutes.
11. Consideration of Bureau of Prisons Drug Abuse In-Care and Aftercare manuals and commentary.
12. Reporting to Commission meetings by Commissioners.
13. Develop policy for attendance by Commissioners at professional meetings.
14. Issuance of subpoenas for certain appearances of probation officers.
15. Consideration of request for release of data tape.
16. Statistical Report.
17. Specificity of reasons for decisions outside of the guidelines.
18. Legal Report.
19. Legal Assistance proposed to be provided by law students.
20. Meetings—Consideration of location and costs.
21. Use of covering letters with Commission correspondence.
22. *Supplemental Warrants.* Proposal to discontinue sending applications for supplemental warrants to the FBI.
23. *Lists of intelligence personnel.* Proposal to exchange such lists for information purposes with Department of Justice.
24. *Original Jurisdiction references.* Proposal to contact Department of Justice when certain cases are referred, and to set up employee coferences with the Department.
25. *Waiver.* Proposed waiver of hearing at the ⅔ point in serving a sentence.
26. *Modification of sentence.* Proposal to oppose any such modifications made after the 120 day period provided by Court Rules.

CONTACT PERSON FOR MORE INFORMATION:

Peter B. Hoffman, 202-724-3097.

[S-922-77 Filed 7-15-77;11:29 am]

9

RAILROAD RETIREMENT BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 36067, July 13, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., July 20, 1977.

CHANGES IN THE MEETING:

Additional item to be considered at the portion of the meeting open to the public:

(15) Effect of vacancies in Board Member positions on the authority of the Board.

[S-914-77 Filed 7-14-77;12:48 pm]

10

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 36073, July 13, 1977.

PREVIOUS ANNOUNCED TIME AND DATE: July 14, 1977, 10 a.m.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

STATUS: Closed meeting.

CHANGES IN THE MEETING:

An additional item was considered by the Commission at the closed meeting regarding the impact on securities market of the New York City blackout.

Chairman Williams, Commissioners Loomis, Evans, and Pollack determined that Commission business required consideration of the matter and that no earlier notice thereof was possible.

JULY 14, 1977.

[S-916-77 Filed 7-14-77;3:42 pm]

federal register

TUESDAY, JULY 19, 1977

PART II

DEPARTMENT OF DEFENSE

Department of the Army, Engineers Corps

■

REGULATORY PROGRAM OF THE CORPS OF ENGINEERS

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

Regulatory Programs of the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rules.

SUMMARY: We are revising and reorganizing all regulations governing the permit programs of the Corps of Engineers. The new format is designed to make the policies and procedures more understandable to a person desiring to perform work in the waters of the United States. The Section 404 program (discharging dredged or fill material into the water) is being revised to clarify many terms and to provide for the issuance of nationwide permits. The new regulations should enable a person to get a quicker decision on his application. In the case of nationwide permits, no application at all is required.

EFFECTIVE DATE: July 19, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Curtis Clark or Mr. Bernie Goode, Regulatory Functions Branch, phone: 202–693–5070 or Mr. William Hedeman, Chief Counsels Office, phone: 202–693–6169.

SUPPLEMENTARY INFORMATION: Because of the rapidly changing nature of the Corps' regulatory programs, we have prefaced this supplementary information with a historical background discussion.

Historical Background

The Department of the Army, acting through the Corps of Engineers, is responsible for administering various Federal laws that regulate certain types of activities in specific waters in the United States and the oceans. The authorities for these regulatory programs are based primarily on various sections of the River and Harbor Act of 1899 (33 U.S.C. 401 et seq.), Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344) and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413). Each of these laws will be discussed in further detail below.

The River and Harbor Act of 1899

Until recently, the regulatory programs of the Corps of Engineers were administered only pursuant to various sections in the River and Harbor Act of 1899. These include: Section 9 (33 U.S.C. 401); Section 10 (33 U.S.C. 403); Section 11 (33 U.S.C. 404); and Section 13 (33 U.S.C. 407).

Section 9 requires a permit from the Corps of Engineers to construct any dam or dike in a navigable water of the United States. The consent of Congress is also required if the navigable water is interstate, and the consent of the appropriate state legislature is required if the water is intrastate. Bridges and causeways constructed in navigable waters of the United States also require permits under Section 9, but the authority to issue these permits was transferred to the U.S. Coast Guard in 1966 when the Department of Transportation was created.

Section 10 identifies other types of structures or work in or affecting navigable waters of the United States that are prohibited unless permitted by the Corps of Engineers. However, unlike Section 9, the consent of Congress or a State legislature is not required. Section 10 requires permits from the Corps for structures in navigable waters such as piers, breakwaters, bulkheads, revetments, power transmission lines, and aids to navigation. It also requires permits for various types of work performed in navigable waters, including dredging and stream channelization, excavation and filling. In addition, any work that is performed outside the limits of a navigable water which affects its navigable capacity may also require a Section 10 permit.

The 1899 Act was enacted to protect navigation and the navigable capacity of the nation's waters. Section 11 focuses on this basic concern by allowing the Secretary of the Army to establish harbor lines landward of which piers, wharves, bulkheads, and other structures or work could be built or performed without a Corps permit. However, as will be noted below, these harborlines now serve only as guides to defining the offshore limits of these activities from the standpoint of their impact on navigation. They can no longer be relied upon as a substitute for the requirement to obtain a permit under the 1899 Act.

Violation of the provisions and requirements of Section 9, 10, or 11 of the 1899 Act can result in criminal prosecution. Section 12 specifies criminal fines that range between $500 and $2,500 per day of violation and/or imprisonment, either or both of which may be imposed upon conviction. In addition, Section 12 also provides for injunctive relief that may be sought by the United States to respond to violations of these Sections, including the restoration of the area to its original condition. See *U.S.* v. *Moretti*, 478 F. 2d 418 (5th Cir. 1975).

Until 1968, the Corps administered the 1899 Act regulatory program only to protect navigation and the navigable capacity of the nation's waters. The permit requirements of the Act were limited in their application to waters that were presently used as highways for the transportation of interstate or foreign commerce.

On December 18, 1968, the Department of the Army revised its policy with respect to the review of permit applications under Sections 9 and 10 of the 1899 Act. It published in the Federal Register a list of additional factors besides navigation that would be considered in the review of these applications. These included: fish and wildlife; conservation; pollution; aesthetics; ecology; and the general public interest. (33 CFR 209.120.)

The 1968 change in policy identified this new type of review as a "public interest review." It was adopted in response to a growing national concern for environmental values as they related to our nation's water resources and in response to related Federal legislation, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), that required the consideration of some of these concerns in Federal decision-making. Enactment of the National Environmental Policy Act on January 1, 1970 (42 U.S.C. 4331 et seq.) gave further support to this change in policy.

The "public interest review" received its first judicial test in the case of *Zabel* v. *Tabb*, 430 F. 2d 199 (15th Cir. 1970), cert. den. 401 U.S. 910 (1972) in which the Court upheld the denial by the Corps of a landfill permit for fish and wildlife reasons (and not reasons related to navigation). In reaching this decision, the Court reaffirmed the Department of the Army's position that it was "acting under a Congressional mandate to collaborate and consider all of these factors" when it reached that decision.

In further response to the adoption of this public interest review, the Department of the Army revised its harborline regulation (33 CFR 209.150) on May 27, 1970. This revision made it clear that permits were required for any work commenced landward of an established harborline after May 27, 1970, and that these permit applications would receive a full public interest review. Of course, navigation concerns in this public interest review will be guided, in large part, by the presence of established harborlines.

During 1972, the Corps of Engineers reviewed all judicial decisions in which the term "navigable waters of the United States" had been interpreted in order to identify all waters to which Sections 9 and 10 of the 1899 Act could be applied. This analysis was made in response to the Federal government's growing concern over the protection of the nation's water resources and the need to protect those resources through the full mandate of available Federal laws.

On September 9, 1972, the Corps of Engineers published an administrative definition of the term "navigable waters of the United States" in the Federal Register (subsequently codified as 33 CFR 209.260). This definition was intended for use in the Corps' administration of Sections 9 and 10 of the 1899 Act, and included the following: (1) all waters presently used to transport interstate or foreign commerce (see *Daniel Ball* v. *United States*, 77 U.S. 557 (1871)); (2) all waters used in the past to transport interstate of foreign commerce (see *Economy Light and Power Company* v. *United States*, 256 U.S. 113 (1921)); all waters susceptible to use in their ordinary condition or by reasonable improvement to transport interstate or foreign commerce (see *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377 (1940)); and all waters subject to the ebb and flow of the tide (see *United States* v. *Moretti, supra*). The landward limit of this jurisdiction for freshwater was established as the ordinary high water mark and the shore-

ward limit for tidal water was established as the mean high water mark (mean higher high water mark on the West Coast).

On April 4, 1974, the Corps of Engineers published final revisions to its permit regulation (33 CFR 209.120) (Proposed revisions were published for interim guidance on May 10, 1973). These revisions were made for the following reasons:

a. To incorporate new permit programs established under Section 404 of the FWPCA and Section 103 of the MPRSA (discussed in more detail below);

b. To incorporate the requirements of new Federal legislation related to the review of the Federal permit applications, including: other sections of the FWPCA and the MPRSA; the National Environmental Policy Act of 1969, and the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).

c. To adopt additional factors of concern in the public interest review, in response to this related legislation, including, in addition to those previously announced, the following: economics, historic values, flood damage prevention, land use classification, recreation, water supply, and water quality.

d. To adopt criteria that would also be considered in the evaluation of each permit application including the desirability of using appropriate alternatives; the extent and permanence of the beneficial and/or detrimental effects of the proposed activity; and the cumulative effect of the activity when considered in relation to other activities in the same general area;

e. To adopt a wetlands policy that would protect wetlands within the Corps jurisdiction from unnecessary destruction; and

f. To implement procedures that insured compliance with these new statutory and policy review requirements.

As previously noted, regulations have been published throughout the past years to implement Sections 9, 10, 11, and 13 of the 1899 Act. These regulations have all been included in Part 209 of Title 33 of the Code of Federal Regulations as follows:

a. 209.120. Permits for Activities in Navigable Waters and Ocean Waters.
b. 209.125. Dams and Dikes Across Waterways.
c. 209.131. Permits for Discharges of Deposits into Navigable Waters.
d. 209.150. Harbor Lines.
e. 209.260. Definition of Navigable Waters of the United States.

THE REFUSE ACT PERMIT PROGRAM

On April 7, 1971 the Corps of Engineers implemented the first nationwide program to regulate the discharge of pollutants into the nation's awters. Authority for this permit program was based on Section 13 of the River and Harbor Act of 1899 (33 U.S.C. 407), commonly referred to as "The Refuse Act", which prohibits the discharge of "refuse matter" into navigable waters of the United States or their tributaries, or onto the banks of such waters if the "refuse matter" is likely to be washed into a navigable water. Regulations to implement this permit program were published in 33 CFR 209.131. On December 24, 1971, the permit program was enjoined by the District Court for the District of Columbia in the case of *Kalur v. Resor*, 335 F. Supp. 1, (D.D.C. 1971).

The Refuse Act permit program remained suspended until October 18, 1972, when Congress enacted the FWPCA. Section 402 of the FWPCA established the National Pollutant Discharge Elimination System program, which subsumed the Refuse Act permit program. Section 402(a)(5) provides that no permits may be issued under Section 13 of the 1899 Act for discharges into waters of the United States after 18 October 1972. However, the Refuse Act prohibitions can only be lifted by the issuance of an NPDES permit, and the Refuse Act remains a viable Federal enforcement mechanism for the discharge of pollutants into these waters without such a permit.

SECTION 404 OF THE FWPCA

On October 18, 1972, Congress enacted the Federal Water Pollution Control Act Amendments of 1972 with the announced purpose of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. The FWPCA established a number of goals, requirements, prohibitions, and programs to achieve this purpose, and addressed the problems of water pollution by using many different approaches. The Amendments provide Federal financial assistance for major research and demonstration projects and the construction of publicly owned waste treatment works. They also provide programs to deal with various sources and types of pollution, including toxic, oil, and hazardous substances. Section 208 of the Act provides for the development and implementation of areawide waste treatment management planning processes to control all sources of pollution.

Section 301 of the FWPCA prohibits the discharge of pollutants from discernible conveyances (defined as "point sources") into "navigable waters", (defined in the FWPCA as "the waters of the United States, including the territorial seas"), unless the discharge is in compliance with Section 402 or 404 of the Act. As noted above, Section 402 establishes the National Pollutant Discharge Elimination System to regulate industrial and municipal point source discharges of pollutants into the Nation's waters. The NPDES permit program is administered by the Administrator of the Environmental Protection Agency, and provides an opportunity for the Administrator to transfer this responsibility to those States that have the authority and capability to assume responsibility for the administration of the NPDES program.

Section 404 of the FWPCA establishes a permit program, administered by the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge, into the waters of the United States, of dredged material and of those pollutants that comprise fill material. Applications for Section 404 permits are evaluated by using guidelines developed by the Administrator of EPA, in conjunction with the Secretary of the Army (See 40 CFR 230). The Chief of Engineers can make a decision to issue a permit that is inconsistent with those guidelines if the interests of navigation require. Section 404(c) gives the Administrator, EPA, further authority, subject to certain procedures, to restrict or prohibit the discharge of any dredged or fill material that may cause an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Violation of the prohibition specified in Section 301 of the FWPCA against discharging pollutants into the waters of the United States without a required permit under Section 402 or 404, or permit conditions, or of other requirements of the FWPCA, can result in civil fines of not more than $10,000 per day of violation, criminal fines of up to $50,000 per day of violation, imprisonment, and/or injunctive relief, including restoration of the area to its original condition. The exact provisions for Federal enforcement of the FWPCA are established in Section 309. (33 U.S.C. 1319).

As part of the revisions to its April 3, 1974 permit regulation, the Department of the Army published regulations to implement the Section 404 permit program. These regulations limited the Section 404 permit program to the same waters that were being regulated under the River and Harbor Act of 1899: waters that are subject to the ebb and flow of the tide shoreward to their mean high water mark (mean higher water mark on the West Coast) and/or waters that are presently used, were used in the past, or are susceptible to use to transport interstate or foreign commerce.

The Natural Resources Defense Council and the National Wildlife Federation challenged this limitation on the jurisdiction of Section 404 as being inconsistent with the intent of Congress to regulate "all waters of the United States," as expressed in the FWPCA's definition of "navigable waters." Concern was expressed over the need to regulate the entire aquatic system, including all of the wetlands that are part of it, rather than only those aquatic areas that are arbitrarily distinguished by the presence of an ordinary or mean high water mark. (A major portion of the coastal wetlands are above the mean high water mark and were outside the permit review requirements of Section 404 by this interpretation.) Concern was expressed over the need to regulate the many tributary streams that feed into the tidal and commercially navigable waters (all of which were subject to regulation under the Refuse Act and NPDES programs) since the destruction and/or degradation of the physical, chemical, and biological integrity of each of these waters is threatened by the unregulated discharge of dredged or fill material. And concern was expressed for the many

other waters, including lakes, isolated wetlands, and potholes whose degradation, destruction, and disappearance continues to increase at alarming rates.

On March 27, 1975, the District Court for the District of Columbia ordered the revocation and rescission of that part of the Department of the Army's regulation "which limits the permit (Section 404) jurisdiction of the Corps by definition or otherwise to other than the waters of the United States." The Court further ordered publication of proposed regulations within 15 days (later amended to 40 days) which clearly recognized the full regulatory mandate of the FWPCA with respect to Section 404, and final regulations within 30 days of the date of the order (later amended to 80 days). *NRDC* v. *Callaway*, 392 F. Supp. 685 (D.D.C. 1975).

Responding to this court order, the Corps published four alternative proposed regulations in the FEDERAL REGISTER for comment on May 6, 1975. Over 4,500 comments were received in response to these proposed regulations. Many of these comments assisted the Corps in developing an administrative definition of "navigable waters" that was consistent with the intent and objectives of the FWPCA, and also in developing a program that was responsive to many of the concerns raised by the comments.

On July 25, 1975, the Corps of Engineers published an interim final regulation in the FEDERAL REGISTER. The interim final regulation essentially melded revisions to the Section 404 program into the previously published April 3, 1974 regulation. It included administrative definitions of "navigable waters", "dredged material", and "fill material", and procedural mechanisms to avoid unnecessary duplicative review in those states that have permit programs similar to Section 404.

The interim final regulation administratively defined the term "navigable waters" to include: coastal waters, wetlands, mudflats, swamps, and similar areas; freshwater lakes, rivers, and streams that are used, were used in the past, or are susceptible to use to transport interstate commerce, including all tributaries to these waters; interstate waters; certain specified intrastate waters, the pollution of which would affect interstate commerce; and freshwater wetlands, including marshes, shallows, swamps, and similar areas that are contiguous or adjacent to the above described lakes, rivers, and streams, and that are periodically inundated and normally characterized by the prevalence of vegetation that requires saturated soil conditions for growth and reproduction.

The regulation also specified that permits would not be required for discharges beyond the "headwaters" of a river or stream unless the interests of water quality required assertion of jurisdiction above the headwaters. "Headwaters" was defined as "the point on the stream above which the flow is normally less than 5 cubic feet per second * * *."

Any material that is excavated or dredged from a water of the United States and reintroduced into a water of the United States is considered to be the "discharge of dredged material" for purposes of Section 404.

"Fill material" was defined to include the following activities: the creation of fastlands, elevations of land beneath waters of the United States, or impoundments; the building of any structure or impoundment requiring rock, sand, dirt, or other pollutants for its construction; site-development fills; causeway or road-fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, and breakwaters; beach nourishment; levees; and backfill for various structures and utility lines.

The regulation also identified certain types of activities that were excluded from the program because they do not involve the discharge of dredged or fill material into water. Plowing, seeding, cultivating, and harvesting for the production of food, fiber, and forest products were included in this list of excluded activities. Also excluded from the program was material placed for maintenance and emergency reconstruction of existing fills.

The July 25 regulation adopted a phase-in schedule to implement the permit requirements of Section 404 for discharges in the above defined waters, and also included authority for District Engineers to issue general permits for those discharges that cause only a minor individual and cumulative impact to the environment. Phase I began immediately upon publication of the regulation, and included all waters subject to the ebb and flow of the tide and/or waters that are, were, or are susceptible to use for commercial navigation purposes (waters already being regulated by the Corps) plus all adjacent wetlands to these waters (thus eliminating the artificial ordinary high water and mean high water mark distinctions). Phase II became effective on September 1, 1976 (originally scheduled for July 1, 1976, but postponed for 60 days by Presidential action), and included primary tributaries to the Phase I waters and lakes greater than five acres in surface area, plus wetlands adjacent to these waters. Phase III, requiring permits for discharges of dredged or fill material into all waters of the United States, became effective on July 1, 1977. Discharges that occur in a particular waterbody before a scheduled phase-in date are permitted by the regulation, subject to six specified conditions. Also permitted by the regulation are certain minor discharges, again subject to the same conditions.

Various policies and procedures were also included in this regulation to allow joint review and processing of applications for Section 404 permits in those states with programs similar to Section 404.

On September 5, 1975, EPA published interim final guidelines to be used in the evaluation of proposed discharges of dredged or fill material. These interim guidelines are published in 40 CFR Part 230.

A number of courts have had occasion to consider whether particular waters, including wetlands, are "waters of the United States" within the scope of the FWPCA. The first case to address whether wetlands beyond the mean high water mark of traditional navigable waters of the United States were subject to the FWPCA was *United States* vs. *Holland*, 373, F. Supp. 665 (M.D. Fla., 1974) in which the Court held:

> The court is of the opinion that the mean high waterline is no limit to Federal authority under the FWPCA. While the line remains a valid demarcation for other purposes, it has no rational connection to the aquatic ecosystems which the FWPCA is intended to protect. Congress has wisely determined that Federal authority over water pollution properly rests on the commerce clause and not on past interpretations of an act designed to protect navigation. And the Commerce clause gives Congress ample authority to reach activities above the mean high water line that pollute the waters of the United States.

Other Courts have pursued the same theme, and often use the Holland rationale to support their position. These include the following: *United States* v. *Ashland Oil and Transportation Co.*, 504 F2d 1317 (6th Cir. 1974), involving discharges of oil into a tertiary tributary to a navigable water of the United States; *United States* v. *P.F.Z. Properties, Inc.*, 393 F. Supp. 1370, 1381 (D.D.C. 1975) and *Leslie Salt* v. *Froehlke*, 403 F. Supp. 1292, 1296–1297 (N.D. Cal. 1974)—each involving discharges of dredged or fill material into navigable waters of the United States; *Conservation Council of North Carolina* v. *Costanzo*, 398 F. Supp. 653, 673 (E.D. N.C. 1975); *United States* v. *Smith*, 7 ERC 1936, 1938–1939 (E.D. Va., 1975); *United States* v. *Golden Acres, Inc.*, No. 76-0023-CIV-4, slip opinion p. 5–6 (E.D. N.C., Jan. 13, 1977); *United States* v. *Riverside Bayview Homes, Inc.*, Civil Action No. 77-76041 (E.D. Mich., Feb. 24, 1977)—all involving discharges into wetlands adjacent to navigable waters of the United States or a primary tributary thereof in which the wetland area is located above the mean high tide line or ordinary high water mark but is still periodically inundated and covered with aquatic vegetation; and *United States* v. *Byrd and Elder*, ERC 1275 (N.D. Ind., August 13, 1976) involving the discharge of fill material into a natural freshwater lake.

SECTION 103 OF THE MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT OF 1972

Five days after enactment of the FWPCA, Congress enacted the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413). This Act, commonly referred to as the "Ocean Dumping Act", has many provisions that resemble the approach taken by the FWPCA to regulate activities that can pollute or otherwise adversely affect the ocean waters.

Section 102 of the Act vests authority in the Administrator, EPA, to issue permits, after notice and opportunity for public hearing, for the transportation from the United States of material that is intended to be dumped in ocean waters. "Material" is defined in the Act to include most liquid, solid, or suspended solid substances. Before issuing a permit,

the Administrator is required to determine that the proposed dumping will not unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological systems or economic potentialities. The Act also requires him to establish ocean dumping criteria to be used in making this evaluation.

Section 103 of the Ocean Dumping Act is similar to Section 404 of the FWPCA in that it creates a separate permit program to be administered by the Secretary of the Army, acting through the Chief of Engineers, to regulate the ocean dumping of dredged material. The Act requires the Corps of Engineers to make the same evaluation that is required of the Administrator for the ocean dumping of other materials, and to make this evaluation, by using the ocean dumping criteria developed by the Administrator. The Act also requires the Corps of Engineers to utilize ocean dumping sites that have been designated by the Administrator, EPA, to the maximum extent feasible.

If the EPA criteria prohibit ocean dumping, the Act requires the Corps of Engineers to make an independent determination as to the need for the proposed dumping based upon an evaluation of the potential affect that would occur to navigation, economic and industrial development, and foreign and domestic commerce of the United States if a permit were denied. An independent determination as to other proposed methods of disposal of dredged materials and appropriate locations for ocean dumping must also be made by the Corps of Engineers in the review of applications for ocean dumping.

No permit may be issued to dump dredged material in the oceans if the dumping does not comply with the EPA criteria unless the Secretary of the Army seeks a waiver of the criteria from the Administrator after certifying that there is no economically feasible method or site available other than the proposed dump site under consideration. The Act requires the Administrator to grant this waiver unless he finds that the proposed dumping will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas.

The EPA criteria for evaluating the ocean dumping of all material, including dredged material, are published in 40 CFR Parts 220–228. These criteria were revised by EPA, and the revisions are published in the FEDERAL REGISTER dated 11 January 1977 (42 FR 2462).

Violation of any provision or requirement of the Ocean Dumping Act can result in criminal or civil penalties of not more than $50,000 per day of violation, imprisonment, and legal actions to enjoin imminent or continuing violations of the Act.

REVISIONS TO REGULATIONS

The Corps of Engineers published its July 25, 1975 regulation as an interim final regulation, and provided a comment period of 90 days in which interested members of the public could comment further on the regulation before it was finalized. Today, we are finalizing that regulation. We wish to take this opportunity to thank again those 2,000 individuals, government officials, special interest groups, and companies who responded to this opportunity for additional comment. Many of you will find that your suggestions have been developed in the revisions to our regulation.

In addition to the 2,000 comments received on the interim final regulation, the Corps of Engineers held four nationwide public hearings on the Section 404 program and 243 information meetings that have assisted us in these revisions.

We now have almost two years of experience in administering the Section 404 program as revised by the July 25, 1975 regulation, and over three years of experience in the administration of our other permit programs since publication of the April 3, 1974 regulation. This experience has revealed some problem areas that require correction. Our District and Division offices have raised these concerns with us, and we have attempted to respond to these problems in revisions to the regulation.

One of the primary criticisms of the existing regulation was its length, organization and wordiness. We have responded to this concern by deleting redundant paragraphs, rewording sentences, and completely reorganizing the regulations. This includes a new format that incorporates related regulations into an orderly sequence.

Today, we are rescinding the following regulations:

a. 33 CFR 209.120, "Permits for Activities in Navigable Waters or Ocean Waters";
b. 33 CFR 209.125, "Dams and Dikes Across Waterways";
c. 33 CFR 209.131, "Permits for Discharges or Deposits into Navigable Waters";
d. 33 CFR 209.133, "Public Hearings";
e. 33 CFR 209.150, "Harbor Lines"; and
f. 33 CFR 209.260, "Definition of Navigable Waters of the United States."

We are also, today, publishing the following new regulations, each of which generally corresponds with one of the above cited regulations that is being rescinded. All regulations that pertain completely to the permit programs of the Corps of Engineers, are being published in a new series of Title 33 of the Code of Federal Regulations, and will be included in Parts 320 to 340. This new series is organized as follows:

a. Part 320, "General Regulatory Policies";
b. Part 321, "Permits for Dams and Dikes in Navigable Waters of the United States" (Section 9 of the River and Harbor Act of 1899);
c. Part 322, "Permits for Structures or Work in or Affecting Navigable Waters of the United States" (Section 10 of the River and Harbor Act of 1899);
d. Part 323, "Permits for Discharges of Dredged or Fill Material into Waters of the United States" (Section 404 of the FWPCA);
e. Part 324, "Permits for Ocean Dumping of Dredged Material" (Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972);
f. Part 325, "Processing of Department of the Army Permits";
g. Part 326, "Enforcement";
h. Part 327, "Public Hearings";
i. Part 328, "Harbor Lines";
j. Part 329, "Definition of Navigable Waters of the United States";
k. Parts 330–339 (Reserved).

The following is an explanation of each new part of this regulation, including the reasons for significant changes that have been made. We will also respond to significant comments that were made in response to various provisions in this regulation.

PART 320

This Part describes the general and related statutory authorities that are used by the Corps of Engineers in administering the various permit programs to regulate activities in waters of the United States and the oceans. The part also describes the general policies that are used by the Corps in the review of each permit application, including: (1) The public interest review described above; and (2) policies on wetlands; fish and wildlife; water quality; historic, scenic, and recreational values; effects on limits of the territorial sea; interference with adjacent properties or Federal projects; and requirements for other Federal, State, or local permits or certifications. This part generally corresponds to the provisions in paragraphs (a), (b), (c), (f), and (g) (1), (3), (4), (5), (6), (10) and (18) of rescinded § 209.120.

We have added descriptions of each of the following Federal statutes to the list of "related legislation" in § 320.3 of this Part, since each of these laws is involved with or related to the review of applications for Federal permits. These include: The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.); Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278 et seq.); and Section (f) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.).

In § 320.4(a), we have added three additional items to the list of factors that comprise our public interest review: Energy needs, safety, and food requirements.

Several modifications have been made to our wetlands policy in § 320.4(b). We identified those wetlands "whose destruction or alteration would affect detrimentally the natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns or environmental characteristics," as one of the types of wetlands that is important to the public interest. (Previously this valuable wetlands function was only recognized if the wetlands that perform it were located next to the wetlands described in the first two subsections.) We also added to the list of functions those wetlands which through natural water filtration processes, serve to purify water. Finally, we have attempted to clarify our guidance on determining whether a particular wetlands

alteration is "necessary". The change now requires the District Engineer to consider whether the proposed activity "is primarily dependent on being located in or in close proximity to the aquatic environment and whether feasible alternative sites are available." Applicants are required to provide sufficient information to make this evaluation. We believe that this change more closely corresponds to the wetlands policy in the Section 404 Guidelines (40 CFR 230.5(b)(8)).

At the request of the Department of the Interior, we have added sites acquired under the Recreational Demonstrations Projects Act of 1942 (PL 77-594) to the types of sites for which the policy in § 320.4(e) on historic, scenic, and recreational values is applicable.

Clarifying language has been added to our policy in § 320.4(j) on other permits or certifications required for the same activity to ensure that it is applicable to all Federal, State and/or local permits or certifications. Under this policy, we will process permit applications concurrently (and in many cases we plan to do this jointly) with other required applications for Federal, State and/or local permits or certifications. If another required permit or certification is denied, we will not issue a permit.

To ensure that this policy cannot be used as a mechanism to delay decision-making on our permit application processing and decision-making, however, we also have modified it to allow the District Engineer to process a permit application to conclusion if the responsible government agency fails to take any definitive action to issue or deny its permit or certification within three months of our public notice.

We have added two new general policies to the review of all applications for permits. Section 320.4(k) includes a policy on the safety of impoundment structures that requires the District Engineer to condition permits for these types of structures to require the permittee to operate and maintain the structure properly to ensure public safety. This policy is not applicable, however, to impoundment structures for which an adequate safety inspection program is required or which are under the control of another Federal agency. Section 320.4(l) includes a policy on the review of permit applications in floodplains as required by the May 24, 1977 Executive Order 11988.

PART 321

This part describes the special policies and procedures that are followed in the review of applications for dams or dikes to be located in a navigable water of the United States. As noted above, this review is made under Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401). The general policies described in Part 320 and the general procedures described in Part 325 are also applicable to the review of these applications.

Part 321 replaces 33 CFR 209.125, which has been rescinded. We have defined the terms "navigable waters of the United States", "dam", and "dike" in this part to specify the types of waters to which Section 9 is applicable, and the type of structures that will require Section 9 permits. We anticipate that our administrative definitions of "dam" and "dike" in Section 321.2 will assist in distinguishing these types of structures from those that would otherwise be regulated under Section 10 of the River and Harbor Act of 1899.

In all other respects, the language in Part 321 resembles that in rescinded § 209.125.

PART 322

This part prescribes the special policies and procedures to be followed by the Corps in the evaluation of applications for structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899. The general policies specified in Part 320.4 and the general procedures specified in Part 325 also are applicable to this evaluation. Furthermore, some of the activities that fall under this Part will also require permits under Section 404 of the FWPCA and Section 103 of the Ocean Dumping Act.

This Part corresponds to those sections of rescinded 33 CFR 209.120 that incorporated the Section 10 program. These include paragraphs (d)(1), (e)(1) and (4), and (g)(2)(7), (8), (9), (11), (13), (14), (15) and (16).

We have adopted administrative definitions of the terms "structure" and "work" to identify the types of activities that will require Section 10 permits (Sec. 322.2).

The 1975 regulation administratively "grandfathered" certain types of activities performed in navigable waters of the United States (see rescinded 33 CFR 209.120(g)(12)(vii)) and exempted others altogether from the need to obtain Section 10 permits (see rescinded 33 CFR 209.120(e)(1)). This latter category included the placement of aids to navigation by the U.S. Coast Guard and structures placed in artificial canals, the connection of which previously was authorized by a Section 10 permit.

Today, instead of again exempting or grandfathering these activities, we are permitting them through the issuance of nationwide permits that are incorporated into this regulation. We have also included other small structures in these nationwide permits that are often placed in navigable waters and have only a de minimus impact on the environment. We are issuing nationwide permits for these activities because we feel that this administrative device is preferable to those affected by it, and is a better administrative approach than relying on a "grandfathering" or "exemption" provision to satisfy the requirements of the 1899 Act.

The following activities are subject to these nationwide permits (see § 322.4):

1. The placement of aids to navigation by the U.S. Coast Guard;

2. Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water already has received a Section 10 permit;

3. Repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or of any currently serviceable structure constructed prior to the requirement for a Seciton 10 permit (no deviation from original plans is authorized);

4. Marine life harvesting devices, such as pound nets, crab pots, eel pots, and lobster traps;

5. Staff and tidal gages, water recording devices, water quality testing and improvement devices, and similar scientific structures;

6. Survey activities including core sampling; and

7. Structures of work completed before December 18, 1968 (the date on which we adopted our public interest review) or in navigable waters over which the District Engineer has not asserted jurisdiction.

The nationwide permit imposes conditions on each of these structures, primarily to protect navigation.

Besides the nationwide permit, three other types of authorizations are used to issue Section 10 permits. These are:

1. Letters of permission—an individual permit issued following the abbreviated review procedures outlined in § 325.5(b);

2. Individual permits—permits issued following a case-by-case analysis of an application; and

3. General permits—permits issued for future minor work or structures in a particular region of the country that will have only minimal individual and cumulative impact on the environment.

We have included definitions of each of these terms in the regulation (§ 322.2). A person needing a Section 10 permit should first check to see whether the proposed project has already been permitted by a general permit or in this Part through a nationwide permit.

In all other respects, this regulation remains basically the same as published in 1975.

PART 323

This Part prescribes the special policies and procedures to be followed by the Corps in the evaluation of applications for permits to discharge dredged or fill material into the waters of the United States pursuant to Section 404 of the FWPCA. Again, as we have noted in Parts 321 and 322, the general policies specified in Part 320 and the general procedures specified in Part 325 also would be applicable to this evaluation. Furthermore, some of the activities that fall under Section 404 will also require permits under Sections 9 and 10 of the River and Harbor Act of 1899 (Parts 321 and 322).

This Part corresponds to those sections of the rescinded 33 CFR 209.120 that incorporated the Section 404 program. These include: paragraphs (d)(2), (4), (5), (6), (7) and (8) and (g)(17).

Section 404 provides that the Corps of Engineers may issue permits, after notice and opportunity for public hearing, for "discharges of dredged or fill material into navigable waters". The majority of comments received on the July 25, 1975 interim final regulation were in response to our definitions of terms "navigable waters", "dredged material", and "fill material".

The legislative history of the term "navigable waters" specified that it "be given the broadest constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes." (H.R. Report No. 92-1465 at 144; A Legislative History of the FWPCA at p. 327). Article 1, Section 8 of the Constitution gives the Federal Government the authority "to regulate commerce with foreign Nations and among the several states." We have interpreted the guidance contained in this legislative history to be consistent with the Federal Government's broad constitutional power to regulate activities that affect interstate commerce as interpreted by the Supreme Court on several occasions. *Perez* v. *United States*, 402 U.S. 146 (1970); *Katzenbach* v. *McClung*, 379 U.S. 294 (1974); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241 (1964); and *Wickard* v. *Filburn*, 317 U.S. 111 (1942).

Water pollution is one such activity, for as the Court stated in *U.S.* v. *Holland*, supra., "Congress has wisely determined that Federal authority over water pollution properly rests on the commerce clause. And the commerce clause gives Congress ample authority to reach activities * * * that pollute the waters of the United States." (See also the cases cited above on defining "waters of the United States" which affirmed the constitutionality of Congress' broad assertion of jurisdiction.)

We followed this basic premise in the development of our administrative definition of "navigable waters" for the July 25, 1975 regulation, and we have followed it again in our efforts to clarify that definition in this regulation.

Our definition of "navigable waters" in the 1975 regulation included the following:

(1) Coastal waters that are navigable waters of the United States subject to the ebb and flow of the tide, shoreward to their mean high water mark (mean higher high water mark on the Pacific coast);

(2) All coastal wetlands, mudflats, swamps, and similar areas that are contiguous or adjacent to other navigable waters. "Coastal wetlands" includes marshes and shallows and means those areas periodically inundated by saline or brackish waters and that are normally characterized by the prevalence of salt or brackish water vegetation capable of growth and reproduction;

(3) Rivers, lakes, streams, and artificial water bodies that are navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(4) All artificially created channels and canals used for recreational or other navigational purposes that are connected to other navigable waters, landward to their ordinary high water mark;

(5) All tributaries of navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(6) Interstate waters landward to their ordinary high water mark and up to their headwaters;

(7) Intrastate lakes, rivers and streams landward to their ordinary high water mark and up to their headwaters that are utilized:

(a) By interstate travelers for water-related recreational purposes;

(b) For the removal of fish that are sold in interstate commerce;

(c) For industrial purposes by industries in interstate commerce; or

(d) In the production of agricultural commodities sold or transported in interstate commerce;

(8) Freshwater wetlands, including marshes, shallows, swamps, and similar areas that are contiguous or adjacent to other navigable waters and that support freshwater vegetation. "Freshwater wetlands" means those areas that are periodically inundated and that are normally characterized by the prevalence of vegetation that requires saturated soil conditions for growth and reproduction; and

(9) Those other waters which the District Engineer determines necessitate regulation for the protection of water quality as expressed in the guidelines (40 CFR 230). For example, in the case of intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters identified in paragraphs (a)-(h), a decision on jurisdiction shall be made by the District Engineer.

Many suggested that we change the nomenclature of the term "navigable waters" and refer to our jurisdiction under Section 404 as "waters of the United States." This is the definition given to that term in Section 502(7) of the FWPCA. We have adopted this suggestion and feel that it will assist in distinguishing between the Section 404 program and the types of waters that are subject to the permit programs administered under Sections 9 and 10 of the 1899 Act.

We have consolidated the 1975 list of waters in our new definition to include four basic categories. We believe that this consolidation will assist in clarifying those waters that are subject to the Section 404 program.

CATEGORY 1

Coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including adjacent wetlands.—This category corresponds to those waters identified in sections (1), (2), (3), and (8) of the old definition. Through consolidation, we believe that many of the ambiguities raised in the old definition will be clarified.

The Federal government's authority to regulate all activities in or affecting navigable waters of the United States has always been recognized. As we have noted above, waters that fall within this category are also regulated under the River and Harbor Act of 1899. They include natural and artifical waters that are subject to the ebb and flow of the tide and/or that are used, were used in the past, or are susceptible to use to transport interstate or foreign commerce.

CATEGORY 2

Tributaries to navigable waters of the United States, including adjacent wetlands.—This category corresponds to sections (4), (5), (8), and (9) of the old definition.

The Federal government's authority to regulate activities on the rivers and streams that feed into navigable waters of the United States also has been historically recognized. As we noted in our historical background discussion, Section 10 of the River and Harbor Act of 1899 can be used to regulate activities outside the jurisdictional limits of navigable waters of the United States if those activities affect the navigable capacity of those waters. Section 13 of the 1899 Act also prohibits the dumping of any refuse matter into any tributary of a navigable water of the United States, or onto the banks of such waters where the material is likely to be washed into the water.

More recently, courts have recognized that the FWPCA is applicable to tributaries of navigable waters. In *U.S.* v. *Ashland Oil, supra*, the Court stated:

Pollution control of navigable streams can only be exercised by controlling pollution of their tributaries.

We have adopted the suggestion of many commenters that we incorporate into our definition (and not in the Preamble as we did in 1975) the statement that nontidal drainage and irrigation ditches that feed into navigable waters will not be considered "waters of the United States" under this definition. To the extent that these activities cause water quality problems, they will be handled under other programs of the FWPCA, including Sections 208 and 402.

CATEGORY 3

Interstate waters and their tributaries, including adjacent wetlands.—This category corresponds to those waters listed in sections (6) and (8) of the old definition.

The affects of water pollution in one state can adversely affect the quality of the waters in another, particularly if the waters involved are interstate. Prior to the FWPCA Amendments of 1972, most federal statutes pertaining to water quality were limited to interstate waters. We have, therefore, included this third category consistent with the Federal government's traditional role to protect these waters from the standpoint of water quality and the obvious effects on interstate commerce that will occur through pollution of interstate waters and their tributaries.

CATEGORY 4

All other waters of the United States not identified in Categories 1-3, such as isolated lakes and wetlands, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce.—This category corresponds to sections (7), (8), and (9) of the old definition.

Waters that fall within categories 1, 2, and 3 are obvious candidates for inclusion as waters to be protected under the Federal government's broad powers to regulate interstate commerce. Other waters are also used in a manner that makes them part of a chain or connection to the production, movement, and/or use of interstate commerce even though they are not interstate waters or part of a

tributary system to navigable waters of the United States. The condition or quality of water in these other bodies of water will have an effect on interstate commerce.

The 1975 definition identified certain of these waters. These included waters used:

(1) By interstate travelers for water-related recreational purposes;
(2) For the removal of fish that are sold in interstate commerce;
(3) For industrial purposes by industries in interstate commerce; and
(4) In the production of agricultural commodities sold or transported in interstate commerce.

We recognized, however, that this list was not all inclusive, as some waters may be involved as links to interstate commerce in a manner that is not readily established by the listing of a broad category. The 1975 regulation, therefore, gave the District Engineer authority to assert jurisdiction over "other waters", such as intermittent rivers, streams, tributaries and perched wetlands, to protect water quality. Implicit in this assertion of jurisdiction over these other waters was the requirement that some connection to interstate commerce be established, even though that requirement was not clearly expressed in the 1975 definition.

We received many comments and criticisms concerning the waters covered in sections (7) and (9) of the 1975 definition, particularly with respect to uncertainty over the types of waters covered by section 9, and as to whether section 404 permits are required to discharge dredged or fill material into these latter waters.

We have responded to these comments by noting in the definition of these waters that they are the type, the degradation or destruction of which could affect interstate commerce. We have also incorporated an explanatory footnote at the end of this category which further explains this connection to interstate commerce.

We are responding to the concern of uncertainty over the need to obtain a permit in these waters by issuing today a nationwide permit for discharges into most of these waters. We believe that if the common sense conditions, guidelines and management practices provided in these nationwide permits are followed, the concern for water quality, as it affects the production, movement and/or use for interstate commerce, ordinarily will be satisfied with respect to these discharges.

Wetlands. Prior to enactment of the FWPCA, the mean tide line (mean higher tide line on the West Coast) was used to delineate the shoreward extent of jurisdiction over the regulation of most activities in tidal waters under the 1899 Act as well as for mapping, delineation of property boundaries, and other related purposes. In freshwater lakes, rivers and streams that are navigable waters of the United States, the landward limit of jurisdiction has been traditionally established at the ordinary high water mark.

The regulation of activities that cause water pollution cannot rely on these artificial lines, however, but must focus on all waters that together form the entire aquatic system. Water moves in hydrologic cycles, and the pollution of this part of the aquatic system, regardless of whether it is above or below an ordinary high water mark, or mean high tide line, will affect the water quality of the other waters within that aquatic system.

For this reason, the landward limit of Federal jurisdiction under Section 404 must include any adjacent wetlands that form the border of or are in reasonable proximity to other waters of the United States, as these wetlands are part of this aquatic system.

The July 25, 1975 regulation identifies "coastal" and "freshwater" wetlands contiguous or adjacent to other waters of the United States as separate categories of waters for inclusion in our overall definition of the term "waters of the United States." Many comments and suggestions were received on these terms.

Both "coastal" and "freshwater" wetlands as used in the July 25, 1975 regulation require that the area in question be "periodically inundated" by either saline, brackish or freshwater and "normally characterized by the prevalence of" salt or brackish water vegetation or vegetation that requires saturated soil conditions for growth and reproduction. Some felt that the criteria for delineating a wetland should not require both "periodic inundation" and the "prevalence of" vegetation, as either condition should suffice from the standpoint of protecting the entire aquatic system. Others raised concern over the vagueness of terms such as "perodically inundated", "normally", and "prevalence", and the lack of any definition for the terms "contiguous" or "adjacent".

In response to these comments, and with the assistance of the Departments of Interior and Agriculture and the Environmental Protection Agency, we have adopted the following definition of "wetlands":

> Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

This definition is intended to eliminate several problems and achieve certain results. The reference to "periodic inundation" has been eliminated. Many interpreted that term as requiring inundation over a record period of years. Our intent under Section 404 is to regulate discharges of dredged or fill material into the aquatic system as it exists, and not as it may have existed over a record period of time. The new definition is designed to achieve this intent. It pertains to an existing wetland and requires that the area be inundated or saturated by water at a frequency and duration sufficient to support aquatic vegetation. This inundation or saturation may be caused by either surface water, ground water, or a combination of both.

