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federal register

TUESDAY, JANUARY 30, 1979

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Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

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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.
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[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 351—REDUCTION IN FORCE

Retention Preference

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with comments invited for consideration in final rulemaking.

SUMMARY: These amendments provide that a preference eligible employee with a service-connected disability of 30 percent or more is entitled (1) to be retained over other preference eligible employees in the determination of retention standing, and (2) to receive a specific notice, with a right of review by the Office, if an agency finds that the employee is not able to fulfill the physical requirements of a position to which he/she would otherwise have been assigned under part 351. The changes are required by Sections 307 (e) and (g) of Pub. L. 95-454 (The Civil Service Reform Act of 1978).

DATES: Effective Date: January 11, 1979, and until final regulations are issued. Comment Date: Written comments will be considered if received no later than April 2, 1979.

ADDRESS: Send written comments to Ted Dow or Thomas A. Glennon, Office of Personnel Management, 1900 E Street, N.W. Washington, D.C. 20415, (202) 632-5623.

FOR FURTHER INFORMATION CONTACT:

Ted Dow or Thomas A. Glennon, Office of Personnel Management 1900 E Street, N.W. Washington, D.C. 20415, (202) 632-5623.

SUPPLEMENTARY INFORMATION: Pursuant to section 533(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

The following specific changes are made in Part 351:

(1) A new Subpart A is added to the regulations, consisting of the statutory requirements for retention preference, as found in Subchapter I of Chapter 35 of title 5, United States Code.

(2) An original § 351.201(g) is included to explain that an employeee in the Senior Executive Service is not covered by Part 351.

(3) Section 351.501(a)(2) is amended to include new retention subgroup AD.

(4) Section 351.501(a)(3) is amended to clarify how employees are ranked within a subgroup.

(5) Section 351.501(e) is amended to delete the definition of employees included in subgroup A, and to incorporate the definition of employees included in new retention subgroup AD.

(6) Section 351.501(f) includes the definition of employees included in subgroup A; this definition was formerly incorporated in § 351.501(e).

(7) Section 351.501(g) includes the definition of employees included in subgroup B; this definition was fromerly incorporated in § 351.501(f).

(8) An original § 351.701(d) is included to cover the right of certain disabled preference eligible employees to receive a notice from the employing agency if it finds that the employee is unable to fulfill the physical requirements of a position which would have otherwise been offered to the employee under part 351.

(9) Section 351.705(a)(3) is amended to permit an agency, at its discretion, to adopt administrative assignment provisions permitting an employee in subgroup III-AD to displace an employee in subgroups III-A or III-B, or an employee in subgroup III-A to displace an an employee in subgroup III-B.

Accordingly 5 CFR Part 351 is amended as follows: (1) by adding a new Subpart A as follows:

PART 351—REDUCTION IN FORCE

Subpart A—Statutory Requirements

Sec.
351.101 Statutory requirements

AUTHORITY: 5 U.S.C. 1302, 3502.

Subpart A—Statutory Requirements

§ 351.101 Statutory requirements.

This subpart sets forth for the benefit of the user the statutory requirments governing retention preference in reduction in force:

§ 3501. Definitions; application.

(a) For the purpose of this subchapter, except section 3504—

(1) "active service" has the meaning given it by section 101 of title 37;

(2) "a retired member of a uniformed service" means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and

(3) a preference elegible employee who is a retired member of a uniformed service is considered a preference elegible only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38;

(B) his service does not include twenty or more years of full-time active service, regardless of when performed by not including periods of active duty for training; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate, or to a member of the Senior Executitve Service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 428, amended Pub. L. 94-183, § 2(8), Dec. 31, 1975, 89 Stat. 1057, amended Pub. L. 95-454, § 404(a), Oct. 13, 1978, 92 Stat. 1165.

§ 3502. Order of retention.

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) length of service; and

(4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the

total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3) (A), (B), or (C) of this title; and

(C) who is an employee in or under the Department of Agriculture is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 428, amended Pub. L. 90-367, § 3, June 29, 1968, 82 Stat. 278; Pub. L. 90-623, § 1(23), Oct. 22, 1968, 82 Stat. 1313, amended Pub. L. 95-454, § 307(e), Oct. 13, 1978, 92 Stat. 1149.)

§ 3503. Transfer of functions.

(a) When a function is transferred from one agency to another, each competing employee employed in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee employed in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429, amended Pub. L. 95-454, § 307(f), Oct. 13, 1978, 92 Stat. 1149.

§ 3504. Preference eligibles; retention; physical qualifications; waiver.

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429, amended Pub. L. 95-454, § 307(g), Oct. 13, 1978, 92 Stat. 1149.)

(2) In § 351.201, paragraph (g) is added. As amended, § 351.201 reads as follows:

§ 351.201 Use of regulations.