The use of the word "normally" in the old definition generated a great deal of confusion. The term was included in the definitions to respond to those situations in which an individual would attempt to eliminate the permit review requirements of Section 404 by destroying the aquatic vegetation, and to those areas that are not aquatic but experience an abnormal presence of aquatic vegetation. Several such instances of destruction of aquatic vegetation in order to eliminate Section 404 jurisdiction actually have occurred. However, even if this destruction occurs, the area still remains as part of the overall aquatic system intended to be protected by the Section 404 program. Conversely, the abnormal presence of aquatic vegetation in a non-aquatic area would not be sufficient to include that area within the Section 404 program.

We have responded to the concern for the vagueness of the term "normally" by replacing it with the phrase "* * * and that under normal circumstances to support * * *" We do not intend, by this clarification, to assert jurisdiction over those areas that once were wetlands and part of an aquatic system, but which, in the past, have been transformed into dry land for various purposes.

Concerns were also expressed over the types and amount of vegetation that would be required to establish a "wetland" under this definition. We have again used the term "prevalence" to distinguish from those areas that have only occasional aquatic vegetation interspersed with upland or dry land vegetation.

At the same time, we have changed our description of the vegetation involved by focusing on vegetation "typically adapted for life in saturated soil conditions." The old definition of "freshwater wetlands" provided a technical "loophole" by describing the vegetation as that which requires saturated soil conditions for growth and reproduction, thereby excluding many forms of truly aquatic vegetation that are prevalent in an inundated or saturated area, but that do not require saturated soil from a biological standpoint for their growth and reproduction. We intend to publish shortly vegetation guides to indicate the types of vegetation intended to be included in this definition, and to rely on the assistance of biologists, scientists and other technical experts from other Federal and State agencies to assist in delineating those wetland areas intended to be incuuded in this definition.

Several comments questioned the need for separate definitions of salt and brackish water wetlands (e.g. coastal wetlands) and freshwater wetlands. Others questioned whether salt and brackish water wetlands in nontidal waters and freshwater wetlands contiguous or adjacent to coastal wetlands were intended to be included in the definition, since these wetlands are part of the aquatic system. Still others ques-

tioned whether these definitions were also applicable to isolated wetlands that are not contiguous or adjacent to coastal waters and freshwater lakes, rivers, and streams, but which still contribute to interstate commerce.

The old definition was intended to include all fresh, brackish and salt water wetlands contiguous or adjacent to coastal waters and freshwater lakes, rivers, streams and other waters included in the definition of "waters of the United States." It was also intended to be used to identify isolated wetlands. We agree, however, that this intent was not clearly expressed. To remedy this situation, we have adopted one definition of wetlands. This definition will be applicable to those wetlands adjacent to coastal waters and freshwaters that are identified in the definition of "waters of the United States," and also to those isolated wetlands that are not adjacent to any lake, river, stream, or other coastal or freshwater. (See the discussion, above, on waters in Category 4.)

We have also responded to the concerns raised over the absence of any definition of the terms "adjacent" or "contiguous" as those terms relate to the location of wetlands. Since "contiguous" is only a subpart of the term "adjacent," we have eliminated the term "contiguous." At the same time, we have defined the term "adjacent" to mean "bordering, contiguous, or neighboring." The term would include wetlands that directly connect to other waters of the United States, or that are in reasonable proximity to these waters but physically separated from them by man-made dikes or barriers, natural river berms, beach dunes, and similar obstructions.

Finally, to respond to those who expressed concern that our definition of "wetlands" may be interpreted as extending to abnormal situations including non-aquatic areas that have aquatic vegetation, we have listed swamps, bogs, and marshes at the end of this definition to further clarify our intent to include only truly aquatic areas.

"High tide line." Many aquatic areas along the coast are located above the mean or mean higher high tide lines but do not fit within the definition of "wetlands" discussed above. These include sandflats, mudflats, and similar areas, that, while not covered with vegetation, are inundated with sufficient frequency and regularity to be included as part of the aquatic resource. While these areas are identified in our previous definition of waters of the United States, some commenters suggested the need for more definitive guidance in delineating the shoreward limit of jurisdiction in coastal areas when these circumstances exist. We have, therefore, adopted the term "high tide line" to delineate these areas. "High tide line" has been defined as "a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide." The term is intended to include areas covered by spring high tides and other high tides that occur with periodic frequency, but does not include those areas that are covered by tidal water as a result of storm surges, hurricanes, or other intense storms.

Ordinary high water mark: A number of comments criticized the definition of "ordinary high water mark" adopted for purposes of delineating the landward limit of jurisdiction in freshwaters (absent adjacent wetlands). The comments indicated that other methods to define the ordinary high water mark have already been refined to a point of reasonable reliability based on the hydrologic movement of freshwaters, and that a second methodology under Section 404 would be administratively cumbersome. In addition, other concerns were expressed over the manner in which a "25% inundation" factor could be determined.

Responding to these comments, we have returned to our definition of "ordinary high water mark" used in the administration of our 1899 Act permit program. We believe that in waters where no wetlands are present, this definition will include those areas that are part of the aquatic system along these freshwater lakes, rivers and streams, as this mark is intended to include those areas where water will be present with predictable regularity.

Headwaters: The July 25, 1975 regulation established a cutoff point, referred to as the headwaters, for each river and stream identified as a water of the United States. "Headwaters" was defined as "the point on the stream beyond which the flow of the waterbody is normally less than five cubic feet per second." Waters above the "headwaters" cutoff point were also included as "waters of the United States," but only if the District Engineer determined that regulation of these waters was necessary to protect water quality.

Many comments and criticisms were received concerning the vagueness of our definition of "headwaters" and the legality of excluding waters in rivers and streams above the headwaters from the definition of waters of the United States. We have responded to these concerns and criticisms by: (1) Including the entire length of rivers and streams in our definition of waters of the United States; (2) utilizing the "headwaters" concept to establish the point on the stream below which an individual or general permit will be required to discharge dredged or fill material (discharges above headwaters are being permitted through the issuance today of a nationwide permit which is discussed in greater detail below); and (3) redefining the term "headwaters."

We have adopted the recommendations of a number of commenters and have redefined the term "headwaters" as the point on a freshwater (nontidal) stream above which the average annual flow is less than five cubic feet per second. Since precision is not required in establishing the headwater point, the definition allows the District Engineer to use approximate means to compute it. The drainage area that will contribute an average annual flow of five cubic feet per second can be estimated by approximating the proportion of the average annual precipitation that is expected to find its way into the stream. Having the area that will produce this flow, the "headwater" point can be approximated from drainage area maps.

However, we also recognized that streams with highly irregular flows, such as occur in the western portion of the country, could be dry at the "headwater" point for most of the year and still average on a yearly basis a flow of five cubic feet per second because of high volume, flash flood type flows which greatly distort the average. We therefore added an option for the District Engineer, after notifying the Regional Administrator of EPA, to establish the headwater based on the median rather than the average flow. A median flow of five cubic feet per second means that 50% of the time the flow is greater than five cubic feet per second and 50% of the time the flow is less than this value. This approach more realistically represents normal base flows of such streams.

We emphasize that the "headwaters" concept used in this new regulation is the point on the stream above which individual or general permits ordinarily will not be required. It is not to be construed as the point beyond which a stream ceases to be a water of the United States under Section 404 or the programs to regulate industrial and municipal discharges and oil and hazardous substances under other sections of the FWPCA. We also refer you to the discussion below on the nationwide permits that are being issued today for various discharges of dredged or fill materal, including those that occur above the headwater. We believe that the common sense conditions and management practices reflected in these nationwide permits will, if followed, avoid potential water quality problems for most of these discharges.

Lakes: The 1975 regulation defined "lakes" as "natural bodies of standing water greater than five acres in surface area and all bodies of standing water created by the impounding of waters of the United States."

A number of comments and criticisms were received concerning this definition. Some felt that the size limitation on natural lakes was too small, while others felt it was not small enough. Others questioned the legality of imposing any size limitation on natural lakes, since a lake less than five acres in size is just as much a "water of the United States" as one that is more than five acres in size.

Many raised questions about the manner and time for measurement of the five surface acres because of the seasonal fluctuations in water content exhibited by most lakes. Others suggested that we add to the list of artificial open bodies of water that are not included in the definition of lakes. (The 1975 definition excludes stock watering ponds and settling basins that are not created by impounding a river or stream.)

We have responded to these comments and criticisms in several ways. First, we have established definitions for two new terms: "natural lake" and "impoundment." We believe that these two sepa-

rate definitions will assist in alleviating the confusion expressed over the broad definition of "lake" as cited in the 1975 regulation.

At the suggestion of EPA, we have defined "natural lake" as "a natural depression fed by one or more streams and from which a stream may flow, that occurs due to the widening or natural blockage of a river or stream, or that occurs in an isolated natural depression that is not part of a surface river or stream." We believe that this definition reflects the three types of situations in which a natural lake may exist.

We have defined the term "impoundment" as a "standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area." Responding to several suggestions, we have clarified what is not included in the term "impoundment" by stating that it does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing.

Unlike the 1975 definition, no size limitation has been placed on the definitions of "natural lake" or "impoundment". Instead, we are permitting, today, through the issuance of nationwide permits, discharges of dredged or fill material into natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are either fed or drained by a river or stream above the headwaters, or isolated and not a part of a tributary system to navigable waters of the United States or interstate waters. (Discharges into natural lakes below the headwaters and isolated natural lakes greater than ten acres will require individual or general permits to satisfy the requirements of Section 301 of the FWPCA.) We are also issuing today a nationwide permit for discharges of dredged or fill material into non-tidal rivers, streams and their impoundments including adjacent wetlands that are located above the headwaters. (Again, discharges into impoundments below the headwaters of a river or stream will require an individual or general permit.) We refer you to our discussion of nationwide permits, below, for further details on this action.

We believe that the inclusion of adjacent wetlands as part of the 10 acre measurement of those natural lakes that are included in this definition will alleviate many concerns raised over how and when this measurement must occur. Since our definition of "wetlands" requires aquatic vegetation, we anticipate that the lake's measurement normally can be made on the basis of the presence of this vegetation, which generally remains fixed throughout the year, even if the water levels in the lake fluctuate.

Dredged and Fill Material. The 1975 regulation provided definitions for "dredged material", "discharge of dredged material", "fill material", and "discharge of fill material". Several comments and two years of experience have revealed the need to make certain changes to these definitions.

To respond to many misunderstandings over activities that require Section 404 permits, the 1975 regulation stated, in the definitions of "dredged material" and "fill material" that "material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting for the production of food, fiber, and forest products" was not included. We intended, by this statement, to make it clear that activities such as plowing, seeding, harvesting, cultivating and any other activity by any industry that do not involve discharges of dredged or fill material cannot be included in the program. However, many interpreted this language as an exclusion of all practices by the farming and forestry industry including those that do involve discharges of dredged or fill material into water. The FWPCA does not allow us to make such an exemption or exclusion for any industry. (See *NRDC vs. Train*, 366 F. Supp. 1393 (D.D.C., 1975.)) We have, however, clarified our intent by stating at the end of our definitions of "discharge of dredged material" and "discharge of fill material" that plowing, seeding, cultivating and harvesting for the production of food, fiber, and forest products are not included in the Section 404 program.

The 1975 definition of "fill material" also excluded "material placed for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures." Since maintenance and emergency reconstruction of these types of fill often involve discharges into water, we do not have authority to exclude these activities from the permit requirements of the FWPCA. We have, therefore, eliminated this exclusion from our definition of "fill material". At the same time, we are issuing, today, a nationwide permit for discharges of dredged or fill material that involve maintenance and emergency reconstruction of existing fills. The nationwide permit contains basic common sense conditions and management practices which, if followed, will achieve the objectives of the FWPCA. Of course, if the maintenance or emergency reconstruction does not involve a discharge in water, no permit is required.

During the two years of experience with the Section 404 program, several industrial and municipal discharges of solid waste materials have been brought to our attention which technically fit within our definition of "fill material" but which were intended to be regulated under the NPDES program. These include the disposal of waste materials such as sludge, garbage, trash, and debris in water. In some cases involving the disposal of these types of material in water, the final result may be a landfill even though the primary purpose of the discharge is waste disposal.

The Corps and the Environmental Protection Agency feel that the initial decision relating to this type of discharge should be through the NPDES program. We have, therefore, modified our definition of fill material to exclude those pollutants that are discharged into water primarily to dispose of waste. We will process Section 404 permits for these types of activities to the extent that a levee or other type of containment structure must be placed in the water as part of the overall disposal plan. We will not, however, take any final action on the Section 404 permit application until a decision on the NPDES permit has been made (See 33 CFR 230.4(j)).

Individual, general, and nationwide permits: As we did in the regulation on our Section 10 program, we have included definitions of "individual", "general" and "nationwide" permits to distinguish between the three types of authorizations that will be used to satisfy the requirements of the FWPCA.

If a discharge requires an individual permit, an application must be made to the District Engineers following the procedures specified in 33 CFR Part 325 and the discharge cannot begin until and unless the permit is issued.

Before applying for an individual permit, however, a person needing a Section 404 permit should check to see whether the proposed discharge has already been permitted by a general permit, or a nationwide permit published in this regulation. District Engineers are issuing general permits for particular regions of the country that cover a wide variety of discharges that cause only minimal individual and cumulative adverse environmental impact. Nationwide permits apply throughout the country, and cover many types of minor activities. If a general or nationwide permit already covers your discharge, you should not have to get an individual permit to satisfy the requirements of the FWPCA.

Nationwide Permits

On May 16, 1977 we published proposed nationwide permits in the FEDERAL REGISTER to authorize discharges of dredged or fill material into certain waters of the United States and also certain specific categories of discharges. We received 163 letters commenting on these nationwide permits, the majority of which supported the concept but suggested additions, modifications and/or deletions to the activities covered and the conditions imposed.

Today, we are issuing nationwide permits for discharges into most of the Category 4 waters, discussed above, (isolated natural lakes larger than 10 acres are not included) and for certain specific categories of discharges into other waters. These nationwide permits are being incorporated into § 323.4.

We wish to take this opportunity to express our appreciation to everyone who commented on these nationwide permits. The following is a discussion of the sub-

stantive changes that were made as a result of your comments.

Management practices. The Environmental Protection Agency expressed concern over the potential for adverse cumulative effects that may be caused by some of the discharges that are subject to the nationwide permit. To minimize these potential effects, EPA suggested that we identify certain basic common sense management practices that should be followed, to the maximum extent possible, to minimize these potential adverse effects on the aquatic environment. We have adopted this suggestion. These management practices pertain to all discharges subject to these nationwide permits and are listed in § 323.4(b). We anticipate that compliance with these practices will avoid the potential for cumulative adverse water quality impacts that may be caused by these discharges.

We intend to remain aware of potential cumulative impacts that may occur on a regional basis as a result of these nationwide permits. If adverse cumulative impacts are anticipated from any of the discharges subject to these nationwide permits, we intend to take appropriate administrative action including the exercise of authority expressed in § 323.4–4 to require individual or general permits for these activities.

Discharges prior to effective dates of phasing (*§ 323.4–1*). The 1975 regulation authorized discharges of dredged or fill material that occurred before a particular phasing date. We have republished this authorization by including it in this nationwide permit. The conditions remain the same as were published in 1975.

Discharges into certain waters of the United States (*§ 323.4–2*). Many commenters expressed confusion over the types of waters that were covered by this nationwide permit, specifically with reference to those that are described in § 323.4–2(a) (4) as "non-tidal waters of the United States that are not part of a surface tributary system to interstate waters or navigable waters of the United States." We intended by this description to include those waters identified in "Category 4," above with the exception of isolated lakes larger than 10 acres. Thus, discharges of dredged or fill material into most of the "Category 4" waters are subject to this nationwide permit.

Numerous letters questioned whether wetlands adjacent to these "Category 4" waters were included as part of this nationwide permit. Discharges into these adjacent wetlands are included. Several environmental groups expressed concern over expanding the size limitations for natural lakes including prairie potholes to 10 acres, which they viewed as an apparent expansion from the present 5 acre lake "exclusion" contained in the Corps' 1975 regulations. As we have already indicated in our discussion on lakes above, the 5 acre standard, measured by surface area, was difficult to determine since, in many regions, the surface area of small lakes is subject to extreme seasonal variation. However, we have found that in most cases, the wetlands adjacent to these small natural lakes are more easily delineated and are relatively stable despite fluctuations in water levels. In order to simplify the identification of natural lakes described in § 323.4–2(a) (2) and (3) we adopted a standard for surface area measurement by including adjacent wetlands. Since these surrounding wetland areas are now included in the measurement, we increased the size limitation for lakes from 5 acres to 10 acres. Again, we emphasize that this size limitation is only used for determining whether an individual or general permit in lieu of this nationwide permit, is required.

We share the concern of the environmental groups that prairie potholes and many other isolated lakes are disappearing. The safeguards contained in the new management practices section of this permit, as well as the authority vested in the District Engineers to process individual or general permits where the concerns of the aquatic environment (as expressed in the EPA Guidelines) so require, will, we believe, adequately protect the broad range of water quality concerns and the public interest in "prairie potholes, small lakes, and other waters described by this section." Moreover, § 323.4–4 provides another safeguard through which EPA can bring concerns for water quality as expressed in the Section 404(b) Guidelines to the attention of the District Engineer.

Several commenters indicated that the third condition of this nationwide permit, dealing with erosion, was vague and overly broad. The condition has been changed to make our intent clear: the fill must be maintained in a manner to prevent erosion and other non-point sources of pollution.

EPA recommended that we include a condition that the discharge would not destroy members of a threatened or endangered species. We concur and this change has been made in this nationwide permit, as well as in the nationwide permit that authorizes discharges for certain types of activities. (See §§ 323.4–2(b) (1) and 323.4–3(b) (3).) We cannot agree to requests from industries to delete this condition altogether since Section (7) of the Endangered Species Act requires the Corps to protect threatened and endangered species in all waters subject to its regulatory jurisdiction.

We received a great number of comments from Resource Districts in opposition to the exception in our nationwide permits (§ 323.4–2(c)) for dams located above the headwaters which would be greater than 25 feet in height or 50 acre feet in impoundment capacity. As was pointed out, this exception would automatically require an individual permit for many dams above the headwaters which, in most cases, were exempt from individual permit requirements by the 1975 regulation. We are excluding this exception since we feel that our original reason for including it will now be satisfied by inclusion of the new management practices, discussed above. The deletion of § 323.4–2(3) means that any dam located above the headwater of a stream will be authorized by the nationwide permit unless the District Engineer applies his discretionary authority under § 323.4–4.

Specific categories of discharges. Comments on the types of activities and proposed conditions included in this portion of the nationwide permit ranged from environmental groups, who favored greater restrictions on permitted activities, to industry groups who proposed additional categories to be permitted to cover their particular activities. We feel that we have struck a reasonable balance between these concerns and requests through the addition of the management practices, discussed above. At the same time, we are committed to reviewing other classes and categories of discharges of dredged or fill material that may be, in the future, candidates for nationwide permits.

Utility lines (*§ 323.4–3(a) (1)*). This section has been amended to clarify that any excess material beyond that needed to restore the bottom contour to its preconstruction status must be removed to an upland disposal area. Such a requirement was envisioned in the proposed permit, but not clearly expressed. At the suggestion of EPA, we have explicitly stated this requirement to insure compliance and avoid misunderstanding.

Numerous commenters suggested further clarification on what was intended by the use of the term "utility line." We have defined the term to include any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, and any cable, line, or wire for the transmission of energy, telephone, radio, or television communication.

Despite several suggestions for prenotification requirements and fill length and volume restrictions, we do not believe that these conditions are necessary. We feel, instead, that upland disposal of excess material and compliance with the management practices will limit any sedimentation or disruption of water flow in streams as a result of these activities.

Bank stabilization (*§ 323.4–3(a) (2)*). We have modified this category of discharge to make it clear that only *necessary* bank stabilization for erosion prevention is being permitted. While some suggested that we include a pre-notification requirement, we do not feel that this is necessary.

Minor road crossing fills (*§ 323.4–3(a) (3)*). This category of activity generated more specific comment than any other of the proposed nationwide permits. We have made certain changes to respond to these comments.

At the request of many commenters, we have removed the 30 day advance notification requirement for discharges between 100 and 200 cubic yards in quantity. We believe that this is impractical to administer and that the basic intent for the notification has been offset by the inclusion of management practices.

Our proposed nationwide permit provided that a crossing must be culverted or bridged to prevent the restriction of normal flow. In response to comments by

EPA and environmental groups "normal" has been changed to "expected high flows." This change will provide more effective drainage and reduce erosion during expected flood stage levels.

Forest industry commenters were almost unanimous in their calls for deleting the 100 to 200 cubic yard reporting requirement (see above) and increasing both the 200 cubic yard fill limit and the 50 foot wetland width limitation. They indicated that many minor road crossings with little or no direct or cumulative environmental impact would not qualify under our proposed permit. Their main source of concern was the 50 foot limit on wetlands adjacent to the waterbody to be crossed. In reviewing the comments it became apparent that confining road crossing activities in adjacent wetlands to 50 feet on either side of the ordinary high water mark of the waterbody would result in excluding many small roadfills from this nationwide permit. On the other hand, others applauded our 50 foot limit and urged a reduction in the allowable level of fill. After carefully considering all comments on this permit we decided that the allowable wetland width to be crossed could be increased from 50 to 100 feet on either side of the stream as long as this allowance was applicable to non-tidal streams. In tidal waters, where adjacent wetlands are more dependent on frequent tidal flushing, and therefore circulation impairments from road fills are more damaging, we concluded that even the 50 foot wetland fill needed to be controlled through an individual or general permit. We, therefore, divided the road fill permit into tidal and non-tidal waters. For non-tidal waterbodies, we increased the adjacent wetland width from 50 to 100 feet. For tidal water crossings (Section 323.4-3(a)(4)) we included only the fill placed incidental to the construction of the bridge itself. Any approach fills or causeways associated with the crossings of tidal waters will require an individual or general Section 404 permit if located in waters of the United States.

One commenter expressed concern that no restriction had been placed on the total amount of fill above the ordinary high water mark, since this could lead to erosion on steep slopes between the ordinary high water mark and the road surface. The letter also feared that without a total fill limit, vast amounts of wetlands could be filled at right angles to the waterbody for roads or turn around areas. We share this commenter's concerns. However, we believe that adherence to the management practices suggested by EPA will minimize erosion and other non-profit sources of pollution. As for his second concern, it must be noted that § 323.4-3(a)(3) only permits minor road crossings and attendant features. It does not authorize general road building in wetlands above the ordinary high water mark. We will construe attendant features narrowly. Major activities appurtenant to the road crossing will not be permitted by this section. These require an individual or general permit issued pursuant to procedures in 33 CFR Part 325.

Many commenters expressed confusion over the 100/200 cubic yard measurement as it pertains to these roadfills. We intended to use that measurement to define the size of the crossing, and to use the ordinary high water mark to determine that size. Thus, up to 200 cubic yards of material can be discharged below the plane of ordinary high water of a waterbody under this nationwide permit, and additional cubic yards of material can be discharged into the 100 foot strip of adjacent wetlands, as necessary, to construct the road provided the conditions to protect those wetlands are satisfied. We have expressed this intent by including a definition of "minor road fill" in the nationwide permit.

Repair, rehabilitation and replacement of existing fills (§323.4-3(a)(4)). As we have previously indicated, the 1975 regulations excluded material placed for maintenance and emergency reconstruction of fills from the definition of "fill material." We have added this previously excluded activity to the list of those that are being permitted today by this nationwide permit.

EPA, Conservation Commissions, and environmental groups noted that the condition in subparagraph (f) that the discharge not disrupt the migration of indigenous aquatic life was not sufficient to safeguard the passage of nonmigratory aquatic life. The final nationwide permit condition reflects this concern by changing "migration" to "movement."

Subparagraph (6) has been amended to clarify its intent to control erosion and other non-points sources of pollution. This subparagraph is consistent with changes made in § 323.4-2(b)(3).

A new condition has been added at the request of the Department of the Interior to exclude components of National and State wild and scenic river systems (established pursuant to the Wild and Scenic Rivers Act) from the nationwide permit programs (§§ 323.4-2(b)(4) and 323.4-3(b)(7)).

Discretionary authority to require individual or general permits (§ 323.4-4). Comments received from industry groups suggested that this section was superfluous since by definition any activity performed in accordance with the conditions in §§ 323.4-2 or 323.4-3 would have minimum adverse water quality impact and would not trigger EPA Guideline concerns. On the other hand other commenters suggested more stringent controls over erosion, water quality, chemical use, restoration of abandoned projects and wildlife protection. In order to make our regulatory program work, we are relying on decentralization and our flexibility to respond to local conditions. Moreover, if we overburden this nationwide permit with specific conditions, its intent and usefulness is reduced. On the other hand, we realize that local conditions may be such that special restrictions are required for activities otherwise acceptable in most areas and certain waters of the United States otherwise covered by a nationwide permit require special restrictions. We believe the most efficient means to do this is to grant our District Engineers the authority to require individual or general permits, as needed, to respond to these local conditions. To this end we invite the help of private groups, citizens, and Federal and State agencies to help our District Engineers respond to these localized concerns.

All Federal agencies that commented expressed support for the concept of nationwide permits, as did 81% of the public comment letters. We believe these new nationwide permits represent a major step forward in reducing unnecessary reviews and delay associated with regulation of minor discharges of dredged or fill material into waters of the United States.

An environmental assessment and a Findings of Fact have been prepared for these nationwide permits as well as for the Section 10 nationwide permits and are available for review in the Office, Chief of Engineers, Forrestal Building, Room 5F-036, Washington, D.C. 20314.

PART 324

This Part prescribes the special policies and procedures that will be used to evaluate applications for permits to transport dredged material for purposes of dumping in ocean waters pursuant to Section 103 of the Ocean Dumping Act. These policies and procedures must also be read in conjunction with the applicable general policies of Part 320 and general procedures of 325. If you need a permit to dump dredged material in the oceans, you should also refer to Part 322 since a permit will be required under Section 10 of the 1899 Act to dredge in navigable waters of the United States.

Part 324 corresponds to Sections (d)(3), (e)(3), and (g)(17) of rescinded 33 CFR 209.120.

We have adopted the definitions of "oceans waters", "dredged material", and "transport" as used by the Ocean Dumping Act.

In accordance with recent revisions to EPA criteria for the evaluation of the ocean dumping of dredged material, we have included requirements for additional specific information that must be included as part of a public notice for a proposed ocean dumping of dregded material. We have also specifically included the requirement that District Engineers consider the availability of land based alternatives during the evaluation of applications for ocean dumping permits. (See also § 320.4(a)(2)).

Procedures have also been included in this Part for those cases in which EPA objects to the proposed dumping of dregded material in ocean waters as being inconsistent with the EPA criteria. (See § 324.4(c)-(e)).

PART 325

This Part describes the procedures for processing all applications for Department of the Army permits, and for modi-

fying or revoking permits that have been issued. It corresponds to and supersedes paragraphs (h) through (s) of rescinded 33 CFR 209.120. The following is a summary of the major changes:

The material was reorganized for clarity. For example, public notice and environment impact statement (EIS) procedures, which were discussed in a number of different places in the rescinded regulation, were consolidated into single paragraphs.

The EIS procedures were revised to allow for a public hearing at completion of the draft EIS rather than the proposed final EIS; to require a public notice of the final EIS filing; and to provide for transmittal of the District Engineer's report to higher authority for decision, if required, after completion of the 30 day comment period on the final EIS (§ 325.4).

Permit file documentation requirements have been clarified. The District Engineer must prepare an impact assessment document (either an environmental assessment or an EIS) for each application and a decision document (either a Findings of Fact or, if the case is sent forward for decision, his report on the application) (§ 325.2(a)).

District Engineers have been delegated expanded authority to deny permits, including those which he determines are not in the public interest. (Their previous denial authority was limited to navigational conflicts and denial of a related state or local certification or authorization.) District Engineers have also been given the authority to issue most permits found to be in the public interest over unresolved objections of another Federal agency if that agency indicates that it does not desire to refer the application to a higher level of authority for review. (§ 325.8(b)).

Litigation potential and objection from a member of Congress have been deleted as reasons for automatically having to refer an application to the Chief of Engineers for decision. (§ 325.8(d)).

Procedures relating to the Coastal Zone Management Act have been made compatible with new regulations of the National Oceanic and Atmospheric Administration to be published as 15 CFR 930 (§ 325.2(b)(2)).

PART 326

This Part prescribes the policies and procedures that will be used by the Corps in the enforcement of the requirements of the River and Harbor Act of 1899, the FWPCA, and the Ocean Dumping Act. The Part corresponds to rescinded 33 CFR 209.120(g)(12), and is generally a restatement of the provisions in that rescinded section.

We have made several additions and clarifications to this enforcement regulation. On August 22, 1975, the Chief of Engineers delegated authority to District Engineers to refer certain types of cases involving unauthorized activities directly to the local U.S. Attorney. This delegation included the following types of cases: (1) All unauthorized structures or work falling exclusively within the scope of Section 10 of the 1899 Act for which a criminal fine or penalty under Section 12 of that Act is considered appropriate; (2) all civil actions involving small unauthorized structures, such as piers, which require restoration or modification by judicial order because efforts to secure voluntary compliance have failed; (3) all violations of Section 301 of the FWPCA involving unauthorized discharges of dredged or fill material into waters of the United States, unless the case involves a substantial question of law or fact, or a request for substantial restoration; and (4) all cases for which a temporary restraining order and/or preliminary injunction is appropriate following non-compliance with a cease and desist order issued by the District Engineer.

We have restated this delegation of authority in this regulation, as well as certain basic policy guidance (also previously included in the August, 1975 delegation) for use by the District Engineer in determining whether civil and/or criminal action is appropriate. We have also incorporated the policies and procedures expressed in a Memorandum, dated June 1, 1976, entitled "EPA Enforcement Policy for Noncompliance with Section 404 of the FWPCA", which was signed by the Assistant Administrator for Enforcement of EPA and concurred in by the Assistant Attorney General and the Chief Counsel of the Corps of Engineers.

Authority to refer certain types of cases directly to the local U.S. Attorney has not been delegated to the District Engineer either because of the extreme seriousness of the case or because the law on the particular type of case has not developed to the point to which Departmental level attention is no longer required.

We intend to propose revisions to this regulation in the near future that will provide further policy and procedural guidance and that will incorporate other enforcement authorities.

PART 327

This Part prescribes the policies and procedures to be followed by the Corps in the conduct of public hearings. A public hearing may become necessary in the evaluation of an application for a Department of the Army permit. The Part restates the policies and procedures that were prescribed in rescinded 33 CFR 209.133.

PART 328

This Part prescribes the policies and procedures used in the establishment of harborlines pursuant to Section 11 of the River and Harbor Act of 1899 (33 U.S.C. 404). As previously indicated, harborlines are only used as guidance to the District Engineer concerning the impact that a particular activity may have on navigation. Activities occurring landward of established harborlines must still have permits under Sections 9 or 10 of the 1899 Act, and may also require permits under Section 404 of the FWPCA and Section 103 of the Ocean Dumping Act. This part restates the policies and procedures expressed in rescinded 33 CFR 209.150.

PART 329

This Part corresponds to rescinded 33 CFR 209.260 and provides the administrative definition of the term "navigable waters of the United States" as used throughout Parts 320–325.

Two changes have been made to this regulation. First, pursuant to the decision of *United States* v. *Stoeco Homes, Inc.*, 498 F.2d 597, (3rd Cir., 1974), *cert. den.*; 420 U.S. 927 (1975), we have included artificial waters subject to tidal action within our administrative definition of navigable waters of the United States. Second, we have delegated authority to Division Engineers to make determinations of navigability. (Previously, this authority existed with the Chief of Engineers.) Accordingly, 33 CFR 209.120, 209.125, 209.131, 209.133, 209.150 and 209.260 are revoked and reserved and 33 CFR 320 through 329 are added as set forth below.

NOTE.—The Department of the Army 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.

(33 U.S.C. 401; 33 U.S.C. 403; 33 U.S.C. 1344; 33 U.S.C. 1413.)

Dated: July 13, 1977.

DRAKE WILSON,
Brigadier General, USA,
Deputy Director of Civil Works.

Chapter II of 33 CFR is amended as follows:

PART 209—ADMINISTRATIVE PROCEDURES

§§ 209.120, 209.125, 209.131, 209.133, 209.150, and 209.260 [Reserved]

1. The above sections are revoked and reserved.

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2. The following parts 320 through 329 are added:

PART 320—GENERAL REGULATORY POLICIES

Sec.
320.1 Purpose and scope.
320.2 Authorities to issue permits.
320.3 Related legislation.
320.4 General policies for evaluating permit applications.

AUTHORITY: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 320.1 Purpose and scope.

(a) *Types of activities regulated.* This regulation and the regulations that follow (33 CFR 321–329) prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army permits for various types of activities that occur in waters of the United States or the oceans. This part identifies the various Federal statutes that require Department of the Army permits before these activities can be lawfully undertaken; the related Federal legislation applicable to the review of each activity that requires a Department of the Army permit; and the general policies that are applicable

to the review of all activities that require Department of the Army permits. Parts 321–324 address the various types of activities that require Department of the Army permits, including special policies and procedures applicable to those activities, as follows:

(1) Dams or dikes in navigable waters of the United States (Part 321);

(2) All other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (Part 322);

(3) All activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (Part 322);

(4) Construction of fixed structures and artificial islands on the outer continental shelf (Part 322);

(5) All discharges of dredged or fill material into the waters of the United States (Part 323); and

(6) All activities involving the transportation of dredged material for the purpose of dumping it in ocean waters (Part 324).

(b) *Forms of authorization.* Department of the Army permits for the above described activities are issued under various forms of authorization. These include individual permits; letters of permission that are issued following a review of an individual application for a Department of the Army permit; general permits that authorize the performance of a category or categories of activities in a specific geographical region after it is determined that these activities will cause only a minimal individual and cumulative adverse environmental impact; and nationwide permits that authorize the performance of certain specified activities throughout the Nation. The nationwide permits are found in 33 CFR 322.4 and 323.4. If an activity is covered by a general or nationwide permit, an application for a Department of the Army permit does not have to be made. In such cases, a person must only comply with the conditions contained in the general or nationwide permit to satisfy the requirements of law.

(c) *General instructions.* The procedures for processing all letters of permission, individual permits, and general permits are contained in 33 CFR 325. However, before reviewing those procedures, a person desiring to perform any activity that requires a Department of the Army permit is advised to review the general and special policies that relate to the particular activity as outlined in this Part 320 and Parts 321 through 324. The terms "navigable waters of the United States" and "waters of the United States" are used frequently throughout these regulations, and it is important that the reader understand the difference from the outset. "Navigable waters of the United States" are defined in 33 CFR 329. These are the traditional waters where permits are required for work or structures pursuant to sections 9 and 10 of the River and Harbor Act of 1899. "Waters of the United States" are defined in 33 CFR 323.2(a). These waters include more than navigable waters of the United States and are the waters where permits are required for the discharge of dredged or fill material pursuant to section 404 of the Federal Water Pollution Control Act Amendments of 1972.

§ 320.2 Authorities to issue permits.

(a) Section 9 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 USC 401) (hereinafter referred to as Section 9) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single State, the structure may be built under authority of the legislature of that State, if the location and plans or any modification thereof, are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit. Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966 (80 Stat. 941, 49 USC 1155g (6)(A)). See also 33 CFR Part 321. A Department of the Army authorization is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1344). See CFR Part 323.

(b) Section 10 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 USC 403) (hereinafter referred to as Section 10) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit, general permit, or letter of permission. The authority of the Secretary of the Army to prevent obstructions to navigation in the navigable waters of the United States was extended to artificial islands and fixed structures located on the outer continental shelf by Section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; 43 U.S.C. 1333(f)). See also 33 CFR Part 322.

(c) Section 11 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 404) authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads or other works may be extended or deposits made without approval of the Secretary of the Army. By policy stated in 33 CFR 328, effective May 27, 1970, harbor lines are guidelines only for defining the offshore limits of structures and fills insofar as they impact on navigation interests. Permits for work shoreward of those lines must be obtained in accordance with Section 10 and, if applicable, Section 404.

(d) Section 13 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency, and the States under Sections 402 and 405 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92–500, 86 Stat. 816, 33 U.S.C. 1342 and 1345). See 40 CFR Parts 124 and 125.

(e) Section 14 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408) provides that the Secretary of the Army on the recommendation of the Chief of Engineers may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(f) Section 1 of the River and Harbor Act of June 13, 1902 (32 Stat. 371; 33 U.S.C. 565) allows any persons or corporations desiring to improve any navigable river at their own expense and risk to do so upon the approval of the plans and specifications by the Secretary of the Army and the Chief of Engineers. Improvements constructed under this authority, which are primarily in Federal project areas, remain subject to the control and supervision of the Secretary of the Army and the Chief of Engineers.

(g) Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92–500, 86 Stat. 816, 33 U.S.C. 1344) (hereinafter referred to as Section 404) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. See 33 CFR 323. The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army, published in 40 CFR Part 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers may consider the economic impact on navigation of such a prohibition in reaching his decision. Furthermore, the

Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

(h) Section 103 of the Marine Protection, Research and Sancturaries Act of 1972, as amended (PL 92-532, 86 Stat. 1052, 33 U.S.C. 1413) (hereinafter referred to as Section 103) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters where it is determined that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological system, or economic potentialities. The selection of disposal sites will be in accordance with criteria, developed by the Administrator of the EPA in consultation with the Secretary of the Army, published in 40 CFR Parts 220-229. However, similar to the EPA Administrator's limiting authority cited in subparagraph (g), above, the Administrator can prevent the issuance of a permit under this authority if he finds that the dumping of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas. See also 33 CFR Part 324.

§ 320.3 Related legislation.

(a) Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500; 86 Stat. 816, 33 U.S.C. 1341) requires any non-Federal applicant for a Federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the affected waters at the point where the discharge originates or will originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(b) Section 307(c) of the Coastal Zone Management Act of 1972, as amended (PL 94-370, 90 Stat. 1013, 16 U.S.C. 1456(c)) requires Federal agencies conducting activities, including development projects, directly affecting a State's coastal zone, to comply, to the maximum extent practicable, with an approved State coastal zone management program. It also requires any non-Federal applicant for a Federal license or permit to conduct an activity affecting land or water uses in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the State has concurred with the non-Federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the State's coastal zone management program. See also 15 CFR Part 930.

(c) Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (PL 92-532, 86 Stat. 1052, 16 U.S.C. 1432) authorizes the Secretary of Commerce, after consultation with other interested Federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters or of the Great Lakes and their connecting waters or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations * * *". See also 33 CFR Part 325 and 33 CFR 209.410.

(e) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, et seq.), the Migratory Marine Game-Fish Act (16 U.S.C. 760c-760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) and other acts express the concern of Congress with the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal agency that proposes to control or modify any body of water must first consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency exercising administration over the wildlife resources of the affected State.

(f) The Federal Power Act of 1920 (41 Stat. 1063; 16 U.S.C. 791a et seq.), as amended, authorizes the Federal Power Commission (FPC) to issue licenses for the construction, operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a power project. However, where such structures will affect the navigable capacity of any navigable waters of the United States (as defined in 16 U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a recommendation to the FPC for the inclusion of appropriate provisions in the FPC license rather than the issuance of a separate Department of the Army permit under 33 U.S.C. 401 et seq. As to any other activities in navigable waters not constituting construction, operation and maintenance of physical structures licensed by the FPC under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 et seq. remain fully applicable. In all cases involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping in ocean waters, Section 404 or Section 103 will be applicable.

(g) The National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places, or eligible for listing. The concern of Congress for the preservation of significant historical sites is also expressed in the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. 469 et seq.), which amends the Act of June 27, 1960. By this Act, whenever a Federal construction project or Federally licensed project, activity or program alters any terrain such that significant historical or acheological data is threatened, the Secretary of the Interior may take action necessary to recover and preserve the data prior to the commencement of the project. See also 33 CFR Part 305.

(h) The Interstate Land Sales Full Disclosure Act (15 USC 1701 et seq.) prohibits any developer or agent from selling or leasing any lot in a subdivision (as defined in 15 USC 1701(3)) unless the purchaser is furnished in advance a printed property report containing information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is part of a project that requires Department of the Army authorization, the Property Report is required by Housing and Urban Development regulation to state whether or not

a permit has been applied for, issued, or denied by the Corps of Engineers for the development under Section 10 or Section 404. The Property Report is also required to state whether or not any enforcement action has been taken as a consequence of non-application for or denial of such permit.

(i) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) declares the intention of the Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act provides that Federal agencies must utilize their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized by that Agency will not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretaries of Interior or Commerce, as appropriate, to be critical. See also 50 CFR Part 17.

(j) The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. The Secretary of Transportation may issue such a license to an applicant if he determines, among other things, that the construction and operation of the deepwater port is in the national interest and consistent with national security and other national policy goals and objectives. An application for a deepwater port license constitutes an application for all Federal authorizations required for the ownership, construction, and operation of a deepwater port, including applications for Section 10, Section 404 and Section 103 permits which must also be issued by the Department of the Army pursuant to the authorities listed in § 320.2. The Secretary of Transportation must obtain the views and recommendations of all Federal agencies having jurisdiction over any aspect of the deepwater port construction and operation prior to issuing a license.

(k) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act.

(l) Section 7(a) of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1278 et seq.) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. No department or agency of the United States shall recommend authorizing of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(m) Section 6(f) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897, 16 USC 460 *l*–4, *et seq.*) provides that no property acquired or developed with assistance from the Land and Water Conservation Fund shall, without the approval of the Secretary of the Interior, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

§ 320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for Department of the Army permits. Additional policies specifically applicable to certain types of activities are identified in Parts 321–324 of this chapter.

(a) *Public interest review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process (e.g., see 33 CFR 209.400, Guidelines for Assessment of Economic, Social and Environmental Effects of Civil Works Projects). That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered; among those are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) the relative extent of the public and private need for the proposed structure or work;

(ii) the desirability of using appropriate alternative locations and methods to accomplish the objective of the proposed structure or work;

(iii) the extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may have on the public and private uses to which the area is suited; and

(iv) the probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated structures or work in the general area.

(b) *Effect on wetlands.* (1) Wetlands are vital areas that constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve important natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected; and

(vii) Wetlands through natural water filtration processes serve to purify water.

(3) Although a particular alteration of wetlands may constitute a minor change,

the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it is part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas in consultation with the appropriate Regional Director of the Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate State agency to assess the cumulative effect of activities in such areas.

(4) No permit will be granted to work in wetlands identified as important by subparagraph (2), above, unless the District Engineer concludes, on the basis of the analysis required in paragraph (a), above, that the benefits of the proposed alteration outweigh the damage to the wetlands resource and the proposed alteration is necessary to realize those benefits. In evaluating whether a particular alteration is necessary, the District Engineer shall consider whether the proposed activity is primarily dependent on being located in, or in close proximity to the aquatic environment and whether feasible alternative sites are available. The applicant must provide sufficient information on the need to locate the proposed activity in the wetland and must provide data on the basis of which the availability of feasible alternative sites can be evaluated.

(5) In addition to the policies expressed in this subpart the Congressional policy expressed in the Estuary Protection Act, PL 90-454, and State regulatory laws or programs for classification and protection of wetlands will be given great weight.

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (§ 320.3(e) above) Corps of Engineers officials will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the State in which the work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. They will give great weight to these views on fish and wildlife considerations in evaluating the application. The applicant will be urged to modify his proposal to eliminate or mitigate any damage to such resources, and in appropriate cases the permit may be conditioned to accomplish this purpose.

(d) *Water quality.* Applications for permits for activities which may affect the quality of a water of the United States will be evaluated for compliance with applicable effluent limitations, water quality standards, and management practices during the construction, operation, and maintenance of the proposed activity. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of Section 401 of the Federal Water Pollution Control Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration. Any permit issued may be conditioned to implement water quality protection measures.

(e) *Historic, scenic, and recreational values.* (1) Applications for permits covered by this regulation may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on the enhancement, preservation, or development of such values. Recognition of those values is often reflected by State, regional, or local land use classifications, or by similar Federal controls or policies. In both cases, action on permit applications should, insofar as possible, be consistent with, and avoid adverse effect on, the values or purposes for which those classifications, controls, or policies were established.