(a) Each agency shall follow this part when it releases a competing employee from his/her competitive level by separation, demotion, furlough for more than 30 days, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, reorganization, reclassification due to change in duties, or the exercise of reemployment rights or restoration rights.

(b) This part does not require an agency to fill a vacant position. However, when an agency, in its discretion, chooses to fill a vacancy by an employee who has been reached for release from his/her competitive level for one of the reasons named in paragraph (a) of this section, this part shall be followed.

(c) This part does not apply to the change of an employee from regular to substitute in the same pay level in the Post Office Department field service.

(d) An agency authorized to administer alien employee programs under section 444 of the Foreign Service Act of 1946, as amended (22 U.S.C. 889), may include special plans for reduction in force in its alien employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

(e) This part does not apply to the termination of a temporary promotion or to the return of an employee to the position from which he/she was temporarily promoted or his/her reassignment or demotion to a different position that is not at a lower grade or level than the position from which he/she was temporarily promoted.

(f) This part does not apply to the release from his/her competitive level of a National Guard technician under section 709 of title 32, United States Code.

(g) This part does not apply to an employee in the Senior Executive Service.

(3) In § 351.501, paragraph (a) (2), (3), (e), (f), and (g) are amended. As amended, § 351.501 reads as follows:

§ 351.501 Tenure groups and subgroups—competitive service.

(a) Each agency shall classify the competing employees on a retention register who occupy positions in the competitive service in the following groups and subgroups on the basis of tenure of employment and veteran preference. The descending order of retention standing:

(1) By groups is group I, group II, group III;

(2) Within each group is subgroup AD, subgroup A, subgroup B;

(3) Within each subgroup persons are ranked beginning with the earliest service date.

(b) Group I includes each career employee who is not serving a probationary period. A career employee in an obligated position is in group I only when competing for positions at and below the grade in which he/she last served on a permanent basis.

(c) Group II includes each employee serving a probationary period, each career-conditional employee, and each career employee in an obligated position.

(d) Group III includes each indefinite employee, each employee serving under a temporary appointment pending establishment of register, each employee in status quo, and each employee serving under other nonstatus nontemporary appointment.

(e) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(f) Subgroup A includes each preference eligible employee not included in subgroup AD.

(g) Subgroup B includes each nonpreference eligible employee.

(4) In § 351.701 paragraph (d) is added. As amended, § 351.701 reads as follows:

§ 351.701 Qualifications for assignment.

(a) Except as provided in § 351.702, an employee is qualified for assignment under § 351.603 if the employee:

(1) Meets the Office standards and requirements for the position, including any minimum educational requirement;

(2) Is physically qualified for the duties of the position;

(3) Meets any special qualifying condition which the Office has approved for the position; and

(4) Has the capacity, adaptability, and any special skills needed to satisfactorily perform the duties and responsibilities of the position without undue interruption to the activity.

(b) An agency may not consider the sex of an employee as a factor in determining the employee's qualification for a position, except when the position is one for which restriction of certification of eligibles by sex is found justified by the Office.

(c) An employee who is carried on leave of absence because of a compensable injury and is released from his/her competitive level may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position when the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to his/her recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines that, on the basis of evidence before it, a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this Part, the agency must notify the Office of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within fifteen days of the notification, to the Office, which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The Office should make a final determination concerning the physical ability of the employee to perform the duties of the position; This determination must be made before the agency may select any other person for the position. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the Office. The functions of the Office under this paragraph may not be delegated to an agency.

(5) In § 351.705 paragraph (a)(3) is amended. The section reads as follows:

§ 351.705 Administrative assignment.

(a) An agency may, in its discretion, adopt provisions which:

(1) Provide for assignments across competitive areas;

(2) Permit a competing employee to displace an employee with lower retention standing in the same subgroup when it cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(3) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B; or

(4) Provide competing employees in the excepted service with assignment rights similar to those in § 351.703 and in paragraphs (a) (1), (2), and (3) of this paragraph.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of a less-than-full-time employee to a full-time position;

(4) May not provide for the assignment of an employee in a competitive position to a position in the excepted service; and

(5) May not provide for the assignment of an excepted employee to a position in the competitive service.

(5 U.S.C. 1302, 3502.)

OFFICE OF PERSONNEL MANAGEMENT,
JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-3161 Filed 1-29-79; 8:45 am]

[3410-30-M]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

Notification of Authority Citations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notification of authority citations.

SUMMARY: At 43 FR 23983, June 2, 1978, at 43 FR 29263, July 4, 1978, and at 43 FR 58542, December 15, 1978, the Food and Nutrition Service adopted final rules making certain changes in the regulations concerning the Special Supplemental Food Program for Women, Infants and Children (WIC Program). This document adds the authority citations under which these amendments were issued.

DATE: The effective dates are June 2, 1978, for the rule document published at 43 FR 23983; July 4, 1978 for 43 FR 29263; and December 15, 1978, for 43 FR 58542.