(2) Specific application of the policy in subparagraph (1) above, applies to:

(i) Rivers named in Section 3 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273 et seq.); those proposed for inclusion as provided by Sections 4 and 5 of the Act, or by later legislation; and wild, scenic, and recreational rivers established by State and local entities;

(ii) Historic, cultural, or archeological sites or practices as provided in the National Historic Preservation Act of 1966 (83 Stat. 852, 42 U.S.C. 4321 et seq.) (see also Executive Order 11593, May 13, 1971, and Statutes there cited). Particular attention should be directed toward any district, site, building, structure, or object listed or eligible for listing in the National Register of Historic Places;

(iii) Sites included in or determined eligible for listing in the National Registry of Natural Landmarks which are published periodically in the FEDERAL REGISTER;

(iv) Sites acquired or developed with the assistance of the Land and Water Conservation Fund (78 Stat. 897, 16 U.S.C. 460, 1-4, et seq.) or the Recreational Demonstrations Projects Act of 1942 (PL 77-594, 56 Stat. 326) and other public parks and recreation areas; and

(v) Any other areas named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal law for similar and related purposes, such as estuarine and marine sanctuaries.

(f) *Effect on limits of the territorial sea.* Structures or work affecting coastal waters may modify the coast line or base line from which the three mile belt is measured for purposes of the Submerged Lands Act and International Law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore. (The Submerged Lands Act, 67 Stat. 29, U.S. Code Section 1301(c), and United States vs. California, 381 U.S. 139 (1965), 382 U.S. 448 (1965).) All applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The District Engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, D.C. 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the file of the application. After completion of standard processing procedures, the file will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) *Interference with adjacent properties or water resource projects.* Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) Because a landowner has the general right to protect his property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, the District Engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources. A significant probability of resulting damage to nearby properties can be a basis for denial of an application.

(2) A landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby landowners and to the general public's right of navigation on the water surface. Proposals which create undue interference with access to, or use of, navigable waters will generally not receive favorable consideration.

(3) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR Part 329) and may interfere with an authorized Federal project, the applicant should be apprised in writing

of the fact and of the possibility that a Federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the River and Harbor Act of 1899 (see 33 CFR Parts 321 and 322) which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claims or right to compensation will accrue from any such damage.

(4) Proposed activities which are in the area of a Federal project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(h) *Activities affecting coastal zones.* Applications for Department of the Army permits for activities affecting the coastal zones of those States having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-Federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate State agency has concurred with the certification or has waived its right to do so. However, a permit may be issued to a non-Federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security. Federal agency applicants for Department of the Army permits are responsible for complying with the Coastal Zone Management Act's directives for assuring that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved State coastal zone management programs.

(i) *Activities in marine sanctuaries.* Applications for Department of the Army authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary. Authorizations so issued will contain such special conditions as may be required by the Secretary of Commerce in connection with his certification.

(j) *Other Federal, state, or local requirements.* (1) Processing of an application for a Department of the Army permit normally will proceed concurrently with the processing of other required Federal, State, and/or local authorizations or certification. Where the required Federal State and/or local certification and/or authorization has been denied, the application for a Department of the Army permit will be denied without prejudice to the right of the applicant to reinstate processing of his application if subsequent approval is received from the appropriate Federal, State and/or local agency. Even if official certification and/or authorization is not required by State or Federal law, but a State, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) Where officially adopted State, regional, or local land-use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest and shall be considered in addition with the other national factors of the public interest identified in § 320.4(a).

(3) A proposed activity may result in conflicting comments from several agencies within the same State. While many States have designated a single State agency or individual to provide a single and coordinated State position regarding pending permit applications, where a State has not so designated a single source, District Engineers will elicit from the Governor an expression of his views and desires concerning the application or, in the alternative, an expression from the Governor as to which State agency represents the official State position in this particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the processing of the permit application, a permit will generally be issued following receipt of a favorable State determination provided the concerns, policies, goals, and requirements as expressed in 33 CFR Parts 320–324, and the following statutes have been followed and considered: The National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archaeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the Federal Water Pollution Control Act (see § 320.3, above).

(5) If the responsible Federal, State, and/or local agency fails to take definitive action to grant or deny required authorizations or to furnish comments as provided in subparagraph (3) above, within three months of the issuance of the public notice, the District Engineer shall process the application to a conclusion.

(6) Permits will not be issued where certification or authorization of the proposed work is required by Federal, State and/or local law and that certification or authorization has been denied.

(7) The District Engineer may, in those States with ongoing permit programs for activities regulated by Department of the Army permits, enter into an agreement with the States to jointly process and evaluate Department of the Army and State permit applications. This may include the issuance of joint public notices; the conduct of joint public hearings, if held; and the joint review and analysis of information and comments developed in response to the public notice, public hearing, the environmental assessment and the environmental impact statement (if necessary), the Fish and Wildlife Coordination Act, the Historical and Archaeological Preservation Act, the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and the Federal Water Pollution Control Act. In such cases, applications for Department of the Army permits may be processed concurrently with the processing of the State permit to an independent conclusion and decision by the District Engineer and appropriate State agency.

(k) *Safety of impoundment structures.* Unless an adequate inspection program is required by another Federal licensing agency or will be performed by another Federal agency, the District Engineer will condition permits for impoundment structures to require that the permittee operate and maintain the structure properly to insure public safety. The District Engineer may condition such permits to require periodic inspections and to indicate that failure to accomplish actions to assure the public safety will be considered cause to revoke the permit.

(l) *Floodplains.* Executive Order 11988, dated May 24, 1977, requires each Federal agency, in its conduct of Federal programs that affect land use including the regulation of water resources, to take action to reduce the risk of flood loss; to minimize the impact of floods on human safety, health and welfare; and to restore and preserve the natural and beneficial values served by floodplains. In evaluating whether activities located in a floodplain that require Department of the Army permits are in the public interest, available alternatives to avoid adverse effects from and incompatible development in floodplains shall be considered.

PART 321—PERMITS FOR DAMS AND DIKES IN NAVIGABLE WATERS OF THE UNITED STATES

Sec.
321.1 General.
321.2 Definitions.
321.3 Special policies and procedures.

AUTHORITY: 33 U.S.C. 401.

§ 321.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of En-

gineers in connection with the review of applications for Department of Army permits to authorize the construction of a dike or dam in a navigable water of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401). See 33 CFR 320.2(a). Dams and dikes in navigable waters of the United States also require Department of the Army permits under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344). Applicants for Department of the Army permits under this Part should also refer to 33 CFR Part 323 to satisfy the requirements of Section 404.

§ 321.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark (mean higher high water mark on the Pacific coast), and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "dam" means an impoundment structure that completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce.

(c) The term "dike" means an embankment, low dividing wall, or other protective barrier that completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce.

§ 21.3 Special policies and procedures.

The following additional special policies and procedures shall be applicable to the evaluation of permit applications under this regulation:

(a) The Secretary of the Army will decide whether Department of the Army authorization for a dam or dike in a navigable water of the United States will be issued, since this authority has not been delegated to the Chief of Engineers. The conditions to be imposed in any instrument of authorization will be recommended by the District Engineer when he forwards his report to the Secretary of the Army, through the Chief of Engineers, pursuant to 33 CFR 325.11.

(b) A Department of the Army application under Section 9 will not be processed until the approval of the United States Congress has been obtained if the navigable water of the United States is an interstate waterbody, or until the approval of the appropriate State legislature has been obtained if the navigable water of the United States is solely within the boundaries of one State.

PART 322—PERMITS FOR STRUCTURES OR WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Sec.
322.1 General.
322.2 Definitions.
322.3 Activities requiring permits.
322.4 Structures and work permitted by this regulation.
322.5 Special policies and procedures.
Appendix A.—U.S. Coast Guard/Chief of Engineers Memorandum of Agreement.
Appendix B.—Delegation of Authority.

AUTHORITY: 33 U.S. 403.

§ 322.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325 those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10). See 33 CFR 320.2(b). Certain structures or work in or affecting navigable waters of the United States are also regulated under other authorities of the Department of the Army. These include discharges of dredged or fill material into waters of the United States, including the territorial seas, pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344; see 33 CFR Part 323) and the transportation of dreged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413; see 33 CFR Part 324). A Department of the Army permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark (mean higher high water mark on the Pacific coast), and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "structure" shall include, without limitation, any pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, jetty, permanent mooring structure, power transmission lines, permanently moored floating vessels, piling, aids to navigation, or any other permanent or semi-permanent obstacle or obstruction.

(c) The term "work" shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term "letter of permission" means an individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.5(b).

(e) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR Part 325 and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR Part 320.

(f) The term "general permit" means a Department of the Army authorization that is issued for a category or categories of structures or work in a specified region of the country, when those structures or work are substantially similar in nature and cause only minimal individual and cumulative adverse environmental impact. A general permit is issued following an evaluation of the proposed category of activities that it will authorize in accordance with the procedures of this regulation (322.5(b)), 33 CFR Part 325, and a determination that the proposed discharges will be in the public interest pursuant to 33 CFR Part 320.

(g) The term "nationwide permit" means a Department of the Army authorization that has been issued by this regulation in § 322.4 to permit certain structures or work in or affecting navigable waters of the United States throughout the Nation.

§ 322.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required under Section 10 for all structures or work in or affecting navigable waters of the United States except for bridges and causeways (see Appendix A) and structures or work licensed under the Federal Power Act of 1920. Activities that were commenced or completed shoreward of established Federal harbor lines before May 27, 1970 (see 33 CFR Part 328) also do not require Section 10 permits; however, if those activities involve the discharge of dredged or fill material into waters of the United States after October 18, 1972, a Section 404 permit is required (see 33 CFR Part 323).

(1) Structures or work are in the navigable waters of the United States if they are within limits defined in 33 CFR Part 329. Structures or work outside these limits are subject to the provisions of law cited in paragraph (a) above, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on the navigable capacity of the waterbody. For purposes of a Section 10 permit, a tunnel or other structure under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the waterbody.

(2) Pursuant to Section 154 of the Water Resource Development Act of 1976 (PL 94-587), Department of the Army permits will not be required under Section 10 to construct wharves and piers in any waterbody, located entirely within one State, that is a navigable water of

the United States solely on the basis of its historical use to transport interstate commerce. Section 154 applies only to the construction of a single pier or wharf and not to marinas. Furthermore, Section 154 is not applicable to any pier or wharf that would cause an unacceptable impact on navigation.

(b) *Outer continental shelf.* Department of the Army permits will also be required for the construction of artificial islands and fixed structures on the outer continental shelf pursuant to Section 4(f) of the Outer Continental Shelf Lands Act (see 33 CFR 320.2(b)).

(c) *Activities of Federal agencies.* Except as specifically provided in this subparagraph, activities of the type described in (a) and (b), above, done by or on behalf of any Federal agency, other than any work or structures in or affecting navigable waters of the United States that are part of the Civil Works activities of the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under this regulation. Division and District Engineers will therefore advise Federal agencies accordingly, and cooperate to the fullest extent in expediting the processing of their applications.

(1) Congress has delegated to the Secretary of the Army and the Chief of Engineers in Section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States. The general legislation by which Federal agencies are empowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of Section 10. If an agency asserts that it has Congressional authorization meeting the test of Section 10 or would otherwise be exempt from the provisions of Section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of Section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to State or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy.

§ 322.4 Structures and work permitted by this regulation.

The following structures or work are hereby permitted for purposes of Section 10 and do not require separate Department of the Army permits:

(a) The placement of aids to navigation by the U.S. Coast Guard; see § 322.5 (e), below;

(b) Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized; See § 322.5(g), below;

(c) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or of any currently serviceable structure constructed prior to the requirement for authorization; provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure, and further provided that the structure to be maintained has not been put to uses differing from uses specified for it in any permit authorizing its original construction;

(d) Marine life harvesting devices such as pound nets, crab traps, eel pots, lobster traps, provided there is no inteference with navigation;

(e) Staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar scientific structures provided there is no interference with navigation;

(f) Survey activities including core sampling; and

(g) Structures or work completed before 18 December 1968 or in waterbodies over which the District Engineer has not asserted jurisdiction provided there is no interference with navigation.

§ 322.5 Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 10 permits. (See Appendix B). The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) *General.* Department of the Army permits will be required for structures or work in or affecting navigable waters of the United States. Certain structures or work specified in § 322.4 are permitted by this regulation. If a structure or work is not permitted by this regulation, an individual or general Section 10 permit will be required.

(b) *General Permits.* The District Engineer may, after compliance with the other procedures of 33 CFR Part 325, issue general permits for certain clearly described categories of structures or work, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories will not require individual permit processing by the procedures of 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that the public interest requires such individual review.

(1) District Engineers will include only those activities that are substantially similar in nature, that cause only minimal adverse environmental impact when performed separately, and that will have only a minimal adverse cumulative effect on the environment as categories which are candidates for general permits.

(2) In addition to the conditions prescribed in Appendix C of 33 CFR Part 325, any general permit issued by the District Engineer shall prescribe the following conditions:

(i) The maximum quantity of material that may be discharged and the maximum area that may be modified by structures or work that are authorized for a single or incidental operation (if applicable);

(ii) A description of the category or categories of activities included in the general permit; and

(iii) The type of water(s) into which the activity may occur.

(3) The District Engineer may require reporting procedures.

(4) A general permit may be revoked if it is determined that the cumulative effects of the activities authorized by it will have an adverse impact on the public interest provided the procedures of 33 CFR 325.7 are followed. Following revocation, application for any future activities in areas covered by the general permit shall be processed as applications for individual permits.

(c) *Non-Federal dredging for navigation.*—(1) The benefits which an authorized Federal navigation project are intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging an access channel to dock and berthing facilities or deepening such a channel to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation projects and, to the maximum practical extent, will be coordinated with interested Federal, State, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-Federal activities which are not so coordinated will be individually evaluated in accordance with this regulation. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will, therefore, be accorded to the fullest extent possible to both Federal and non-Federal operations. Furthermore, permits for non-Federal dredging operations will contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained, disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values.

(2) A permit for the dredging of a channel, slip, or other such project for navigation will also authorize the periodic maintenance dredging of the

project. Authority for maintenance dredging will be subject to revalidation at regular intervals to be specified in the permit. Revalidation will be in accordance with the procedures prescribed in 33 CFR 325.6. The permit, however, will require the permittee to give advance notice to the District Engineer each time maintenance dredging is to be performed. Where the maintenance dredging involves the discharge of dredged material into waters of the United States or the transportation of dredged material for the purpose of dumping in the ocean waters, the procedures in 33 CFR Parts 323 and 324 respectively shall also be followed.

(d) *Structures for small boats.* As a matter of policy, in the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District Engineers will inform applicants of the hazards involved and encourage safety in location, design and operation. Corps of Engineers officials will also encourage cooperative or group use facilities in lieu of individual proprietor use facilities.

(1) Letters transmitting permits for structures for small boats will, where applicable, include the following language: "Notice is hereby given that a possibility exists that the structure permitted may be subject to damage by wave wash from passing vessels. Your attention is invited to special condition _____ of the permit." The appropriate designation of the permit condition placing responsibility on the permittee and not on the United States for integrity of the structure and safety of boats moored thereto will be inserted.

(2) Floating structures for small recreational boats or other recreational purposes in lakes controlled by the Corps of Engineers under a Resources Manager are normally subject to permit authorities cited in § 322.3, above, when those waters are regarded as navigable waters of the United States. However, such structures will not be authorized under this regulation but will be regulated under applicable regulations of the Chief of Engineers published in 36 CFR 327.19 if the land surrounding those lakes is under complete Federal ownership. District Engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake Resources Manager's office.

(e) *Aids to navigation.* The placing of fixed and floating aids to navigation in a navigable water of the United States is within the purview of Section 10 of the River and Harbor Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast Guard because of their control of marking, lighting and standardization of such navigation aids. Applications for permits for installation of aids to navigation will, therefore, be coordinated with the appropriate District Commander, U.S. Coast Guard, and permits for such aids will include a condition to the effect that the permittee will conform to the requirements of the Coast Guard for marking, lighting, etc. Since most fixed and floating aids to navigation will not ordinarily significantly affect environmental values, the usual form of authorization to be used will be a letter of permission (See 33 CFR 325.1(b)).

(f) *Outer continental shelf.* Artificial islands and fixed structures located on the outer continental shelf are subject to the standard permit procedures of this regulation. Where the islands or structures are to be constructed on lands which are under mineral lease from the Bureau of Land Management, Department of the Interior, that agency, in cooperation with other Federal agencies, fully evaluates the potential effect of the leasing program on the total environment. Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security. The public notice will so identify the criteria.

(g) *Canals and other artificial waterways connected to navigable waters of the United States.* (1) A canal or similar artificial waterway is subject to the regulatory authorities discussed in § 322.3, above, if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, condition, or capacity. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of this regulation. For all other canals the exercise of regulatory authority is restricted to those activities which affect the course, condition, or capacity of the navigable waters of the United States. Examples of the latter may include the length and depth of the canal; the currents, circulation, quality and turbidity of its waters, especially as they affect fish and wildlife values; and modifications or extensions of its configuration.

(2) The proponent of canal work should submit his application for a permit, including a proposed plan of the entire development, and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal, to the District Engineer before commencing any form of work. If the connection to navigable waters of the United States has already been made without a permit, the District Engineer will proceed in accordance with 33 CFR Part 326. Where a canal connection is planned, an application for a Section 10 permit should be made at the earliest stage of planning. Where the canal construction has already begun, the District Engineer will, in writing, advise the proponent of the need for a permit to connect the canals to navigable waters of the United States. He will also ask the proponent if he intends to make such a connection and will request the immediate submission of the plans and permit application if it is so intended. The District Engineer will also advise the proponent that any work is done at the risk that, if a permit is required, it may not be issued, and and that the existence of partially completed excavation work will not be allowed to weigh favorably in evaluation of the permit application.

(h) *Facilities at the borders of the United States.* (1) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(2) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the exportation or importation of natural gas to or from a foreign country, must be made to the Federal Power Commission. (Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(e), 15 U.S.C. 717(b), and 18 CFR Parts 32 and 153).

(3) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.766).

(4) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; facilities for the exportation or importation of water or sewage to or from a foreign country; and monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country. (Executive Order 11423, August 16, 1968.)

(5) A Department of the Army permit under Section 10 of the River and Harbor Act of 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has

been issued as provided above, the decision whether to issue the Department of the Army permit will be based primarily on factors of navigation, since the basic existence and operation of the facility will have been examined and permitted as provided by the Executive orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in waters of the United States or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate Department of the Army authorizations under Section 404 of the Federal Water Pollution Control Act or under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, are also required (See 33 CFR Parts 323, 324).

(i) *Power transmission lines.* (1) Permits under Section 10 of the River and Harbor Act of 1899 are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Federal Power Commission under the Federal Water Power Act of 1920. If an application is received for a permit for lines which are part of a water power project, the applicant will be instructed to submit his application to the Federal Power Commission. If the lines are not part of a water power project, the application will be processed in accordance with the procedures prescribed in this regulation.

(2) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code.

Minimum additional clearance above clearance required for bridges

Nominal system voltage kilovolt:	Feet[1]
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

[1] Above clearance required for bridges.

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

(j) *Seaplane operations.* (1) Structures in navigable waters of the United States associated with seaplane operations require Department of the Army permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(2) The FAA must be notified by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, District Engineer, and other interested parties as to the effects of the proposal on the use of airspace. The District Engineer will therefore refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to their recommendations when evaluating the general public interest.

(3) If the seaplane base will serve air carriers licensed by the Civil Aeronautics Board, the applicant must receive an airport operating certificate from the FAA. That certificate reflects determination and conditions relating to the installation operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the District Engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(k) *Foreign Trade Zones.* The Foreign Trade Zones Act (48 Stat. 998–1003, 19 U.S.C. 81a to 81u, as amended) authorizes the establishment of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published in 15 CFR Part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the District Engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of this regulation. Evaluation by a District Engineer of a permit application may give recognition to the consideration by the Board of the general economic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

APPENDIX A—U.S COAST GUARD/CHIEF OF ENGINEERS, MEMORANDUM OF AGREEMENT

1. PURPOSE AND AUTHORITY

A. The Department of Transportation Act, the Act of October 15, 1966, P.L. 89–670, transferred to and vested in the Secretary of Transportation certain functions, powers and duties previously vested in the Secretary of the Army and the Chief of Engineers. By delegation of authority from the Secretary of Transportation (49 CFR 1.46(c)) the Commandant, U.S. Coast Guard, has been authorized to exercise certain of these functions, powers and duties relating to bridges and causeways conferred by:

(1) The following provision of law relating generally to drawbridge operating regulations: Section 5 of the Act of August 18, 1894, as amended (28 Stat. 362; 33 U.S.C. 499);

(2) The following law relating generally to obstructive bridges: The Act of June 21, 1940, as amended (The Truman-Hobbs Act) (54 Stat. 497; 33 U.S.C. 511 et seq.);

(3) The following laws and provisions of law to the extent that they relate generally to the location and clearances of bridges and causeways in the navigable waters of the United States:

(a) Section 9 of the Act of March 3, 1899, as amended (30 Stat. 1151; 33 U.S.C. 401);

(b) The Act of March 23, 1906, as amended (34 Stat. 84; 33 U.S.C. 491 et seq.); and

(c) The General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525 et seq.) except Sections 502(c) and 503.

B. The Secretary of the Army and The Chief of Engineers continue to be vested with broad and important authorities and responsibilities with respect to navigable waters of the United States, including, but not limited to, jurisdiction over excavation and filling, design flood flows and construction of certain structures in such waters, and the prosecution of waterway improvement projects.

C. The purposes of this agreement are:

(1) To recognize the common and mutual interest of the Chief and Engineers and the Commandant, U.S. Coast Guard, in the orderly and efficient administration of their respective responsibilities under certain Federal statutes to regulate certain activities in navigable waters of the United States;

(2) To clarify the areas of jurisdiction and the responsibilities of the Corps of Engineers and the Coast Guard with respect to:

(a) The alteration of bridges,

(1) In connection with Corps of Engineers waterway improvement projects, and

(2) Under the Truman-Hobbs Act;

(b) The construction, operation and maintenance of bridges and causeways as distinguished from other types of structures over or in navigable waters of the United States;

(c) The closure of waterways and the restriction of passage through or under bridges in connection with their construction, operation, maintenance and removal; and

(d) The selection of an appropriate design flood flow for flood hazard analysis of any proposed water opening.

(3) To provide for coordination and consultation on projects and activities in or affecting the navigable waters of the United States.

In furtherance of the above purposes the undersigned do agree upon the definitions, policies and procedures set forth below.

2. ALTERATION OF BRIDGES IN OR ACROSS NAVIGABLE WATERS WITHIN CORPS OF ENGINEERS PROJECTS

A. The Chief of Engineers agrees to advise and consult with the Commandant on navigation projects contemplated by the Corps of Engineers which require the alteration of bridges across the waterways involved in such projects. The Chief of Engineers also agrees to include in such project proposals the costs of alterations, exclusive of betterments, of all bridges within the limits of the designated project which after consultation with the Commandant he determines to require alteration to meet the needs of existing and prospective navigation. Under this concept the federal costs would be furnished under the project.

B. The Commandant of the Coast Guard agrees to undertake all actions and assumes all responsibilities essential to the determination of navigational requirements for horizontal and vertical clearances of bridges across navigable waters necessary in connection with any navigation project by the Chief of Engineers. Further, the Commandant agrees to conduct all public proceedings necessary thereto and establish guide clearance criteria where needed for the project objectives.

3. ALTERATION OF BRIDGES UNDER THE TRUMAN-HOBBS ACT

The Commandant of the Coast Guard acknowledges and affirms the responsibility of the Coast Guard, under the Truman-Hobbs Act, to program and fund for the alteration of bridges which, as distinct from project related alterations described in paragraph 2 herein, become unreasonable obstructions to navigation as a result of factors or changes in the character of navigation and this agreement shall in no way affect, impair or modify the powers or duties conferred by that Act.

4. APPROVAL, ALTERATION AND REMOVAL OF OTHER BRIDGES AND CAUSEWAYS

A. *General Definitions.* For purposes of this Agreement and the administration of the statutes cited in 1.A.(3) above, a "bridge" is any structure over, on or in the navigable waters of the United States which (1) is used for the passage or conveyance of persons, vehicles, commodities and other physical matter and (2) is constructed in such a manner that either the horizontal or vertical clearance, or both, may affect the passage of vessels or boats through or under the structure. This definition includes, but is not limited to, highway bridges, railroad bridges, foot bridges, aqueducts, aerial tramways and conveyors, overhead pipelines and similar structures of like function together with their approaches, fenders, pier protection systems, appurtenances and foundations. This definition does not include aerial power transmission lines, tunnels, submerged pipelines and cables, dams, dikes, dredging and filling in, wharves, piers, breakwaters, bulkheads, jetties and similar structures and works (except as they may be integral features of a bridge and used in its construction, maintenance, operation or removal; or except when they are affixed to the bridge and will have an effect on the clearances provided by the bridge) over which jurisdiction remains with the Department of the Army and the Corps of Engineers under Sections 9 and 10 of the Act of March 3, 1899, as amended (33 U.S.C. 401 and 403). A "causeway" is a raised road across water or marshy land, with the water or marshy land on both sides of the road, and which is constructed in or affects navigation, navigable waters and design flood flows.

B. *Combined Structures and Appurtenances.* For purposes of the Acts cited in 1.A.(3) above, a structure serving more than one purpose and having characteristics of either a bridge or causeway, as defined in 4.A., and some other structure, shall be considered as a bridge or causeway when the structure in its entirety, including its appurtenances and incidental features, has or retains the predominant characteristics and purpose of a bridge or causeway. A structure shall not be considered a bridge or causeway when its primary and predominant characteristics and purpose are other than those set forth above and it meets the general definitions above only in a narrow technical sense as a result of incidental features. This interpretation is intended to minimize the number of instances which will require an applicant for a single project to secure a permit or series of permits from both the Department of Transportation and the Department of the Army for each separate feature or detail of the project when it serves, incidentally to its primary purpose, more than one purpose and has features of either a bridge or causeway and features of some other structure. However, if parts of the project are separable and can be fairly and reasonably characterized or classified in an engineering sense as separate structures, each such structure will be so treated and considered for approval by the agency having jurisdiction thereover.

C. *Alteration of the Character of Bridges and Causeways.* The jurisdiction of the Secretary of Transportation and the Coast Guard over bridges and causeways includes authority to approve the removal of such structures when the owners thereof desire to discontinue their use. If the owner of a bridge or causeway discontinues its use and wishes to remove or alter any part thereof in such a manner that it will lose its character as a bridge or causeway, the Coast Guard will normally require removal of the structure from the waterway in its entirety. However, if the owner of a bridge or a causeway wishes to retain it in whole or in part for use other than for operation and maintenance as a bridge or causeway, the proposed structure will be considered as coming within the jurisdiction of the Corps of Engineers. The Coast Guard will refer requests for such uses to the Corps of Engineers for consideration. The Corps of Engineers agrees to advise the Commandant of the receipt of an application for approval of the conversion of a bridge or causeway to another structure and to provide opportunity for comment thereon. If the Corps of Engineers approves the conversion of a bridge or causeway to another structure, no residual jurisdiction over the structure will remain with the Coast Guard. However, if the Corps of Engineers does not approve the proposed conversion, then the structure remains a bridge subject to the jurisdiction of the Coast Guard.

5. CLOSURE OF WATERWAYS AND RESTRICTION OF PASSAGE THROUGH OR UNDER BRIDGES

Under the statutes cited in Section 1 of this Memorandum of Agreement, the Commandant must approve the clearances to be made available for navigation through or under bridges. It is understood that this duty and authority extends to and may be exercised in connection with the construction, alteration, operation, maintenance and removal of bridges, and includes the power to authorize the temporary restriction of passage through or under a bridge by use of falsework, piling, floating equipment, closure of draws, or any works or activities which temporary reduce the navigation clearances and design flood flows, including closure of any or all spans of the bridge. Moreover, under the Ports and Waterways Safety Act of 1972, Public Law 92-340, 86 Stat. 424, the Commandant exercises broad powers in waterways to control vessel traffic in areas he determines to be especially hazardous and to establish safety zones or other measures for limited controls or conditional access and activity when necessary to prevent damage to or the destruction or loss of, any vessel, bridge, or other structure on or in the navigable waters of the United States. Accordingly, in the event that work in connection with the construction, alteration or repair of a bridge or causeway is of such a nature that for the protection of life and property navigation through or in the vicinity of the bridge or causeway must be temporarily prohibited, the Coast Guard may close that part of the affected waterway while such work is being performed. However, it is also clear that the Secretary of the Army and the Chief of Engineers have the authority, under Section 4 of the Act of August 18, 1894, as amended, (33 U.S.C. 1) to prescribe rules for the use, administration and navigation of the navigable waters of the United States. In recognition of that authority, and pursuant to Section 102(c) of the Ports and Waterways Safety Act, the Coast Guard will consult with the Corps of Engineers when any significant restriction of passage through or under a bridge is contemplated to be authorized or a waterway is to be temporarily closed.

6. COORDINATION AND COOPERATION PROCEDURES

A. District Commanders, Coast Guard Districts, shall send notices of applications for permits for bridge or causeway construction, modification, or removal to the Corps of Engineers Divisions and Districts in which the bridge or causeway is located.

B. District Engineers, Corps of Engineers, shall send notices of applications for permits for other structures or dredge and fill work to local Coast Guard District Commanders.

C. In cases where proposed structures or modifications of structures do not clearly fall within one of the classifications set forth in paragraph 4.A. above, the application will be forwarded with recommendations of the reviewing officers through channels to the Chief of Engineers and the Commandant of the Coast Guard who shall, after mutual consultation, attempt to resolve the questions.

D. If the above procedures fail to produce agreement, the application will be forwarded to the Secretary of the Army and Secretary of Transportation for their determination.

E. The Chief of Engineers and the Commandant, Coast Guard pledge themselves to mutual cooperation and consultation in making available timely information and data, seeking uniformity and consistency among field offices, and providing timely and adequate review of all matters arising in connection with the administration of their responsibilities governed by the Acts cited herein.

Dated: March 21, 1973.

C. R. BENDER.

Dated: April 18, 1973.

F. J. CLARKE.

APPENDIX B—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR CONSTRUCTION OR OTHER WORK AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

MAY 24, 1971.

Pursuant to the authority vested in me by the Act of March 3, 1899, c.425, Sections 10 and 14, 30 Stat. 1151, 1152, 33 U.S.C. Sections 403 and 408, and the Act of June 13, 1902, c.1079, Section 1, 32 Stat. 371, 33 U.S.C. Section 565, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits for construction or other work affecting navigable waters of the United States. Except in cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed work on the public interest. In cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed work on navigation and national security. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Acts.

The Chief of Engineers and his authorized representatives shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

STANLEY R. RESOR,
Secretary of the Army.

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

Sec.

323.1 General.
323.2 Definitions.
323.3 Activities requiring permits.
323.4 Discharges permitted by this regulation.
323.4–1 Discharges prior to effective dates of phasing.
323.4–2 Discharges into certain waters of the United States.
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323.4–4 Discretionary authority to require individual or general permits.
323.5 Special policies and procedures.

Appendix A—Delegation of authority.

AUTHORITY: 33 U.S.C. 1344.

§ 323.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344) (hereinafter referred to as Section 404). See 33 CFR 320.2(g). Certain discharges of dredged or fill material into waters of the United States are also regulated under other authorities of the Department of the Army. These include dams and dikes in navigable waters of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401; see 33 CFR 321) and structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403; see 33 CFR 322). A Department of the Army permit will also be required under these additional authorities if they are applicable to activities involving discharges of dredged or fill material into waters of the United States. Applicants for Department of the Army permits under this Part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 323.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "waters of the United States" means: [1]

(1) The territorial seas with respect to the discharge of fill material. (The transportation of dredged material by vessel for the purpose of dumping in the oceans, including the territorial seas, at an ocean dump site approved under 40 CFR 228 is regulated by Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 USC 1413). See 33 CFR 324. Discharges of dredged or fill material into the territorial seas are regulated by Section 404.);

(2) Coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including adjacent wetlands;

(3) Tributaries to navigable waters of the United States, including adjacent wetlands (manmade nontidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States under this definition).

(4) Interstate waters and their tributaries, including adjacent wetlands; and

(5) All other waters of the United States not identified in paragraphs (1)–(4) above, such as isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce.[2]

The landward limit of jurisdiction in tidal waters, in the absence of adjacent wetlands, shall be the high tide line and the landward limit of jurisdiction an all other waters, in the absence of adjacent wetlands, shall be the ordinary high water mark.

(b) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark (mean higher high water mark on the Pacific coast) and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR 329 for a more complete definition of this term.)

(c) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

(d) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(e) The term "natural lake" means a standing body of open water that occurs in a natural depression fed by one or more streams and from which a stream may flow, that occurs due to the widening or natural blockage of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream.

(f) The term "impoundment" means a standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing.

(g) The term "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(h) The term "high tide line" means a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The mark may be determined by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast

[1] The terminology used by the FWPCA is "navigable waters" which is defined in Section 502(7) of the Act as "waters of the United States including the territorial seas." For purposes of clarity, and to avoid confusion with other Corps of Engineers regulatory programs, the term "waters of the United States" is used throughout this regulation.

[2] In defining the jurisdiction of the FWPCA as the "waters of the United States," Congress, in the legislative history to the Act, specified that the term "be given the broadest constitutional interpretation unencumbered by agency determinations which would have been made or may be made for administrative purposes." The waters listed in paragraphs (a)(1)–4 fall within this mandate as discharges into those waterbodies may seriously affect water quality, navigation, and other Federal interests; however, it is also recognized that the Federal government would have the right to regulate the waters of the United States identified in paragraph (a)(5) under this broad Congressional mandate to fulfill the objective of the Act: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). Paragraph (a)(5) incorporates all other waters of the United States that could be regulated under the Federal government's Constitutional powers to regulate and protect interstate commerce, including those for which the connection to interstate commerce may not be readily obvious or where the location or size of the waterbody generally may not require regulation through individual or general permits to achieve the objective of the Act. Discharges of dredged or fill material into waters of the United States identified in paragraphs (a)(1)–(4) will generally require individual or general permits unless those discharges occur beyond the headwaters of a river or stream or in natural lakes less than 10 acres in surface area. Discharges into these latter waters and into most of the waters identified in paragraph (a)(5) will be permitted by this regulation, subject to the provisions listed in paragraph 323.4–2(b) unless the District Engineer develops information, on a case-by-case basis, that the concerns for the aquatic environment as expressed in the EPA Guidelines (40 CFR 230) require regulation through an individual or general permit. (See 323.4–4).

by strong winds such as those accompanying a hurricane or other intense storm.

(i) The term "headwaters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second.* The District Engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means.

(j) The term "primary tributaries" means the main stems of tributaries directly connecting to navigable waters of the United States up to their headwaters, and does not include any additional tributaries extending off of the main stems of these tributaries.

(k) The term "dredged material" means material that is excavated or dredged from waters of the United States.

(l) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to Section 402 of the Federal Water Pollution Control Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(m) The term "fill material" means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Federal Water Pollution Control Act Amendments of 1972.

(n) The term "discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary to the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(o) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this regulation and 33 CFR 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR Part 320.

(p) The term "general permit" means a Department of the Army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cause only minimal individual and cumulative adverse environmental impact. A general permit is issued following an evaluation of the proposed category of discharges in accordance with the procedures of this regulation (§ 323.3(c)), 33 CFR Part 325, and a determination that the proposed discharges will be in the public interest pursuant to 33 CFR Part 320.

(q) The term "nationwide permit" means a Department of the Army authorization that has been issued by this regulation in § 323.4 to permit certain discharges of dredged or fill material into waters of the United States throughout the Nation.

§ 323.3 Discharges requiring permits.

(a) *General.* Department of the Army permits will be required for the discharge of dredged or fill material into waters of the United States. Certain discharges specified in §§ 323.4–1, 323.4–2 and 323.4–3 are permitted by this regulation. If a discharge of dredged or fill material is not permitted by this regulation, an individual or general Section 404 permit will be required for the discharge of dredged or fill material into waters of the United States in accordance with the following phased schedule:

(1) Before July 25, 1975, discharges into navigable waters of the United States.

(2) After July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands.

(3) After September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area. (See also § 323.4–2 for discharges that are permitted by this regulation.)

(4) After July 1, 1977, discharges into all waters of the United States. (See also § 323.4–2 for discharges that are permitted by this regulation.)

(b) *Individual permits.* Unless permitted by this regulation (§§ 323.4–1, 323.4–2 and 323.4–3) or authorized by general permits (§ 323.3(c)), the discharge of dredged or fill material into waters of the United States will require an individual Department of the Army permit issued in accordance with the policies in § 320.4 and procedures in 33 CFR Part 325.

(c) *General permits.* The District Engineer may, after compliance with the other procedures of 33 CFR Part 325, issue general permits for certain clearly described categories of structures or work, including discharges of dredged or fill material, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories will not require individual permit processing by the procedures of 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that the public interest requires individual review.

(1) District Engineers will include only those activities that are substantially similar in nature, that cause only minimal adverse environmental impact when performed separately, and that will have only a minimal adverse cumulative effect on the environment as categories which are candidates for general permits.

(2) The District Engineer shall include appropriate conditions as specified in Appendix C of 33 CFR Part 325 in each general permit and shall prescribe the following additional conditions:

(i) The maximum quantity of material that may be discharged and the maximum area that may be modified by a single or incidental operation (if applicable);

(ii) A description of the category or categories of activities included in the general permit; and

(iii) The type of water(s) into which the activity may occur.

(3) The District Engineer may require reporting procedures.

(4) A general permit may be revoked if it is determined that the effects of the activities authorized by it will have an adverse impact on the public interest provided the procedures of 33 CFR 325.7 are followed. Following revocation, applications for future activities in areas covered by the general permit shall be processed as applications for individual permits.

(d) *Activities of Federal agencies.* (1) Discharges of dredged or fill material into waters of the United States done by or on behalf of any Federal agency, or instrumentality other than the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and District Engineers will therefore advice Federal agencies and instrumentalities accordingly and cooperate to the fullest extent in the expeditious processing of their applications.

(2) The policy provisions set out in 33 CFR 320.4(j), relating to State or local authorizations, do not apply to discharges of dredged or fill material into

*For streams that are dry during long periods of the year, District Engineers, after notifying the Regional Administrator of EPA, may establish the headwater point as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time. The District Engineer shall notify the Regional Administrator of his determination of these headwater points.

waters of the United States undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the appropriate State, interstate and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Federal Water Pollution Control Act, as amended; in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 11752, dated 17 Dec. 73). They are not required, however, to provide certification of compliance with effluent limitations and water-quality standards from State or interstate water pollution control agencies in connection with activities involving discharges into waters of the United States.

(e) *Activities licensed under the Federal Power Act of 1920.* Any part of a structure or work licensed by the Federal Power Commission that involves the discharge of dredged or fill material into waters of the United States shall require a Department of the Army authorization under this regulation.

§ 323.4 Discharges permitted by this regulation.

(a) *General.* Discharges of dredged or fill material specified in §§ 323.4–1, 323.4–2 and 323.4–3, below, are hereby permitted for purposes of Section 404 without further processing under this regulation (individual applications are not needed), except as provided in § 323.4–4 below. Permits may, however, be required under Section 10 of the River and Harbor Act of 1899 (see 33 CFR 322). Sections 323.4–1, 323.4–2, and 323.4–3 do not obviate the requirement to obtain State or local assent required by law for the activities permitted therein.

(b) *Management practices.* In addition to the conditions specified in §§ 323.4–2(b) and 323.4–3(b), the following management practices should be followed, to the maximum extent practicable, in the discharge of dredged or fill material permitted by §§ 323.4–2 and 324.4–3 to minimize the adverse effects of these discharges on the aquatic environment:

(1) Discharges of dredged or fill material into waters of the United States should be avoided or minimized through the use of other practical alternatives;

(2) Discharges in spawning areas during spawning seasons should be avoided;

(3) Discharges should not restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the waters (unless the primary purpose of the fill is to impound waters);

(4) If the discharge creates an impoundment water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, should by minimized;

(5) Discharges in wetlands areas should be avoided;

(6) Heavy equipment working in wetlands should be placed on mats;

(7) Discharges into breeding and nesting areas for migratory waterfowl should be avoided; and

(8) All temporary fills should be removed in their entirety.

§ 323.4–1 Discharges prior to effective dates of phasing.

(a) Discharges of dredged or fill material in waters of the United States that occur before the phase-in dates specified in § 323.3(a)(2)–(4) above are hereby permitted for purposes of Section 404, provided the conditions in paragraph (c) below are met.

(b) Discharges of dredged or fill material of less than 500 cubic yards into waters other than navigable waters of the United States (see 33 CFR 329) that are part of an activity that was commenced before July 25, 1975, that were completed by January 25, 1976, and that involve a single and complete project and not a number of projects associated with a complete development plan are hereby permitted for purposes of Section 404, provided the conditions in paragraph (c) below are met. The term "commenced" as used herein shall be satisfied if there has been, before July 25, 1975, some discharge of dredged or fill material as a part of the above activity or an entering into of a written contractual obligation to have the dredged or fill material discharged at a designated disposal site by a contractor.

(c) For the purposes of Section 404, the following conditions must have been satisfied for the discharges occurring before the dates specified in paragraph (a) and (b) above:

(1) That the discharge was not located in the proximity of a public water intake;

(2) That the discharge did not contain unacceptable levels of pathogenic organisms in areas used for recreation involving physical contact with the water;

(3) That the discharge did not occur in areas of concentrated shellfish production; and

(4) That the discharge did not destroy or endanger the critical habitat or a threatened or endangered species, as identified under the Endangered Species Act.

§ 323.4–2 Discharges into certain waters of the United States.

(a) Discharges of dredged or fill material into the following waters of the United States are hereby permitted for purposes of Section 404, provided the conditions in paragraph (b) below are met:

(1) Non-tidal rivers, streams and their impoundments including adjacent wetlands that are located above the headwaters;

(2) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are fed or drained by a river or stream above the headwaters. In the absence of adjacent wetlands, the surface area of a lake shall be determined at the ordinary high water mark;

(3) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are isolated and not a part of a surface river or stream. In the absence of adjacent wetlands, the surface area of a lake shall be determined at the ordinary high water mark; and

(4) Other non-tidal waters of the United States other than isolated lakes larger than 10 acres (see (3) above) that are not part of a surface tributary system to interstate waters or navigable waters of the United States (see § 323.2(a)(5)).

(b) For purposes of Section 404, the following conditions must be satisfied for any discharge of dredged or fill material in waters described in paragraph (a), above:

(1) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

(2) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(3) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(4) That the discharge will not occur in a component of the National Wild and Scenic Rivers System or in a component of a State wild and scenic river system.

§ 323.4–3 Specific categories of discharges.

(a) The following discharges of dredged or fill material into waters of the United States are hereby permitted for purposes of Section 404, provided the conditions specified in this paragraph and paragraph (b) below are met:

(1) Dredged or fill material placed as backfill or bedding for utility line crossings provided there is no change in preconstruction bottom contours (excess material must be removed to an upland disposal area). A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. (The utility line will require a Section 10 permit if in navigable waters of the United States. See 33 CFR Part 322.);

(2) Material discharged for bank stabilization, provided that the bank stabilization activity is less than 500 feet in length, is necessary for erosion prevention, and is limited to less than an average of one cubic yard per running foot along the bank, provided further that no material for bank stabilization is placed in any wetland area, and provided further that no material is placed in any locality or in any manner so as to impair surface water flow into or out of any wetland area. (This activity will require a Section 10 permit if in navigable waters of the United States. See 33 CFR part 322.);

(3) Minor road crossing fills including all attendant features both temporary and permanent that are part of a single and complete crossing of a nontidal waterbody, provided that the crossing is culverted or bridged to prevent the restriction of expected high flows and provided further that discharges into any wetlands adjacent to the waterbody do not extend beyond 100 feet on either side of the ordinary high water mark of that waterbody. A "minor road crossing fill" is defined as a crossing that involves the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing will require a permit from the US Coast Guard if located in navigable waters of the United States (see 33 USC 401);

(4) Fill placed incidental to the construction of bridges across tidal waters including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills. Approach fills and causeways are not included in this permit and will require an individual or general Section 404 permit if located in waters of the United States; these fills as well as the bridge itself will also require a permit from the U.S. Coast Guard; and

(5) The repair, rehabilitation or replacement of any previously authorized, currently serviceable fill, or of any currently serviceable fill discharged prior to the requirement for authorization; provided such repair, rehabilitation or replacement does not result in a deviation from the specifications of the original work, and further provided that the fill to be maintained has not been put to uses differing from uses specified for it in any permit authorizing its original construction.