FOR FURTHER INFORMATION CONTACT:

Jennifer R. Nelson, Director, Supplemental Food Programs Division, Food and Nutrition Service U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8206.

SUPPLEMENTAL INFORMATION: The proper authority citations for all of the rule documents published at 43 FR 23983, at 43 FR 29263, and at 43 FR 58542 are as follows:

(Sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779); sec. 14, Pub. L. 94-105, 89 Stat. 518 (42 U.S.C. 1786))

(Catalog of Federal Domestic Assistance, Program No. 10.557.)

Signed at Washington, D.C., on January 22, 1979.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 79-2895 Filed 1-29-79; 8:45 am]

[3410-02-M]

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 2; Docket No. AO-71-A71]

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the order based on industry proposals considered at a public hearing held in February 1976. More than the required two-thirds of the dairy farmers who voted in a referendum approved the order as amended.

The amended order changes the procedure for classifying unaccounted for

disappearances (shrinkage) of milk in a handler's operations. Under the change, shrinkage will be classified on essentially the same basis as now provided under most other Federal milk orders. This action will improve slightly the ability of handlers regulated under this order to compete for fluid milk sales with handlers regulated under other nearby Federal milk marketing orders.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued January 9, 1976; published January 14, 1976 (41 FR 2092).

Extension of Time for Filing Briefs—Issued April 15, 1976; published April 21, 1976 (41 FR 16660).

Recommended Decision (Partial)—Issued April 5, 1977; published April 11, 1977 (42 FR 18950).

Extension of Time for Filing Exceptions to the Recommended Decision (Partial)—Issued May 6, 1977; published May 11, 1977 (42 FR 23841).

Final Decision (Partial)—Issued August 12, 1977; published August 17, 1977 (42 FR 41582).

Order Amending Order—Issued September 27, 1977; published September 30, 1977 (42 FR 52379).

Recommended Decision—Issued October 5, 1978; published October 11, 1978 (43 FR 46853).

Final Decision—Issued December 5, 1978; published December 11, 1978 (43 FR 57914).

FINDINGS AND DETERMINATIONS

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth below.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. Section 1002.41 is revised to read as follows:

§ 1002.41 Classes of utilization.

Subject to the conditions set forth in §§ 1002.42 through 1002.46, the classes of utilization shall be as follows:

(a) Class I-A milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product:

(i) Inside the marketing area;

(ii) As route disposition in an other order marketing area;

(iii) To an other order plant and assigned under such other order to Class I;

(iv) In packaged form to an other order plant if such product is not defined as a fluid milk product under such other order; and

(v) To a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market;

(2) Contained in inventory of packaged fluid milk products on hand at the end of the month except as provided in paragraph (c)(3) of this section;

(3) In shrinkage assigned to Class I-A pursuant to paragraph (d) of this section; and

(4) Not specifically accounted for as Class I-B or Class II milk.

(b) Class I-B milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product outside the marketing area, except as provided in paragraphs (a)(1) (ii) through (v) and (c) (3), (4) and (5) of this section; and

(2) In shrinkage assigned to Class I-B pursuant to paragraph (d) of this section.

(c) Class II milk shall be all skim milk and butterfat:

(1) Disposed of in any product other than a fluid milk product;

(2) Disposed of as a fluid milk product in bulk to any establishment (other than a plant defined in § 1002.8) at which food products are processed and packed and at which establishment there is no disposition of fluid milk products other than those received in consumer packages for consumption on the premises;

(3) Contained in inventory of fluid milk products in bulk which are on hand at the end of the month, and also with respect to any plant not defined in § 1002.8 (b) or (d) in inventory of fluid milk products in packaged form;

(4) Disposed of as a packaged fluid milk product to an other order plant and assigned under such other order as a fluid milk product to Class II;

(5) Disposed of in bulk as a fluid milk product to an other order plant and assigned to Class II under such other order;

(6) In skim milk represented by the nonfat solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid milk product definition pursuant to § 1002.15;

(7) Contained in fluid milk products that are disposed of for animal feed;

(8) Contained in fluid milk products that are dumped, if the market administrator is notified in advance and is given the opportunity to verify such disposition;

(9) Contained in fluid milk products that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond his control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(10) In shrinkage of skim milk and butterfat, respectively, at a plant that is allocated pursuant to § 1002.42 to the receipts specified in § 1002.42(b)(1), but not to exceed the following:

(i) Two percent of the skim milk and butterfat, respectively, in pool milk received from producers;

(ii) Plus 2.0 percent of the skim milk and butterfat, respectively, in milk received from pool units;

(iii) Plus 2.0 percent of the skim milk and butterfat, respectively, in milk received from units other than pool units, exclusive of the quantity for which Class II utilization was requested by the handler;

(iv) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from other pool plants;

(v) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(vi) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from plants other than those defined in § 1002.8 (b) or (d), exclusive of the quantity for which Class II utilization was requested by the handler; and

(vii) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (c)(10) (i) through (vi) of this section;

(11) In shrinkage of skim milk and butterfat, respectively, at a plant that is allocated pursuant to § 1002.42 to the receipts specified in § 1002.42(b)(2).

(d) Shrinkage in excess of the amounts assigned to Class II pursuant to paragraph (c) (10) and (11) of this section shall be assigned pro rata to Class I-A and Class I-B in accordance with the respective volumes of skim milk and butterfat actually accounted for in each such class.

2. Section § 1002.42 is revised to read as follows:

§ 1002.42 Shrinkage.

Shrinkage shall be allocated to a handler's receipts at each plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at each plant.

(b) Shrinkage of skim milk and butterfat, respectively, shall be prorated between the respective quantities of skim milk and butterfat:

(1) In receipts described in § 1002.41(c)(10); and

(2) In other source milk not specified in § 1002.41(c)(10) which was received in bulk fluid form.

3. In § 1002.45(a), new subparagraphs (1-a) and (7-a) are added to read as follows:

§ 1002.45 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(1-a) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1002.41(c)(10);

* * * * *

(7-a) Add to the remaining pounds of skim milk in Class II the pounds subtracted pursuant to paragraph (a) (1-a) of this section;

* * * * *

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

Effective date: March 1, 1979.

Signed at Washington, D.C., on January 25, 1979.

P. R. "BOBBY" SMITH,
Assistant Secretary for Marketing Services.

[FR Doc. 79-3180 Filed 1-29-79; 8:45 am]

[3410-02-M]

[Milk Order No. 126; Docket No. AO-231-A46]

PART 1126—MILK IN THE TEXAS MARKETING AREA

Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides for changes in the present order provisions based on industry proposals considered at a public hearing held June 13-14, 1978. The amendments would modify the basis on which a person may qualify as a "producer-handler" under the order. They also would allow handlers to divert milk between pool distributing plants and would modify the payment requirements of the order. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

EFFECTIVE DATE: MARCH 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4824.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 26, 1978, published June 1, 1978 (43 FR 23725). Suspension Order: Issued June 22, 1978, published June 27, 1978 (43 FR 27776). Partial Recommended Decision: Issued August 4, 1978, published August 8, 1978 (43 FR 35047). Partial Final Decision: Issued September 1, 1978, published September 8, 1978 (43 FR 40030). Final Order: Issued September 26, 1978, published September 29, 1978 (43 FR 44824). Recommended Decision: Issued October 11, 1978, published October 16, 1978 (43 FR 47534). Final Decision: Issued December 18, 1978, published December 28, 1978 (43 FR 60573).

FINDINGS AND DETERMINATIONS

The findings and determinations set forth below are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the Texas order and of the previously issued amendments to it. All of the previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of

feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determination.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. Section 1126.10(c) is revised as follows:

§ 1126.10 Producer-handler.

* * * * *

(c) Whose receipts of fluid milk products (including such products which he obtains at a location other than his processing plant for distribution on his routes) during the month from pool plants do not exceed the lesser of 5 percent of his Class I disposition during the month or 10,000 pounds;

* * * * *

2. Section 1126.13(d) is revised as follows:

§ 1126.13 Producer milk.

* * * * *

(d) Diverted from a pool plant described in § 1126.7(a) for the account of the handler operating such plant to another pool plant, except that milk diverted to a plant operated by a cooperative association may not be milk of the cooperative association's members. Milk so diverted shall be priced at the plant to which diverted; or

* * * * *

3. Section 1126.73(g)(1) is revised as follows:

§ 1126.73 Payments to producers and to cooperative associations.

* * * * *

(g) * * *

(1) On or before the 26th day of each month, an amount determined by multiplying such receipts during the first 18 days of the month by the Class III price for the preceeding month. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1126.74 for the preceding month; and

* * * * *

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

Effective date: March 1, 1979.

Signed at Washington, D.C., on January 25, 1979.

P. R. "BOBBY" SMITH,
Assistant Secretary for Marketing Services.

[FR Doc. 79-3181 Filed 1-29-79; 8:45 am]

[3410-34-M]

Title 9—Animals and Animal Products

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

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

PART 73—SCABIES IN CATTLE

Areas Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: The purpose of these amendments is to quarantine portions of Tulare County, a portion of Fresno County, a portion of Kern County, and additional portions of San Luis Obispo County in California; and portions of Nowata County in Oklahoma because of the existence of cattle scabies. Psoroptic cattle scabies was confirmed from specimens collected from cattle in these areas by the Veterinary Services Laboratories in Ames, Iowa. Therefore, in order to prevent the dissemination of cattle scabies it is necessary to quarantine the infested areas.

EFFECTIVE DATE: January 24, 1979.