(b) For the purposes of Section 404, the following conditions must be satisfied prior to any discharge of dredged or fill material associated with the activities described above:

(1) That the discharge will not be located in the proximity of a public water supply intake;

(2) That the discharge will not occur in areas of concentrated shellfish production;

(3) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

(4) That the discharge will not disrupt the movement of those species of aquatic life indigenous to the waterbody;

(5) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(6) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(7) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

§ 323.4–4 Discretionary authority to require individual or general permits.

Notwithstanding the provisions of §§ 323.4–1, 323.4–2 and 323.4–3, above, the procedures of this regulation and 33 CFR Part 325, including those pertaining to individual and general permits, shall apply to any discharge(s) of dredged or fill material if the District Engineer determines that the concerns of the aquatic environment, as expressed in the guidelines (see 40 CFR Part 230) indicate the need for such action because of individual and/or cumulative adverse impacts to the affected waters. In such cases, he shall take such steps as are necessary to notify persons who would be affected by such action. If the Regional Administrator, EPA, advises the District Engineer that the concerns for the aquatic environment as expressed in the Section 404(b) Guidelines require assertion of jurisdiction under § 323.4–4, and the District Engineer and Division Engineer disagree, the Office of the Chief of Engineers (DAEN–CWO–N and DAEN–CCH) shall be notified for further coordination and resolution with the Administrator.

§ 323.5 Special policies and procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 404 permits. (See Appendix A.) The following additional special procedures shall also be applicable to the evaluation of permit applications under this regulation:

(a) *EPA Guidelines.* Applications for permits for the discharge of dredged or fill material into waters of the United States will be reviewed in accordance with guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Federal Water Pollution Control Act. (See 40 CFR Part 230.) If the EPA guidelines alone prohibit the designation of a proposed disposal site, the economic impact on navigation and anchorage of the failure to authorize the use of the proposed disposal site will also be considered in evaluating whether or not the proposed discharge is in the public interest.

(b) *Coordination with EPA.* Prior to actual issuance of permits for the discharge of dredged or fill material in waters of the United States, Corps of Engineers officials will advise appropriate Regional Administrators, EPA, of the intent to issue permits to which EPA has objected, recommended conditions, or for which significant changes are proposed. If the Regional Administrator advises, within fifteen days of the advice of the intent to issue, that he objects to the issuance of the permits, the case will be forwarded to the Chief of Engineers in accordance with 33 CFR 325.11 for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain an analysis of the economic impact on navigation and anchorage that would occur by failing to authorize the use of a proposed disposal site, and whether there are other economically feasible methods or sites available other than those to which the Regional Administrator objects.

Appendix A.—Deletion of Authority To Issue or Deny Permits for the Discharge of Dredged or Fill Material Into Navigable Waters

March 12, 1973.

Pursuant to the authority vested in me by Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, P.L. 92–500, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the discharge of dredged or filled material into navigable waters at specified disposal sites. The Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed discharge on the public interest. All permits issued shall specify a disposal site for the discharge of the dredged or fill material through the application of guidelines developed by the Administrator of the Environmental Protection Agency and myself. In those cases where these guidelines would prohibit the specification of a disposal site, the Chief of Engineers, in his evaluation of whether the proposed discharge is in the public interest, is authorized also to consider the economic impact on navigation and anchorage which would occur by failing to authorize the use of a proposed disposal site. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act, other pertinent laws and any applicable memoranda of understanding between the Secretary of the Army and heads of other governmental agencies.

The Chief of Engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

KENNETH E. BELIEU,
Acting Secretary of the Army.

PART 324—PERMITS FOR OCEAN DUMPING OF DREDGED MATERIAL

Sec.
324.1 General.
324.2 Definitions.
324.3 Activities requiring permits.
324.4 Special procedures.
Appendix A.—Delegation of authority.

AUTHORITY: 33 U.S.C. 1413.

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the transportation of dredged material by vessel for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228 pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 USC 1413) (hereinafter referred to as Section 103). See 33 CFR 320.2(h). Activities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require Department of the Army permits under Section

10 of the River and Harbor Act of 1899 (33 USC 403) for the dredging in navigable waters of the United States. Applicants for Department of the Army permits under this Part should also refer to 33 CFR Part 322 to satisfy the requirements of Section 10.

§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(b) The term "dredged material" means any material excavated or dredged from navigable waters of the United States or ocean waters.

(c) The term "transport" or "transportation" refers to the carriage and related handling of dredged material by a vessel.

§ 324.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required for the transportation of dredged material for the purpose of dumping it in ocean waters.

(b) *Activities of Federal agencies.* (1) The transportation of dredged material for the purpose of dumping in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers are subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and District Engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Engineers that involve the transportation of dredged material for dumping in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to State or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the substantive State, interstate, and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and related laws in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 11752, dated 17 Dec 73.) They are not required, however, to obtain and provide certification of compliance with effluent limitations and water-quantity standards from State or interstate water pollution control agencies in connection with activities involving discharges into ocean waters.

§ 324.4 Special procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 103 permits. (See Appendix A.) The following additional procedures shall also be applicable under this regulation.

(a) *Public notice.* For all applications for Section 103 permits, the District Engineer will issue a public notice which shall contain, in addition to the information specified in 33 CFR 325.3, the following information:

(1) The location of the proposed disposal site and its physical boundaries;

(2) A statement as to whether the site has been designated for use by the Administrator, EPA, pursuant to Section 102(c) of the Act;

(3) If the proposed disposal site has not been designated by the Administrator, EPA a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(4) A brief description of known dredged material discharges at the proposed disposal site;

(5) Existence and documented effects of other authorized dumpings that have been made in the dumping area (e.g., heavy metal background reading and organic carbon content);

(6) An estimate of the length of time during which disposal will continue at the proposed site;

(7) Characteristics and composition of the dredged material; and

(8) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

(b) *Evaluation.* Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities. In making this evaluation, criteria established by the Administrator, EPA, pursuant to Section 102 of the Marine Protection Research and Sanctuaries Act of 1972, as amended, shall be applied including an evaluation of the need for the ocean dumping and including the availability of alternatives to ocean dumping. Where ocean dumping is determined to be necessary, the District Engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to Section 102(c) of the Act. See 40 CFR Parts 220 to 229.

(c) *EPA review.* If the Regional Administrator, EPA, advises the District Engineer that the proposed dumping will comply with the criteria the District Engineer shall complete his evaluation of the Section 103 application under this regulation and 33 CFR Parts 320 and 325. If, however, the Regional Administrator advises the District Engineer that the proposed dumping will not comply with the Criteria, the District Engineer will proceed as follows.

(1) The District Engineer shall determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the District Engineer shall evaluate them in accordance with 33 CFR Parts 320, 322, 323, 325 and this regulation, as appropriate.

(2) If the District Engineer makes a determination that there is no economically feasible alternative method or site available, he shall so advise the Regional Administrator of his intent to issue the permit setting forth his reasons for such determination.

(d) *EPA objection.* If the Regional Administrator advises, within 15 days of the notice of the intent to issue, that he still objects to the issuance of the permit, the case will be forwarded to the Chief of Engineers, for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain, in addition to the analysis required by 33 CFR 325.11, an analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(e) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the Criteria or of the critical site designation in accordance with 40 CFR 225.4.

APPENDIX A—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR THE TRANSPORTATION OF DREDGED MATERIAL FOR THE PURPOSE OF DUMPING IT INTO OCEAN WATERS

MARCH 12, 1973.

Pursuant to the authority vested in me by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, 86 Stat. 1052, Pub. L. 92-532, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters. The Chief of Engineers and his authorized representatives shall, in exercising such authority, evaluate the impact of the proposed dumping on the public interest. No permit shall be issued unless a determination is made that the proposed dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. In making this determination, those criteria for ocean dumping established by the Administrator of the Environmental Protection Agency pursuant to Section 102 (a) of the above Act which relate to the effects of the proposed dumping shall be applied. In addition, based upon an evaluation of the potential effect which a permit denial will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Chief of Engineers or his authorized representatives, in evaluating the permit appli-

cation, shall make an independent determination as to the need for the dumping, other possible methods of disposal, and appropriate locations for the dumping. In considering appropriate disposal sites, recommended sites designated by the Administrator of the Environmental Protection Agency pursuant to Section 102(c) of the above Act will be utilized to the extent feasible. Prior to issuing any permit, the Chief of Engineers or his authorized representatives shall first notify the Administrator of the Environmental Protection Agency or his authorized representative of his intention to do so. In any case in which the Administrator or his authorized representative disagrees with the determination of the Chief of Engineers or his authorized representative as to compliance with the criteria established pursuant to Section 102(a) of the above Act relating to the effects of the dumping or with the restrictions established pursuant to Section 102(c) of the above Act relating to critical areas, the determination of the Administrator or his authorized representative shall prevail. If, in any such case, the Chief of Engineers or his Director of Civil Works finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in noncompliance with such criteria or restrictions, he shall so certify and request that I seek a waiver from the Administrator of the Environmental Protection Agency of the specific requirements involved. Unless the Administrator of the Environmental Protection Agency grants a waiver, the Chief of Engineers or his authorized representatives shall not issue a permit which does not comply with such criteria and restrictions. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act, other pertinent laws, and any applicable memoranda of understanding between the Secretary of the Army and the heads of other governmental agencies.

The Chief of Engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

KENNETH E. BELIEU,
Acting Secrtary of the Army.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

Sec.

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AUTHORITY: 33 U.S.C. 401 et seq.: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this regulation (Part 325) apply to any form of Department of the Army permit. Special procedures and additional information are contained in Parts 320 through 324. This Part is arranged in the basic timing sequence used by the Corps of Engineers in processing Department of the Army permits.

(b) *Application form.* Any person proposing to undertake any activity requiring Department of the Army authorization as specified in 33 CFR 321–324 must apply for a permit to the District Engineer in charge of the District where the proposed activity is to be performed. Applications for permits must be prepared in accordance with instructions in Engineer Pamphlet 1145–2–1, "A Guide for Applicants," utilizing the prescribed application form (ENG Form 4345). The form and pamphlet may be obtained from the District Engineer having jurisdiction over the waterway in which the proposed activity will be located. Local variations of the application form for purposes of facilitating coordination with State and local agencies may be used.

(c) *Content of application.* (1) Generally, the application must include a complete description of the proposed activity including necessary drawings, sketches or plans; the location, purpose and intended use of the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and the approvals required by other Federal, interstate, State or local agencies for the work, including all approvals received or denials already made.

(2) If the activity involves dredging in waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(3) If the activity includes the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the application must include the source of the material; a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. (See Part 324 for additional information requirements on ocean dumping applications.) Certification under Section 401 of the Federal Water Pollution Control Act is required for such discharges into waters of the United States.

(4) If the activity includes the construction of a fill or pile or float-supported platform, the project description must include the use and specific structures to be erected on the fill or platform.

(d) *Additional information.* In addition to the information indicated in subparagraph (c), above, the applicant will be required to furnish such additional information as the District Engineer may deem necessary to assist him in his evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites, as may be necessary for the preparation of the Environmental Assessment or Environmental Impact Statement (see § 325.4).

(e) *Signature of application.* The application must be signed by the person who desires to undertake the proposed activity; however, the application may be signed by a duly authorized agent if accompanied by a statement by that person designating the agent and agreeing to furnish, upon request, supplemental information in support of the application. In either case, the signature of the applicant will be understood to be an affirmation that he possesses the authority to undertake the activity proposed in his application, except where the lands are under the control of the Corps of Engineers, in which cases the District Engineer will coordinate the transfer of the real estate and the permit action. When the application is submitted by an agent, the application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area.

(f) *Fees.* Fees are required for permit applications under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and Sections 9 and 10 of the River and Harbor Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the work is non-commercial in nature and provides personal benefits that have no connection with a commercial enterprise. The final decision as to basis for fee (commercial vs. non-commercial) shall be solely the responsibility of the District Engineer. No fee will be charged if the applicant withdraws his application at any time prior to issuance of the permit and/or if his application is denied. Collection of the fee will be deferred until the applicant is notified by the District Engineer that a public interest review has been completed and that the proposed activity has been determined to be in the public interest. Upon receipt of this notification the applicant will forward a check or money order to the District Engineer, made payable to the Treasurer of the United States. The permit will then be issued upon receipt of the application fee. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require a permit will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions or general permits. Agencies or instrumentalities of Federal, State or local governments will not be required to pay any fee in connection with the applications for permits. This fee structure will be reviewed from time to time.

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received, the District Engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and obtain from the applicant any additional information he deems necessary for further processing.

(2) When all required information has been provided, the District Engineer will issue a public notice as described in § 325.3, below, unless specifically exempted by other provisions of this regulation.

(3) The District Engineer shall consider all comments received in response to the public notice (see § 325.3) in his subsequent actions on the permit application. Receipt of the comments will be acknowledged and they will be made a part of the official file on the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another Federal agency, the District Engineer may seek the advice of that agency. The applicant must be given the opportunity to furnish the District Engineer his proposed resolution or rebuttal to all objections from Government agencies and other substantive adverse comments before final decision will be made on the application.

(4) The District Engineer shall prepare an Environmental Assessment on all applications. The Environmental Assessment shall be dated, signed, and placed in the record and shall include the expected environmental impacts of the proposal. Where the District Engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the Environmental Assessment. In those cases requiring an Environmental Impact Statement (EIS), the draft EIS may serve as the Environmental Assessment. Where an EIS is not prepared, the Environmental Assessment will include a statement that the decision on the application is not a major Federal action significantly affecting the quality of the human environment,

(5) The District Engineer shall also evaluate the proposed application to determine the need for a public hearing pursuant to 33 CFR Part 327.

(6) After all above actions have been completed, the District Engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a Findings of Fact on all applications to support his determination. The Findings of Fact shall include the District Engineer's views on the probable effect of the proposed work on the public interest including conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), if applicable, and the conclusions of the District Engineer. The Findings of Fact shall be dated, signed, and included in the record prior to final action on the application. Where the District Engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the Findings of Fact. If a permit is warranted, the District Engineer will determine the conditions and duration which should be incorporated into the permit. In accordance with the authorities specified in § 325.8, the District Engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final Environmental Impact Statement, if prepared, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in the format prescribed in § 325.11. Notice that the application has been forwarded to higher headquarters will be furnished the applicant and to any Federal agency expressing an interest in the application. Such notice shall not divulge the District Engineer's recommendations. In those cases where the application is forwarded for decision in the format prescribed in § 325.11, the report will serve as the Findings of Fact.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason for denial. If the final decision is to issue the permit, the issuing official will forward two copies of the draft permit to the applicant for signature accepting the conditions of the permit. The applicant will return both signed copies to the issuing official who then signs and dates the permit. The permit is not valid until signed by the issuing official. Final action on the permit application is the signature on the letter notifying the applicant of the denial of his application or signature of the issuing official on the authorizing document.

(8) The District Engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. This list will be distributed to all persons who received any of the public notices listed.

(9) If the applicant fails to respond within 45 days to any request or inquiry of the District Engineer, the District Engineer may advise the applicant by certified letter that his application will be considered as having been withdrawn unless the applicant responds thereto within thirty days of the date of the letter.

(b) *Procedures for particular types of permit situations.* (1) If the District Engineer determines that water quality certification for the proposed activity is necessary under the provisions of the Federal Water Pollution Control Act, he shall so notify the applicant and obtain from him either the appropriate certification or a copy of his application, for such certification. The District Engineer may issue the public notice of the application jointly with the certifying agency if arrangements for such joint notices have been approved by the Division Engineer. When the activity may affect the waters of another State, a copy of the certification will be forwarded to the Regional Administrator of EPA who shall determine if the proposed activity may affect the quality of the waters of any State or States other than the State in which the work is to be performed. If he needs supplemental information in order to make this determination, the Regional Administrator may request it from the District Engineer who shall obtain it from the applicant and forward it to the Regional Administrator. The Regional Administrator shall, within thirty days of receipt of the application, certification and supplemental information, notify the affected State, the District Engineer, and the applicant in the event such a second State may be affected. The second State then has sixty days to advise the District Engineer that it objects to the issuance of the permit on the basis of the effect on the quality of its waters and to request a hearing. No authorization will be granted until required certification has been obtained or has been waived. Waiver is deemed to occur if the certifying agency fails or refuses to act on a request for certification within a reasonable period of time after receipt of such request. The request for certification must be made in accordance with the regulations of the certifying agency. In determining whether or not a waiver period has commenced, the District Engineer will verify that the certifying agency has received a valid request for certification. Three months shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by the District Engineer require that action on an application be taken within a more limited period of time, the District Engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly if it appears that circumstances may reasonably require a period of time longer than three months, the District Engineer may afford the certifying agency up to one year to provide the required certification before determining that a waiver has occurred. District Engineers shall check with the certifying agency at the end of the allotted period of time before determining that a waiver has occurred.

(2) If the proposed activity is to be undertaken in a State operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management Act (see 33 CFR 320.3(b)), the District Engineer shall proceed as follows:

(i) If the applicant is a Federal agency, and the application involves a Federal activity in or affecting the coastal zone or a Federal development project in the coastal zone, the District Engineer shall forward a copy of the public notice to

the agency of the State responsible for reviewing the consistency of Federal activities. The Federal agency applicant shall be responsible for complying with the Coastal Zone Management Act's directives for ensuring that Federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved coastal zone management programs. (See 15 CFR Part 930.) If the State coastal zone agency objects to the proposed Federal activity on the basis of its inconsistency with the State's approved coastal zone management program, the District Engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the Coastal Zone Management Act for resolving such disagreements.

(ii) If the applicant is not a Federal agency and the application involves an activity affecting the coastal zone, the District Engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved State coastal zone management program. Upon receipt of the certification, the District Engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the State coastal zone agency and request its concurrence or objection. The District Engineer can issue the public notice of the application jointly with the State agency if arrangements for such joint notices have been approved by the Division Engineer. If the State agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the District Engineer shall not issue the permit until the State concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the Coastal Zone Management Act or is necessary in the interest of national security. If the State agency fails to concur or object to a certification statement within six months of the State agency's receipt of the certification statement, State agency concurrence with the certification statement shall be conclusively presumed.

(3) If the proposed activity involves any property listed or eligible for listing in the National Register of Historic Places (which is published in its entirety in the FEDERAL REGISTER annually in February with addenda published each month), the District Engineer will proceed in accordance with 33 CFR Part 305.

(4) If the proposed activity consists of the dredging of an access channel and/or berthing facility associated with an authorized Federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the Federal project to the maximum extent feasible. Separate notice, hearing, and Environmental Impact Statement will not be required for activities so included and coordinated; and the public notice issued by the District Engineer for these Federal and associated non-Federal activities will be the notice of intent to issue permits for those included non-Federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the Federal project unless special considerations applicable to the proposed activity are identified. (See § 322.5(a).)

(5) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of structures or artificial islands on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390: Attention, Code N512 and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(ii) If the activity involves the construction of structures to enhance fish propagation (fish havens) along the coasts of the United States, to Defense Mapping Agency, Hydrographic Center and National Ocean Survey as in (i), above, and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iii) If the activity involves the erection of an aerial transmission line across a navigable water of the United States, to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, reference C322.

(iv) If the activity is listed in subparagraphs (i), (ii), or (iii), above, or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(c) *Emergency procedures.* An "emergency" is a situation which would result in an unacceptable hazard to life or severe loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under required procedures. In such cases the District Engineer will explain the circumstance and recommend special procedures in writing to the Chief of Engineers, ATTN: DAEN-CWO-N. The Chief of Engineers, upon consultation with the Secretary of the Army or his authorized representative, will instruct the District Engineer as to further processing of the application.

(d) *Timing of processing of applications.* In view of the extensive coordination with other agencies and the public and the study of all aspects of proposed activities required by the above procedures, applicants must allow adequate time for the processing of their applications. The District Engineer will be guided by the following time limits for the indicated steps in processing permit applications:

(1) Public notice should be issued within fifteen days of receipt of all required information from the applicant, unless joint notice with State agencies is to be used.

(2) The receipt of comments as a result of the public notice should not extend beyond thirty days from the date of the notice. However, if unusual circumstances warrant, the District Engineer may extend the comment period up to a maximum of seventy-five days.

(3) The District Engineer should either send notice of denial to the applicant, or issue the draft permit to the applicant for acceptance and signature, or forward the application to higher headquarters within thirty days of one of the following whichever is latest: Closing of the public notice comment period with no objections received; receipt of notice of withdrawal of objections; completion of coordination following receipt of applicant's rebuttal of objections; closing of the record of a public hearing; or expiration of the waiting period following the filing of the final Environmental Impact Statement with CEQ.

§ 325.3 Public notice.

(a) *General.* The Public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature of the activity to generate meaningful comments. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name and address of the applicant;

(3) The location of the proposed activity;

(4) A brief description of the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and a description of the type, composition and quantity of materials to be discharged or dumped and means of conveyance. See also 33 CFR 324 for additional information required on ocean dumping public notices;

(5) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;

(6) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(7) A list of other government authorizations obtained or requested, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(8) A statement concerning a preliminary determination of the need for and/or availability of an Environmental Impact Statement;

(9) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest, including environmental values; and

(10) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing, within which interested parties may express their views concerning the permit application.

(b) *Evaluation factors.* A paragraph describing the various factors on which decisions are based during evaluation of a permit application shall be included in every public notice.

(1) Except as provided in paragraph (b)(4) below, the following will be included:

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

(2) If the activity involves the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the public notice shall also indicate that the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Federal Water Pollution Control Act (40 CFR Part 230) or of the criteria established under authority of Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 228), as appropriate. See also 33 CFR Part 324.

(3) If the activity includes the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the following statement will also be included in the public notice:

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

(4) In cases involving construction of fixed structures or artificial islands on Outer Continental Shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security."

(c) *Distribution of public notices.* (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate State agencies, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commissions, and to any other interested party. If in the judgment of the District Engineer the proposal may result in substantial public interest, the public notice (without drawings) may be published for five consecutive days in the local newspaper, and the applicant shall reimburse the District Engineer for the costs of publication. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the Field Representatvie of the Secretary of the Interior, the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the State agency responsible for fish and wildlife resources, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addresses in appropriate cases as follows:

(i) If the activity involves structures or dredging along the shores of the sea or Great Lakes, to the Coastal Engineering Research Center, Washington, D.C. 20016.

(ii) If the activity involves construction of fixed structures or artificial islands on the Outer Continental Shelf or in the territorial seas, to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, D.C. 20310; the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390, Attention, Code N512; and the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(iii) If the activity involves the construction of structures to enhance fish propagation along the Atlantic, Pacific, and Gulf coasts, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iv) If the activity involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity is in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, D.C. 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the application. A copy of the public notice with the list of the addressees to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the District Engineer may request their comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constituent or himself, the District Engineer will inform the member of Congress of the final decision.

(d) *General permit notices (RCS: DAEN-CWO-52).* For purposes of performing a nationwide analysis of the effectiveness of the general permit program, Division offices will submit "Public Notices on General Permits" reports (RCS: DAEN-CWO-52) by COB on the 15th day, following the end of each quarter, to HQDA (DAEN-CWO-N) Washington, D.C. 20314. Said reports will be in the form of a letter listing the public notices published during the previous month to announce proposals or to finalize issuances of general permits; copies of the public notices are to be made inclosures to the reports. Negative reports will be submitted if no general permit actions have taken place in the Division during the reporting period.

§ 325.4 Environmental impact statements.

(a) *General.* Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) requires all Federal agencies, with respect to major Federal actions significantly affecting the quality of the human environment, to submit to the President's Council on Environmental Quality a detailed statement on:

(1) The environmental impact of the proposed actions.

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented.

(3) Alternatives to the proposed action.

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. The District Engineer must determine whether such an Environmental Impact Statement (EIS) is required in connection with each permit application.

(b) *EIS procedures.* In addition to the procedures required by 33 CFR 209.410 (ER 1105-2-507), the following special procedures apply to the processing of permits involving the preparation of an EIS.

(1) The District Engineer, at the earliest practicable time prior to the is-

suance of the public notice, shall make a preliminary assessment of impacts of the project should it be approved and make a preliminary determination as to whether the quality of the human environment would be significantly affected. This preliminary assessment will normally be based on experience with similar type activities performed in the past. A statement of the District Engineer's preliminary determination shall be included in the public notice. This preliminary determination will be reconsidered as additional information is developed.

(2) If the District Engineer's final determination after consideration of all additional information developed (including responses to the public notice) is that the proposed work will not significantly affect the quality of the human environment, the District Engineer's determination shall be documented, dated, and placed in the record as his Environmental Assessment (see § 325.2(a)(4)).

(3) At such time as the District Engineer believes that a permit may be warranted but that the proposed activity would significantly affect the quality of the human environment, he will require the applicant to furnish any additional information that the District Engineer considers necessary to allow his preparation of an EIS. The applicant should also be advised at this time that there is no assurance that favorable action will ultimately be taken on his application. Additionally, if the District Engineer has previously announced a preliminary determination that no EIS would be required, he shall issue a supplemental public notice to advise the public of the changed determination. If the applicant is unable to furnish certain information considered by the District Engineer to be necessary for the EIS, the District Engineer may, after obtaining written approval from the Division Engineer, charge the applicant pursuant to 31 U.S.C. 483(a) for those extraordinary expenses incurred by the Government in developing the information. All money so collected shall be paid into the Treasury of the United States as miscellaneous receipts. Otherwise the costs of the preparation and distribution of the EIS itself shall be borne by the Federal Government. In those cases when the determination has been made that an EIS will be required, the District Engineer shall consider inviting public comments as to specific factors of concern which should be addressed in the draft EIS. Upon preparation of the draft EIS, a public notice shall be issued summarizing the facts of the case and announcing the availability of the draft EIS. A copy of that notice shall be furnished to all recipients of the draft EIS including CEQ. If a public hearing is to be held pursuant to § 325.2(a)(5), the hearing may be held anytime after completion of the draft EIS.

(4) If another agency is the lead agency as defined by the CEQ guidelines (40 CFR 1500.7(b)) the District Engineer will coordinate with that agency to insure that the resulting EIS adequately describes the impact of the activity which is subject to Corps permit authority. That previously prepared EIS will be referenced in the public notice announcing the permit application and a statement included that the effects of the proposed activity on the environment as outlined therein will be carefully considered in the evaluation of the permit application.

(c) *Public notice on EIS filing.* The 30-day wait period required by the National Environmental Policy Act for issuing a permit for which an EIS has been prepared begins with notation in the Federal Register that the FEIS has been filed with CEQ or on the date of delivery to U.S. Postal Service facilities for mailing of copies of the FEIS to agencies, groups, and individuals on the project mailing list, whichever date is later. In order to notify the interested public of their opportunity to comment on the FEIS, the District Engineer shall issue a public notice when the filing notation has been published in the Federal Register to all parties receiving the original application notice or draft EIS and to all others who have expressed an interest in the application. The public notice should include:

(1) A brief summary of application (applicant, work, date of public notice, date of draft EIS release, date of public hearing, if held);

(2) Opportunity to comment to the District Engineer on the FEIS until the deadline date projected by the 30-day wait period;

(3) A statement that the comments received on the FEIS will be evaluated and considered in arriving at the final decision on the application; and

(4) Information on how interested parties can obtain or have access to the FEIS.

§ 325.5 Forms of authorization.

(a) *General.* (1) Department of the Army authorizations under this regulation shall be in the form of an individual permit, general permit, or letter of permission, as appropriate. The basic format shall be ENG Form 1721, Department of the Army Permit (Appendix A).

(2) While the general conditions included in ENG Form 1721 are normally applicable to all permits, some may not apply to certain authorizations (e.g., after-the-fact situations where work is completed, or situations in which the permittee is a Federal agency) and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest.

(b) *Letters of permission.* In those cases subject to Section 10 of the River and Harbor Act of 1899 in which, in the opinion of the District Engineer, the proposed work is minor, will not have significant impact on environmental values, and should encounter no opposition, the District Engineer may omit the publishing of a public notice and authorize the work by a letter of permission. However, he will coordinate the proposal with all concerned fish and wildlife agencies, Federal and State, as required by the Fish and Wildlife Coordination Act. The letter of permission will not be used to authorize the discharge of dredged or fill material into waters of the United States nor the transportation of dredged material for purposes of dumping it in ocean waters. The letter of permission will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority (i.e., 33 U.S.C. 403), any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the general conditions from ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) *General permits.* The District Engineer may, after compliance with the other procedures of this regulation, issue general permits for certain clearly described categories of structures or work, including discharges of dredged or fill material, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories that are authorized by such general permits do not have to be further authorized by the procedures of this regulation unless the District Engineer determines, on a case-by-case basis, that the public interest requires.

(d) *Section 9 permits.* Permits for structures under Section 9 of the River and Harbor Act of 1899 will be drafted during review procedures at Department of the Army level.

(e) *Nationwide permits.* Nationwide permits mean Department of the Army authorizations that have been issued by the regulations for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or general permit.

§ 325.6 Duration of authorizations.

(a) *General.* Department of the Army authorization may authorize both the work and the resulting use. Authorizations continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) *Structures.* Authorizations for the existence of a structure or other activity of a permanent nature are usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the authorization will be of limited duration with a definite expiration date. Except as provided in subparagraph (e), below, permits for the discharge of dredged material in the waters of the United States or for the transportation of dredged material for the purpose of dumping it in ocean waters will be of limited duration with a definite expiration date.

(c) *Works.* Authorizations for construction work or other activity will specify time limits for accomplishing the work or activity. The time limits will specify a date by which the work must be started, normally one year from the date

of issuance, and a date by which the work must be completed. The dates will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. An authorization for work or other activity will automatically expire if the permittee fails to request an extension or revalidation.

(d) *Extensions of time.* Extensions of time may be granted by the District Engineer for authorizations of limited duration, or for the time limitations imposed for starting or completing the work or activity. The permittee must request the extension and explain the basis of the request, which will be granted only if the District Engineer determines that an extension is in the general public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2, including issuance of a public notice, except that such processing is not required where the District Engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued and that the work is proceeding essentially in accordance with the approved plans and conditions.

(e) *Periodic maintenance.* If the authorized work includes periodic maintenance dredging, an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after his evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR Parts 320 to 325. In such cases, the District Engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the requirements of the regulation and 33 CFR Parts 320–324. If the permittee desires to continue maintenance dredging beyond the expiration date, he must request a revalidation of that portion of his permit which authorized the maintenance dredging. The request must be made to the District Engineer six months prior to the expiration date, and include full description of the proposed methods of dredging and disposal of dredged materials. The District Engineer will process the request for revalidation in accordance with the standard procedures including the issuance of a public notice describing the authorized work to be maintained and the proposed methods of maintenance.

§ 325.7 Modification, suspension or revocation of authorizations.

(a) *General.* The District Engineer may reevaluate the circumstance and conditions of a permit either on his own motion or as the result of periodic progress inspection, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the general public interest. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the activity authorized have changed since the permit was issued, extended or revalidated, and the continuing adequacy of the permit conditions; any significant objections to the activity authorized by the permit which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with Sec. 325.2, and not as modifications under this paragraph.

(b) *Modification.* The District Engineer, as a result of revaluation of the circumstances and conditions of a permit, may determine that protection of the general public interest requires a modification of the terms or conditions of the permit. In such cases, the District Engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the District Engineer will give the permittee written notice of the modification, which will then become effective on such date as the District Engineer may establish, which in no event shall be less than ten days from its date of issuance. In the event a mutual agreement cannot be reached by the District Engineer and the permittee, the District Engineer will proceed in accordance with subparagraph (c), below, if immediate suspension is warranted. In cases where immediate suspension is not warranted but the District Engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a hearing. The modification will become effective on the date set by the District Engineer which shall be at least ten days after receipt of the notice unless a hearing is requested within that period. If the permittee fails or refuses to comply with the modification, the District Engineer will proceed in accordance with 33 CFR Part 326.

(c) *Suspension.* The District Engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the general public interest. The District Engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop all previously authorized activities. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may request a hearing within 10 days of receipt of notice of the suspension to present information in this matter. If a hearing is requested the procedures prescribed in 33 CFR 327 will be followed. After the completion of the hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing is requested), the District Engineer will take action to reinstate the permit, modify the permit, or recommend revocation of the permit in accordance with subparagraph (d), below.

(d) *Revocation.* Following completion of the suspension procedures in subparagraph (c), above, if revocation of the permit is recommended, the District Engineer will prepare a report of the circumstances and forward it together with the record of the suspension proceedings to DAEN-CWO-N. The Chief of Engineers may, prior to deciding whether or not to revoke the permit, afford the permittee the opportunity to present any additional information not made available to the District Engineer at the time he made the recommendation to revoke the permit including, where appropriate, the means by which he intends to compy with the terms and conditions of the permit. The permittee will be advised in writing of the final decision.

§ 325.8 Authority to issue or deny authorizations.

(a) *General.* Except as otherwise provided in this regulation, the Secretary of the Army subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for construction or other work in or affecting navigable waters of the United States pursuant to Sections 10 and 14 of the Act of March 3, 1899, and Section 1 of the Act of June 13, 1902. He also has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for the discharge of dredged or fill material in waters of the United States pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 or for the transportation of dredged material for the purpose of dumping it into ocean waters pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits pursuant to Section 9 of the River and Harbor Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) *District Engineer's authority.* District Engineers are authorized to issue in accordance with this regulation permits and letters of permission which are subject to such special conditions as are necessary to protect the public interest in the waters of the United States or ocean waters pursuant to Sections 10 and 14 of the River and Harbor Act of March 3, 1899; Section 1 of the River and Harbor Act of June 13, 1902; Section 404 of the Federal Water Pollution Control Act Amendments of 1972; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases in which there are no known substantive objections to the proposed work or activity or in which objections

have been resolved to the satisfaction of the District Engineer. Unless otherwise precluded by this regulation, District Engineers may issue permits over an unresolved objection of another Federal agency if that agency indicates to the District Engineer that it does not desire to refer the application to a higher level of authority for review. It is essential to the legality of a permit that it contain the name of the District Engineer as the issuing officer. However, the permit need not be signed by the District Engineer, in person; but may be signed for and in behalf of him by whoever he designates. District Engineers shall deny permits when required State or local authorization and/or certification has been denied or when a State has objected to a required certification of compliance with its coastal zone management program and the Secretary of Commerce has not reviewed the action and reached a contrary finding. A District Engineer may also deny any permit if he determines that the proposed activity is not in the public interest provided the referral requirements of § 325.8(d) below are not applicable. In such cases the Findings of Fact should be in the general format required for reports under Sec. 325.11 and must conclusively justify a denial decision. All other permit applications including those cases in § 325.7 (c) and (d) below will be referred to Division Engineers. District Engineers are also authorized to add, modify, or delete special conditions in permits, except for those conditions which have been imposed by higher authority, and to suspend permits according to the procedures of § 325.7(c):

(c) *Division Engineer's authority.* Division Engineers will review, attempt to resolve outstanding matters, and evaluate all permit applications referred by District Engineers. Division Engineers may authorize the issuance or denial of permits pursuant to Sections 10 and 14 of the River and Harbor Act of March 3, 1899; Section 1 of the River Harbor Act of June 13, 1902, Section 404 of the Federal Water Pollution Control Act Amendments of 1972; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions to those permits as may be necessary to protect the public interest in waters of the United States or ocean waters in accordance with the policies cited in this regulation. Except as provided in subparagraph (d), below, if the Division Engineer determines that issuance of a permit with or without conditions is in the public interest, but there is continuing objection to the issuance of the permit by another Federal agency, he shall advise the regional representative of that Federal agency of his intent to issue the permit. The Division Engineer shall not proceed with the issuance of a permit if, within 15 days after the date of this notice of intent to issue a permit, an authorized representative of that Federal agency indicates to the Division Engineer in writing that he wishes to bring his concerns to the Departmental level and has Departmental concurrence to do so. In such cases, the proposed permit will be forwarded to higher authority for resolution. Thereafter, a permit will be issued only pursuant to and in accordance with instructions from such higher authority. Every effort should be made to resolve differences at the Division Engineer level before referring the matttr to higher authority.

(d) *Referral to the Chief of Engineers.* Division Enginees will refer to the Chief of Engineers the following cases:

(1) When it is proposed to issue a permit and there are unresolved objections from another Federal agency which must be handled under special procedures specified in statutes or Memoranda of Understanding which thereby preclude final resolution by the Division Engineer;

(2) When the recommended decision is contrary to the stated position of the Governor of the State in which the work is to be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When the Chief of Engineers requests the case be forwarded for decision;

(5) When the proposed activity would affect the baseline used for determination of the limits of the territorial sea; and

(6) When Section 9 of the River and Harbor Act of 1899 authority is involved.

§ 325.9 Supervision and enforcement.

(a) *Inspection and monitoring.* District Engineers will assure that authorized activities are conducted and executed in conformance with approved plans and other conditions of the permits. Appropriate inspections should be made on timely occasions during performance of the activity and appropriate notices and instructions given permittees to insure that they do not depart from the approved plans. Revaluation of permits to assure compliance with its purposes and conditions will be carried out as provided in § 325.7. If there are approved material departures from the authorized plans, the District Engineer will require the permittee to furnish corrected plans showing the activity as actually performed.

(b) *Non-compliance.* Where the District Engineer determines that there has been non-compliance with the terms or conditions of a permit, he should first contact the permittee and attempt to resolve the problem. If a mutually agreeable resolution cannot be reached, a written demand for compliance will be made. If the permittee has not agreed to comply within 5 days of receipt of the demand, the District Engineer will issue an immediately effective notice of suspension in accordance with § 325.7(c) and consider initiation of appropriate legal action.

(c) *Surveillance.* For purposes of inspection of permitted activities and for surveillance of the waters of the United States for enforcement of the permit authorities the District Engineer will use all means at his disposal. All Corps of Engineers employees will be instructed to observe and report all activities in waters of the United States which would require permits. The assistance of members of the public and personnel of other interested Federal, State and local agencies to observe and report such activities will be encouraged. To facilitate this surveillance, the District Engineer will, in appropriate cases, require a copy of ENG Form 4336 to be posted conspicuously at the site of authorized activities and will make available to all interested persons information on the scope of authorized activities and the conditions prescribed in the authorizations. Furthermore, significant actions taken under § 325.7 will be brought to the attention of those Federal, State and local agencies and other persons who express particular interest in the affected activity. Surveillance in ocean waters will be accomplished primarily by the Coast Guard pursuant to section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(d) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activity in waters of the United States normally will be paid by the Federal Government in accordance with the provisions of section 6 of the River and Harbor Act of 3 March 1905 (33 U.S.C. 417) unless daily supervision or other unusual expenses are involved. In such unusual cases, and after approval by the Division Engineer, the permittee will be required to bear the expense of inspections in accordance with the conditions of his permit; however, the permittee will not be required or permitted to pay the United States inspector either directly or through the District Engineer. The inspector will be paid on regular payrolls or service vouchers. The District Engineer will collect the cost from the permittee in accordance with the following:

(1) At the end of each month the amount chargeable for the cost of inspection pertaining to the permit will be collected from the permittee and will be taken up on the statement of accountability and deposited in a designated depository to the credit of the Treasurer of the United States, on account of reimbursement of the appropriation from which the expenses of the inspection were paid.

(2) If the District Engineer considers such a procedure necessary to insure the United States against loss through possible failure of the permittee to supply the necessary funds in accordance with subparagraph (1), above, he may require the permittee to keep on deposit with the District Engineer at all times an amount equal to the estimated cost of inspection and supervision for the ensuing month, such deposit preferably being in the form of a certified check, payable to the order of Treasurer of the United States. Certified checks so deposited will be carried in a special deposit account (guaranty for inspection expenses) and upon completion of the work under the permit the funds will be returned to the permittee provided he has paid the actual cost of inspection.

(3) On completion of work under a permit, and the payment of expenses by the permittee without protest, the account will be closed, and outstanding deposits returned to the permittee. If the account is protested by the permittee, it will be referred to the Division Engineer for approval before it is closed and before any deposits are returned to the permittee.

(e) *Bonds.* If the permitted activity includes restoration of the waterway to its original condition, or if the issuing official has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest in the waterway, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

§ 325.10 Publicity.

The District Engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in navigable waters or ocean waters. Whenever the District Engineer becomes aware of plans being developed by either private or public entities who might require permits in order to implement the plans, he will advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Similarly when the District Engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

§ 325.11 Reports.

The report of a District Engineer on an application for a permit requiring action by the Division Engineer or by the Chief of Engineers will be in a letter form with the application and all pertinent comments, records, photographs, maps, and studies including the final Environmental Impact Statement if prepared, as inclosures. The inclosures for all cases referred to the Chief of Engineers will be in duplicate. If an EIS has been prepared, the report shall not be forwarded until expiration of the 30-day comment period following filing of the final EIS and shall address any comments received on the final EIS. The following items will be included or discussed in the report:

(a) Name of applicant.

(b) Location, character and purpose of proposed activity, including a description of any wetlands involved.

(c) Applicable statutory authorities and administrative determinations conferring Corps of Engineers regulatory jurisdiction.

(d) Other Federal, State, and local authorizations obtained or required and pending.

(e) Date of public notice and public hearings, if held, and summary of objections offered with comments of the District Engineer thereon. The comments should explain the objections and not merely refer to inclosed letters.

(f) Views of State and local authorities.

(g) Views of District Engineer concerning probable effect of the proposed work on:

(1) Navigation, present and prospective.

(2) Harbor lines, if established.

(3) Flood heights, drift and flood damage protection.

(4) Beach erosion or accretion.

(5) Fish and Wildlife.

(6) Water Quality.

(7) Aesthetics.

(8) Historic values.

(9) Recreation.

(10) Economy.

(11) Water supply.

(12) Energy needs.

(13) Land use classification and coastal zone management plans.

(h) Other pertinent remarks, such as:

(1) Extent of public and private need.

(2) Appropriate alternatives.

(3) Extent and permanence of beneficial and/or detrimental effects.

(4) Probable impact in relation to cumulative effects created by other activities.

(i) A copy of the environmental assessment or the Environmental Impact Statement. If an EIS is prepared, a summary of comments received on the final EIS together with the District Engineer's response to those comments.

(j) A discussion of conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or the dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), as applicable.

(k) Conclusions.

(l) Recommendations including any proposed special conditions.

APPENDIX A—PERMIT FORM

Application No. _____
Name of Applicant _____
Effective Date _____
Expiration Date (If applicable) _____

DEPARTMENT OF THE ARMY

Permit

Referring to written request dated _____ for a permit to:

( ) Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

( ) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, Pub. L. 92-500);

( ) Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; Pub. L. 92-532); _____

_____

_____

(Here insert the full name and address of the permittee.)

is hereby authorized by the Secretary of the Army: to _____

_____

_____

_____

_____

_____

(Here describe the proposed structure or activity, and its intended use. In the case of an application for a fill permit, describe the structures, if any proposed to be erected on the fill. In the case of an application for the discharge of dredged or fill material into waters of the United States or the transportation for discharge in ocean waters of dredged material, describe the type and quantity of material to be discharged.)

in _____

_____

_____

_____

_____

_____

(Here to be named the ocean, river, harbor, or waterway concerned.)

at _____

_____

_____

_____

_____

_____

(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings; give file number or other definite identification marks). Subject to the following conditions:

I. General conditions: (a) That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

(b) That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (Pub. L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

(c) That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water

quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

(d) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

(e) That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

(f) That the permittee agrees that it will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

(g) That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

(h) That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

(i) That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

(j) That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevent to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

(k) That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

(l) That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

(m) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

(n) That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

(o) That if the activity authorized herein is not started on or before _____ day of _____, 19—, (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before _____ day of _____, 19—, (three years form the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

(p) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

(q) That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition S hereof, he must restore the area to a condition satisfactory to the District Engineer.