FOR FUTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: These amendments quarantine portions of Tulare County, a portion of Fresno County, a portion of Kern County, and additional portions of San Luis Obispo County in California; and portions of Nowata County in Oklahoma because of the existence of cattle scabies. The restrictions pertaining to the interstate movement of cattle from quarantined areas as contained in 9 CFR Part 73, as amended, will apply to the areas quarantined.

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

1. In § 73.1a, in paragraph (c) relating to the State of California, new paragraphs (c)(6), (c)(7), (c)(8), and (c)(9) are added, and new paragraph (h) relating to the State of Oklahoma is added as set forth below.

§ 73.1a Notice of quarantine.

* * * * *

(c) * * *

(6) The premises of Montgomery Gill, Strathmore, Tulare County, California, comprised of:

(i) *Premises No. 1.* Secs. 16, 17, 18, 19, 20, 21, and 30, T. 20 S., R. 28 E.; secs. 13, 24, and 25, T. 20 S., R. 27 E.; and,

(ii) *Premises No. 2.* Secs. 5, 6, 7, 8, 17, and 18, T. 21 S., R. 28 E.

(7) The premises of Fresno Ag-Recycler, Firebaugh, Fresno County, California, Section 11, T. 13 S., R. 14 E.

(8) The premises of Richard Rudnick, Onyx, Kern County, California, Section 4, T. 26 S., R. 35 E.

(9) The premises of J. R. Davis, Atascadero, San Luis Obispo County, California, comprised of:

(i) *Home premises.* SE¼ of sec. 33, T. 27 S., R. 12 E.; and

(ii) *Paradise Valley premises.* Secs. 18 and 19, T. 28 S., R. 12 E.; secs. 13 and 14, T. 28 S., R. 11 E.

* * * * *

(h) Notice is hereby given that cattle in a certain portion of the State of Oklahoma are affected with scabies, a contagious, infectious, and communicable disease; and, therefore, the following area in such State is hereby quarantined because of said disease:

The premises of the Halsell Ranch, Lenapah, Nowata County, Oklahoma, Sections 31, 34, 35, and 36, T. 28 N., R. 17 E.; E½ sec. 5, E½ sec. 8, sec. 17, and 20, T. 27 N., R. 16 E.; secs. 1, 2, 3, 4, 9, 10, 11, 12, 14, 15, 16, 21, 22, 34, 35, and 36, SW¼ sec. 6, NW¼ sec. 13, N½ sec. 28, T. 27 N., R. 17 E.

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

These amendments impose certain further restrictions necessary to prevent the interstate spread of cattle scabies and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant informtion available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and good cause is found for making the amendments effective before March 1, 1979.

Done at Washington, D.C., this 24th day of January 1979.

NOTE.—This final rulemaking is being published under emergency procedures as authorized by E.O. 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the possibility of the spread of cattle scabies into other States or Territories of the United States is severe enough to constitute an emergency which warrants the publication of this quarantine without waiting for public comment. These amendments to the regulations covering cattle scabies will be scheduled for review under provisions of E.O. 12044 and Secretary's Memorandum 1955. The review will include preparation of an Impact Analysis Statement which will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. 301-436-8695.

M. T. GOFF,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-2998 Filed 1-29-79; 8:45 am]

[1505-01-M]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 335—SECURITIES OF INSURED STATE NONMEMBER BANKS

Proxy Statements, Tender Offers and Other Matters

Correction

In FR Doc. 78-35924 appearing at page 60561 in the issue for Thursday, December 28, 1978, in the third column of page 60562, under paragraph (A)(1) of § 335.4(h)(5)(iv), in the last line change "* * * of similar arrangement." to read "* * * or similar arrangement; or" and run it into the following paragraph, which should have begun "(*4*)" instead of "(4)". Also in that paragraph, the words "* * * a security or power specified in paragraphs (1), (2) or (3), above . . ." should have read "* * * a security or power specified in paragraphs (*1*), (*2*) or (*3*), above, * * *".

[6720-01-M]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 79-64]

PART 544—CHARTER AND BYLAWS

Bylaws Regarding Age Limitations on Directors and Officers

JANUARY 24, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final Rule.

SUMMARY: The 1978 amendments to the Age Discrimination in Employment Act upped the permissible mandatory retirement age from 65 to 70 for all employees and certain officers of Federal savings and loan associations. This rule conforms optional Federal association bylaws to statutory changes, which became effective January 1, 1979. Permissible mandatory retirement age of directors is also raised to 70 in keeping with the spirit of the law.

EFFECTIVE DATE: January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Telephone number (202) 377-6440.

SUPPLEMENTARY INFORMATION: Pub. L. 95-256, approved April 6, 1978, amended sections of the Age Discrimination in Employment Act of 1976 (ADEA) which affect hiring and retirement policies of Federally-chartered savings and loan associations, and other institutions, which employ 20 or more people. Effective January 1, 1979, Federal associations may not refuse employment to an applicant on the basis of any age between 40 and 70 years. Also, employees may not be involuntarily retired before age 70, except for certain executives. The ADEA permits mandatory retirement at age 65 of persons who (1) have been employed in bona fide executive or high policy-making positions for at least two years immediately preceding retirement, and who (2) upon retirement will be immediately entitled to nonforfeitable annual retirement benefits of $27,000 or more. More detailed information on this exempted category will be provided by the United States Department of Labor. Interested persons may wish to comment on the Labor Department proposal which appeared in the FEDERAL REGISTER on December 12, 1978 (43 FR 58148); the comment period closes February 12, 1979. The Department also published a document regarding employee benefit plans on September 22, 1978 (43 FR 43264).

Federal associations which have adopted Bank Board approved optional bylaws regarding age limitations on employment and retirement of directors and officers (12 CFR 544.6(h) and (i)) may adopt the revised optional bylaws which reflect ADEA changes. Other alternatives are to prepare new bylaws in these categories for Bank Board approval, or to rescind existing optional bylaws without replacing them.

EXPLANATION OF AMENDMENTS: Present paragraphs (h) and (i) of § 544.6 are among Bank Board approved optional bylaws which Federal associations may adopt. Under present optional bylaws (h) and (i), no person may be employed or continue as an officer or director of a Federal association if he or she is over the age chosen by that association, which age may range from 65 to 70. Mandatory retirement age is the same.

As revised to conform to ADEA, paragraphs (h) and (i) set these permissible employment and mandatory retirement age limits at 70, or above, according to the association's policy. Exceptions for mandatory retirement at age 65 of certain executives in accordance with ADEA is also covered. Federal associations which adopt

these revised bylaws must be guided by the Labor Department's interpretation of executives who qualify under the exception, and should therefore refer to that Department's proposal noted above and any final action based on it.

The Bank Board finds that (1) notice and public procedure are unnecessary under 5 U.S.C. 553(b) and 12 CFR 508.11 for these amendments because their immediate adoption to reflect the new statutory amendments discussed above is in the public interest, and (2) publication of the amendments for the 30-day notice period specified in 5 U.S.C. 553(d) and 12 CFR 508.14 prior to their effective date is unnecessary for the same reason.

Accordingly, 12 CFR Part 544 of the Rules and Regulations for the Federal Savings and Loan System are hereby amended by revising § 544.6 (h) and (i) to read as set forth below, effective January 31, 1979.

§ 544.6 Amendment to bylaws.

* * * * *

(h) *Age limitation on directors.* No person (fill in any age 70 or above) years of age shall be eligible for election, reelection, appointment or reappointment to the board of directors of the association. No director shall serve as such beyond the annual meeting of the association immediately following his or her becoming (fill in age used above), except that a director serving on (fill in bylaw adoption date) may complete his or her term as director. This age limitation does not apply to an advisory director.

(i) *Age limitation on officers.* No person (fill in any age 70 or above) years of age shall be eligible for election, reelection, appointment or reappointment as a officer of the association. No officer shall serve beyond the annual meeting of the association immediately following his or her becoming (fill in age used above) except that an officer serving on (fill in bylaw adoption date) may complete his or her term. However, an officer shall, at the option of the board of directors, retire at age 65 if he or she has served in an executive or high policy-making post for at least two years imediately prior to retirement, and is immediately entitled to nonforfeitable annual retirement benefits of at least $27,000.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 79-3107 Filed 1-29-79; 8:45 am]

[7535-01-M]

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Final Rule—Refund of Interest

AGENCY: National Credit Union Administration.

ACTION: Final Rule.

SUMMARY: This rule provides Federal credit unions the option to authorize refunds of interest that vary according to different classes of loans.

EFFECTIVE DATE: Immediately effective January 30, 1979.

ADDRESS: National Credit Union Administration, 2025 M Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Robert M. Fenner, Assistant General Counsel, Office of General Counsel, at the above address. Telephone: (202) 632-4870.

SUPPLEMENTARY INFORMATION: On January 3, 1979, the Administration published a proposed amendment (44 FR 895) to its rule on interest refunds (12 CFR 701.24) that would provide Federal credit unions the option to vary interest refunds according to certain classes of loans, and to exclude from a refund any class of loans that has not made a significant contribution to the earnings making the refund possible. Previously, the rule had required that any refund be given to all members who paid interest, and that the amount of each member's refund be determined by the application of a uniform percentage to the amount of interest paid.

Twelve sets of written comments were submitted on the proposal; two from credit union trade associations and ten from individual credit unions. All commentors supported the proposal, some suggesting minor changes. Upon evaluation of the comments, and after further staff review, the amendment is being made final with certain changes as explained below.