(r) That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

(s) That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

(t) That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: Here list conditions relating specifically to the proposed structure or work authorized by this permit. The following Special Conditions will be applicable when appropriate:

Structures In or Affecting Navigable Waters of the United States

(a) That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

(b) That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

(c) That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

(d) That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

(e) Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

Maintenance Dredging

(a) That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for —— years from the date of issuance of this permit (ten years unless otherwise indicated);

(b) That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

Discharges of Dredged or Fill Material Into Waters of the United States

(a) That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

(b) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(c) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(d) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

Dumping of Dredged Material Into Ocean Waters

(a) That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220–228.

(b) That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

(Permittee)

(Date)

By authority of the Secretary of the Army:

(District Engineer)

(Date)

Transferee hereby agrees to comply with the terms and conditions of this permit.

(Transferee)

(Date)

APPENDIX B—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF THE ARMY

In recognition of the responsibilities of the Secretary of the Army under sections 10 and 13 of the Act of March 3, 1899 (33 U.S.C. 403 and 407), relating to the control of dredging, filling, and excavation in the navigable waters of the United States, and the control of refuse in such waters, and the interrelationship of those responsibilities with the responsibilities of the Secretary of the Interior under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–666c), and the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.), relating to the control and prevention of water pollution in such waters and the conservation of the Nation's natural resources and related environment, including fish and wildlife and recreational values therein; in recognition of our joint responsibilities under Executive Order No. 11288 to improve water quality through the prevention, control, and abatement of water pollution from Federal and federally licensed activities; and in recognition of other provisions of law and policy, we, the two Secretaries, adopt the following policies and procedures:

POLICIES

1. It is the policy of the two Secretaries that there shall be full coordination and cooperation between their respective Departments on the above responsibilities at all organizational levels, and it is their view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers shall coordinate with the Regional Directors of the Secretary of the Interior on fish and wildlife, recreation, and pollution problems associated with dredging, filling, and excavation operations to be conducted under permits issued under the 1899 Act in the navigable waters of the United States, and they shall avail themselves of the technical advice and assistance which such Directors may provide.

2. The Secretary of the Army will seek the advice and counsel of the Secretary of the Interior on difficult cases. If the Secretary of the Interior advises that proposed operations will unreasonably impair natural resources or the related environment, including the fish and wildlife and recreational values thereof, or will reduce the quality of such waters in violation of applicable water quality standards, the Secretary of the Army in acting on the request for a permit will carefully evaluate the advantages and benefits of the operations in relation to the resultant loss or damage, including all data presented by the Secretary of the Interior, and will either deny the permit or include such conditions in the permit as he determines to be in the public interest, including provisions that will assure compliance with water quality standards established in accordance with law.

PROCEDURES FOR CARRYING OUT THESE POLICIES

1. Upon receipt of an application for a permit for dredging, filling, excavation, or other related work in navigable waters of the United States, the District Engineers shall send notices to all interested parties, including the appropriate Regional Directors of the Federal Water Pollution Control Administration, the United States Fish and Wildlife Service, and the National Park Service of the Department of the Interior, and the appropriate State conservation, resources, and water pollution agencies.

2. Such Regional Directors of the Secretary of the Interior shall immediately make such studies and investigations as they deem necessary or desirable, consult with the appropriate State agencies, and advise the District Engineers whether the work proposed by the permit applicant, including the deposit of any material in or near the navigable waters of the United States, will reduce the quality of such waters in violation of applicable water quality standards or unreasonably impair natural resources or the related environment.

3. The District Engineer will hold public hearings on permit applications whenever response to a public notice indicates that hearings are desirable to afford all interested parties full opportunity to be heard on objections raised.

4. The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington Headquarters.

5. The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and he shall include his analysis thereof, for the purpose of obtaining the Department of Interior's comments prior to final determination of the issues.

6. In those cases where the Chief of Engineers and the Under Secretary are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

7. If in the course of operations within this understanding, either Secretary finds its terms in need of modification, he may notify the other of the nature of the desired changes. In that event the Secretaries shall within 90 days negotiate such amendment as is considered desirable or may agree upon termination of this understanding at the end of the period.

Dated: July 13, 1967.

STEWART L. UDALL,
Secretary of the Interior.

Dated: July 13, 1967.

STANLEY RESOR,
Secretary of the Army.

PART 326—ENFORCEMENT

Sec.
326.1 Purpose.
326.2 Discovery.
326.3 Investigation.
326.4 Legal Action.
326.5 Processing After-the-fact Applications.

AUTHORITY: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 326.1 Purpose.

This regulation prescribes the policy, practice, and procedures to be followed by the Corps of Engineers in connection with activities requiring Department of the Army permits that are performed without prior authorization.

§ 326.2 Discovery of unauthorized activity in Progress

When the District Engineer becomes aware of any unauthorized activity which is still in progress, he shall immediately issue a cease and desist order to all persons responsible for and/or involved in the performance of the activity. If appropriate, the District Engineer may also order interim protective measures to be taken in order to protect the public interest.

§ 326.3 Investigation.

The District Engineer shall commence an immediate investigation of all unauthorized activities brought to his attention to ascertain the facts surrounding the activity. In making this investigation, the District Engineer shall solicit the views of the Regional Administrator of the Environmental Protection Agency, the Regional Director of the U.S. Fish and Wildlife Service, and the Regional Director of the National Marine Fisheries Service, and other appropriate Federal, State, and local agencies. He shall also request the persons involved in the unauthorized activity to provide appropriate information on the activity to assist him in his evaluation and in recommending the course of action to be taken. The District Engineer shall evaluate the information and views developed during this investigation in conjunction with the appropriate factors and criteria that pertain to the particular unauthorized activity as cited in 33 CFR Parts 320, 321, 322, 323, and 324, and the guidance contained in § 326.4, below. Following this evaluation, the District Engineer shall formulate recommendations as to the appropriate administrative and/or legal action to be taken.

§ 326.4 Legal action.

(a) District Engineers shall be guided by the following policies in determining whether an unauthorized activity requires appropriate legal action:

(1) *Criminal action.* Criminal action is considered appropriate when the facts surrounding an unauthorized activity reveal the necessity for punitive action and/or when deterrence of future unauthorized activities in the area is considered essential to the establishment or maintenance of a viable permit program.

(2) *Civil action.* Civil action is considered appropriate when the preliminary evaluation of the unauthorized activity reveals that (i) restoration is in the public interest and attempts to secure voluntary restoration have failed, or (ii) the unauthorized activity is in the public interest but must be altered or modified by judicial order because attempts to secure voluntary compliance have failed, or (iii) a civil penalty under Section 309 of the FWPCA is warranted.

(b) Preparation of case. If the District Engineer determines that legal action is appropriate, he shall prepare a litigation report which shall contain an analysis of the data and information obtained during his investigation and a recommendation of appropriate civil and criminal action. In those cases where the analysis of the facts developed during his investigation (when made in conjunction with the appropriate factors and criteria specified in 33 CFR Parts 320, 321, 322, 323, and 324) leads to the preliminary conclusion that removal of the unauthorized activity is in the public interest, the District Engineer shall also recommend restoration of the area to its original or comparable condition.

(c) Referral to local U.S. Attorney. Except as provided in subsection (d), District Engineers are authorized to refer the following cases directly to the local U.S. Attorney.

(1) All unauthorized structures or work in or affecting navigable waters of the United States that fall exclusively within the purview of Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322) for which a criminal fine or penalty under Section 12 of that Act (33 USC 406) is considered appropriate.

(2) All civil actions involving small unauthorized structures, such as piers, which the District Engineer determines are (i) not in the public interest and therefore must be removed, or (ii) are in the public interest but must be altered or modified by judicial order, because attempts to secure voluntary compliance have failed.

(3) All violations of Section 301 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1311) involving the unauthorized discharge of dredged or fill material into the waters of the United States where the District Engineer determines, with the concurrence of the Regional Administrator, that civil and/or criminal action pursuant to Section 309 of the FWPCA is appropriate.

(4) All cases for which a temporary restraining order and/or preliminary injunction is appropriate following noncompliance with a cease and desist order.

Information copies of all letters of referral shall be forwarded to the Chief of Engineers, ATTN: DAEN-CCK, and the Chief Pollution Control Section, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

(d) Referral to Office, Chief of Engineers. District Engineers shall prepare and forward a litigation report to the Office, Chief of Engineers, ATTN: DAEN-CCK, for all other cases not identified in subsection (c) in which civil and/or criminal action is considered appropriate, including:

(1) All cases involving significant questions of law or fact;

(2) All cases involving discharges of dredged or fill material into waters of the United States that are not interstate waters or navigable waters of the United States, or part of a surface tributary system to these waters;

(3) All cases involving recommendations for substantial or complete restoration;

(4) All cases involving violations of Section 9 of the River and Harbor Act of 1899; and

(5) All cases involving violations of the Marine Protection, Research and Sanctuaries Act of 1972.

(e) If the District Engineer refers a case to the local U.S. Attorney or if criminal and/or civil action is instituted against the responsible person for any unauthorized activity, the District Engineer shall not accept for processing any application for a Department of the Army permit until final disposition of the referral action and/or all judicial proceedings, including the payment of all prescribed penalties and fines and/or completion of all work ordered by the court. Thereafter, the District Engineer may accept an application for a permit; provided, that with respect to any judicial order requiring partial or total restoration of an area, the District Engineer, if so ordered by the court, shall supervise this restoration effort and may allow the responsible persons to apply for a permit for only that portion of the unauthorized activity for which restoration has not been so ordered.

§ 326.5 Processing after-the-fact applications.

In those cases in which the District Engineer determines that the unauthorized activity does not warrant legal action, the following procedures shall be followed.

(a) Processing and evaluation of applications for after-the-fact authorizations for activities undertaken without the required Department of the Army permits will in all other respects follow the standard policies and procedures of 33 CFR Parts 320-325. Thus, authorization may still be denied in accordance with the policies and procedures of those regulations.

(b) Where after-the-fact authorization in accordance with this paragraph is determined to be in the public interest, the standard permit form for the activity will be used, omitting inappropriate conditions, and including whatever special conditions the District Engineer may deem appropriate to mitigate or prevent undesirable effects which may have occurred or might occur.

(c) Where after-the-fact authorization is not determined to be in the public interest, the notification of the denial of the permit will prescribe any corrective actions to be taken in connection with the work already accomplished, including restoration of those areas subject to denial, and establish a reasonable period of time for the applicant to complete such actions. The District Engineer, after denial of the permit, will again consider whether civil and/or criminal action is appropriate in accordance with § 326.4.

(d) If the applicant declines to accept the proposed permit conditions, or fails to take corrective action prescribed in the notification of denial, or if the District Engineer determines, after denying the permit application, that legal action is appropriate, the matter will be referred to the Chief of Engineers, ATTN: DAEN-CCK, with recommendations for appropriate action.

PART 327—PUBLIC HEARINGS

Sec.

327.1 Purpose.
327.2 Applicability.
327.3 Definitions.
327.4 General policies.
327.5 Presiding officer.
327.6 Legal adviser.
327.7 Representation.
327.8 Conduct of hearings.
327.9 Filing of transcript of the public hearing.
327.10 Powers of the presiding officer.
327.11 Public notice.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed Department of the Army permit action or Federal project as defined in § 327.3 below including those held pursuant to Section 404 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1344) and Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all Divisions and Districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed Department of the Army permit action, or Federal project, and which affords to the public the opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) Permit action, as used herein, means the review of an application for a permit pursuant to Section 10 of the

River and Harbor Act of 1899 (33 U.S.C. 403), Section 404 of the FWPCA (33 U.S.C. 1344), the Outer Continental Shelf Act (43 U.S.C. 1333(f)), and Section 103 of the MPRSA of 1972, as amended (33 U.S.C. 1413), or the modification or revocation of any Department of the Army permit. (See 33 CFR 325.7.)

(c) Federal project means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters subject to Section 404 of the FWPCA (33 U.S.C. 1344), or Section 103 of the MPRSA, as amended (33 U.S.C. 1413; and 33 CFR 209.145. (This regulation supersedes all references to public meetings in 33 CFR 209.145.)

§ 327.4 General policies.

(a) A public hearing will be held in connection with the consideration of a Department of the Army permit application under Section 404 of the FWPCA or Section 103 of the MPRSA, or a Federal project whenever a public hearing will assist in making a decision on such permit application or Federal project. In addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7.)

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a Department of the Army permit application under Section 404 of the FWPCA or Section 103 of the MPRSA or on a Federal project, that a public hearing be held to consider the material matters in issue in the permit application or Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the District Engineer shall promptly set a time and place for the public hearing, and give due notice thereof, as prescribed in § 327.11 below. Requests for a public hearing under this paragraph shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The District Engineer will make such a determination in writing, and communicate his reasons therefor to all requesting parties.

(c) In cases involving the evaluation of a Department of the Army permit application only under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), public hearings will be held upon written request whenever the District Engineer determines that there is sufficient public interest to warrant such action. Among the instances warranting public hearings are general public opposition to a proposed work, Congressional requests or requests from responsible local authorities, or controversial cases involving significant environmental issues.

(d) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(e) In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the interested public.

§ 327.5 Presiding officer.

(a) The District Engineer, in whose District a matter arises, shall normally serve as the Presiding Officer. When the District Engineer is unable to serve, he may designate the Deputy District Engineer as such Presiding Officer. In any case, he may request the Division Engineer to designate another Presiding Officer. In cases of unusual interest, the Chief of Engineers reserves the power to appoint such person as he deems appropriate to serve as the Presiding Officer.

(b) The Presiding Officer in each case shall establish a hearing file. The hearing file shall include a copy of any permit application or permits and supporting data, any public notices issued in the case, the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to the proposed action, the hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal adviser.

In each public hearing, the District Counsel or his designee shall serve as legal adviser to the Presiding Officer in ruling upon legal matters and issues that may arise.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, and may be represented by counsel, or by other representatives.

§327.8 Conduct of hearings.

(a) Hearings shall be conducted by the Presiding Officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision: Any person may present written statements for the hearing file prior to the time the hearing file is closed to public submissions, and may present proposed findings and recommendations. The Presiding Officer shall afford participants an opportunity for rebuttal.

(b) The Presiding Officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(c) Cross-examination of witnesses shall not be permitted.

(d) All public hearings shall be reported verbatim. Copies of the transcripts of proceedings may be purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate District Engineer.

(e) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the Presiding Officer for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

(f) At any hearing, the Presiding Officer shall make an opening statement, outlining the purpose of the hearing and prescribing the general procedures to be followed. The Presiding Officer shall afford participants an opportunity to respond to his opening statement.

(g) The Presiding Officer shall allow a period of 10 days after the close of the public hearing for submission of written comments. After such time has expired, unlesss such period is extended by the Presiding Officer or the Chief of Engineers for good cause, the hearing file shall be closed to additional public written comments.

(h) In appropriate cases, the District Engineer may participate in joint public hearings with other Federal or State agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or State agency is required to allow cross-examination in its public hearing, the District Engineer may still participate in the joint public hearing but shall not require cross examination as a part of his participation.

(i) The procedures in subparagraphs (d), (f) and (g) of this Section may be waived by the Presiding Officer in appropriate cases.

§ 327.9 Filing of transcript of the public hearing.

Where the Presiding Officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as Presiding Officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the Presiding Officer and the transcript of the public hearing and evidence submitted there shall in such cases be fully considered by the initial action authority in making his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Powers of the Presiding Officer.

Presiding Officers shall have the following powers:

(a) To regulate the course of hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under which the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice shall provide for a period of not less than 30 days following the date of public notice during which time interested parties may prepare themselves for the hearing, except that, in cases of public necessity, a shorter time may be allowed. Notice shall also be given to all Federal agencies affected by the proposed action, and to State and local agencies having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and published in newspapers of general circulation.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft Environmental Impact Statement or Environmental Assessment.

PART 328—HARBOR LINES

Sec.
328.1 Purpose and scope.
328.2 Applicability.
328.3 References.
328.4 Definition.
328.5 The purpose of harbor lines.
328.6 Establishment or modification of harbor lines.

AUTHORITY: 33 U.S.C. 401 et seq.

§ 328.1 Purpose and scope.

This regulation prescribes the policy, practice and procedures concerning harbor lines and any work in navigable waters of the United States shoreward of such lines.

§ 328.2 Applicability.

This regulation is applicable to all Corps of Engineers activities and installations having Civil Works responsibilities.

§ 328.3 References.

(a) Section 11 of the River and Harbor Act of 1899 (33 U.S.C. 404).

(b) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(c) Public Law 91-190, the National Environmental Policy Act of 1969.

§ 328.4 Definition.

The term "harbor line(s)" is used here in its generic sense. It includes types of harbor lines frequently referred to by other names, including, for example, pierhead lines and bulkhead lines.

§ 328.5 The purpose of harbor lines.

(a) Under previous policies, practices and procedures, riparian owners could erect open pile structures or undertake solid fill construction shoreward of established harbor lines without obtaining a permit under 33 U.S.C. 403. This was a matter of great concern, particularly in cases involving long established harbor lines, since all factors affecting the public interest may not have been taken into account at the time the lines were established. Accordingly, under previous policies, practices and procedures there was the danger that work shoreward of existing harbor lines could be undertaken without appropriate consideration having been given to the impact which such work may have on the environment and without a judgment having been made as to whether or not the work was, on balance, in the public interest.

(b) In order to assure that the public interest will be considered and protected in all instances, all existing and future harbor lines were declared on 27 May 1970 (33 CFR 209.150) to be guidelines for defining, with respect to the impact on navigation interests alone, the offshore limits of open pile structures (pierhead lines) or fills (bulkhead lines). A permit under 33 USC 403 is required in each case for any work which is commenced shoreward of existing or future harbor lines after 27 May 1970. Applications for permits for work in navigable waters of the United States shoreward of harbor lines shall be filed and processed in accordance with the provisions of 33 CFR Part 325. No permit is required for work completed or commenced prior to 27 May 1970 in conformance with existing harbor line authority.

§ 328.6 Establishment or modification of harbor lines.

Applications for the establishment of new harbor lines or the modification of existing harbor lines will be processed in a manner similar to applications for permits for work in navigable waters of the United States. Public notice concerning any such application will be sent to all parties known or believed to be interested in the application and a copy of the notice will be posted in post offices or other public places in the area. Public notices, apart from providing information relative to any harbor line application, shall make it clear that harbor lines are guidelines for defining, with respect to the impact on navigation interests alone, the offshore limits of open pile structures or fills and that the establishment of a harbor line carries with it no presumption that individual applications for permits to undertake work shoreward of any harbor line will be granted. Public hearings will be held in connection with applications for the establishment or modification of harbor lines whenever there appears to be sufficient public interest to justify the holding of a public hearing or when responsible Federal, State or local authorities, including Members of the Congress, request that a hearing be held and it is likely that information will be presented at the hearing that will be of assistance in determining whether the harbor line should be established or modified. District Engineers will forward all recommendations concerning the establishment or modification of harbor lines through the appropriate Division Engineer to the Office of the Chief of Engineers, DAEN-CWO-N. No new harbor lines will be established and no existing harbor lines will be modified unless specifically authorized by the Chief of Engineers.

PART 329—DEFINITION OF NAVIGABLE WATERS OF THE UNITED STATES

Sec.
329.1 Purpose.
329.2 Applicability.
329.3 General policies.
329.4 General definitions.
329.5 General scope of determinations.
329.6 Interstate or foreign commerce.
329.7 Intrastate or interstate nature of waterway.
329.8 Improved or natural conditions of waterbody.
329.9 Time at which commerce exists or determination is made.
329.10 Existence of obstructions.
329.11 Geographic and jurisdictional limits of rivers and lakes.
329.12 Geographic and jurisdictional limits of oceanic and tidal waters.
329.13 Geographic limits: shifting boundaries.
329.14 Determination of navigability.
329.15 Inquiries regarding determinations.
329.16 Use and maintenance of lists of determinations.

AUTHORITY: 33 U.S.C. 401 et seq.

§ 329.1 Purpose.

This regulation defines the term "navigable waters of the United States" as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning "navigable waters."

§ 329.2 Applicability.

This regulation is applicable to all Corps of Engineers Districts and Divisions having Civil Works responsibilities.

§ 329.3 General policies.

Precise definitions of "navigable waters" or "navigability" are ultimately dependent on judicial interpretation, and cannot be made conclusively by administrative agencies. However, the policies and criteria contained in this regulation are in close conformance with the tests used by the Federal Courts and determinations made under this regulation are considered binding in regard to the activities of the Corps of Engineers.

§ 329.4 General definition.

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability,

once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

§ 329.5 General scope of determination.

The several factors which must be examined when making a determination whether a waterbody is a navigable water of the United States are discussed in detail below. Generally, the following conditions must be satisfied:

(a) Past, present, or potential presence of interstate or foreign commerce;

(b) Physical capabilities for use by commerce as in subparagraph (a) above; and

(c) Defined geographic limits of the waterbody.

§ 329.6 Interstate or foreign commerce.

(a) *Nature of Sommerce: type, means, and extent of use.* The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the waterbody's capability of use by the public for purposes of transportation of commerce which is the determinative factor, and not the time, extent or manner of that use. As discussed in § 329.9 below, it is sufficient to establish the potential for commercial use at any past, present, or future time. Thus, sufficient commerce may be shown by historical use of canoes, bateaux, or other frontier craft, as long as that type of boat was common or well-suited to the place and period. Similarly, the particular items of commerce may vary widely, depending again on the region and period. The goods involved might be grain, furs, or other commerce of the time. Logs are a common example; transportation of logs has been a substantial and well-recognized commercial use of many navigable waters of the United States. Note, however, that the mere presence of floating logs will not of itself make the river "navigable"; the logs must have been related to a commercial venture. Similarly, the presence of recreational craft may indicate that a waterbody is capable of bearing some forms of commerce, either presently, in the future, or at a past point in time.

(b) *Nature of commerce: interstate and intrastate.* Interstate commerce may of course be existent on an intrastate voyage which occurs only between places within the same state. It is only necessary that goods may be brought from, or eventually be destined to go to, another state. (For purposes of this regulation, the term "interstate commerce" hereinafter includes "foreign commerce" as well.)

§ 329.7 Intrastate or interstate nature of waterway.

A waterbody may be entirely within a state, yet still be capable of carrying interstate commerce. This is especially clear when it physically connects with a generally acknowledged avenue of interstate commerce, such as the ocean or one of the Great Lakes, and is yet wholly within one state. Nor is it necessary that there be a physically navigable connection across a state boundary. Where a waterbody extends through one or more states, but substantial portions, which are capable of bearing interstate commerce, are located in only one of the states, the entirety of the waterway up to the head (upper limit) of navigation is subject to Federal jurisdiction.

§ 329.8 Improved or natural conditions of the waterbody.

Determinations are not limited to the natural or original condition of the waterbody. Navigability may also be found where artificial aids have been or may be used to make the waterbody suitable for use in navigation.

(a) *Existing improvements: artificial waterbodies.* (1) An artificial channel may often constitute a navigable water of the United States, even though it has been privately developed and maintained, or passes through private property. The test is generally as developed above, that is, whether the waterbody is capable of use to transport interstate commerce. Canals which connect two navigable waters of the United States and which are used for commerce clearly fall within the test, and themselves become navigable. A canal open to navigable waters of the United States on only one end is itself navigable where it in fact supports interstate commerce. A canal or other artificial waterbody that is subject to ebb and flow of the tide is also a navigable water of the United States.

(2) The artificial waterbody may be a major portion of a river or harbor area or merely a minor backwash, slip, or turning area. (See § 329.12(b).)

(3) Private ownership of the lands underlying the waterbody, or of the lands through which it runs, does not preclude a finding of navigability. Ownership does become a controlling factor if a privately constructed and operated canal is not used to transport interstate commerce nor used by the public; it is then not considered to be a navigable water of the United States. However, a private waterbody, even though not itself navigable, may so affect the navigable capacity of nearby waters as to nevertheless be subject to certain regulatory authorities.

(b) *Non-existing improvements, past or potential.* A waterbody may also be considered navigable depending on the feasibility of use to transport interstate commerce after the construction of whatever "reasonable" improvements may potentially be made. The improvements need not exist, be planned, nor even authorized; it is enough that potentially they could be made. What is a "reasonable" improvement is always a matter of degree; there must be a balance between cost and need at a time when the improvement would be (or would have been) useful. Thus, if an improvement were "reasonable" at a time of past use, the water was therefore navigable in law from that time forward. The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvement; those which may be entirely reasonable in a thickly populated, highly developed industrial region may have been entirely too costly for the same region in the days of the pioneers. The determination of reasonable improvement is often similar to the cost analyses presently made in Corps of Engineers studies.

§ 329.9 Time at which commerce exists or determination is made.

(a) *Past use.* A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) above) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions. Nor does absence of use because of changed economic conditions affect the legal character of the waterbody. Once having attained the character of "navigable in law," the Federal authority remains in existence, and cannot be abandoned by administrative officers or court action. Nor is mere inattention or ambiguous action by Congress an abandonment of Federal control. However, express statutory declarations by Congress that described portions of a waterbody are nonnavigable, or have been abandoned, are binding upon the Department of the Army. Each statute must be carefully examined, since Congress often reserves the power to amend the Act, or assigns special duties of supervision and control to the Secretary of the Army or Chief of Engineers.

(b) *Future or potential use.* Navigability may also be found in a waterbody's susceptibility for use in its ordinary condition or by reasonable improvement to transport interstate commerce. This may be either in its natural or improved condition, and may thus be existent although there has been no actual use to date. Non-use in the past therefore does not prevent recognition of the potential for future use.

§ 329.10 Existence of obstructions.

A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway in its original condition might have had substantial obstructions which were overcome by frontier boats and/or portages, and nevertheless be a "channel" for commerce, even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes. However, the question is ultimately a matter of degree, and it must be recognized that there is some point beyond which navigability could not be established.

§ 329.11 Geographic and jurisdictional limits of rivers and lakes.

(a) *Jurisdiction over entire bed.* Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark.

(1) The "ordinary high water mark" on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(2) Ownership of a river or lake bed or of the lands between high and low water marks will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody.

(b) *Upper limit of navigability.* The character of a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may, under some of the tests described above, be at some point yet further upstream.

§ 329.12 Geographic and jurisdictional limits of oceanic and tidal waters.

(a) *Ocean and coastal waters.* The navigable waters of the United States over which Corps of Engineers regulatory jurisdiction extends include all ocean and coastal waters within a zone three geographic (nautical) miles seaward from the coast line. Wider zones are recognized for special regulatory powers, such as those exercised over the Outer Continental Shelf.

(1) *Coast line defined.* Generally, where the shore directly contacts the open sea, the line on the shore reached by the ordinary low tides comprises the coast line from which the distance of three geographic miles is measured. On the Pacific coast the line of mean lower low water is used. The line has significance for both domestic and international law (in which it is termed the "baseline"), and is subject to precise definitions. Special problems arise when offshore rocks, islands, or other bodies exist, and the line may have to be drawn to seaward of such bodies.

(2) *Shoreward limit of jurisdiction.* Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. However, on the Pacific coast, the line reached by the mean of the higher high waters is used. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(b) *Bays and estuaries.* Regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by § 329.12(a) (2) above) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered "navigable in law," but only so far as the area is subject to inundation by the mean high waters. The relevant test is therefore the presence of the mean high tidal waters, and not the general test described above, which generally applies to inland rivers and lakes.

§ 329.13 Geographic limits: shifting boundaries.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable waters of the United States. Thus, gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterbody which also change the shoreline boundaries of the navigable waters of the United States. However, an area will remain "navigable in law," even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. For example, shifting sand bars within a river or estuary remain part of the navigable water of the United States, regardless that they may be dry at a particular point in time.

§ 329.14 Determination of navigability.

(a) *Effect on determinations.* Although conclusive determinations of navigability can be made only by Federal Courts, those made by Federal agencies are nevertheless accorded substantial weight by the courts. It is therefore necessary that when jurisdictional questions arise, District personnel carefully investigate those waters which may be subject to Federal regulatory jurisdiction under the guidelines set out above, as the resulting determination may have substantial impact upon a judicial body. Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law.

(b) *Procedures of determination.* A determination whether a waterbody is a navigable water of the United States will be made by the Division Engineer, and will be based on a report of findings prepared at the District level in accordance with the criteria set out in this regulation. Each report of findings will be prepared by the District Engineer, accompanied by an opinion of the District Counsel, and forwarded to the Division Engineer for a final determination. Each report of findings will be based substantially on applicable portions of the format in subparagraph (c) below.

(c) Suggested format of report of findings:

(1) Name of waterbody_____
(2) Tributary to_____
(3) Physical characteristics_____
(i) Type: (river, bay slough, estuary, etc.)_____
(ii) Length _____
(iii) Approximate discharge volumes:
Maximum _____
Minimum _____
Mean _____
(iv) Fall per mile_____
(v) Extent of tidal influence_____
(vi) Range between ordinary high and ordinary low water_____
(vii) Description of improvements to navigation not listed in subparagraph (5) below _____
(4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interstate commerce_____
(5) Authorized projects_____
(i) Nature, condition and location of any improvements made under projects authorized by Congress_____
(ii) Description of projects authorized but not constructed_____
(iii) List of known survey documents or reports describing the waterbody_____
(6) Past or present interstate commerce_____
(i) General types, extent, and period in time _____
(ii) Documentation if necessary_____
(7) Potential use for interstate commerce, if applicable_____
(i) If in natural condition_____
(ii) If improved_____
(8) Nature of jurisdiction known to have been exercised by Federal agencies if any_____
(9) State or Federal court decisions relating to navigability of the waterbody, if any_____
(10) Remarks _____
(11) Finding of navigability (with date) and recommendation for determination_____

§ 329.15 Inquiries regarding determinations.

(a) Findings and determinations should be made whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the Division Engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the Division Engineer. If a need develops for an emergency determination, District Engineers may act in reliance on a finding prepared as in § 329.14 above. The report of findings should then be forwarded to the Division Engineer on an expedited basis.

(b) Where determinations have been made by the Division Engineer, inquiries regarding the navigability of specific portions of waterbodies covered by these determinations may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that _____ (River) (Bay) (Lake, etc.) is a navigable water of the United States from _____ to _____. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department.

whether such actions occur within or outside the navigable areas.

(c) Specific inquiries regarding the jurisdiction of the Corps of Engineers can be answered only after a determination whether (1) the waters are navigable waters of the United States or (2) if not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

§ 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each District office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the Division Engineer; changes are not considered final until a determination has been made by the Division Engineer.

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TUESDAY, JULY 19, 1977

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

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SPECIAL DIETARY FOODS LABEL STATEMENTS

Proposed Statement of Reasons, Findings of Fact, and Conclusions and Tentative Order

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 105]

[Docket No. 75N-0318]

SPECIAL DIETARY FOODS LABEL STATEMENTS

Proposed Statement of Reasons, Proposed Findings of Fact, Proposed Conclusions, and Tentative Order

AGENCY: Food and Drug Administration.

ACTION: Tenative Order Following a Public Hearing on Regulations.

SUMMARY: This tentative order revises label statements for special dietary food. It is issued following a public hearing on special dietary food regulations. The regulations in the tentative order would govern label statements on special dietary foods for use in reducing or maintaining body weight or caloric intake, or in the diet of diabetics, and prevent misleading label statements on foods that are not useful for these purposes.

DATE: Exceptions by August 18, 1977.

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

TENTATIVE EFFECTIVE DATE: Labeling may be changed to comply with any regulations issued as a result of this tentative order on the date of publication of the final order in the FEDERAL REGISTER; all products initially introduced into interstate commerce shall comply by July 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard T. Hunt, Compliance Regulations Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the matter of revising regulations for food for special dietary uses, the Commissioner of Food and Drugs is issuing a tentative order, following a public hearing, setting forth regulations with respect to label statements on special dietary foods for use in reducing or maintaining body weight, or in the diet of diabetics, and to related misleading label statements on other foods.

The section numbers discussed in this document were recodified in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302). For the convenience of the readers, the recodified sections are indicated by the word "formerly" or "now" following the section numbers.

HISTORY

1. On the initiative of the Commissioner of Food and Drugs, a notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of June 20, 1962 (27 FR 5815), and numerous comments were received in response thereto. Subsequently, orders were published in the FEDERAL REGISTER of June 18, 1966 (31 FR 8521 et seq.), to become effective December 15, 1966, deleting §1.11 (21 CFR 1.11), excepting from labeling requirements certain artificially sweetened foods (21 CFR 5.5), establishing definitions and standards of identity for dietary supplements of vitamins and minerals and for vitamin and mineral-fortified foods (21 CFR Part 80, now 21 CFR Part 105), and revising the regulations for the labeling of food for special dietary uses (21 CFR Part 125, now 21 CFR Part 105).

2. During the 30-day period provided by the orders of June 18, 1966, objections and requests for a public hearing were filed. Consequently, an order was published in the FEDERAL REGISTER of December 14, 1966 (31 FR 15730), staying the effective date of § 5.5, Part 80, and Part 125, and staying the effective date of the deletion of § 1.11, as published June 18, 1966. The order of December 14, 1966, gave notice that a public hearing would be held on the basis of the objections received, and set forth the issues to be decided at the hearing. Since the order also contained amendments to the provisions of Parts 80 and 125 published in the FEDERAL REGISTER of June 18, 1966, an additional period of 30 days was provided for the filing of objections by persons adversely affected. Numerous letters objecting to the amendments and requesting a public hearing were received; however, no substantive issues not already stated in the order of December 14, 1966, were raised by these objections. A correction of a printer's error in the order of December 14, 1966, was published in the FEDERAL REGISTER of December 21, 1966 (31 FR 16312).

3. A notice was published in the FEDERAL REGISTER of April 2, 1968 (33 FR 5268), scheduling a hearing to begin May 21, 1968, and a prehearing conference to begin May 7, 1968. The notice also designated Mr. David H. Harris as the Hearing Examiner for these proceedings, and notice that he was appointed a hearing examiner was published in the FEDERAL REGISTER of May 4, 1968 (33 FR 6828).

4. The hearing was convened as scheduled May 21, 1968, and recessed the same day to permit continuation of prehearing conferences. Notice was given in the FEDERAL REGISTER of June 13, 1968 (33 FR 8679), that the hearing was being reconvened June 20, 1968. The hearing was reconvened as scheduled and continued for almost 2 years, closing on May 14, 1970.

5. The taking of evidence with reference to infant foods was closed October 14, 1969. Pursuant to 21 CFR 2.96, and limited to the infant food portion of the proceedings, the Hearing Examiner submitted his report and certified the record together with his report to the Commissioner of Food and Drugs. This Hearing Examiner's report, dated August 26, 1970, is part of the public record (Docket No. FDC-79) on file with the Hearing Clerk, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

6. The Hearing Examiner subsequently submitted his report of the entire proceedings, except for the previously submitted portion on infant foods, and certified the associated record together with his report to the Commissioner of Food and Drugs. This Hearing Examiner's report, dated January 25, 1971, is part of the public record (Docket No. FDC-78) and is also on file with the Hearing Clerk.

7. Final orders have already been published on all matters within the scope of the proceeding except the matters covered by this tentative order. After review of the Hearing Examiner's report and related material, the Commissioner issued final orders on § 125.5 (now § 105.65) (label statements relating to infant foods) in the FEDERAL REGISTER of December 10, 1971 (36 FR 23553); to hypoallergenic foods (21 CFR 125.8, now 21 CFR 105.62) and to food for use as a means of regulating the intake of sodium (21 CFR 125.9, now 21 CFR 105.69) in the FEDERAL REGISTER of May 17, 1972 (37 FR 9763); and to definitions, interpretation of terms, general label statements, and vitamins and minerals (21 CFR 125.1, 125.2 and 125.3, now 21 CFR 105.3, 105.60, and 105.77) in the FEDERAL REGISTER of August 2, 1973 (38 FR 20708).

8. The Commissioner's final order on label statements relating to definitions, interpretations of terms, general label statements, and vitamins and minerals was stayed pending the outcome of judicial review pursuant to an order published in the FEDERAL REGISTER of October 26, 1973 (38 FR 29577). The record relating to that order was reopened for certain limited purposes pursuant to judicial remand in "National Nutritional Foods v. FDA," 504 F.2d 761 (2d Cir. 1974). In the FEDERAL REGISTER of October 19, 1976 (41 FR 46156), FDA issued final revised regulations governing vitamin and mineral products in compliance with the remand directions and the new amendments to the Federal Food, Drug, and Cosmetic Act concerning vitamins and minerals. In that order, FDA revised §§ 125.1, 125.2, and 125.3 (now §§ 105.3, 105.60, and 105.77) revoked § 125.4 and amended § 125.5 (now § 105.65), to delete the reference to § 125.4. In the FEDERAL REGISTER of April 19, 1977 (42 FR 20292), the Commissioner ruled on two petitions for reconsideration, and generally reaffirmed the regulations but revised the regulations on some matters.

LIMITED SCOPE OF THIS ACTION

9. This document pertains only to regulations concerning limited matters relating to the labeling of foods for special dietary use because of usefulness in reducing or maintaining caloric intake or body weight or in the diet of diabetics and related misleading statements (21 CFR 105.66 and 105.67 of the tentative order).

10. The regulations in the tentative order with respect to foods for use in reducing or maintaining caloric intake or

body weight or for use in the diet of diabetics were designated 21 CFR 125.5 and 125.6, respectively, in the regulations on which the hearing was held, as revised and stayed by the order of December 14, 1966. To be compatible with the current format of Part 125 (now Part 105) in the Code of Federal Regulations, any final regulations issued on these matters will be designated 21 CFR 105.66 and 105.67, respectively.

11. With the issuance of a final order on the matters covered by this tentative order, the rulemaking proceeding, commenced in 1962, to revise the regulations for foods for special dietary uses, will be substantially completed. The record will remain open only for certain limited purposes to take appropriate action in the light of judicial review of the final orders issued in this proceeding.

Relationship to Proposed Rule on Saccharin

12. By notice published in the Federal Register of April 15, 1977 (42 FR 19996), the Commissioner proposed to prohibit the use of saccharin as a food additive, including its use in "diet" soft drinks. The proceeding to establish labeling requirements for special dietary foods and prevent deceptive claims started in 1962 and long preceded the current studies relating to safety of saccharin. The regulations as originally proposed, and the regulations stayed for the public hearing, set forth labeling provisions governing special dietary foods containing nonnutritive sweeteners.

The tentative order also covers labeling provisions regarding nonnutritive sweeteners. The Commissioner intends to retain provisions on the labeling of nonnutritive sweeteners in food offered for weight control even if no safe nonnutritive sweeteners are available for use when the final order on this matter is issued. It is appropriate to have provisions on the labeling of nonnutritive sweeteners in case a safe nonnutritive sweetener for use in these foods becomes available. To avert possible confusion, the Commissioner has expressly indicated in the tentative order that a nonnutritive sweetener may be used in special dietary foods offered for weight control only if the use is safe and in accordance with the law and regulations. The Commissioner points out that there are other means besides the use of nonnutritive sweeteners through which foods can achieve a usefulness in weight control diets, e.g., reduction in fat content, use of natural juices or water as a packing medium.

13. In citing the record, the Commissioner has used the following system of abbreviations:

Tr.—For transcript pages of the hearing.
P.—For exhibits introduced by the Government, the proponent.
O.—For exhibits introduced by opponents.
WD–G—For written direct testimony by a witness for the Government.
WD–3A—For a written direct testimony by a witness for the designated opponent (e.g., "3A").
#—File number of submissions to the Hearing Examiner.
HEF—Hearing Examiner Finding.

14. In many instances, the findings of fact of the Hearing Examiner are relied on and adopted as the Commissioner's Proposed Findings of Fact. This is indicated by the parenthetical reference HEF, with the number of the Hearing Examiner's findings, at the end of the proposed finding. If the Commissioner has adopted a Hearing Examiner finding with changes, the finding is stated as being based on the Hearing Examiner finding.

Statement of Reasons

The Hearing Examiner's findings, adopted in the tentative order, are, in most instances, sufficient as a statement of reasons for the regulations in the tentative order. This statement gives a supplementary discussion of the need for the regulations, of the reasons for the changes made in the stayed regulations, and of the reasons for not accepting some contentions raised by participants in the hearing. The Commissioner has also discussed his specific reasons for not accepting findings of the Hearing Examiner, unless the reason for nonacceptance is evident from the discussion in this statement, or unless the finding was not relevant or necessary. The Commissioner has stated in parentheses after the Hearing Examiner's findings the reasons for not accepting particular findings when the reasons related to the specific finding, rather than major regulatory issues.

The Commissioner has not made an individual ruling on each finding of fact and conclusion of law proposed by participants to the Hearing Examiner. A considerable number of findings and conclusions were proposed and it served no useful purpose to discuss each separately. Some were incorporated by the Hearing Examiner into his findings. Some provided additional bases for support of conclusions adequately supported by other findings. Others were not accepted for reasons indicated in the findings or in this statement.

Need for Regulation

Obesity is a major health problem in the United States. Millions need to lose weight. Millions need to make a conscious adjustment in their eating habits to maintain their weight at a proper level. A major way to control weight is for individuals to limit their total daily intake of calories while still choosing foods that provide the full complement of required nutrients. Sustained weight loss is most likely achieved, not through crash dieting or monotonous diets, but through a moderate reduction in total caloric intake and a varied selection of usual foods. The Commissioner's aim in these regulations is to enable those who need to control their weight to identify and evaluate foods which may particularly help them attain and maintain their proper weight within a balanced and nutritious diet program.

Weight control problems can be helped if foods of special value are brought to the attention of purchasers. It is important that these regulations permit foods of special value to make appropriate claims. The labeling should be simple and conspicuous enough to reach the purchaser's attention. The labeling requirements should not be so burdensome that manufacturers forego making claims for foods which are of special value. It is equally important, however, that the labeling provide enough information for the purchaser to evaluate the usefulness of the food for regulating caloric intake and body weight.

The last major goal for these regulations is to prevent misleading labeling claims on foods that are not of value for special dietary use. These other claims should either not be made, or the claim should indicate clearly that the value of the food does not relate to weight control.

Foods of Special Value for Reducing or Maintaining Caloric Intake

Any food can be eaten by those on a diet, since the suitability of any one food depends upon the caloric and nutrition values of the other foods chosen by the consumer, but it would be inappropriate, on that account, to allow either all foods or no foods to claim special dietary value for weight control. Two types of food are appropriately considered to be of special value. The first type is food which is low in calories on an absolute basis. The second type is food which has been fabricated or altered to make it comparatively lower in calories than another similar or identical food for which it can substitute, e.g., reduced calorie food.

The use of a single low calorie, or comparatively lower calorie food, might very well not have dietary significance if it were the sole means used to reduce or maintain weight. People eat many foods in a day, however, and their efforts to control caloric intake should be based on their total diet and not a single item. Low calorie foods, reduced calorie foods, and other lower calorie substitutes are genuinely of special value when used with other measures to regulate caloric intake and body weight, including increased physical activity, and consumption of smaller portions.

General requirements. Paragraph (a) of § 105.66 of the tentative order contains the general requirements applicable to all foods that purport or are represented to be of special dietary usefulness for reducing or maintaining caloric intake or body weight. Section 101.3 (formerly § 1.8d) of the regulations governs the placement of the statement on labels if not otherwise provided for in these regulations.

One of the general requirements is that each food subject to 105.66 bear nutrition labeling in accordance with § 101.9 (formerly § 1.17), unless exempt under § 101.9. Even without this provision, the foods would be required to bear nutrition labeling since § 101.9 requires nutrition labeling on any food that bears any nutrition claim or information. Nonetheless, a requirement for nutrition labeling has been included in § 105.66 of the tentative order because it would avoid any possibility of confusion about the applicability of § 101.9, or oversight of it.

Section 125.5(a) of the stayed regulations required the label to bear information on the protein, fat, and available carbohydrate content of the food. The hearing record amply supports the need for labeling information about nutrition. The purchaser of special dietary foods particularly needs ready access to nutrition information because he has to be sure he gets all needed nutrients while reducing his caloric intake.

The Commissioner has not proposed to require the nutrition information provided for in the stayed regulation in addition to nutrition labeling in accordance with § 101.9. There is no need for two statements in differing formats; they could confuse consumers. The nutrition labeling provided for in § 101.9 will give the purchaser adequate nutrition information, and the uniform format it establishes for presenting nutrition information facilitates comparisons among foods.