SUMMARY OF COMMENTS

Classes of Loans. Section 701.24(b) of the amendment allows the board of directors of a Federal credit union to vary the percentage of an interest refund according to different classifications of loans, such classifications to be established using the criteria of 12 CFR 701.21-1(c): Type of line of credit or loan plan, purpose of the loan and type or value of security in relation to the amount of the loan. (Section 701.21-1(c) is the Administration's regulation providing that interest rates charged on loans may vary according to these same criteria.)

Some commentors suggested that the authority to vary the refund percentage should not be limited to these criteria, but rather, that a more relaxed standard, such as a "reasonable basis for the classification," be imposed. Considering, however, that the legislative history of the interest refund authority indicates it is intended as a "readjustment of the interest rate" (S. Rep. No. 394, 83d Cong., 1st Sess. 1 (1953)), the Administration believes the criteria for allowing varying rates of refund should be consistent with those for varying the interest rate charged. (This is not to say that the board must, in authorizing a varying refund, use the same actual classifications set forth in their loan policy, but only that the same criteria set forth in § 701.21-1(c) be used.)

One commentor suggested that the minutes of the board of directors' meeting reflect the reasoning behind any decision to vary interest refunds. The Administration believes it will be good policy for a board to document its reasons in this fashion, thus making its decision accountable to the members. A new § 701.24(d) has been added accordingly. (Because of this and another addition discussed below, § 701.24(c)-(e) of the proposal have been redesignated as § 701.24(e)-(g), respectively.)

Another commentor questioned whether a board of directors would remain free to declare a uniform refund. It is the Administration's intent only to provide varying refunds as an optional method. Thus, a board of directors may still choose to authorize a strictly uniform refund (same percentage applied to all loans), or the board may choose to authorize a uniform refund subject to exclusion of one or more classes of loans as discussed below.

Excluding classes of Loans. Section 701.24(b) of the proposed amendment would allow the board to exclude any "class" of loans from an interest refund if it determined those loans had not made a significant contribution to the earnings that made the refund possible. The word "classification" has been used in the final rule, for purposes of consistency and in order to clarify that the § 701.21-1(c) criteria apply in defining any group of loans that will be excluded from a refund (subject to the following exception).

The commentors were nearly unanimous in suggesting that, in addition to excluding unprofitable "classifications" of loans from an interest

refund, the board be given the discretion to exclude delinquent loans. Some commentors suggested that the regulations specify the degree of delinquency necessary to warrant exclusion. The Administration agrees that it may be appropriate under certain conditions to exclude delinquent loans. First, consistent with the Administration's requirements for reporting delinquent loans, a loan should be excluded only if it is two months or more delinquent. Subject to that minimum standard, the board of directors should make its own good faith determination as to the degree of delinquency beyond which loans have not made a sufficient contribution to earnings to warrant a refund.

The provisions with respect to excluding loans have been revised to reflect these determinations, and in the interest of clarity they have been segregated from the provisions concerning varying the rate of refund and are set forth in the final rule as § 701.24(c).

Three commentors suggested that the board of directors be permitted to exclude classes of loans for reasons other than that of an insignificant contribution to earnings. The Administration believes, however, that this requirement should be retained in as much as Congress has indicated its intent that the refund authority be used to benefit those borrowers who made the refund possible. *See*, S. Rep. No. 394, 83d Cong., 1st Sess. 2 (1953). In this regard, it is not the administration's intent to require detailed cost accounting procedures, but rather only a good faith determination based on a review of the expense and income data available under the credit union's existing accounting procedures.

Reestablishing terminated Accounts. Section 701.24(e) of the rule (§ 701.24(c) in the proposal) provides that, when authorizing an interest refund for a current dividend period, the board may also authorize a refund for any previously omitted dividend period during the calendar year. Two commentors suggested that in authorizing a refund for a previously omitted period, the board not be required to reestablish accounts of persons who were members as of the close of that period but have since terminated their membership. Although the Administration recognizes the administrative burden of this requirement, it is constrained from relaxing it, in that the statutory interest refund authority entitles "* * * members of record at the close of business on the last day of [the] dividend period * * *" to share in the refund for that period (12 U.S.C. 1761b).

IMMEDIATE EFFECTIVE DATE

The amendments are being made immediately effective in order that they may be used by Federal credit unions in their December 31, 1978, refunds (which will in most cases be authorized no later than January 31, 1979).

LAWRENCE CONNELL,
Administrator.

JANUARY 25, 1979.

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

Accordingly, 12 CFR 701.24 is revised to read as follows:

§ 701.24 Refund of interest.

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to reasonable classifications of loans. Distinctions among classifications shall be based upon one or more of the criteria set forth in 12 CFR 701.21-1(c).

(c) Based upon a determination that such loans have not made a significant contribution to the earnings that make the refund possible, the board of directors may exclude from an interest refund (1) any classification of loans determined in accordance with paragraph (b) of this section, and (2) all loans delinquent at least two months, or all loans delinquent for such greater period as is determined by the board.