Paragraph (a) of § 105.66 also requires foods offered for weight control to bear a statement indicating the importance of the total diet in weight control. This statement will bring this basic principle of weight control to the user's attention and clarify that the claim of usefulness by the food must be understood in relationship to the total diet.

Section 125.5(a) of the stayed regulations did not provide for this particular statement, but it did require foods to bear the statement "For calorie restricted diets." That statement served in part to direct the purchaser's attention to the importance of calories and the total diet, but the Commissioner believes that the new statement makes the point in a clearer way. The statement "For calorie restricted diets" also served to identify foods which purport to be useful for weight control. Identification is important, but the Commissioner believes that this can be adequately done through the labeling of the food in terms of the basis of the claim it makes, e.g., "Low Calorie." Accordingly, in the tentative order, the Commissioner has not required mandatory use of the statement "For calorie restricted diets."

Food fabricated or altered to lower caloric content. Foods which have been fabricated or altered to make them of special dietary usefulness for maintaining or reducing caloric intake or body weight would be required by § 105.66(b) of the tentative order to bear a statement describing the fabrication of alteration and the percentage by weight of any nonnutritive constituent used. This requirement has a purpose similar to that of the provisions in the stayed regulation requiring statements about the use of nonnutritive sweeteners or other nonnutritive constitutents and the percent by weight of any nonnutritive constituent. The percentage by weight of a nonnutritive sweetener did not have to be listed under the stayed regulation, and need not be listed under the regulation in this tentative order since the weight of nonnutritive sweeteners is ordinarily slight.

The Commissioner has not included labeling provisions specifically for sugar substitutes sold as such, even though the stayed regulation contained a provision on their labeling. He believes a specific provision is unnecessary in view of the general requirements applicable to all foods making caloric claims. The labels of any sugar substitutes will have to bear the statement required by § 105.66 about the manner of fabrication or alteration, and the additional requirements applicable to the claim of special dietary usefullness made by the food.

Low calorie foods. Section 105.66(c) of the tentative order sets forth the requirements for low calorie foods. The record indicated the need to establish a maximum number of calories in a food promoted as low calorie to ensure that foods have the value for dietary purposes they purport to have. The experts who testified generally agreed that there should be a maximum but disagreed on what the maximum should be, and on the bases upon which it should be set.

Section 125.5(f)(1) of the stayed regulations set a 15-calorie maximum per serving, and a 30-calorie maximum on a daily intake basis for a food labeled "low calorie." That calorie requirement rereceived "practically no support from any witness, Government or otherwise," to quote the Government Post-Hearing Evidentiary Memorandum, because it was "unrealistically low" and only a few foods would meet it (#588, p. 61). Government witnesses supported increasing the maximum to 25 calories per serving, and the Hearing Examiner found this maximum reasonable (HEF 486).

The Commissioner accepts the concept that the caloric designation should indicate foods of distinctly low calorie value in a single serving. The Government witnesses based the 25-calorie maximum on the concept that the low calorie designation should indicate both foods of distinctly low calorie value and foods that could be eaten at will without signicantly adding to the total daily caloric intake (HEF 483; WD–G–Levine, Q & A 130–133). Some low calorie foods may be so low in caloric value that they can be eaten freely, in as many servings as a person is likely to want, without adding significantly to the caloric content of the total diet, but the Commissioner has not limited the low calorie food designation to foods that can be eaten freely in numerous servings. Repeated servings of foods at the higher end of the low calorie range could make a significant contribution for some people. It is inevitably a matter of applying reasonable judgment, both by the Commissioner in establishing the requirements and by the consumer in consuming the food. Consummers will know from the caloric content given in nutrition labeling whether the low calorie foods may be consumed in numerous servings per day, or can only be consumed in a single serving or a few servings without adding significantly to the total caloric intake.

The Government's 25-calorie maximum was criticized on the basis that few foods would satisfy it, and particularly few fruits, vegetables, juices, and soups (e.g., Record cited in HEF 485, #576, Proposed Findings of Fact 105–124). The Commissioner has considered this objection carefully, and believes that the maximum caloric value for low calorie foods should be increased to 40 calories. The 40 calorie maximum would still include only foods of distinctly low caloric value and it would allow an increased number and variety of foods to be labeled. The Commissioner has analyzed the caloric values for foods included into the current edition of the U.S. Department of Agriculture Handbook No. 8 of which he takes official notice. The Commissioner recognizes that the determination of caloric values for foods varies depending upon the amount estimated as the serving size for different kinds of foods. Even allowing for some variations in estimates of serving sizes, the Commissioner finds that the 40 calorie per serving maximum includes a reasonable number of foods which should properly be recognized as "low calorie."

Some parties who criticize the Government's position advanced different concepts to be used in calculating the maximum for low calorie foods. These included basing the determination on typical foods recommended for use in diets, e.g., an ordinary hard boiled egg, or upon arithmetical portions of an appropirate diet, e.g., one-seventh of the calories in a low calorie meal (#576, Proposed Findings of Fact 90–92). These concepts have not been accepted. There is no convincing evidence that consumers would understand the low calorie designation in these ways. The concepts would allow foods containing a significant number of calories in a single serving to be labeled low calorie.

It was also argued that the low calorie term should be used to indicate foods which are lower in calories than similar foods in the same class, or foods used for a similar purpose, by, for example, distinguishing low calories vegetables from high calorie vegetables, or by encouraging the use of fruits in lieu of high calorie desserts (WD–53–Mayer, pp. 43–45, 57). To the extent this concept is valid, the 40 calories maximum promotes it in part. The Commissioner does not, however, accept this concept. Foods in the 60–75 calorie range provides substantial calorie, and use of the low calorie designation on such foods may lead to excess consumption of calories by consumers who associate the low calories designation with distinctly low caloric content. In addition, this concept is based on substituting a low calorie food for a number of different foods, all of which may vary in nutrition.

The Commissioner believes that the substitution of one food for another should be evaluated carefully in relationship to the nutrition value of the food. It would be difficult to determine nutritional equivalence with respect to the substitution of one food for various different foods, and to develop a labeling scheme that would convey to the purchaser clearly all the possible differences in nutritional values which should be considered in evaluating whether the substitution is appropriate. Accordingly, the Commissioner has not accepted the

concept that the low calorie designation should be used to encourage substitution of certain foods for various dissimilar foods.

The Commissioner has included a caloric density requirement of 0.4 calorie per gram for low calorie foods, in lieu of the provision in the stayed regulations which precluded low calorie claims by foods containing more than a specified number of calories in the average total daily intake. The daily intake provision served to prevent claims by foods based on the number of calories in an individual serving unit even though several units might be consumed at a time, e.g., a single cookie, a piece of candy or a single teaspoonful of sugar. These foods are not appropriate to consume at will. Caloric density distinguishes these inappropriate claims with greater precision. Because of the variability in serving sizes for these foods, statements of calories per serving are not adequately informative to aid consumers in evaluating whether these foods can usefully be included in a calorie-restricted diet. The importance of consideration of caloric density was presented in the testimony in the hearing (#576 at Proposed Findings of Fact 117–20, 122, 124, adopted as the Commissioner's Proposed Findings of Fact 61–66). This testimony indicated that most soups, juices, fruits and vegetables would meet the .4 caloric density requirement provided for in the regulation.

This testimony was introduced to support the position that the "low calorie" term should be permitted only on foods that are reduced to low calorie levels, and on soups, juices, fruits and vegetables that are low calorie as naturally constituted (#577, pp. 53–68). It was argued that foods that were not in these classes were inappropriate for use as low calorie foods. The Commissioner believes the caloric density requirement provides a better basis for distinguishing inappropriate low calorie claims than would a requirement that precludes claims by foods not in specified classes.

The tentative order adopts the requirement in the stayed regulation that foods claiming to be low calorie bear the identifying designation "low calorie" or variations of it and sets minimum standards for the type size to be used in the "low calorie" designation or variations of it to eliminate uncertainties about the degree of prominence to ensure that this important information reaches the consumer's attention. Under § 125.5 of the stayed regulations, this designation was required to appear on the label, and § 125.2 (now § 105.60) of the regulations stayed for the hearing also required statements to appear on the principal display panel. To eliminate any uncertainty about placement, and to ensure that consumers can readily identify foods offered as low calorie, the tentative order requires the statement to appear on the principal display panel.

Low calorie foods are of two types, those that are fabricated or altered to reduce calorie content to a low caloric level and those that are low in calories as ordinarily grown or made, e.g., celery. Both types may be labeled low calorie. Foods that are low calorie as ordinarily grown or made may not be labeled in a way that suggests they are lower in calories in comparison with identical foods. For example, if celery were labeled "low calorie celery" it would suggest that the labeled celery is lower in calories than other celery. These foods can make low calorie claims in other ways that do not have a misleading implication, e.g., "celery, a low calorie food" (Number 576, Proposed Finding of Fact 126).

"Reduced calorie" food and other comparative claims. Section 105.66(d) of the tentative order sets forth criteria for reduced calorie foods. Under § 125.5(g) of the stayed regulations, a food could make a comparative claim of usefulness in calorie regulation only if it had at least a 50 percent reduction as compared with another food. Many experts testified that it was appropriate to establish a minimum reduction figure, but that a 50 percent reduction requirement was unreasonable. The Hearing Examiner found a 50 percent minimum percentage reduction unreasonable, and proposed instead a 35 percent reduction as the minimum (HEF 481). The Commissioner accepts the Hearing Examiner's finding in essence, but has set the minimum reduction requirements slightly lower at 33⅓ percent. The 33⅓ percent figure can be expressed as a proportional reduction of one-third, a figure that is more familiar and understandable to the public.

The Commissioner believes the 33⅓ percent reduction requirement is more appropriate than the 50 percent requirement because he finds it to be more suitable for the moderate type of dieting program which is generally preferable for use by the general public. Diets with a moderate reduction are the most advisable for general uses, because they present less risk that intake of essential nutrients will be inadequate when the caloric intake is reduced. A 33⅓ percent reduction requirement allows a greater variety of nutritious foods to bear claims of usefulness in reducing or maintaining caloric intake or body weight, and variety is important in maintaining the motivation to adhere to a diet program.

Some witnesses at the hearing advocated an even lower caloric reduction requirement of 25 or 10 percent. The Commissioner believes that these figures would allow foods to bear claims that are not of significant help, and, by enlarging the number of foods that could make claims, it would be more difficult to make consumers aware of foods of particular use. This requirement may, however, in some instances preclude claims by foods for which it would be useful to have reduced calorie corollaries. The Commission has provided for a procedure, not found in the stayed regulations, through which foods not meeting the usual requirements will be allowed to bear claims of usefulness if the petitioner presents an appropriate scientific basis for his petition.

The Commissioner has also established a 25-calorie-reduction requirement per serving for foods that claim to be reduced calorie foods. This requirement will preclude claims by food such as spices, used in small amounts and containing a few calories, that may have a reduction that appears large in percentage terms but which is not significant. This requirement is in lieu of the provision in the stayed regulation limiting claims to foods of caloric importance, a requirement with a similar purpose but indefinite in its applicability. The Commissioner has not accepted the Hearing Examiner's finding 450 with respect to caloric importance for this reason. The regulations would also prohibit claims by foods which are reduced only in a comparison with a hypothetical food of the same type having more calories, even though no higher calorie food of that type had ever been sold.

Nutritionally inferior foods would not be permitted to make comparative claims of usefulness in weight control. The record clearly shows the importance of maintaining the intake of essential nutrients while calorie intake is being reduced. The stayed regulations did not expressly preclude claims by nutritionally inferior foods but the Commissioner believes it would be misleading to offer a food for special dietary use in a weight control diet if the food were less nutritious, apart from fat and calories, than the food it is represented as replacing in the diet.

The tentative order would also require all foods that claim to be reduced in calories to bear a statement describing the comparison on which the claim is based that gives the calorie content of the foods compared. The comparison statement may be made in the form of a comparison with a specific food, by its brand name or common or usual name, in the form in which it is customarily made and consumed. The comparison may also be made with the same food without the fabrication or alteration that gives the food its special dietary significance.

The stayed regulations permitted foods to make comparative claims either in relationship to the same food without a specified fabrication or alteration of special dietary significance, or in relationship to a specific food as customarily made and consumed. The Commissioner believes it is more useful if comparative claims are made with a specific food, e.g., "peaches packed in water, 38 calories per ½ cup serving, 62 percent less calories than Brand X peaches in heavy syrup" rather than in relationship to a general class of foods, e.g., "peaches packed in water, 38 calories per ½ cup serving, 62% less calories than if packed in heavy syrup." The tentative order allows the comparison to be made either way, however, since the determination of the amount of the reduction is easier when made in comparison with the same food without the fabrication or alteration. When the calorie comparison is made with a class of foods, the foods within the class may vary somewhat in calorie con-

tent making calorie computations more complex.

The calorie content comparison may be made by specifying either the number of calories in each food, or the number in one food and the percentage or proportional difference in calories in relationship to the other food. To be a comparison of caloric content, the statement must give the amount of calories in at least one of the foods compared. The statement must appear on the label, but need not appear on the principal display panel.

A food claiming usefulness in weight reduction or mantenance would have to be labeled "reduced calorie" if it meets the requirement of § 105.66(d) and is similar in taste and other organoleptic properties to the food specified on the labeling with which it is compared. A reduced calorie food need not be identical, apart from calories, to the food for which it substitutes, but it must be essentially the same as the other food in taste, appearance, and other organoleptic properties.

The stayed regulations did not expressly require all comparatively reduced calorie foods to bear common identifying terminology. Instead, separate labeling requirements were established in § 125.5 (b), (c), (d), (e), and (g) depending upon whether the food achieved its calorie reduction through use of artificial sweeteners nonnutritive ingredients, or some other means. A statement of general policy published in the FEDERAL REGISTER of July 6, 1966 (31 FR 9215) indicated that FDA was willing to consider "reduced in calories" as alternative terminology to "lower in calories." The Commissioner believes it will improve consumer understanding to provide common identifying terminology on foods that have the same organoleptic properties apart from a calorie reduction and has adopted the "reduced calorie" term for this purpose.

A food that is fabricated or altered to lower its calorie content but that does not have the same organoleptic properties as a specific food with which it is compared may not be labeled "reduced calorie" but may bear other labeling to indicate its special dietary usefulness. For example, canned pears packed in unsweetened water could not be labeled as reduced calorie because it does not resemble canned pears in syrup with respect to sweetness. It could bear a comparative claim on the label, though, comparing the calorie content of the pears in unsweetened water with pears in syrup. It could also bear other terms that represent or suggest special dietary usefulness, such as "for calorie restricted diets." The term "diet" could be used on the label to indicate the food's special dietary usefulness, but it could not be used in a way that suggests the food is similar in all its organoleptic properties to the food with which it is compared. Thus, the word "diet" could not be used immediately preceding the name of the food.

Label terms suggesting usefulness in regulating caloric intake or body weight. Section 105.66(e) of the tentative order would prohibit misleading terms in the labeling of foods which are not of special dietary usefulness for weight control. Thus, foods could not be labeled with terms that suggest the food is low calorie or lower in calorie than another food or other terms suggesting usefulness in regulating caloric intake unless it complies with § 105.66 (c) or (d) governing such claims. If anyone believes that it would be useful to consumers to allow these terms to be used on other foods, he may petition the Commissioner to amend the regulations to provide for such claims. If the claim is appropriate, the Commissioner can propose labeling that will enable the consumer to understand the basis of the claim being made and prevent confusion from various forms of making the claim.

Some foods have recently been offered as useful for weight control even though the foods are neither low calorie nor comparatively more reduced in calories than other food. The foods are offered as useful in conjunction with a total program for regulating the person's complete diet. Thus, an ordinary can of corn might be labeled as useful for weight control because of its inclusion in a total diet program. Claims of usefulness of this type were not prevalent at the time of the hearing, and the record does not provide an adequate basis for evaluating the usefulness of the foods in this type of program and the type of labeling that can be used on the foods without misleading consumers about the usefulness of the food and the fact that the foods are not reduced calorie or low calorie. The Commissioner will give careful attention to any adequately supported petition that seeks to provide for labeling of these foods for use in diets in a way that is not misleading.

Formulated meal replacements, low calorie meals, and other total meal replacements would not be subject to this provision pending the issuance of regulations governing these foods. Under the stayed regulation, claims for such foods had to be made on a comparative basis in relationship to a similar food or the same food without a fabrication or alteration of special dietary significance. Testimony was introduced that the validity of the claim should be determined on other bases, such as an absolute caloric standard for a low calorie meal (e.g., #576, Proposed Finding of Fact 88). The Commissioner proposed in the FEDERAL REGISTER of June 14, 1974 (39 FR 20905) a nutritional quality guideline for formulated meal replacements that would have required compliance with § 125.6 for such foods offered for use in a reduced calorie diet. The Commissioner has found the hearing record insufficient, however, to evaluate the suitability of other possible bases for making calorie claims for meal replacements and for low calorie meals. Accordingly, he proposes to exempt claims by formulated meal replacements and meal substitutes from § 125.6 at this time.

Use of terms such as "sugar free," "sugarless," "no sugar," etc. Purchasers associate statements about the absence of sugar with weight control claims and foods that are low calorie or have been altered to reduce calories significantly. The regulation does not prevent the "sugarless" statement from being used on foods that are not of special use in weight control diets, but it would require affirmative disclosures to prevent consumers from being misled about the usefulness of the food. Under § 105.66(f) of the tentative order, any food that makes a statement about the absence of sugar will have to bear a statement indicating the food is not low calorie or calorie reduced, unless the food is a low or reduced calorie food. Without the disclosure, some consumers might think the food was offered for weight control or was offered for both calorie control and another purpose.

Evidence was introduced at the hearing to show that the "sugarless" claim is useful to identify foods like chewing gum that are in sustained contact with the teeth in which use of a sweetener other than sucrose may help avoid tooth decay (WD–98–Schotenboer, pp. 7–8). The record is insufficient, in the Commissioner's judgment, to permit a conclusion that the use of certain sweeteners, such as sorbitol, is of dietary usefulness to help avoid tooth decay. He intends to examine this matter further to see if claims of usefulness in avoiding tooth decay based on the use of a sweetener other than sucrose are misleading. He agrees though, that the "sugarless" claim should be permitted to be used to indicate dietary uses other than usefulness for weight control if the use is not misleading and if the food bears appropriate labeling to prevent consumers from being misled about the other implications of the sugarless claim. The tentative order provides for suitable labeling of foods claiming to be sugarless.

Affirmative disclosures would not have been required under the stayed regulation, but the stayed regulation would not have allowed a food to bear a claim like "sugarless" that implies usefulness for weight control if the food were not a low calorie or comparatively reduced calorie food. Since this regulation would allow the "sugarless" term to be used on other foods, this creates the need to require additional disclosures to ensure that the term is not misleading to consumers.

Foods offered for weight gain. The Commissioner does not intend at this time to issue provisions on the particular label statements that must be borne by special dietary foods offered for use in gaining body weight. The stayed regulations required a food offered for this use to bear certain information about its nutrition content. Such foods have to provide the same information, in the form of nutrition labeling, by virtue of § 101.9 (formerly § 1.17), because of the inherent nutrition claim in any claim of usefulness in gaining body weight. In addition, under 21 CFR 105.60 (formerly 21 CFR 125.2), the food will have to bear an appropriate identification of the claim and its dietary basis. Thus, there no

longer is any need for the particular provisions in § 125.5(a) of the stayed regulations with respect to foods offered for weight gain, and these particular provisions are not included in this tentative order. If the Commissioner finds that additional label statements should be required on foods offered for use in gaining body weight, he will propose new regulations.

Foods useful in the diet of diabetics. Section 105.67 of the tentative order sets forth labeling requirements for food used in the diet of diabetics: Section 125.6 of the stayed regulations would have permitted foods to make claims of usefulness in the diet of diabetics. At the hearing, a Government witness testified that no such special labeling should be permitted because there are no unique characteristics of individual foods in the diet of diabetics, and because, in the event the diabetic needs to lose weight, the dietary needs of the diabetic for this purpose do not differ from those of other persons dieting to lose weight (WD–G–Moses, pp. 40–41). The Hearing Examiner rejected the proposal to delete labeling of foods for diabetics on the basis of his view that the diets of diabetics should be carbohydrate restricted and that for diabetics who are not overnight it might be desirable to reduce simple sugars in foods while maintaining customary total caloric intake (HEF 496, 498).

The Commissioner accepts the finding that the dietary components for diabetics for purposes of attaining optimal weight are essentially the same as for persons who do not have diabetes mellitus. The record is insufficient to establish, however, whether there may be foods with unique characteristics particularly suitable for inclusion in the diet of diabetics. The Commissioner recognizes, however, that some physicians believe there are foods of special value when used in the diet of diabetics under medical supervision. Some testimony was introduced at the hearing that some physicians recommend the use of foods containing mannitol or sorbitol by diabetics, but that the label of any food intended for use in the diet of diabetics should bear a statement that the food is for use only upon the advice, recommendation, or direction of their physician (#587, Proposed Finding of Fact 3). In view of this, the Commissioner has provided at this point in time for labeling of foods for use by dibetics upon the advice of a physician. The labeling must indicate prominently that the food is offered for use by diabetics only upon medical advice.

Evidence was introduced at the hearing which purported to show that the sugar alcohols, mannitol and sorbitol, would not be metabolized or would be metabolized slowly in ways that would not increase requirements for insulin, making them, it was urged, useful for diabetics, because use of these sugar alcohols would provide sweetened foods without requiring as much insulin as would the same foods made with sucrose or other similar sugars. The record indicated that the only sophisticated study of mannitol at that time was done solely on animals and that questions of data interpretation remained about that study (Ricketts Tr. 21008–09). Mannitol is currently subject to restricted use under an interim food additive regulation (21 CFR 180.25, formerly 21 CFR 121.4005).

A single study without positive controls was introduced in support of the concept that 40 grams or more of sorbitol per day may be useful to diabetics (Steinke Tr. 30553–66). The Commissioner believes that the record of this proceeding does not provide an adequate basis for reaching a conclusion on what claims are valid and have been adequately supported. Significant advances in knowledge and dietary management of diabetes mellitus have also occurred since the time of the 1968–1970 hearing upon which this proceeding is based.

If the Commissioner decides to propose regulations to define when claims of usefulness for diabetics are false or misleading, he will initiate a new proceeding. This will facilitate additional opportunity for public comment on a proposal, and allow the Commissioner to consider developments since the close of the hearing. The Commissioner also informs the public that he is initiating studies of the current state of knowledge of the dietary management of diabetes mellitus which will include a review of whether there are or are not foods with characteristics warranting label claims indicating particular usefulness in diets of diabetics.

Under the stayed regulations, foods labeled for use in the diet of diabetics would have had to bear a statement relating to the use of artifical sweeteners or nonnutritive ingredients. This requirement has been omitted from the tentative order. Such a statement might suggest incorrectly to diabetics that particular nonnutritive sweetereners or other nonnutritive ingredients are especially useful to diabetics. The labeling described in the tentative order will advise the diabetic to consult with his/her physician about the usefulness of the food. The statement of ingredients on the label will indicate the ingredients used and permit the physician and the diabetic to evaluate the usefulness of the food.

To ensure that consumers do not mistakenly think that all foods labeled for use by diabetics are necessarily low or reduced in calories, the labeling of foods that are not low or reduced in calories must bear an appropriate disclosure.

Foods that are useful in controlling body weight or caloric intake cannot, solely by virtue of that usefulness, be offered as special dietary moods useful in the diet of diabetics. Some diabetics need to lose weight, but the hearing record shows that their dietary needs in losing weight are the same as that of the general population.

Having considered the evidence pertaining to dietary management of body weight, caloric intake and diabetes received at the hearing, the Hearing Examiner's report and the various briefs, proposed findings of fact, and proposed conclusions of law with respect to §§ 125.5 and 125.6 of the stayed regulations sent to the Hearing Examiner in connection with testimony of this particular matter, the Commissioner, under the Federal Food, Drug, and Cosmetic Act (secs. 201 (n), 403 (a) and (j), 701 (a) and (e), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055, 70 Stat. 919 as amended (21 U.S.C. 321(n), 343 (a) and (j), 371 (a) and (e))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes the following findings of fact, conclusions, and tentative order:

PROPOSED FINDINGS OF FACT RELEVANT TO § 125.5 (§ 105.66 OF TENTATIVE ORDER)

1. Obesity is a major public health problem in the United States today. The degree of health hazard is not necessarily proportional to the degree of obesity, and there can be significant health hazards of interference with body functions from relatively small amounts of obese overweight (WD–53–Mayer, pp. 26–27). (Based on HEF 427; the Commissioner has omitted a finding about whether obesity is increasing because it is not necessary and because current statistics have not been examined.)

2. The likelihood of successful reduction is in significant part a function of the prior duration of the obesity, and the longer the duration the less the likelihood of success. In treating obese patients, the object is to enable the patient to moderate his intake for the rest of his life and it is advisable to modify, in the main, the quantity of foods to which he is habituated (WD–53–Mayer, pp. 16–17, 26–27; Stare, Tr. 29220; WD–G–Levine, Q & A 37; (HEF 428)).

3. Obesity is caused by an excess of caloric intake over caloric expenditure in the same time period (WD–53–Mayer, pp. 15–16; WD–3A–Sebrell, p. 22; WD–G–Ricketts, p. 3; WD–G–Levine, Q & A 33–34; WD–76–Stare, Q & A 11–13; (HEF 429)).

4. Obesity can be psychologically damaging, particularly to adolescents, even if subsequently reduced. Obese persons frequently regain lost weight (WD–53–Mayer, pp. 14–15, 17–20; Ricketts, Tr. 20795; Levine, Tr. 22371). (Based on HEF–430; the Commissioner has omitted a finding about the exact percentage of obese children who become obese adults because it is not necessary and he is uncertain about the precise percentage.)

5. Regaining of lost weight may be dangerous to health, and is particularly discouraging to patients and therapists. Prevention of further obesity is as important to public health in the United States as reduction of already-existing obesity (WD–53–Mayer, pp. 16, 21; Levine, Tr. 22371–72, 22400; Ricketts, Tr. 0740, 20795; WD–49–Hirsch, p. 4; Darby, Tr. 26303; Stare, Tr. 29225; (HEF 431)).

6. A food may be of value for special dietary use by reason of its value in preventing obesity. A food may be of value for special dietary use by reason of its value in maintenance of reduced body weight. A food may be of value for

special dietary use by reason of its value in reducing excess weight[1] (WD-52-Mayer, pp. 34-35; Darby, Tr. 26293-94; (HEF 432)).

7. Body weight can be reduced by restricting total caloric intake and, if possible, increasing physical activity. Body weight can be raised by increasing caloric intake (WD-G-Ricketts, Q & A 15-16, 18; WD-G-Levine, Q & A 36; WD-76-Stare, Q & A 16; (HEF 443)).

8. A pound of weight (due to fat) in human beings is produced by approximately 3500 calories in excess of expenditure in a given time period, and a deficit of this amount in a given time period will reduce 1 pound of weight due to fat (WD-53-Mayer, p. 15). (Based on HEF 435; the Commissioner has accepted the Hearing Examiner's finding with the addition of the bracketed term.)

9. The goals of prevention of weight gain, maintenance of reduced weight, and reduction of weight, for large groups of people, are compatible with each other in that a balanced diet with moderate caloric reduction is the optimum route to each of these three goals since, as stated in the Final Report to the President of the White House Conference on Food, Nutrition and Health by the "Subpanel on Obesity" of the "Panel on Adults in an Affluent Society: The Degenerative Diseases of Middle Age:" "It is clear that that best and most effective results occur with a balanced diet of the usually available foodstuffs but with a decrease in total caloric intake of a type that can be used both for weight reduction and for the maintenance of lower body weight after reduction has been achieved" (WD-53-Mayer, pp. 29-30, 22-24, 41-42; WD-49-Hirsch, 26A p. 14, Tr. 30,331; Darby, Tr. 26,294; WD-3A-Sebrell, pp. 22-23, Tr. 26,150; Exhibit 0-695-53).

10. Sorbitol and mannitol are sugar alcohols. Sorbitol is readily metabolized into fructose and thereafter forms part of a general pool with protein, fats, vitamins and other substances from which pool the body may produce glucose as needed. When this glucose is released into the blood, insulin may be required. Sorbitol produces approximately 4 kcal (kilocalorie) per gram. Mannitol is variable in its caloric value. Like sorbitol, mannitol, after it is initially metabolized enters the general pool from which glucose is derived by the body (WD-G-Levine, Q & A 25-27, 80, 191; WD-G-Ricketts, Q & A 37-38; Bondy, Tr. 30060, 30062; Steinke, Tr. 30563-5; WD-49-Shuman, p. 10; (HEF 436)).

11. "Artificial sweetener" is a sweetening substance not used in normal metabolism as a source of calories (WD-G-Levine, Q & A 81; (HEF 437)).

12. The most common use of artificial sweeteners in foods is for the purpose of reducing or maintaining the body weight and in the diets of diabetics (WD-G-Moses, Q & A 21; (HEF 438)).

[1] The Commissioner has deleted the term "obese overweight" whenever it appeared in the Hearing Examiner's findings because the term is redundant, and he has substituted the correct term "excess weight."

13. Purchasers regard foods labeled as being artificially sweetened to be for caloric restriction and weight reduction (WD-G-Swanson, Q & A 22-24; (HEF 439)).

LABEL INFORMATION

14. Purchasers in the United States are aware of the relationship between their body weight and the foods they eat. Purchasers in the United States are highly responsive to the labeling, promotion, and advertising of foods (WD-G-Swanson, Q & A 15-17; (HEF 440)).

15. The FDA survey reports the following: 53 percent of the respondents have used products labeled "artifically sweetened"; 27 percent, "dietetic"; 45 percent, "low calorie"; 36 percent, "lower in calories"; 35 percent, "sugar free"; 10 percent, "diabetic"; 16 percent, "salt restricted". (Exh. P-1151, d-1, Q 43; (HEF 441)).

16. The FDA survey reports the following: Of those who used the products labeled as described in the preceding finding, 55 percent used the products labeled "artificially sweetened" on their own initiative; 25 percent did so with products labeled "dietetic"; 45 percent, "low calorie"; 36 percent, "lower in calories"; 33 percent, "sugar free"; 4 percent, "diabetic"; 5 percent, "salt restricted" (Exh. P-1151, d-1151, d-2, Q 44; (HEF 442)).

17. The FDA survey reported the following: 66 percent of the respondents understood that a food with the label statement "for calorie restricted diets" was intended for use in a reducing diet and 8 percent for use in a diabetic diet; 22 percent understood the label statement "dietetic" as intended for people on a reducing diet and 28 percent for people on a diabetic diet; 36 percent understood the label statement "diet" to mean that the food was of value in a weight reducing diet and 9 percent as intended for use by diabetics (Exh. P-1151, d-5, Q 50-52; (HEF 444)).

18. The great variety of labels, labeling, promotional material, and advertising for foods offered for special dietary uses because of their reduced caloric or carbohydrate content in the United States tends to confuse and mislead (WD-G-Ricketts, Q & A 73-80; WD-G-Iverson, Q & A 30-38, 42-47, 52-61, 68 (HEF 445)).

19. There is no uniformity to the labeling information or the descriptive phrases used to indicate that a food is of value in a calorie or carbohydrate restricted diet (WD-G-Moses, pp. 39-40, 50-128 (HEF 446)).

20. The label statement "low calorie" appears on the following labels: Exhs. P-794, P-800-802, P-807, P-809, P-812, P-814, P-829, P-832, P-837-844, P-856, P-872, P-916, P-918-920, P-930-934, P-936-943, P-945-949, P-955-957, P-960, P-962-964, P-972, P-975, P-991, P-993, P-1003, P-1009; WD-G-Moses, pp. 50-51; "lower in calories", Exhs. P-774, P-776, P-777, P-906, P-929, P-971, P-990; WD-G-Moses, p. 63; "low in carbohydrate", "no available carbohydrate", "starch free", P-1038-39, P-803, P-805, P-806, P-815, P-850, P-851, P-854, P-955, P-965, P-985, P-987, P-1018; WD-G-Moses, p. 71; representations that sugar was absent, such as, "for sugar restricted diets", "sugarless", "sugar free", no added sugar", "prepared without sugar", Exhs. P-773-774, P-776, P-778, P-779, P-780-781, P-783-798, P-804, P-816, P-818-820, P-824, P-828, P-834-837, P-839-842, P-844, P-846-847, P-849-855, P-857-868, P-870, P-883-884, P-906, P-908, P-917-918, P-920-930, P-947, P-949-950, P-954, P-959, P-972-974, P-983, P-987-988, P-992, P-1015, P-1017-1018; WD-G-Moses, pp. 84-85; "low fat", "lower in fat", Exhs. P-692, P-898, P-966, P-968-969, P-971-972, P-1002, P-1017; WD-G-Moses, pp. 92-93; "dietetic", Exhs. P-771-772, P-777-790, P-794-797, P-803, P-805-806, P-808, P-811, P-813, P-815, P-817-818, P-823, P-825, P-834-835, P-842, P-845, P-847, P-849-854, P-857-862, P-870, P-888, P-897, P-906, P-916-917, P-919-920, P-922, P-924-928, P-954, P-974, P-983, P-987; WD-G-Moses, pp. 101-102; "diet", Exhs. P-767-768, P-823, P-827, P-846, P-895, P-898, P-909-915, P-920-930, P-932, P-935-936, P-939-940, P-949, P-959-960, P-982, P-992, P-995-996, P-998; WD-G-Moses, p. 102; "artificially sweetened", Exhs. P-775-776, P-807, P-809-810, P-812, P-814, P-816-817, P-819-822, P-824, P-827-828, P-830, P-833-841, P-843-844, P-847, P-855-856, P-866-867, P-872, P-932, P-934-936, P-939, P-946-950, P-955-957, P-959-964, P-972-974, P-988, P-1003, P-1015, P-1017-1021; WD-G-Moses, p. 125; "diabetic", "diabetes", "for diabetics", Exhs. P-816, P-819-822, P-826, P-873-881, P-883-886, P-894, P-1017; WD-G-Moses, p. 147; "special formula" bread etc., Exhs. P-896, P-901-902, P-997, P-999-1001, P-1012; WD-G-Moses, p. 114; (HEF 447)).

21. The great variety and multiplicity of label designations for foods offered for special dietary use because of their reduced caloric or carbohydrate content has an adverse effect upon the purchasers' understanding of those products and the potential for misunderstanding and error in perception increases as the number of such designations increases with respect to the ability of the purchaser to intelligently choose among such foods (WD-G-Swanson, Q & A 10 (HEF 448)).

22. As of 1970, the different methods used on the various labels, to express the amounts of protein, fat, and available carbohydrates present in the product, were in terms which were difficult to understand (WD-G-Moses, Q & A 34-37; WD-G-Iverson, Q & A 66, Exhs. P-640, P-641, P-647, P-688, P-767-847, P-849-868, P-870-1021, P-1035-1039, P-1042-1044, P-1090-1102, P-1104-1111). (Based on HEF 449; the Commissioner accepts the Hearing Examiner's findings as of 1970 because the subsequent institution of a requirement for nutrition labeling alleviated these difficulties.)

23. As of 1970, relatively few labels of foods offered as reduced in calories or carbohydrates provide information whereby the reduction in calories or carbohydrates can be measured or evaluated by purchasers. Frequently, when both nutritive and nonnutritive sweeten-

ers are used in a food for special dietary use, the presence of the nutritive sweeteners and the proportion of the food which is comprised of nutritive substances is not made apparent (WD–G–Moses, Q & A 34–37, 56, 219–221; Exhs. P–640, P–641, P–647, P–688, P–690–698, P–767–847, P–849–869, P–870–1021, P–1035–1039, P–1042–1044, P–1090–1102, P–1104–1111; WD–G–Moses, pp. 131–134). (Based on HEF 455; the Commissioner accepts the Hearing Examiner's finding as of 1970 because the subsequent institution of a requirement for nutrition labeling alleviated these difficulties.)

24. Regulations of the Food and Drug Administration in effect in 1970 with respect to foods offered for the reduction or maintenance of body weight do not require label information sufficient to inform as to the number of calories that will be obtained through ingestion of an ordinary serving of the food (WD–53–Mayer, pp. 46–48; WD–G–Iversen, p. 18). (Based on HEF 456; the Commissioner accepts the Hearing Examiner's finding as of 1970 because the subsequent institution of a requirement for nutrition labeling alleviated these difficulties.)

25. Regulations of the Food and Drug Administration presently in effect governing foods offered for weight reduction or maintenance do not require label information which fully informs consumers as to the value of the food for special dietary use in that the regulations do not require the label to compare the number of calories contained in a reduced calorie food with the number of calories in the same food as ordinarily consumed (WD–G–Moses, pp. 31, 32; WD–53–Mayer, p. 48; WD–G–Levine, pp. 18–19, 25–26; WD–G–Ricketts, p. 10; (HEF 457)).

26. It is necessary to make an intelligent evaluation of the value of a food offered for special dietary use to increase, reduce or maintain body weight, or for the diets of diabetics, to know the amount of protein, fat, carbohydrates and calories contained in a serving of the food (WD–G–Levine, Q & A 28–32, 65, 68, 70; WD–G–Ricketts, Q & A 21–24, 26, 27, 97; WD–G–Ross, Q & A 69; WD–G–Iverson, Q & A 65, 66; (HEF 458)).

27. Amounts of protein, fat, and available carbohydrates are customarily expressed in grams (WD–G–Ricketts, Q & A 30; WD–G–Livine, Q & A 71; (HEF 459)).

28. Caloric content, in order fully to inform consumers, should be expressed in terms of an amount which constitutes an ordinary serving of the food (WD–G–Moses, pp. 19–20; WD–53–Mayer, pp. 46–48; WD–G–Levine, Q & A 73, 74; WD–G–Swanson, Q & A 49; WD–G–Ricketts, Q & A 31–33; WD–G–Ross, Q & A 69–71; WD–G–Iverson, Q & A 65, 66; (HEF 460)).

29. The phrase "for calorie restricted diets" is not necessary in order fully to inform consumers of the value of a food which purports to be or is represented as being for special dietary use by reason of being low or lower in calories (Mayer, Tr. 28, 912–913; Swanson, Tr. 22,905–906; WD–49–Hirsch, p. 20, Tr. 30, 302).

LABEL INFORMATION ON FABRICATION OR ALTERATION TO LOWER CALORIE CONTENT

30. Artificial sweeteners used to sweeten foods may be nutritive, nonnutritive or a combination of these. A diabetic or a person seeking to reduce or maintain his body weight must know the nature of the sweeteners used in the food to properly plan a diet. It is necessary that some designation such as "artificially sweetened" be used on the food's label to call attention to the presence of such sweeteners and is the artificial sweetener is nutritive or nonnutritive this fact should be displayed. If the name of the artificial sweetener is used on the label, it is necessary and appropriate that the fact that it is nonnutritive be stated (WD–G–Levine, Q & A 87; WD–G–Ricketts, Q & A 40, 46, 58–60; WD–G–Ross, Q & A 79–82; (HEF 463)).

31. It will further the purpose of fully informing the purchaser as to the value of a food offered for special dietary use in which an artificial sweetener has been used to require that the label carry a statement comparing the caloric content of a specified serving of such food with an equivalent serving of the same food made with an amount of ordinary sugar which would produce sweetness equal to that produced by the use of the artificial sweetener (WD–G–Ricketts, Q & A 47, 28; WD–G–Levine, Q & A 90, 91). (HEF 467; the Commissioner does not accept this finding insofar as it relates to the labeling of low calorie foods.)

32. One gram of saccharin or of a saccharin salt is equivalent in sweetness to 300 grams of sugar (WD–G–Blomquist, Q & A 6–11; (HEF 468)).

33. Sweetness is an important component of palatability. Nonnutritive sweeteners provide the sensation of sweetness without adding calories (WD–53–Mayer, pp. 43–44; Sebrell, TR. 26147; WD–G–Levine, pp. 9, 17, Tr. 22337; WD–G–Ricketts, p. 7; Iversen, TR. 21844–45; (HEF 469)).

34. Food constituents, other than artificial sweetners, which are not utilized in normal metabolism as a source of calories, are also useful as ingredients in foods for special dietary uses (WD–G–Ricketts, Q & A 61; WD–G–Ross, Q & A 87; (HEF 487)).

35. Such constituents include fibrous plant matter, commonly called "crude fiber." This material is not assimilated by the body (WD–G–Ricketts, Q & A 62–64; WD–G–Levine, Q & A 113–119; (HEF 488)).

36. Where a food that contains one or more of such constituents is offered for special dietary use for reduction or maintenance of body weight or the regulation of carbohydrate intake, it is necessary for the purpose of fully informing purchasers as to the value of the food, that the label state the percent by weight of such ingredient and whether they are nutritive or nonnutritive. The label should also bear a statement of comparison between the calorie content of a specified serving of such food and an equivalent serving of the same food which does not contain such constituents, or with a food without the fabrication or alteration (WD–G–Ricketts, Q & A 65; WD–G–Levine, Q & A 121–122, 127; WD–G–Ross, Q & A 88). (Based on HEF 489; the Commissioner has accepted the finding with the addition of the final clause in the last sentence in order to take account of the alternative means of making the comparison permitted under the stayed regulations and the regulation in the tentative order. In addition, he has not accepted the finding that labeling about nonnutritive constituents is necessary in order to inform persons with intestinal disorders; the listing of the constituent in the statement of ingredients would generally be adequate for this purpose, and it would not be necessary solely for this purpose to require an additional label statement about the presence of nonnutritive constituents.)

REDUCED CALORIE FOODS

37. Many foods offered for special dietary use on the basis that they have been reduced in calories or carbohydrates are not significantly different from the unaltered food (WD–G–Levine, Q & A 93–98, 136, 222; (HEF 451)).

38. Some foods, reduced in calories or carbohydrates, are not ordinarily eaten in large enough amounts to have an appreciable value in the diet although the reductions are high on a percentage basis (WD–G–Levine, Q & A 159–163, 227; (HEF 453)).

39. Condiments and seasonings are not of caloric importance in the diet. They are consumed in small amounts. Caloric or carbohydrate reduction in such foods would have little effect in the diet of persons who desire to restrict their calorie or carbohydrate intake. Even if the percentage of reduction is high, it is not scientifically reasonable to describe such foods as "low calorie" foods (WD–G–Levine, Q & A 159–163; WD–G–Ross, 96; WD–G–Ricketts, Q & A 72; (HEF 466)).

40. Artificial sweeteners, both nutritive and nonnutritive, can be useful in diets designed for the restriction of caloric intake and if promoted on this basis the caloric reduction resulting from the use of the artificial sweetener should be significantly large (WD–G–Ricketts, Q & A 34, 35, 49, 50; (HEF 470)).

41. The caloric significance of a given caloric reduction in a food is not affected by the manner in which the reduction is achieved. Where a food for special dietary use is promoted on the basis of a reduction in its caloric content by a means other than the use of nonnutritive sweeteners, the reduction should be significantly large (WD–G–Ricketts, Q & A 49, 50; WD–G–Levine, Q & A 128, 129, 164; WD–G–Ross, Q & A 91; WD–G–Iversen, Q & A 68; (HEF 471)).

42. The nutritional significance of a given caloric reduction in a food may be adverse depending upon the manner in which the caloric reduction was achieved, for example, where the caloric reduction results in elimination of protein, vitamins or minerals (WD–49–Hirsch, pp. 10–11).

43. A 50-percent reduction requirement would require some foods which are good sources of protein, such as dairy prod-

ucts, to reduce not only fat and carbohydrate content but protein content as well (WD–49–Howard, pp. 18–20). (Based on HEF 474; the Commissioner has limited the finding to "some" foods, since he does not believe it would be correct with respect to all foods.)

44. Significantly more foods can achieve a caloric reduction below 50 percent, and a 50-percent requirement is not consistent with the goal of a moderate reduction in as many foods as possible (WD–53–Mayer, pp. 50–51; Mayer, Tr. 28,806; WD–49–Hirsch, p. 16; WD–3A–Sebrell, p. 23). (Based on HEF 475; the Commissioner has not accepted the part of findings with respect to a 25-percent reduction for the reasons given in the Statement of Reasons.)

45. The size of the caloric reduction in a food for special dietary use, whether produced by the use of a nonnutritive artificial sweetener or by some other means, which would justify promotion on the basis of the reduction achieved was the subject of sharp disagreement among the expert witnesses who spoke to the matter (HEF 476).

46. Dr. Ricketts stated: "And I stated several times before that the figure of 50 percent was *an approximate one, an arbitrary one, and that I had no strong feelings about keeping it there* or making it 60 percent or 40 percent. And I suppose I could not quibble very hard about 35 percent" (emphasis added) (Tr. 20826; (HEF 477)).

47. Dr. Levine stated: "When it comes to the selection of 50 percent, sure, everything has to be, in a sense *arbitrary*. But let us say you have a 100-calorie portion of something. If this is going to be really useful for reduction of weight it should be *around* 50 calories for the same serving, because there are certain foods that will never be reduced in caloric content" (emphasis added) Tr. 22212. And at Tr. 22275–76, he stated that he would consider an approximate reduction of 40 percent in the caloric value of pudding to be significant (HEF 478).

48. There was no more agreement on a single percentage figure among the expert witnesses who testified on behalf of the opponents whose estimates ranged from 10 percent, WD–49–Eisenstein, p. 16, Tr. 29419; to 25 percent, WD–49–Graham, p. 16; WD–49–Hirsch, p. 18; WD–3A–Darby, p. 6; WD–53–Mayer, p. 49, Tr. 28796; to from 25 to 30 percent, Stare, Tr. 29197–98; to 33 percent, WD–49–Olson, p. 21; (HEF 479).

49. A 50-percent minimum requirement may operate to encourage the use of "fillers" in situations where products narrowly fall short of meeting the percentage (WD–49–Hirsch, p. 15; (HEF 480)).

50. The Hearing Examiner stated: "It appears that the selection of a minimum percentage figure of reduction in caloric value as "significant" for the purpose of justifying the promotion of a food for special dietary use on the basis of such reduction, is necessarily tinged with some arbitrariness. Under the circumstances and in the light of the evidence, I am persuaded to suggest that the figure of 35 percent is reasonable, workable and most equitable * * *." (Based on HEF 481; the Commissioner has not accepted the part of the findings with respect to the diet of diabetics for the reasons given in the Statement of Reasons.)

51. Where a food for special dietary use is promoted on the basis that it is "lower in calories," it is reasonable and necessary to fully inform a purchaser as to the value of the food that the label bear a statement of comparison showing the caloric content of a specified serving of the food and the caloric content of an equivalent serving of a similar food as customarily made and consumed (WD–G–Ricketts, Q & A 67; WD–G–Levine, Q & A 155, 156; WD–G–Ross, Q & A 90; (HEF 482)).

LOW CALORIE FOODS

52. In spite of the wide usage of the term "low in calories" in the labeling of foods for special dietary use in reducing or maintaining body weight, there is no common standard to determine when a food is "low in calories" (WD–G–Moses, Q & A 60, 62, 75–89; WD–G–Iversen, Q & A 67; e.g., 81–140 calories per serving, Exhs. P–1031–1034; 40–130 calories per serving, Exhs. P–801, P–807, P–812, P–814, P–856, P–940, P–941, P–943, P–945, P–946, P–947, P–949, P–956, P–972, P–991, P–1003, P–1009; (HEF 454)).

53. A food for special dietary use which is promoted on the basis that it is a "low calorie" food should, in order to fully inform a purchaser as to its value, be required to meet a caloric standard designating a food as a "low calorie" food (WD–G–Levine, Q & A 142–145; WD–G–Ricketts, Q & A 81; (HEF 483)).

54. The dispute concerning the standard for "low calorie" was less sharp than that involving the significance of caloric reduction. Drs. Ricketts, Levine, and Ross stated that a serving of such a food should not exceed 15 to 25 calories and that the total contribution to a day's diet should not exceed 50 calories (WD–G–Ricketts, Q & A 81, 82; WD–G–Levine, Q & A 139, 140; WD–GRoss, Q & A 89; (HEF 484)).

55. Dr. Mayer was of the opinion that the definition should include foods ranging from 25 to 75 calories (WD–53–Mayer, 54–55; (HEF 485)).

56. The Hearing Examiner stated "As in 'significant reduction' fixing a standard for qualification of a food as 'low calorie' is more or less arbitrary in nature. In view of the evidence it is suggested that a fair figure would be not more than 25 kcalories per serving with a daily ceiling of 65 calories." (Based on HEF 486; the Commissioner has not accepted the part of the findings relating to the particular figure that should be set for the reasons given in the Statement of Reasons.)

57. Caloric density, that is, the ratio of calories to weight, varies among foods (P–719).

58. Government and opponent witnesses indicated that caloric density should be considered in determining the special dietary value of a food as a low calorie food (Darby, Tr. 26,305, 26,309, 26,313; WD–G–Ricketts, p. 15; Levine, Tr. 22,–353–54, 22,239).

59. The ratio of calories to gram of sugar is approximately 4:1, that is, four calories to a gram (P–719, p. 73).

60. Sugar, as pure carbohydrate, is a calorically dense food (Levine, 22,353–54, 22,239).

61. Those soups, juices, fruits, and vegetables which contain less than 65 calories in an ordinary serving contain a ratio of calories to grams of from 1:2 to 1:20, that is, one-half to one-twentieth of a calorie per gram, and most contain one-third to one-sixth of a calorie per gram (P–719, pp. 66–69, 47–49, 39–46, 77–86).

62. Soups, juices, fruits, and vegetables containing less than 65 calories in an ordinary serving are from one-eighth to one-eightieth as calorically dense as sugar, and most are from one-twelfth to one-twenty-fourth as calorically dense as sugar.

63. The caloric densities of soups, juices. fruits, and vegetables are among the lowest of all foods eaten in the United States (P–719).

64. There is no justifiable reason for restricting the term "low calorie" on the basis of average total daily intake of the food since the overall nutritional contribution of the food must be considered in dietary planning (WD–3A–Darby, p. 6).

PROPOSED FINDINGS OF FACT RELEVANT TO § 125.6 (§ 105.67 OF TENTATIVE ORDER)

65. There were approximately 2.3 million "diabetics" in the United States in 1970. The median ages were 60.2 years for males and 61.8 years for females. Two-thirds of all diabetics were over 55 years of age. Diabetics who were under age 25 comprised 5 percent of the total. Undetected cases of this disease may have amounted to approximately 2 percent of the population in addition. Persons suffering from diabetes mellitus are known as "diabetics" (Exh. P–1082, pp. 3–4; WD–G–Levine, Q & A 171). (Based on HEF 490; the Commissioner accepts the statistical findings as valid as at the time of the hearing.)

66. There are no regulations presently having specific reference to foods for use in the diets of diabetics (WD–G–Moses, Q & A 72, p. 39 (HEF 491)).

67. The stayed regulations, which are the subject of the public hearing herein, published in December 1966; H.E. Exh. No. 3, includes § 125.6 (a), (b), (c), and (d) which regulates label statements for foods represented for the special dietary use of diabetics (HEF 492).

68. On June 6, 1969 during the course of the public hearing, the Chief of the Food Case Branch, Division of Case Guidance, Bureau of Regulatory Compliance of the FDA offered testimony suggesting the elimination of stayed § 125.6 (WD–G–Moses, p. 41; (HEF 493)).

69. Such elimination was suggested because "at the time stayed § 125.6 was drafted, I though it might be advisable to require a clear and direct declaration

when a food was intended for use in diabetic diets, since this might be less likely to mislead consumers than the many indefinite descriptive terms now being used on such foods. Since that time, however, further experience has caused me to reconsider—I am informed that usually the diet of diabetics must be restricted in calories as well as in readily assimilated sugar and carbohydrates. The information needed by diabetics to control their intake of calories is required by stayed § 125.5. I therefore do not believe stayed § 125.6 is necessary" (WD–G–Moses, pp. 40–41; (HEF 494)).

70. The diets recommended for diabetics are not identical to diets recommended for weight reduction or weight control (WD–49–Shuman, p. 2; WD–49–Graham, p. 13; WD–49–Marble, p. 2; WD–98–Bondy, p. 3; Steinke, Tr. 30551; WD–G–Ricketts, Q & A 87; WD–G–Levine, Q & A 187; WD–G–Ross, Q & A 80–82; (HEF 495)).

71. The carbohydrate intake recommended for diabetics depends on many factors, including the ratio of fat to protein in the food consumed. Caloric reduction per se has greater significance in diets for weight reduction or weight control than in the diets of diabetics. Many persons with diabetes are of normal weight, or even underweight, and do not need low calorie diets. If a diabetic is not overweight, his diet is not the same as that of an overweight person (WD–49–Kagan, p. 22, Tr. 30611; WD–49–Shuman, p. 2; WD–49–Marble, p. 2; WD–49–Hirsch, p. 23; Steinke, Tr. 30554–55). (Based on HEF 496; the Commissioner has not accepted the part of the findings relating to the nature of the dietary needs of diabetics for the reasons given in the Statement of Reasons.)

72. Diabetics are sophisticated in their choice of foods and the label statement "for the diets of diabetics" as the means of identification of foods intended for such use would be beneficial and assist in fully informing such purchasers as to the value of the foods (Bondy, Tr. 30073–74; WD–49–Gitter, p. 22; Steinke, Tr. 30555–56; (HEF 497)).

PROPOSED CONCLUSIONS OF LAW

A. With respect to § 105.66 Label statements relating to usefulness in maintaining or reducing caloric intake or body weight:

The Commissioner concludes, based on the foregoing statement of reasons, in conjunction with the findings of fact herein published, that:

1. It is reasonable and necessary, to fully inform purchasers of the value of foods for special dietary uses, to require that the labels of any food that purports to be or is represented as useful in maintaining or reducing caloric intake or body weight bear label statements as required by § 105.66 as set forth in the tentative order.

2. It is reasonable and necessary to prevent purchasers of special dietary foods for use in maintaining or reducing caloric intake or body weight from being misled about foods which are not of special dietary usefulness for such purpose to restrict the use of label statements, and/or to require certain disclosures on foods that are not of such special dietary usefulness as required by § 105.66 as set forth in the tentative order.

B. With respect to § 105.67 Label statements relating to food for use in the diet of diabetics:

The Commissioner concludes, based on the foregoing statement of reasons, in conjunction with the findings of fact herein published, that:

1. It is reasonable and necessary, to fully inform purchasers of the value of foods for special dietary uses, to require that the labels of any food that purports to be or is represented for use in the diet of diabetics bear the label statements as required by § 105.67 as set forth in the tentative order.

2. It is reasonable and necessary to prevent purchasers of special dietary foods for use in the diet of diabetics from being misled about foods thhat are not of special dietary usefulness for such purpose to restrict the use of label statements as required by § 105.67 as set forth in the tentative order.

TENTATIVE ORDER

Therefore, on the basis of the foregoing statement of reasons, findings of fact, and conclusions of law drawn therefrom: *It is ordered*, That the stay of the effective date of §§ 125.5 and 125.6 (now 105.67) as promulgated in the FEDERAL REGISTER of December 14, 1966 (31 FR 15730) be ended and redesignated as §§ 105.66 and 105.67, respectively, and revised to read as follows:

§ 105.66 Label statements relating to usefulness in reducing or maintaining caloric intake or body weight.

(a) *General requirements.* Any food that purports to be or is represented for special dietary use because of usefulness in maintaining or reducing caloric intake or body weight, including, but not limited to any food which bears representations that it is low or reduced in calories, shall bear:

(1) Nutrition labeling in conformity with § 101.9 of this chapter, unless exempt under that section; and

(2) On its label the statement "Weight control by diet requires limiting total intake of calories."

(b) *Food fabricated or altered to lower caloric content.* (1) Any food subject to paragraph (a) of this section which has been fabricated or altered to lower its caloric content (e.g., "low calorie" food made by replacing a nutritive ingredient with a nonnutritive ingredient, a "reduced calorie" food made by adding a nonnutritive filler) shall bear on its principal display panel a clear and concise statement of how the special dietary usefulness has been achieved, and the percentage by weight of any nonnutritive ingredient used to achieve the special dietary usefulness.

(2) A special dietary food may contain a nonnutritive sweetener or other ingredient only if the ingredient is safe for use in the food under the applicable law and regulations of this chapter. Any food which achieves its special dietary usefulness in reducing or maintaining caloric intake or body weight through the use of a nonnutritive sweetener shall bear on its principal display panel the statement required by paragraph (b) (1) of this section, but need not state the percentage by weight of the nonnutritive sweetener. If a nutritive sweetener(s) as well as a nonnutritive sweetener(s) is added, the statement shall indicate the presence of both types of sweeteners, e.g., "Sweetened with nutritive sweetener(s) (_____), and nonnutritive sweetener(s) (_____)" (the blanks to be filled in with the name of the sweeteners used).

(c) *"Low calorie" foods.* (1) A food may purport to be or be represented as low calorie only if:

(i) A serving of the food supplies no more than 40 calories, and

(ii) The food does not provide more than 0.4 calorie per gram, as consumed, and

(iii) The food bears on its principal display panel the term "low calorie," "low in calories," or "a low calorie food" in type size no smaller than one-half of the largest type size used on the label to represent, suggest, or imply special dietary usefulness, or type size 1/16 inch in height, whichever is larger.

(2) Foods that are low calorie within the meaning of paragraph (c) (1) of this section, as naturally occurring, without having any fabrication or alteration, may be labeled as a low calorie food, e.g., "celery, a low calorie food." They may may not be labeled with the term "low calorie" immediately preceding the name of the food because it would imply that the food has been altered to lower its calories with respect to other foods of the same type.

(d) *"Reduced calorie" foods, and other comparative claims.* (1) A food may be labeled as "reduced calorie," or with other terms representing or suggesting special dietary usefulness on the basis of a fabrication or alteration that makes the food lower in calories than a food it can substitute for in the diet only if:

(i) A comparison of the calorie content of a specified serving of the food with the calorie content of an equivalent serving of the same food without the fabrication or alteration of special dietary significance reveals a calorie reduction of at least one-third and of at least 25 calories per serving;

(ii) The food bears on its label a statement which clearly and concisely describes the comparison upon which the claim of special dietary usefulness is made. The statement shall either identify a specific food having at least one-third more calories and at least 25 more calories per serving for which the food can substitute, or indicate that the claim of special dietary usefulness is based on a comparison with the same food without the fabrication or alteration of special dietary significance. The statement shall also include a comparison between the calorie content of a specified serving of the food and an equivalent serving of the food it substitutes for, or the same food

without the fabrication or alteration of special dietary significance.

(iii) The food is not nutritionally inferior, under the criteria set forth in § 101.3(e) of this chapter, to the food for which it substitutes or the same food without the fabrication or alteration of special dietary significance, and

(iv) The food can be reasonably expected to substitute for a food having at least one-third more calories per serving, and at least 25 more calories per serving, that is sold in sufficient quantities that it is useful for those on calorie-restricted diets to be aware of the lower-calorie substitute for it.

(2) (i) Any food subject to this paragraph (d) which is similar in all its organoleptic properties to the food it is represented as substituting for, or to the food without the fabrication or alteration of special dietary significance, shall be labeled as "reduced calorie," "reduced in calories," or "a reduced calorie food" in type size no smaller than one-half of the largest type size used on the label to represent, suggest or imply special dietary usefulness, or type size 1/16 inch in height whichever is larger.

(ii) Any food subject to this paragraph (d) which does not resemble in all its organoleptic properties the specific food for which it substitutes, e.g., canned pears packet in unsweetened water, in comparison with pears in heavy syrup, may be labeled with appropriate terms to indicate its dietary usefulness, e.g., "for calorie restricted diets," but may not be labeled as "reduced calorie," "reduced in calories" or with any other terms in juxtaposition with its name or in the labeling that represents or suggests that the food is essentially the same as the other food in all its organoleptic properties except for a reduction in calories.

(3) It may not be technologically feasible to manufacture a "reduced calorie" food under the criteria set forth in this paragraph for all foods which are significant dietary source of calories and for which it would be useful to those on calorie-restricted diets to have a reduced calorie substitute. Accordingly, the Commissioner may establish by regulation acceptable alternative criteria for a "reduced calorie" food, in a regulation issued pursuant to section 401 of the act establishing a standard of identity for the food, in a regulation in Part 102 of this chapter establishing a common or usual name for the food, in an amendment to this section, or in a regulation issued pursuant to sections 201(n) and 403(a) of the act. A petition requesting such a regulation shall be submitted to the Hearing Clerk in the form established by Part 10 of this chapter. Under no circumstances will a food be permitted to be labeled as "reduced calorie" unless (i) the petition demonstrates that it is not feasible to attain a greater caloric reduction than that for which approval is sought and (ii) the petition demonstrates that the use of the food, with the caloric reduction attained, will result in a significant reduction in calories in the daily diet.

(e) *Label terms suggesting usefulness in regulating caloric intake or body weight.* (1) Except as provided in paragraph (e) (2) and (3) of this section, a food may be labeled with terms such as "diet," "dietetic," "for calorie restricted diets," "weight control," "artificially sweetened," "sweetened with nonnutritive sweetener," or other such terms representing or suggesting usefulness in regulating caloric intake or body weight only if: The food is labeled "low calorie" or "reduced calorie" or bears a comparative claim of special dietary usefulness in compliance with paragraph (c) or (d) of this section.

(2) Paragraph (e) (1) of this section shall not apply to any use of such terms which is specifically authorized by a regulation governing a particular food, or, unless otherwise restricted by regulation, to any use of the term "diet," which clearly shows that the food is offered solely for dietary use(s) other than regulating caloric intake or body weight, e.g., "for low-sodium diets."

(3) Paragraph (e) (1) of this section shall not apply to any use of such terms on a formulated meal replacement, low calorie meal, or other food that is represented to be of special dietary use as a whole meal pending the issuance of a regulation governing the use of such terms on such foods.

(f) *Use of terms such as "sugar free," "sugarless," "no sugar," etc.* Consumers may reasonably be expected to regard terms such as "sugar free," "sugarless," "no sugar," etc., as indicating a product which is low in calories or significantly reduced in calories. Consequently, except as provided in paragraph (f) (2) of this section, a food may not be labeled with such terms unless:

(1) It is labeled "low calorie" or "reduced calorie" or bears a comparative claim of special dietary usefulness labeled in compliance with paragraph (c) or (d) of this section, or

(2) The "sugarless" term is immediately accompanied, each time it is used, by the statement "Not a reduced calorie food" or "Not a low calorie food," such statement to be in a type size at least as large as the type size employed for the accompanying "sugarless" term.

§ 105.67 Label statements relating to food for use in the diet of diabetics.

(a) A food that purports to be represented or special dietary use because of usefulness in the diet of diabetics shall bear nutrition labeling in compliance with § 101.9 of this chapter, unless exempt under that section, and the statement "Diabetics: This product may be useful in your diet on the advice of a physician. This food is not a reduced calorie food." If the food is useful in maintaing or reducing calorie intake or body weight and labeled in conformity with § 105.66, the last sentence may be eliminated.

(b) A food shall not be represented to be useful in the diets of diabetics if such representation is false or misleading.

(c) The term "diabetic," "for diabetics," "diabetes," or the like, shall not be included as part of the name of any food, or otherwise be included on the labeling more prominently than the statement required by paragraph (a) of this section.

(d) The term "dietetic," "diet," or the like, shall not be included in the labeling of a food solely because of its possible usefulness in the diet of diabetics.

(e) A food shall not purport to be or be represented for special dietary use because of usefulness in the diet of diabetics solely by virtue of its being a food useful in reducing or maintaining caloric intake or body weight.

Interested persons may, on or before August 18, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written exceptions regarding this tentative order in relationship to the administrative record for this proceeding. Exceptions shall point out with particularity the alleged errors in the proposed findings of fact and tentative order and contain specific references to the pages of the transcript of testimony and to the exhibits on which the exceptions are based. Exceptions and accompanying briefs should be filed in quadruplicate (except that individuals may submit single copies), and should be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received exceptions and accompanying briefs may be seen in the above office Monday through Friday, from 9 a.m. to 4 p.m., except on Federal legal holidays.

Dated: July 5, 1977.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc.77-20307 Filed 7-18-77;8:45 am]

Federal Register

TUESDAY, JULY 19, 1977
PART IV

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

■

RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Summary Plan Description Requirement; Final and Interim Regulations

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Summary Plan Description Requirements; Final and Interim Regulations

AGENCY: Department of Labor.

ACTION: Final rules, plus interim rules that are effective pending the issuance of final rules. The interim rules are also proposals; comments on the final form they should take are invited.

SUMMARY: This document contains regulations governing the form, content, and distribution of the summary plan description which describes rights and benefits under an employee benefit plan. The Employee Retirement Income Security Act of 1974 requires that summary plan descriptions be furnished to participants and beneficiaries covered under the plan.

EFFECTIVE DATE: July 19, 1977.

ADDRESSES: Interested persons are invited to submit written comments by September 1, 1977, concerning §§ 2520.104–5, 2520.104–6, 2520.104–28, 2520.104a–5, 2520.104b–2(a)(3), and 2520.104b–4, which are interim and proposed. Such comments should be submitted to the Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, Washington, D.C. 20216. Attention: SPD Regs. All comments should be clearly referenced to the section to which they apply.

FOR FURTHER INFORMATION CONTACT:

Robert Doyle, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, area code: 202–523–8685.

SUPPLEMENTARY INFORMATION: The supplementary information on these rules is divided into two parts. Part I, "Description of the Rules", is a general, nontechnical description of the changes which have been made in the rules published on March 15, 1977, and what the rules, as amended, require. Part II, "Technical Explanation of the Regulation" contains detailed explanations of the more technical rules.

PART I—DESCRIPTION OF THE RULES

General.—Set forth below are all of the regulations concerning summary plan descriptions, including a number of sections which were previously published in final form. The previously published sections are reproduced for two reasons. First, it will greatly add to the convenience of people using these regulations to prepare their summary plan descriptions to have all of the rules set forth in one place. Second, the changes in these regulations from the March 15, 1977, versions may be better understood when they are placed in their context.

It should be noted that there are several exemptions and alternative methods of compliance of general effect which are not reproduced here. These exemptions and alternatives are in 26 CFR §§ 2520.104–20 to 2520.104–25. They cover certain welfare plans having fewer than 100 participants, apprenticeship plans, welfare and pension plans for select management or highly compensated employees, and day care plans.

Final sections which have been reproduced without change are §§ 2520.102–2, 2520.102–4, 2520.104a–1, 2520.104b–1, and 2520.104b–3. Of the following sections, portions or whole sections were previously published as interim rules on March 15, 1977, and are made final: §§ 2520.102–3, 2520.104–26, 2520.104–27, and 2520.104b–2. These sections are individually discussed below. Last, the following sections are interim rules: §§ 2520.104–5, 2520.104–6, 2520.104–28, 2520.104a–5, 2520.104b–2(a)(3), and 2520.104b–4. These sections are also individually discussed below. It should be noted that these interim sections will apply to all plans which have not yet distributed their initial summary plan description.

Section 2520.102–3.—Paragraphs (b)(3) and (4) have been amended to provide an alternative to the requirement that the summary plan description include a statement that the administrator will provide a complete list of sponsors on request. Comments indicated that providing such a list would be too expensive for plans having large numbers of sponsors. The alternative allows a statement that the administrator will, on request, tell a participant or beneficiary whether a particular employer or employee organization is a sponsor of the plan.

Some comments indicated that the standard statement regarding insurance of pension benefits by the Pension Benefit Guaranty Corporation (PBGC) contained in paragraph (m) was too complicated. After consultation with the PBGC, it was decided that the standard statement should not be changed. The regulation provides that plan administrators who wish to prepare their own statements may do so.

Paragraph (t), concerning the ERISA statement of rights, has been amended to clarify the requirement that the statement of rights be set forth as a unit at one place in the summary plan description. In addition, the language of the standard statement has been modified to respond to comments concerning its tone. Only one change has been made in the information which must be included: a statement has been added concerning a participant's right to review of a claim denial.

Section 2520.104–4.—This section has been amended pursuant to comments to make it clear that the alternative method of compliance provided for plans involved in mergers applies only to mergers which take place after the first summary plan description is filed and distributed. It also clarifies which merger documents are to be available for inspection by participants and beneficiaries.

Sections 2520.104–5 and 2520.104–6.—These sections have been revised to make them clearer and more easily understood. Only two changes have been made to the substance of the rules. The date for filing and distributing the first summary plan description has been extended by amendment of sections 2520.104–5 and 2520.104–6 to preserve the full 120 day period after the publication of these regulations in the FEDERAL REGISTER for both pension and welfare plans. The new date is November 16, 1977. A new subparagraph has been added to clarify the date on which the 120 day period will begin for those pension plans which are entitled to amend under the terms of section 401(b) of the Internal Revenue Code of 1954 (the Code) and the regulations issued by the Internal Revenue Service under section 401(b) of the Code. A special rule has been added pursuant to comments which permits pension plans which adopt master, prototype, or practitioner pattern plans to defer the filing and disclosure date until after the master, prototype, or pattern plan has completed the Internal Revenue Service qualification process.

Sections 2520.104–26 and 2520.104–27.—These regulations provide a limited exemption and an alternative method of compliance for union dues financed welfare and pension plans. They are unchanged in substance from the March 15 interim rules. Although comments were received urging both expansion and contraction of the exemption and alternative method of compliance provided by these rules, it was concluded that the interim rules struck an appropriate balance in reducing plan burdens while affording protection to participants. Certain changes in language were made for clarity.

Section 2520.104–28.—Some comments stated that the period of 120 days following publication of these regulations during which the initial summary plan description must be prepared and furnished, would be too short and would cause hardships in certain limited instances. In response to these comments, a new section 2520.104–28 has been provided which allows a 60 day extension of the time to file and disclose for good cause, and which requires that participants and beneficiaries be told what the reason is. The Department of Labor will not issue opinions concerning what constitutes good cause.

Section 2520.104a–3.—Paragraph (a) of this section has been revised to make it clear that the filing of the summary plan description with the Secretary must include any supplements required to be distributed to participants and beneficiaries.

Section 2520.104a–5.—This is a new section which adds a requirement that summaries of material modifications which are required to be distributed to participants and beneficiaries must also be filed with the Secretary.

Section 2520.104b–2.—A new subparagraph (3) has been added to paragraph (a) of this section to clarify the date on which a plan becomes subject to the reporting and disclosure provisions of

Part 1 of Title I of ERISA. This date marks the starting point of the 120 day period for filing and disclosing the summary plan description for most new plans.

Subparagraphs (d)(2) and (e)(2) have not been changed from the interim versions.

Paragraph (f) has been amended to include plans which have distributed but not filed a summary plan description. Under the March 15, 1977, interim regulation this paragraph applied only to plans which had previously filed as well as distributed a summary plan description. A number of comments stated that plans had refrained from filing their summary plan descriptions pending the issuance of final regulations.

Section 2520.104b–4.—This section, which was published in final form on March 15, 1977, has been changed in several ways. A number of comments argued that the alternative provided by the interim version of this section could not be used by many pension plans. These comments urged the Department to establish another method of compliance which could be used by most pension plans, and which would allow pension plans to provide only information relevant to the situation of a retired participant, a beneficiary receiving benefits, or a participant who separated from employment with vested benefits.

In response to these comments, the regulation has been reorganized and new alternatives for the initial summary plan description have been added. The regulation has been reorganized so that it now deals separately with the requirements to furnish an initial summary plan description, updated summary plan description, and summaries of material modifications.

The new alternatives for the initial summary plan description are in subparagraphs (a)(1) and (a)(2). Under these rules, the summary plan description for a retiree or beneficiary must identify the plan and those responsible for administering it, must contain certain information concerning the operation and funding of the plan, and must state that the benefits being received will be changed only as provided in described provisions of the plan. The summary plan description for a vested separated participant must contain the same identification, operation, and funding information as for retirees and beneficiaries, but there are different rules concerning benefit information. If the plan gave the vested separated participant a statement of the dollar amount of his or her vested benefit or a description of the method of computation of the benefit at the time of separation, the summary plan description must say so, and must inform the participant that another copy will be furnished on request. If such a statement was not given, the plan must either give such a statement now or include a description of the formula for calculating the vested benefit. In addition, the summary plan description must describe the forms in which benefits will be paid, and the circumstances, if any, under which the benefit may be changed. Subparagraph (a)(3) contains the alternative which was published on March 15.

A new paragraph (d) has also been added in response to comments which stated that some plans did not understand that retirees, beneficiaries, and vested separated participants must get a summary plan description which describes the plan provisions applicable to them. In some cases, summary plan descriptions were furnished which described rules which applied only to present employees, or which did not identify which parts of the summary plan description were applicable to these groups and which were not. Paragraph (d) allows plans in this situation to either supplement the earlier summary plan description or use one of the alternatives provided in this section.

Part II—Technical Explanation of the Regulations

Sections 2520.104–5 and 2520.104–6.—The amendments to §§ 2520.104–5 and 2520.104–6 (29 CFR 2520.104–5 and 2520.104–6) contained in this regulation provide a short additional deferral of the initial summary plan description reporting and disclosure requirements for welfare and pension plans, respectively. These sections have been extensively rewritten to make them shorter, clearer, and less technical. However, the only changes in substance are those described below.

Sections 2520.104–5 and 2520.104–6 as published on March 15, 1977, required that welfare plans and certain pension plans file a copy of the summary plan description with the Secretary, and furnish a copy to participants covered under the plan and beneficiaries receiving benefits under a pension plan, not later than July 15, 1977. The amendments to these sections contained in this document defer the filing and disclosure date to 120 days after publication in the Federal Register of these final regulations. The new date is November 16, 1977.

Comments on section 2520.104–6 pointed out a problem with the rule that a plan which becomes subject to Part 1 of Title I on or after March 17, 1977, must file and disclose the summary plan description within 120 days after the plan becomes subject to Part 1. These comments pointed out that some employers will adopt master, prototype, or practitioner pattern plans on or after March 17, 1977, but before the sponsor of the master, prototype, or practitioner pattern plan has received a determination letter from the Internal Revenue Service.

Material changes which might thereafter be required by the Internal Revenue Service in the master, prototype, or pattern plan would then require the filing and disclosure of a summary of material modifications as required by § 2520.104b–3 and § 2520.104a–5. To avoid this duplication of effort and consequent additional expense, and to prevent the possibility of misleading participants, a new paragraph (d) has been added to section 2520.104–6 which permits plans adopting master, prototype, or pattern plans on or after March 17, 1977, to defer compliance with the statutory requirements until the remedial amendment period allowed by Internal Revenue Service regulation § 1.401b–1(d)(1) and (2) has expired. The period described in these paragraphs ends, generally speaking, six months after the sponsor of the master, prototype, or practitioner pattern plan receives its determination letter from the Internal Revenue Service.

Section 2520.104b–2.—Comments received by the Department indicated that uncertainty existed as to when a plan becomes subject to Part 1 of Title I so as to start the running of the 120 day period for filing and disclosure of the summary plan description. A new subparagraph (a)(3) has been added to section 2520.104b–2 which provides rules for determining when a plan becomes subject to Part 1.

The basic rule is that a plan becomes subject to Part 1 on the first day an employee is credited with an hour of service under sections 2530.200b–2 or 2530.200b–3 of the minimum standards regulations. To clarify the operation of this rule in cases involving prospective or retroactive effect, the regulation also provides specific rules for these cases. In the case of a plan which is adopted with a retroactive effective date, the 120 day period begins on the day after it is adopted. If a plan is adopted with a prospective effective date, including situations where the prospective date is dependent upon satisfaction of a condition or the occurrence of a contingency, the 120 day period begins the day after the plan is actually put into effect.

As noted above, the following sections are promulgated as immediately effective rules, part or all of which have not previously been proposed: 2520.104–5, 2520.104–6, 2520.104–23, 2520.104a–5, and 2520.104b–4. 5 U.S.C. § 533(a)(3)(B) of the Administrative Procedure Act permits an agency for good cause to issue an interim rule without notice and opportunity for comment if "notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest." Pursuant to the requirement of 5 U.S.C. § 533(a)(3)(B) that a brief statement of reasons supporting a finding of good cause by an agency must accompany the issuance of an interim rule without public notice and comment under this section, the following findings are made:

Issuance of proposals would be impractical because plan administrators must have assurance that regulatory requirements will not be changed in order to properly schedule preparations for compliance. Consequently, only a certain, i.e. final, rule would be effective at this time. Moreover, the delay inherent in the proposal, comment, and revision process would in many cases deny timely information to participants and beneficiaries. Such delay would be contrary to the public interest in prompt and complete disclosure.

When these interim sections are made final, any changes will be applicable only to plans becoming subject to Part 1 after

the date the final regulations are published and to updated summary plan descriptions furnished after such publication. Therefore, the rules contained in these sections will be applicable to all plans currently subject to Part 1 of Title I which have not yet disclosed the initial summary plan description.

Accordingly, 29 CFR Part 2520 is amended by adding §§ 2520.104–6(d), 2520.104–26, 2520.104–27, 2520.104–28, 2520.104a–5, 2520.104b–2(a)(3), and 2520.104b–4(d) and by amending §§ 2520.102–3 (b) (3) and (4), (m) and (t); 2520.104–4; 2520.104–5; 2520.104–6; 2520.104a–3; 2520.104b–2 (d)(2), (e)(2) and (f); and 2520.104b–4 to read as follows:

Subpart B—Contents of Plan Descriptions and Summary Plan Descriptions

Sec.

2520.102–2 Style and format of summary plan description.
2520.102–3 Contents of summary plan description.
2520.102–4 Option for different summary plan descriptions.

Subpart D—Provisions Applicable to Both Reporting and Disclosure Requirements

2520.104–4 Alternative method of compliance for certain successor pension plans.
2520.104–5 Deferral of certain reporting and disclosure requirements relating to the summary plan description for welfare plans.
2520.104–6 Deferral of certain reporting and disclosure requirements relating to the summary plan description for pension plans.
2520.104–26 Limited exemption for certain dues financed welfare plans maintained by employee organizations.
2520.104–27 Alternative method of compliance for certain dues financed pension plans maintained by employee organizations.
2520.104–28 Extension of time for filing and disclosure of the initial summary plan description.

Subpart E—Reporting Requirements

2520.104a–1 Filing with the Secretary of Labor.
2520.104a–3 Summary plan description.
2520.104a–5 Summary of material modifications.

Subpart F—Disclosure Requirements

2520.104b–1 Disclosure.
2520.104b–2 Summary plan description.
2520.104b–3 Summary of material modifications to the plan and changes in the information required to be included in the summary plan description.
2520.104b–4 Alternative method of compliance for furnishing pension plan documents to retired participants and their beneficiaries and separated participants with vested benefits.

AUTHORITY: Sections 101, 102, 104, 105, 109, 110, 111(b)(1), 111(c), 505, Pub. L. 93–406, 88 Stat. 840–1 847–52, 894 (29 U.S.C. 1021–2, 1024–5, 1029–31, 1135); Secretary of Labor's Order No. 76–13.

Subpart B—Contents of Plan Descriptions and Summary Plan Descriptions

§ 2520.102–2 Style and format of summary plan description.

(a) *Method of presentation.*—The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. In fulfilling these requirements, the plan administrator shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan. Consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross-references and a table of contents.

(b) *General format.*—The format of the summary plan description must not the effect of misleading, misinforming, or failing to inform participants and beneficiaries. Any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure, or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted.

(c) *Foreign languages.*—In the case of either—

(1) A plan that covers fewer than 100 participants at the beginning of a plan year, and in which 25 percent or more of all plan participants are literate only in the same non-English language, or

(2) A plan which covers 100 or more participants at the beginning of the plan year, and in which the lesser of:

(i) 500 or more participants, or

(ii) 10% or more of all plan participants are literate only in the same non-English language, so that a summary plan description in English would fail to inform these participants adequately of their rights and obligations under the plan, the plan administrator for such plan shall provide these participants with an English-language summary plan description which prominently displays a notice, in the non-English language common to these participants, offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants and shall be calculated to provide them with a reasonable opportunity to become informed as to their rights and obligations under the plan. The notice offering assistance contained in the summary plan description shall clearly set forth in the non-English language common to such participants the procedures they must follow in order to obtain such assistance.

Example.—Employer A maintains a pension plan which covers 1,000 participants. At the beginning of a plan year five hundred of Employer A's covered employees are literate only in Spanish, 101 are literate only in Vietnamese, and the remaining 399 are literate in English. Each of the 1,000 employees receives a summary plan description in English, containing an assistance notice in both Spanish and Vietnamese stating the following:

This booklet contains a summary in English of your plan rights and benefits under Employer A Pension Plan. If you have difficulty understanding any part of this booklet, contact Mr. John Doe, the plan administrator, at his office in Room 123, 456 Main St., Anywhere City, State 20001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday. You may also call the plan administrator's office at: 202–555–2345 for assistance.

§ 2520.102–3 Contents of summary plan description.

Section 102 of the Act specifies information that must be included in the summary plan description. The summary plan description must accurately reflect the contents of the plans as of the date not earlier than 120 days prior to the date such summary plan description is disclosed. The following information shall be included in the summary plan description of both employee welfare benefit plans and employee pension benefit plans, except as stated otherwise in subsection (j) through (n):

(a) The name of the plan, and, if different, the name by which the plan is commonly known by its participants and beneficiaries;

(b) The name and address of—

(1) In the case of a single employer plan, the employer whose employees are covered by the plan,

(2) In the case of a plan maintained by an employee organization for its members, the employee organization that maintains the plan,

(3) In the case of a collectively-bargained plan established or maintained by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, parent, or most significantly employer of a group of employers all of which contribute to the same plan, or other similar representative of the parties who established or maintain the plan, as well as:

(i) A statement that a complete list of the employers and employee organi-

zations sponsoring the plan may be obtained by participants and beneficiaries upon written request to the plan administrator, and is available for examination by participants and beneficiaries, as required by §§ 2520.104b–1 and 2520.104b–30, or,

(ii) A statement that participants and beneficiaries may receive from the plan administrator, upon written request, information as to whether a particular employer or employee organization is a sponsor of the plan and, if the employer or emplyee organization is a plan sponsor, the sponsor's address.

(4) In the case of a plan established or maintained by two or more employers, the association, committee, joint board of trustees, parent, or most significant employer of a group of employers all of which contribute to the same plan, or other similar representative of the parties who established or maintain the plan, as well as:

(i) A statement that a complete list of the employers sponsoring the plan may be obtained by participants and beneficiaries upon written request to the plan administrator, and is available for examination by participants and beneficiaries, as required by §§ 2520.104b–1 and 2520.104b–30, or,

(ii) A statement that participants and beneficiaries may receive from the plan administrator, upon written request, information as to whether a particular employer is a sponsor of the plan and, if the employer is a plan sponsor, the sponsor's address.

(c) The employer identification number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the plan number assigned by the plan sponsor. (For further detailed explanation, see the instructions to the plan description Form EBS–1 and "Identification Numbers Under ERISA" (Publ. 1004), published jointly by DOL, IRS, and PBGC);

(d) The type of pension or welfare plan, e.g., for pension plans—defined benefit, money purchase, profit sharing, etc., and for welfare plans—hospitalization, disability, pre-paid legal service, etc.;

(e) The type of administration of the plan, e.g., contract administration, insurer administration, etc.,

(f) The name, business address, and business telephone number of the plan administrator as that term is defined by section 3(16) of the Act;

(g) The name of the person designated as agent for service of legal process, and the address at which process may be served on such person, and in addition, a statement that service of legal process may be made upon a plan trustee or the plan administrator;

(h) The name, title, and address of the principal place of business of each trustee of the plan;

(i) If a plan is maintained pursuant to one or more collective bargaining agreements, a statement that the plan is so maintained, and that a copy of any such agreement may be obtained by participants and beneficiaries upon written request to the plan administrator, and is available for examination by participants and beneficiaries, as required by §§ 2520.104b–1 and 2520.104b–30. For the purpose of this paragraph, a plan is maintained pursuant to a collective bargaining agreement if such agreement controls any duties, rights or benefits under the plan, even though such agreement has been superseded in part for other purposes;

(j) The plan's requirements respecting eligibility for participation and for benefits. The summary plan description shall describe the plan's provisions relating to eligibility to participate in the plan, such as age or years of service requirements, and the items listed in subparagraphs (1) or (2) as appropriate:

(1) For employee pension benefit plans, it shall also include a statement describing the plan's normal retirement age, as that term is defined in section 3(24) of the Act, and a statement describing any other conditions which must be met before a participant will be eligible to receive benefits. Such plan benefits shall be described or summarized.

(2) For employee welfare benefit plans, it shall also include a statement of the conditions pertaining to eligibility to receive benefits, and a description or summary of the benefits. In the case of a welfare plan providing extensive schedules of benefits (a medical care plan, for example), only a general description is required if reference is made to detailed schedules of benefits which are available without cost to any participant or beneficiary who so requests;

(k) In the case of an employee pension benefit plan, a statement describing any joint and survivor benefits provided under the plan, including any requirement that an election be made as a condition to select or reject the joint and survivor annuity;

(l) For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture or suspension of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by (j) and (k) above.

(m) For an employee pension benefit plan the following information:

(1) If the benefits of the plan are not insured under Title IV of the Act, a statement of this fact, and the reason for the lack of insurance; and

(2) If the benefits of the plan are insured under Title IV of the Act, a statement of this fact, a summary of the pension benefit guaranty provisions of Title IV, and a statement indicating that further information on the provisions of Title IV can be obtained from the plan administrator or the Pension Benefit Guaranty Corporation. The address of the PBGC shall be provided.

(3) A summary plan description will be deemed to have complied with subparagraph (2) if it includes the following statement in the summary plan description:

Benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC) if the plan terminates. Generally, the PBGC guarantees most vested normal age retirement benefits, early retirement benefits, and certain disability and survivor's pensions. However, PBGC does not guarantee all types of benefits under covered plans, and the amount of benefit protection is subject to certain limitations.

The PBGC guarantees vested benefits at the level in effect on the date of plan termination. However, if a plan has been in effect less than five years before it terminates, or if benefits have been increased within the five years before plan termination, the whole amount of the plan's vested benefits or the benefit increase may not be guaranteed. In addition, there is a ceiling on the amount of monthly benefit that PBGC guarantees, which is adjusted periodically.

For more information on the PBGC insurance protection and its limitations, ask your Plan Administrator or the PBGC. Inquires to the PBGC should be addressed to the Office of Communications, PBGC, 2020 K Street NW., Washington, D.C. 20006. The PBGC Office of Communications may also be reached by calling 202–254–4817.

(n) In the case of an employee pension benefit plan, a description and explanation of the plan provisions for determining years of service for eligibility to participate, vesting, and breaks in service, and years of participation for benefit accrual. The description shall state the service required to accrue full benefits and the manner in which accrual of benefits is prorated for employees failing to complete full service for a year.

(o) In the case of an employee pension benefit plan that will use the "cutback" rule of Internal Revenue Service Revenue Ruling 76–378, IRB 1976–40, October 4, 1976, to make retroactive changes in the vesting or accrual provisions described in the summary plan description, a statement that certain provisions of the plan are subject to amendment which directly or indirectly modifies certain plan rights and benefits, the nature of such modifications, the identification by reference of such plan provisions, and the identification by reference of the portions of the summary plan description where such provisions are described. Such statement may be either printed within the text of the summary plan description or it may be printed in a separate sheet and disclosed together with the summary plan description.

(p) The sources of contributions to the plan—for example, employer, employee organization, employees—and the method by which the amount of contribution is calculated. Defined benefit pension plans may state without further explanation that the contribution is actuarially determined.

(q) The identity of any funding medium used for the accumulation of assets through which benefits are provided. The summary plan description shall identify any insurance company, trust fund, or any other institution, organization, or entity which maintains a fund on behalf of the plan or through which the plan is funded or benefits are provided.

(r) The date of the end of the year for purposes of maintaining the plan's fiscal records;

(s) The procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of Title I of the Act); and

(t) (1) The statement of ERISA rights authorized by section 104(c) of the Act, containing the items of information applicable to the plan included in the model statement of subparagraph (2) of this paragraph. Items which are not applicable to the plan are not required to be included. The statement may contain explanatory and descriptive provisions in addition to those prescribed in paragraph (t) (2) of this section. However, the style and format of the statement must not have the effect of misleading, misinforming or failing to inform participants and beneficiaries of a plan. All such information shall be written in a manner calculated to be understood by the average plan participant, taking into account factors such as the level of comprehension and education of typical participants in the plan and the complexity of the items required under this subparagraph to be included in the statement. Inaccurate, incomprehensible or misleading explanatory material will fail to meet the requirements of this section. The statement of ERISA rights (the model statement or a statement prepared by the plan), must appear as one consolidated statement. If a plan finds it desirable to make additional mention of certain rights elsewhere in the summary plan description, it may do so. The summary plan description may state that the statement of ERISA rights is required by federal law and regulation.

(2) A summary plan description will be deemed to comply with the requirements of paragraph (e) (1) of this section if it includes the following statement; items of information which are not applicable to a particular plan may be deleted: As a participant in (name of plan) you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites and union halls, all plan documents, including insurance contracts, collective bargaining agreements and copies of all documents filed by the plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.

Obtain copies of all plan documents and other plan information upon written request to the plan administrator. The administrator may make a reasonable charge for the copies.

Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain a statement telling you whether you have a right to receive a pension at normal retirement age (age * * *) and if so, what your benefits would be at normal retirement age if you stop working under the plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once a year. The plan must provide the statement free of charge.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a (pension, welfare) benefit or exercising your rights under ERISA. If your claim for a (pension, welfare) benefit is denied in whole or in part you must receive a written explanation of the reason for the denial. You have the right to have the plan review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to $100 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous. If you have any questions about your plan, you should contact the plan administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U. S. Labor-Management Services Administration, Department of Labor.

§ 2520.102–4 Option for different summary plan descriptions.

In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the amendment is adopted and to employees who later become participants, but not to participants who no longer are employees when the amendment is adopted. (See § 2520.104b–4.) Similarly, a plan may provide for different benefits for participants employed at different plants of the employer, or for different classes of participants in the same plant. In such cases the plan administrator may fulfill the requirement to furnish a summary plan description to participants covered under the plan and beneficiaries receiving benefits under the plan by furnishing to each member of each class of participants and beneficiaries a copy of a summary plan description appropriate to that class. Each summary plan description so prepared shall follow the style and format prescribed in § 2520.102–2, and shall contain all information which is required to be contained in the summary plan description under § 2520.102–3. It may omit information which is not applicable to the class of participants or beneficiaries to which it is furnished. It should also clearly identify on the first page of the text the class of participants and beneficiaries for which it has been prepared and the plan's coverage of other classes. If the classes which the employee benefit plan covers are too numerous to be listed adequately on the first page of the text of the summary plan description, they may be listed elsewhere in the text so long as the first page of the text contains a reference to the page or pages in the text which contain this information. If the plan administrator elects to prepare more than one summary plan description, each such summary plan description shall be filed with the Secretary in the manner provided in § 2520.104a–3(b).

Subpart D—Provisions Applicable to Both Reporting and Disclosure Requirements

§ 2520.104–4 Alternative method of compliance for certain successor pension plans.

(a) *General.*—Under the authority of section 110 of the Act, this section sets forth an alternative method of compliance for certain successor pension plans in which some participants and beneficiaries not only have their rights set out in the plan, but also retain eligibility for certain benefits under the terms of a former plan which has been merged into the successor. This section is applicable only to plan mergers which occur after the issuance by the successor plan of the initial summary plan description under the Act. Under the alternative method, the plan administrator of the successor plan is not required to describe relevant provisions of merged plans in summary plan descriptions of the successor plan furnished after the merger to that class of participants and beneficiaries still affected by the terms of the merged plans. Also, the plan administrator of the successor plan is not required to file with the Secretary of Labor a copy of the summary plan description of any merged plan.

(b) *Scope and application.*—This alternative method of compliance is available only if:

(1) The plan administrator of the successor plan furnishes to the participants covered under the merged plan and beneficiaries receiving pension benefits under the merged plan within 90

days after the effective date of the merger—

(i) A copy of the most recent summary plan description of the successor plan;

(ii) A copy of any summaries of material modifications to the successor plan not incorporated in the most recent summary plan description; and

(iii) A separate statement containing a brief description of the merger; a description of the provisions of, and benefits provided by, the merged and successor plans which are applicable to the participants and beneficiaries of the merged plan; and a notice that copies of the merged and successor plan documents, as well as the plan merger documents (including the portions of any corporate merger documents which describe or control the plan merger), are available for inspection and that copies may be obtained upon written request for a duplication charge (pursuant to § 2520.104b–30); and

(2) After the merger, the plan administrator, in all subsequent summary plan descriptions furnished pursuant to § 2520.104b–2(a)—

(i) Clearly and conspicuously identifies the class of participants and beneficiaries affected by the provisions of the merged plan, and

(ii) States that the documents described in paragraph (b)(1) of this section are available for inspection and that copies may be obtained upon written request for a duplication charge (pursuant to §2520.104b–30).

§ 2520.104–5 Deferral of certain reporting and disclosure requirements relating to the summary plan description for welfare plans.

(a) *General Rule.*—Under the authority of section 104(a)(3) of the Act, employee welfare benefit plans described in and meeting the conditions of paragraph (b) may defer certain reporting and disclosure requirements that apply on and after July 15, 1977. These requirements may be deferred until dates that are no earlier than November 16, 1977, as provided in paragraph (c). The requirements that may be deferred include filing a copy of a summary plan description with the Secretary, furnishing a copy of a summary plan description to participants of a plan, filing material modifications to the plan and changes in the information required to be included in the summary plan description with the Secretary, furnishing a summary description of such modifications or changes to participants of a plan, and furnishing a copy of the latest summary plan description to participants and beneficiaries upon written request.

(b) *Application.*—(1) In the case of a welfare plan which became subject to the provisions of Part 1, Title I of the Act on or before March 2, 1976, the plan administrator may defer until the time specified in paragraph (c) compliance with the requirements set forth in paragraph (a), if the administrator:

(i) Furnished an ERISA Notice which met the requirements of § 2520.104b–5 on or before May 30, 1976 to each participant covered under the plan as of March 2, 1976,

(ii) Furnished an ERISA Notice which met the requirements of § 2520.104b–5 to each person who became a participant covered under the plan after March 2, 1976 and before December 2, 1976, within 90 days after that person became a participant covered under the plan and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary to whom no copy of the Notice had been previously furnished.

(2) In the case of a welfare plan which became subject to the provisions of Part 1, Title I of the Act after March 2, 1976 but before December 2, 1976, the plan administrator may defer until the time specified in paragraph (c) compliance with the requirements set forth in paragraph (a) if the administrator:

(i) Furnished an ERISA Notice which met the requirements of § 2520.104b–5 within 90 days after the date the plan became subject to the provisions of Part 1, Title I, to each person who was a participant covered under the plan on the date the plan became subject to the provisions of Part 1, Title I;

(ii) Furnished an ERISA Notice which met the requirements of § 2520.104b–5 to each person who became a participant covered under the plan after the date on which the plan became subject to the provisions of Part 1, Title I and before December 2, 1976, within 90 days after that person became a participant covered under the plan; and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary to whom no copy of the Notice had been previously furnished.

(3) In the case of a welfare plan which became subject to the provisions of Part 1, Title I of the Act on or after December 2, 1976, but before the date of publication of these regulations, the administrator may defer compliance with the requirements set forth in paragraph (a) until the time set in paragraph (c).

(c) The administrator of a welfare plan described in paragraph (b) who elected to defer compliance with the requirements described in paragraph (a) shall comply with such requirements by November 16, 1977.

§ 2520.104–6 Deferral of certain reporting and disclosure requirements relating to the summary plan description for pension plans.

(a) *General rule.*—Under the authority of section 110 of the Act, an alternative method of compliance which defers certain reporting and disclosure requirements that apply on and after May 30, 1976 is provided for employee pension benefit plans described in and meeting the conditions of paragraph (b). The alternative method of compliance permits pension plans to defer these requirements until the times set forth in paragraphs (c) or (d). The requirements which may be deferred include filing a copy of the summary plan description with the Secretary, furnishing a copy of the summary plan description to participants and beneficiaries of a plan, filing material modifications and changes in the information required to be included in the summary plan description with the Secretary, furnishing a summary description of such modifications or changes to participants and beneficiaries of a plan, and furnishing a copy of the latest summary plan description upon written request.

(b) *Application.*—(1) In the case of a pension plan which became subject to the provisions of Part 1, Title I of the Act on or before March 2, 1976, the plan administrator may defer until the times specified in paragraph (c)(1) compliance with the requirements set forth in paragraph (a), if the administrator:

(i) Furnished an ERISA Notice which met the requirements of § 2520.104b–5 on or before May 30, 1976 to each participant covered under the plan and beneficiary receiving benefits as of March 2, 1976,

(ii) Furnished an ERISA Notice to each person who became a participant covered under the plan or a beneficiary receiving benefits after March 2, 1976 but more than 120 days before the date prescribed in paragraph (c)(1), within 90 days after that person became a participant covered under the plan or beneficiary receiving benefits, and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary receiving benefits to whom no copy of the Notice had been previously furnished.

(2) In the case of a pension plan which became subject to the provisions of Part 1, Title I of the Act after March 2, 1976 but before December 2, 1976, the plan administrator may defer until the times specified by paragraph (c)(1) compliance with the requirements set forth in paragraph (a) if the administrator:

(i) Furnished an ERISA notice which met the requirements of § 2520.104b–5 within 90 days after the date the plan became subject to the provisions of Part 1, Title I to each person who was a participant covered under the plan or beneficiary receiving benefits on the date the plan became subject to the provisions of Part 1, Title I;

(ii) Furnished an ERISA Notice which met the requirements of § 2520.104b–5 to each person who became a participant covered under the plan or a beneficiary receiving benefits after the date on which the plan became subject to the provisions of Part 1, Title I but more than 120 days before the date prescribed in paragraph (c)(1), within 90 days after that person became a participant covered under the plan or a beneficiary receiving benefits; and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary receiving benefits to whom no copy of the Notice had been previously furnished.

(3) In the case of a pension plan which became subject to the provisions of Part I, Title 1 of the Act on or after December 2, 1976 but before March 17, 1977, the administrator may defer compliance with the requirements set forth in paragraph (a) until the times specified in paragraph (c)(1).

(4) In the case of a pension plan, other than a pension plan described in subparagraph (5), which became subject to the provisions of Part I, Title I of the Act on or after March 17, 1977 and before publication of these regulations, the administrator may defer compliance with the requirements set forth in paragraph (a) until the time specified in paragraph (c)(2).

(5) In the case of a master, prototype, or practitioner pattern plan which became subject to the provisions of Part I, Title 1 of the Act on or after March 17, 1977, the administrator may defer compliance with the requirements set forth in paragraph (a) until the times specified in paragraph (d).

(c) (1) The administrator of a pension plan described in paragraph (b)(1), (b)(2), or (b)(3) who elected to defer compliance with the requirements described in paragraph (a)—

(i) (A) Which files a request for a determination letter within the period prescribed in section 401(b) of the Internal Revenue Code of 1954 and the regulations issued pursuant thereto, shall comply with the requirements described in paragraph (a) by the later of November 16, 1977 or 90 days after the date on which notice of the final determination with respect to the request for a determination letter is issued by the Internal Revenue Service, the request is withdrawn or the request is otherwise finally disposed of.

(B) For the purpose of computing the periods of time described in subparagraph (A) above, a notice of determination, opinion letter or notification letter from the Internal Revenue Service will be deemed to be issued on the later of the date of such document or the date of postmark. The date of withdrawal of a request for a determination letter, opinion letter or notification letter will be deemed to be the later of the date on the document withdrawing the request or the postmark thereon. The date of "other disposition" will be the later of the date on the document notifying of such other disposition or the postmark on such document.

(ii) Which does not file a request for a determination letter within the period prescribed in section 401(b) of the Internal Revenue Code and the regulations issued pursuant thereto, shall comply with the requirements described in paragraph (a) by the later of November 16, 1977 or the close of the period prescribed in section 401(b) of the Internal Revenue Code of 1954 and the regulations issued pursuant thereto.

(2) The administrator of a pension plan described in paragraph (b)(4) who defers compliance with the requirements described in paragraph (a) shall comply with such requirements by November 16, 1977.

(d) *Special rule for plans adopting master, prototype or practitioner pattern plans after March 17, 1977.*—(1) The administrator of a pension plan which adopts a master, prototype, or practitioner pattern plan on or after March 17, 1977 may defer compliance with the statutory requirements described in paragraph (b)(1) or (b)(2) until the later of—

(i) The end of the applicable remedial amendment period described in 26 CFR § 1.401b–1(d) (1) or (2) of regulations issued by the Internal Revenue Service under section 401(b) of the Internal Revenue Code of 1954, or

(2) November 16, 1977.

§ 2520.104–26 Limited exemption for certain dues financed welfare plans maintained by employee organizations.

(a) *Scope.*—Under the authority of section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require (i) filing with the Secretary a plan description and annual report, and (ii) furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirements (i) to furnish a summary plan descripition to participants and beneficiaries, and (ii) to file a copy of the summary plan description with the Secretary, as follows:

(1) In lieu of filing a plan description and a summary plan description with the Secretary,

(i) Filing is made under the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, of the Report Form LM–1 or LM–1A, together with a copy of the employee organization constitution or by-laws in which the plan is described, and

(ii) Filing is made of any document furnished to participants and beneficiaries, in accordance with subparagraph (3).

(2) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the LMRDA and regulations thereunder.

(3) (i) The plan meets the requirements for furnishing a summary plan description of § 2520.104b–2(f), except the requirement of subparagraph (1) of that paragraph to have furnished the summary plan description before the date of publication of these regulations. The employee organization constitution or by-laws may be used as the summary plan description, if they meet the requirements of that paragraph.

(ii) Notwithstanding subparagraph (i), if any provisions of such documents indicate that a certain portion of members' dues or a certain portion of the employee organization's assets will be used only for the payment of benefits, although such portion of dues or assets may legally be used for general employee organization purposes, or may be subject to the claims of general creditors of the employee organization, such documents may nevertheless be used as the summary plan description provided that:

(A) The supplement required by § 2520.104b–2(f) contains a clear statement that such portion of dues or assets may legally be used for general employee organization purposes or may be subject to the claims of general creditors of the employee organization, and

(B) The employee organization constitution or by-laws are amended as soon as possible following normal procedures (e.g., at the next regularly scheduled employee organization convention, in the case of a constitution or by-laws which provide for amendment in regularly scheduled conventions) to reflect accurately the status of the plan.

(b) *Application.*—This exemption is available only to welfare benefit plans maintained by an employee organization, as that term is defined in section 3(4) of the Act, paid for out of the employee organization's assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries.

(c) *Limitations.*—This exemption does not exempt the administrator from any other requirement of Part 1 of Title I of the Act.

§ 2520.104–27 Alternative method of compliance for certain dues financed pension plans maintained by employee organizations.

(a) *Scope.*—Under the authority of section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require (i) filing with the Secretary a plan description and annual report, and (ii) furnishing a summary annual report to participants and beneficiaries receiving benefits. Such plans may use a simplified method of reporting and disclosure to comply with the requirements (i) to furnish a summary plan description to participants and beneficiaries receiving benefits, and (ii) to file a copy of the summary plan description with the Secretary, as follows:

(1) In lieu of filing a plan description and a summary plan description with the Secretary,

(i) Filing is made under the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, of the Report Form LM–1 or LM–1A, together with a copy of the employee organization constitution or by-laws in which the plan is described, and

(ii) Filing is made of any document furnished to participants and beneficiaries, in accordance with subparagraph (3).

(2) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the LMRDA and regulations thereunder.

(3) (i) The plan meets the requirements for furnishing the summary plan description of § 2520.104b-2(f) except the requirement of subparagraph (1) of that paragraph to have furnished the summary plan description before the date of publication of these regulations. The employee organization constitution or by-laws may be used as the summary plan description, if they meet the requirements of that paragraph.

(ii) Notwithstanding subparagraph (i), if any provisions of such documents indicate that a certain portion of members' dues or a certain portion of the employee organization's assets will be used only for the payment of benefits, although such portion of dues or assets may legally be used for general employee organization purposes, or may be subject to the claims of general creditors of the employee organization, such documents may nevertheless be used as the summary plan description provided that:

(A) The supplement required by § 2520.104b-2(f) contains a clear statement that such portion of dues or assets may legally be used for general employee organization purposes or may be subject to the claims of general creditors of the employee organization, and

(B) The employee organization constitution or by-laws are amended as soon as possible following normal procedures (e.g., at the next regularly scheduled employee organization convention, in the case of a constitution or by-laws which provide for amendment in regularly scheduled conventions) to reflect accurately the status of the plan.

(b) *Application.*—This exemption is available only to pension benefit plans maintained by an employee organization, as that term is defined in section 3(4) of the Act, paid for out of the employee organization's assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries.

(c) *Limitations.*—This exemption does not exempt the administrator from any other requirement of Part 1 of Title I of the Act.

§ 2520.104-28 Extension of time for filing and disclosure of the initial summary plan description.

(a) *General.*—An employee benefit plan may, for good cause as determined by the plan administrator, extend the date to file and disclose the initial summary plan description or supplement for a period of 60 days from the date provided in § 2520.104a-3 and § 2520.104b-2. This extension is available to all employee benefit plans except for those plans described in paragraph (c), which may use the extension procedure provided under that paragraph.

(b) *Requirements.*—In order for an employee benefit plan to extend the date for filing and disclosure of the initial summary plan description or supplement, the plan administrator of a plan must—

(1) Determine that there is good cause for the extension. The following are examples of situations for which good cause could be found. This list is not exclusive and other situations may also constitute good cause for extending the date for filing and disclosure:

(i) A plan whose summary plan description or supplement is being prepared by a consulting company, insurance carrier or service, or other person that engages in the preparation of summary plan descriptions or supplements, where the volume of work of such persons exceeds the capacity to finish preparation of these documents before the time to file and disclose them under § 2520.104a-3 and § 2520.104b-2.

(ii) A plan of a plan sponsor which has 20 or more classes of participants for which separate summary plan descriptions or supplements will be filed and disclosed.

(2) Furnish with the initial summary plan description or supplement a statement describing the good cause for which the date for filing and disclosure was extended.

(c) *Plans involved in collective bargaining negotiations.*—The plan administrator of a plan which by the terms of a collective bargaining agreement may be the subject of collective bargaining negotiations within a period of 120 days prior to, or after, the date for filing and disclosure of the summary plan description or supplement under § 2520.104a-3 and § 2520.104b-2, may extend the requirement to file and disclose the summary plan description or supplement for a period not to exceed 90 days from the date of conclusion of the new collective bargaining agreement. A statement explaining the basis upon which the date was extended must be furnished with the summary plan description or supplement.

(d) *Limitation.*—This extension procedure is available only for an employee benefit plan which is subject to Part 1 or Title I on or before the date of publication of these regulations.

Subpart E—Reporting Requirements

§ 2520.104a-1 Filing with the Secretary of Labor.

(a) *General reporting requirements.*—Part 1 of Title I of the Act requires that the administrator of an employee benefit plan subject to the provisions of Part 1 file with the Secretary of Labor certain reports and additional documents. Each report filed shall accurately and comprehensively detail the information required. Where a form is prescribed, the reports shall be filed on that form. The Secretary may reject any incomplete filing. Reports and documents shall be filed as specified in this part.

(b) *Exemption for certain welfare plans.*—See §§ 2520.104-20, 2520.104-21, 2520.104-22, 2520.104-24, and 2520.104-25.

(c) *Alternative method of compliance for pension plans for certain selected employees.*—See § 2520.104-23.

§ 2520.104a-2. Plan description reporting requirements.

(a) *Filing obligation.*—The administrator of an employee benefit plan which is subject to the provisions of Part 1 of Title I of the Act after January 31, 1976, shall file a plan description (Form EBS-1) with the Secretary of Labor within 120 days after the plan becomes subject to Part 1. For example, a plan is established (and becomes subject to the provisions of Part 1) on January 1, 1977. The plan administrator files a plan description by April 30, 1977. For plans subject to Part 1 on or before January 31, 1976, see § 2520.104-3.

(b) *Filing address.*—The plan description shall be filed with the Secretary of Labor by mailing it to EBS-1, U.S. Department of Labor, Washington, D.C. 20216 or by delivering it during normal working hours to Room N-4635, Department of Labor, 200 Constitution Avenue NW., Washington, D.C.

(c) *Special rules for plans subject to deferred initial reporting requirements.*—See §§ 2520.104-3, 2520.104-5, and 2520.104-6.

(d) *Contents of the plan description.*—See § 2520.102-1.

§ 2520.104a-3 Summary plan description.

(a) *Filing obligation.*—The administrator of a plan subject to the provisions of Part 1 of Title I of the Act shall file with the Secretary of Labor a copy of the summary plan description, including any supplement which is required to be furnished to participants covered under the plan and pension plan beneficiaries receiving benefits under the plan, as well as a copy of the statement of ERISA rights. The copy of the summary plan description shall be filed on or before the last date on which a summary plan description may be furnished to such plan participants and beneficiaries under section 104(b)(1)(B) of the Act and § 2520.104b-2.

(b) *Filing of multiple summary plan descriptions.*—In the case of a plan for which the plan administrator has chosen under § 2520.102-4 to prepare more than one summary plan description, the plan administrator shall file with the Secretary a copy of each such summary plan description and a list identifying each such summary plan description. The name of the plan sponsor and the employer identification number (EIN) assigned to the plan sponsor by the Internal Revenue Service shall appear on the cover page of each summary plan description filed and also on the list of such summary plan descriptions.

(c) *Terminated plans.*—(1) If on or before the date by which a plan is required to file a summary plan description or updated summary plan description under this section, the plan has terminated within the meaning of subparagraph (2), such plan is not required to file a summary plan description with the Secretary.

(2) For purposes of this section, a plan shall be considered terminated if:

(i) In the case of an employee pension benefit plan, all distributions to participants and beneficiaries have been completed; and

(ii) In the case of an employee welfare benefit plan, no claims can be incurred which will result in a liability of the plan to pay benefits. A claim is incurred upon the occurrence of the event or condition from which the claim arises (whether or not discovered).

(d) *Filing address.*—The summary plan description shall be filed with the Secretary of Labor by mailing it to SPD, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20216, or by delivering it during normal working hours to Room N-4635, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, D.C.

(e) *Alternative requirements for plans subject to the alternative ERISA Notice requirements.*—See § 2520.104b-2, and § 2520.104-5 or § 2520.104-6. See § 2510.-3-3(d).

§ 2520.104a-5 Summary of material modifications.

The administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of the Act shall file a summary description of modifications or changes described in section 102(a)(1) of the Act and required to be disclosed to participants and beneficiaries by section 104(b) of the Act with the Secretary no later than the date on which the summary description is required to be disclosed to participants and beneficiaries by 2520.104b-3.

Subpart F—Disclosure Requirements

§ 2520.104b-1 Disclosure.

(a) *General disclosure requirements.*—The administrator of an employee benefit plan covered by Part 1 of Title I of the Act must disclose certain material, including reports, statements, and documents, to participants and beneficiaries. Disclosure under Part 1 takes three forms. First, the plan administrator must, by direct operation of law, furnish certain material to all participants covered under the plan and beneficiaries receiving benefits under the plan (other than beneficiaries under a welfare plan) at stated times or if certain events occur. Second, the plan administrator must furnish certain material to individual participants and beneficiaries upon their request. Third, the plan administrator must make certain material available to participants and beneficiaries for inspection at reasonable times and places.

(b) *Fulfilling the disclosure obligation.*—(1) Where certain material, including reports, statements, and documents, is required under Part 1 of the Act and this part to be furnished either by direct operation of law or on individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries. Material which is required to be furnished to all participants covered under the plan and beneficiaries receiving benefits under the plan (other than beneficiaries under a welfare plan) must be sent by a method or methods of delivery likely to result in full distribution. For example in-hand delivery to an employee at his or her worksite is acceptable. However, in no case is it acceptable merely to place copies of the material in a location frequented by participants. It is also acceptable to furnish such material as a special insert in a periodical distributed to employees such as a union newspaper or a company publication if the distribution list for the periodical is comprehensive and up-to-date and a prominent notice on the front page of the periodical advises readers that the issue contains an insert with important information about rights under the plan and the Act which should be read and retained for future reference. If some participants and beneficiaries are not on the mailing list, a periodical must be used in conjunction with other methods of distribution such that the methods taken together are reasonably calculated to ensure actual receipt. Material distributed through the mail may be sent by first, second, or third-class mail. However, distribution by second or third-class mail is acceptable only if return and forwarding postage is guaranteed and address correction is requested. Any material sent by second or third-class mail which is returned with an address correction shall be sent again by first-class mail or personally delivered to the participant at his or her worksite.

(2) For purposes of section 104(b)(4) of the Act, materials furnished upon written request shall be mailed to an address provided by the requesting participant or beneficiary or personally delivered to the participant or beneficiary.

(3) For purposes of section 104(b)(2) of the Act, where certain documents are required to be made available for examination by participants and beneficiaries in the principal office of the plan administrator and in such other places as may be necessary to make available all pertinent information to all participants and beneficiaries, disclosure shall be made pursuant to the provisions of this paragraph. Such documents must be current, readily accessible, and clearly identified, and copies must be available in sufficient number to accommodate the expected volume of inquiries. Plan administrators shall make copies of the plan description, latest annual report, and the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated available at all times in their principal offices. They are not required to maintain these plan documents at all times at each employer establishment or union hall or office as described in paragraphs (b)(3)(i), (ii), and (iii) of this section, but the documents must be made available at any such location within ten calendar days following the day on which a request for disclosure at that location is made. Plan administrators shall make plan documents available at the appropriate employer establishment or union meeting hall or office within the required ten day period when a request is made directly to the plan administrator or through a procedure establishing reasonable rules governing the making of requests for examination of plan documents. If a plan administrator prescribes such a procedure and communicates it to plan participants and beneficiaries, a plan administrator will not be required to comply with a request made in a manner which does not conform to the established procedure. In order to comply with the requirements of this section, a procedure for making requests to examine plan documents must permit requests to be made in a reasonably convenient manner both directly to the plan administrator and at each employer establishment, or union meeting hall or office where documents must be made available in accordance with this paragraph. If no such reasonable procedure is established, a good faith effort by a participant or beneficiary to request examination of plan documents will be deemed a request to the plan administrator for purposes of this paragraph.

(i) In the case of a plan not maintained according to a collective bargaining agreement, including a plan maintained by a single employer with more than one establishment, a multiple employer plan, and a plan maintained by a controlled group of corporations (within the meaning of § 1563(a) of the Internal Revenue Code of 1954 (the Code), determined without regard to § 1563(a)(d) and (e)(3)(C) of the Code), documents shall be made available for examination in the principal office of the employer and at each employer establishment in which at least 50 participants covered under a plan are customarily working. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. Where employees are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, and communications, the "establishment" shall be the place to which employees report each day. When employees do not usually work at, or report to, a single establishment—for example, traveling salesmen, technicians, and engineers—the establishment shall be the location from which the employees customarily carry out their activities—for example the field office of an engineering firm servicing at least 50 participants covered under the plan.

(ii) In the case of a plan maintained solely by an employee organization, the plan administrator shall take measures to ensure that documents are available for examination at the meeting hall or office of each union local in which there are at least 50 participants covered under the plan. Such measures shall include distributing copies of the documents to each union local in which there are at least 50 participants covered under the plan.

(iii) In the case of a plan maintained according to a collective bargaining agreement, including a collectively bar-

gained single employer plan with more than one establishment, a collectively bargained multiple employer plan, and a multiemployer plan which meets the definition of section 3(37) of the Act, § 2510.3–37 of this chapter, and section 414(b) of the Internal Revenue Code of 1954 and 26 CFR § 1.414(f) (40 CFR 43034), documents shall be made available for examination in the principal office of the employee organization and at each employer establishment in which at least 50 participants covered under the plan are customarily working. In employment situations where employees do not usually work at, or report to, a single establishment, the plan administrator shall take measures to ensure that plan documents are available for examination at the meeting hall or office of each union local in which there are at least 50 participants covered under the plan.

(c) *Participant and beneficiary status for purposes of section 101(a) and 104 (b) (1) of the Act and Subpart F of this part.*—See §§ 2510.3–3(d) (1), 2510.3–3 (d) (2), and 2520.3–3(d) (3) of this chapter.

§ 2520.104b–2 Summary plan description.

(a) *Obligation to furnish.*—Under the authority of sections 104(b) (1) and 104(c) of the Act, the plan administrator of an employee benefit plan subject to the provisions of Part 1 of Title I shall furnish a copy of the summary plan description and a statement of ERISA rights as provided in § 2520.102–3(t), to each participant covered under the plan (as defined in § 2510.3–3(d)), and each beneficiary receiving benefits under a pension plan on or before the later of:

(1) The date which is 90 days after the employee becomes a participant, or (in the case of a beneficiary receiving benefits under a pension plan) within 90 days after he or she first receives benefits, except as provided in § 2520.104b–4(a), or,

(2) Within 120 days after the plan becomes subject to Part 1 of Title I.

(3) (i) A plan becomes subject to Part 1 of Title I on the first day on which an employee is credited with an hour of service under § 2530.200b–2 or § 2530.–200b–3. Where a plan is made prospectively effective to take effect after a certain date or after a condition is satisfied, the day upon which the plan becomes subject to Part 1 of Title I is the day after such date or condition is satisfied. Where a plan is made retroactively effective dependent on a condition, the day on which the plan becomes subject to Part 1 of Title I is the day after the day on which the condition is satisfied. Where a plan is made retroactive subject to a contingency which may or may not occur in the future, the day on which the plan becomes subject to Part 1, Title I is the day after the day on which the contingency occurs.

(ii) Example: Company A is negotiating the purchase of Campany B. On September 1, 1978, as part of the negotiations, Company A adopts a pension plan covering the employees of Company B, contingent on the successful conclusion of its negotiations to purchase Company B. The plan provides that it shall take effect on the first day of the calendar year in which the purchase is concluded. On February 1, 1979, the negotiations conclude with Company A's purchase of Company B. The plan therefore becomes effective on February 1, 1979, retroactive to January 1, 1979. The summary plan description must be filed and disclosed no later than 120 days after February 1, 1979.

(b) *Periods for furnishing updated summary plan descriptions.* — [Reserved].

(c) *Alternative ERISA Notice requirements.*—A plan which elected to comply with the alternative ERISA Notice procedure provided in § 2520.104–5 or § 2520.104–6 is not required to furnish a copy of the summary plan description to participants and beneficiaries until the time described in the applicable section, and will be deemed to have satisfied the requirements of section 104(b) (1) (B) of the Act until such time. Thereafter, the requirements of section 104(b) (1) (B) of the Act and this section must be met in full.

(d) *Use of form EBS–1 as summary plan description.*—(1) The plan administrator of an employee benefit plan shall be deemed to have satisfied the requirements of section 104(b) (1) (B) of the Act and this section for the initial disclosure of the summary plan description if the plan administrator filed a summary plan description pursuant to proposed § 2520.104a–3(d) of the June 9, 1975, proposed regulations (40 FR 24642); § 2520.104–3 as issued on April 30, 1975 (40 FR 19469; see also 40 FR 20628, May 12, 1975); proposed §§ 2522.–40 and 2523.30 as published on December 4, 1974, (39 FR 42241); and the instructions on old form EBS–1 (bearing print date 4–75), and if the plan administrator furnished copies of a complete Form EBS–1 bearing print date 4–75 to participants covered under the plan and beneficiaries receiving benefits under the plan.

(2) Under the authority of section 104 (c) of the Act, a plan described in subparagraph (1) shall furnish to participants covered under the plan and beneficiaries receiving benefits under the plan a statement of ERISA rights which complies with § 2520.102–3(t) by November 16, 1977.

(e) *Disclosure obligation for plans which filed and disclosed by May 30, 1976 in reliance upon regulations of the Department.*—(1) The plan administrator of an employee benefit plan shall be deemed to have satisfied the requirements of section 104(b) (1) (B) of the Act and this section for the initial disclosure of the summary plan description if the plan administrator filed a summary plan description based upon the final regulations published in the FEDERAL REGISTER on August 15, 1975 (40 FR 34526) and on specific sections of the proposed regulations published in the FEDERAL REGISTER on June 9, 1975 (40 FR 24642) in reliance upon the preamble to the final regulations published in the FEDERAL REGISTER on April 23, 1976 (41 FR 16957) and announced in Departmental press release USDL 76–706, published April 21, 1976, and if the plan administrator furnished to participants covered under the plan and pension beneficiaries receiving benbenefits under the plan copies of such summary plan description.

(2) Under the authority of section 104 (c) of the Act, a plan described in subparagraph (1) shall furnish to participants covered under the plan and beneficiaries receiving benefits under the plan a statement of ERISA rights which complies with §2520.102–3(t) by November 16, 1977.

(f) *Disclosure obligation for all other plans which previously disclosed the summary plan description.*—(1) This section applies to those employee benefit plans which have disclosed to participants covered under the plan and beneficiaries receiving benefits under a pension plan, a summary plan description on or after September 2, 1974, and before March 15, 1977, and which are not described in paragraph (4) or (e) of this section.

(2) The plan administrator of an employee benefit plan described in subparagraph (1) shall be deemed to have satisfied the requirements of section 104(b) (1) (B) of the Act and this section for the initial disclosure of the summary plan description and the disclosure of the first updated summary plan description if the plan administrator:

(i) Furnishes to participants covered under the plan and pension plan beneficiaries receiving benefits under the plan, by November 16, 1977, a copy of a supplement to the summary plan description which includes any items of information required by § 2520.102–3 which were not included in the earlier document and which, taken together with the earlier document, meets the style and format requirements of § 2520.–102–2. The requirement of § 2520.102–2 (b) that benefit restrictions be described or cross-referenced adjacent to the description of benefits will be deemed satisfied if the supplement contains a statement which references participants to the descriptions of benefits and benefit restrictions in the summary plan description and describes their relationship;

(ii) Files with the Secretary, by November 16, 1977, a copy of the summary plan description described in paragraph (f) (1) and a copy of the supplement described in paragraph (f) (2) (i); and

(iii) Furnishes to participants and beneficiaries a summary plan description which meets the requirements of §§ 2520.102–2 and 2520.102–3 within five years (or ten years) of the date of disclosure described in subparagraph (i).

(g) *Terminated plans.*—(1) If, on or before the date by which a plan is required to furnish a summary plan description or updated summary plan description to participants and pension plan beneficiaries under this section, the plan has terminated within the meaning

of subparagraph (2), the administrator of such plan is not required to file with the Secretary or to furnish to participants covered under the plan or to beneficiaries receiving benefits under the plan a summary plan description.

(2) For purposes of this section, a plan shall be considered terminated if:

(i) In the case of an employee pension benefit plan, all distributions to participants and beneficiaries have been completed; and

(ii) In the case of an employee welfare benefit plan, no claims can be incurred which will result in a liability of the plan to pay benefits. A claim is incurred upon the occurrence of the event or condition from which the claim arises (whether or not discovered).

(h) *Alternative requirements for plans subject to the alternative ERISA Notice requirements.*—See § 2520.104–5 or § 2520.104–6. See § 2510.3–3(d).

(i) *Style and format of the summary plan description.*—See § 2520.102–2.

(j) *Contents of the summary plan description.*—See § 2520.102–3.

(k) *Option for different summary plan descriptions.*—See § 2520.102–4, § 2520.104–26, and § 2520.104–27.

(l) *Employee benefit plan—participant covered under a plan.*—See § 2510.3–3(d).

§ 2520.104b–3 Summary of material modifications to the plan and changes in the information required to be included in the summary plan description.

(a) The administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of the Act shall, in accordance with § 2520.104b–1(b), furnish a summary description of any material modification to the plan and any change in the information required by section 102(b) of the Act and § 2520.102–3 of these regulations to be included in the summary plan description to each participant covered under the plan and each beneficiary receiving benefits under the plan. The plan administrator shall furnish this summary, written in a manner calculated to be understood by the average plan participant, not later than 210 days after the close of the plan year in which the modification or change was adopted. This disclosure date is not affected by retroactive application to a prior plan year of an amendment which makes a material modification to the plan; a modification does not occur before it is adopted. For example, a calendar year plan adopts a modification in April 1978. The modification, by its terms, applies retroactively to the 1977 plan year. A summary description of the material modification is furnished on or before July 29, 1979. A plan which adopts an amendment which makes a material modification to the plan which takes effect on a date in the future must disclose a summary of that modification within 210 days after the close of the plan year in which the modification or change is adopted. Under the authority of sections 104(a)(3) and 110 of the Act, a summary description of a material modification or change is not required to be disclosed if it is rescinded or otherwise does not take effect. For example, a calendar year plan adopts a modification in June 1978. The modification, by its terms, becomes effective beginning in plan year 1979. Before the beginning of plan year 1979, the prospective modification is withdrawn. No summary of the material modification is required to be disclosed.

(b) The summary of material modifications to the plan or changes in information required to be included in the summary plan description need not be furnished separately if the changes or modifications are described in a timely summary plan description. For example, a calendar year plan adopts a material modification on June 3, 1976. The modification is incorporated in a summary plan description furnished on July 15, 1977. No separate summary of the material modification is furnished. The plan adopts another material modification September 15, 1977. A separate summary of the modification is furnished on or before July 29, 1978.

(c) The copy of the summary plan description furnished in accordance with §§ 2520.104b–2(a)(1)(i) and 2520.104b–4 shall be accompanied by all summaries of material modifications or changes in information required to be included in the summary plan description which have not been incorporated into that summary plan description.

(d) *Alternative requirements for plans subject to the alternative ERISA Notice requirements.*—See § 2520.104a–3, § 2520.104b–2 and § 2520.104–5 or 2520.104–6.

(e) *Filing obligation for all other plans which previously filed and disclosed the summary plan description.*—See § 2520.104a–3.

§ 2520.104b–4. Alternative methods of compliance for furnishing the summary plan description and summaries of material modifications of a pension plan to a retired participant, a separated participant with vested benefits, and a beneficiary receiving benefits.

Under the authority of section 110 of the Act, in the case of an employee pension benefit plan—

(a) *Summary plan descriptions.*—A plan administrator will be deemed to satisfy the requirements of section 104(b)(1) of the Act and § 2520.104b–2(a) to furnish a copy of the initial summary plan description to a retired participant, a beneficiary receiving benefits, or a separated participant with vested benefits ("vested separated participant") if, no earlier than the date stated in subparagraph (4) of this paragraph,

(1) In the case of a retired participant or a beneficiary receiving benefits, a document is furnished which—

(i) Meets the requirements of §§ 2520.102–2 and 2520.102–3 except paragraphs (b)(3), (b)(4), (j), (k), (l), (n), (o), and (p);

(ii) Contains a statement that the benefit payment presently being received by the retired participant or beneficiary receiving benefits will continue in the same amount and for the period provided in the mode of settlement selected at retirement, and will not be changed except as described in subparagraph (iii); and

(iii) Contains a statement describing any plan provision under which the present benefit payment may be reduced, changed, terminated, forfeited, or suspended;

(2) In the case of a vested separated participant, a document is furnished which—

(i) Meets the requirements of §§ 2520.102–2 and 2520.102–3 except paragraphs (b)(3), (b)(4), (j), (l), (n), (o), (p), and (r);

(ii) (A) If at or after separation, a separated vested participant was furnished a statement of the dollar amount of the vested benefit or the method of computation of the benefit, includes a statement that the dollar amount of the vested benefit was previously furnished and that a copy of the previously furnished statement of the dollar amount of such vested benefit or method of computation of the benefit may be obtained from the plan upon request;

(B) If the vested separated participant was not furnished a statement of the dollar amount of the vested benefit or the method of computation of the benefit, the plan furnishes either a statement of the dollar amount of the vested benefit, or a statement of the formula used to determine the dollar amount of the vested benefit;

(iii) Includes a statement of the form in which the benefits will be paid and duration of the payment period or a description of the optional modes of payment available under the plan; and

(iv) Includes a statement describing any plan provision under which a benefit may be reduced, changed, terminated, forfeited, or suspended; or

(3) (i) Such retired participant, vested separated participant, or beneficiary receiving benefits was furnished with a copy of a document which—

(A) Satisfies the requirements of section 102(a)(1) of the Act and § 2520.102–2 (relating to the style and format of the summary plan description) and § 2520.102–3 (relating to the content of the summary plan description),

(B) Describes the rights and obligations under the plan of such retired participant, vested separated participant, or beneficiary receiving benefits as of the date stated in subparagraph (4);

(ii) In the case of a person who retired, became a beneficiary, or separated with vested benefits before November 16, 1977, a document will be deemed to comply with the requirements of subparagraph (i) if the document omitted only information described in one or more of the provisions of § 2520.102–3 listed below, provided that a supplement containing such information, which meets the requirements of § 2520.102–2, is furnished to the retired participant, vested separated participant, or beneficiary receiving benefits by November 16, 1977.

(A) Employer identification number (EIN), as required by § 2520.102–3(c);

(B) Type of administration, as required by § 2520.102–(e);

(C) Name of agent for service of legal process, as required by § 2520.102–3(g);

(D) Names and addresses of trustees, as required by § 2520.102–3(h);

(E) Statement regarding plan termination insurance as required by § 2520.-102–3(m);

(F) Date of the end of the fiscal year, a required by § 2520. 102–3(r); or

(G) Statement of ERISA rights, as required by § 2520.102–3(t).

(4) For purposes of this paragraph the dates are: for a vested separated participant, the date of separation; for a beneficiary, the date on which payment of benefits commences; and for a retired participant, the date of retirement.

(b) *Updated summary plan descriptions.*—A copy of an updated summary plan description need not be furnished as prescribed in section 104(b)(1) of the Act and § 2520.104b–2(b) to a retired participant, vested separated participant, or a beneficiary receiving benefits if—

(1) (i) On or after the date stated in subparagraph (ii), the retired participant, vested separated participant, or beneficiary is furnished with a copy of the most recent summary plan description and a copy of any summaries of material modifications not incorporated in such summary plan description;

(ii) For purposes of subparagraph (i) the dates are: for a retired participant, the date of retirement; for a vested separated participant, the date of separation; and for a beneficiary, the date on which payment of benefits commences;

(2) No later than the date on which an updated summary plan description is furnished to participants and beneficiaries as prescribed by section 104(b)(1) of the Act and § 2520.104b–2(b), a retired participant, vested separated participant, or beneficiary receiving benefits is furnished a notice containing the following:

(i) A statement that the benefit rights of such retired participant, vested separated participant, or beneficiary receiving benefits are set forth in the earlier summary plan description and any subsequently furnished summaries of material modifications (see paragraph (c)), and

(ii) A statement that such retired participant, vested separated participant, or beneficiary receiving benefits may obtain a copy of the earlier summary plan description and summaries of material modifications described in subparagraph (i), and the updated summary plan description, without charge, upon request, from the plan administrator; and

(3) The plan administrator furnishes a copy of the documents described in subparagraph (2)(ii) to such retired participant, vested separated participant or beneficiary, without charge, upon request.

(c) *Summary of material modifications or changes.*—A summary description of a material modification to the plan or a change in the information required to be included in the summary plan description need not be furnished to a retired participant, a vested separated participant or a beneficiary receiving benefits under the plan, within the time prescribed in section 104(b)(1) of the Act and § 2520.104b–3 for furnishing summary descriptions of such modifications and changes, if the material modification or change in no way affects such retired participant's, vested separated participant's, or beneficiary's rights under the plan. For example, a change in trustees is information which such a person may need to know in order to make inquiries about his or her rights expeditiously, and hence must be furnished. On the other hand, a modification in benefits under the plan to which such retired participant, vested separated participant, or beneficiary had not at any time been entitled (and would not in the future be entitled) would not affect his or her rights and hence need not be furnished. If such retired participant, vested separated participant, or beneficiary requests a copy of a summary description of a material modification or a change which was not furnished, the plan administrator shall furnish the copy, without charge.

(d) *Special rule for a plan which has previously furnished a summary plan description.*—A plan described in § 2520.-104b–2 (e) or (f) which did not specify and identify those items of information in the summary plan description pertinent to a class of participants or beneficiaries as required by § 2520.102–2 must furnish, by November 16, 1977, a supplement to the class which—

(1) Identifies the information not relevant to the class, and

(2) Provides the information required to be furnished to the class under § 2520.102–3, or under an alternative provided by this section.

Effective date: This regulation shall become effective July 19, 1977.

Signed at Washington, D.C., this 10th of July 1977.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc.20810 Filed 7–18–77;1:07 pm]

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