(d) The board of directors minutes shall document the reasons for any decision to vary interest refund rates or exclude certain loans from a refund.

(e) The board of directors may authorize an interest refund for a dividend period only during such time as it may declare a dividend. However, if in a given calendar year a credit union has dividend periods more frequent than annual and an interest refund was not authorized for one or more dividend periods, the board, during the time permitted for the declaration of the current dividend, may authorize an interest refund for the current dividend period and for any one or more of the omitted dividend periods.

(f) The board of directors shall not authorize an interest refund for any dividend period unless dividends have been declared and paid on share accounts.

(g) An interest refund shall be recorded on the books of the credit union as a reduction of interest income.

[FR Doc. 79-3095 Filed 1-29-79; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9045]

The Raymond Lee Organization, Inc., Et Al.

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order, among other things, requires a New York City idea promotion company and two individual parties to cease misrepresenting the nature and value of their services; their qualifications and ability to refine and successfully promote inventions, ideas, and products; and the probability of financial gain to their clients. The firm is further required to include specified statements in promotional literature and contracts which cite the number of recent customers who achieved financial success through the firm's efforts; disclose that additional costs may be incurred; and advise potential purchasers that the company makes no evaluations as to the patentability and marketability of submissions. Additionally, the order requires the firm to provide purchasers with a ten-day cooling-off period in which to cancel their contracts and receive full refunds.

DATES: Complaint issued July 15, 1975. Final order issued November 1, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Harriet Guber Mulhern, Attorney, New York Regional Office, Federal Trade Commission, 2243-EB Federal Building, 26 Federal Plaza, New York, N.Y. 10007. (212) 264-1232.

SUPPLEMENTARY INFORMATION: In the Matter of The Raymond Lee Organization, Inc., a corporation, Raymond Lee, individually and as an officer of said corporation, and Lawrence Peska, individually and as a former officer of said corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Advertising Falsely or Misleadingly: § 13.15 Business status, advantages or connections; 13.15-5 Advertising and promotional

[1] Copies of the Complaint, Initial Decision, Final Order and Opinion of the Commission are filed with the original document.

services; 13.15-20 Business methods and policies; 13.15-30 Connections or arrangements with others; 13.15-100 History; 13.15-195 Nature; 13.15-225 Personnel or staff; 13.15-245 Prospects; 13.15-250 Qualifications and abilities; 13.15-255 Reputation, success, or standing; 13.15-265 Service; § 13.42 Connection of others with goods; § 13.60 Earnings and profits; § 13.90 History of product or offering; § 13.110 Endorsements, approval and testimonials; § 13.155 Prices; § 13.155-5 Additional prices unmentioned; § 13.160 Promotional sales plans; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing; § 13.275 Undertakings, in general; § 13.285 Value. Subpart-Claiming Or Using Endorsements or Testimonials Falsely or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; 13.330-94 Users, in general. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-40 Furnishing information to media; 13.533-45 Maintain records. Subpart-Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1370 Business methods, policies, and practices; § 13.1395 Connections and arrangements with others; § 13.1435 History; § 13.1490 Nature; § 13.1513 Operations generally; § 13.1520 Personnel or staff; § 13.1535 Qualifications; § 13.1540 Reputation, success or standing; § 13.1553 Services.—Goods: § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1665 Endorsements; § 13.1685 Nature; § 13.1697 Opportunities in product or service; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use or standing; § 13.1765 Undertakings, in general; § 13.1775 Value.—Prices: § 13.1778 Additional costs unmentioned.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1854 History of products; § 13.1863 Limitations of product; § 13.1870 Nature; § 13.1882 Prices; 13.1882-10 Additional prices unmentioned; § 13.1895 Scientific or other relevant facts. Subpart-Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1935 Earnings and profits; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts; § 13.2090 Undertakings, in general.

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

The Final Order, including further order requiring report of compliance therewith, is as follows:

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondents from the initial decision, and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying opinion, having determined to deny the appeal of respondents and sustain the initial decision with certain modifications:

It is ordered, That the initial decision of the administrative law judge, pages 1-156, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent inconsistent with, modified or otherwise indicated in the accompanying Opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following Order to Cease and Desist be, and it hereby is, entered:

ORDER

I

It is ordered, That The Raymond Lee Organization, Inc., a corporation, its successors and assigns, Raymond Lee, individually and as an officer of said corporation, Lawrence Peska, individually and as a former officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, with the exception of those offering patent and trademark services to attorneys and registered patent agents only, in connection with the advertising, offering for sale or sale of services relating to the introduction, promotion, development, licensing, marketing or sale of ideas or inventions to industry, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any of respondents, or their officers, agents, representatives or employees, are registered patent attorneys or patent agents, or are licensed, recognized or qualified to prepare, file, amend or prosecute patent applications before the United States Patent and Trademark Office, or before any patent offices located in foreign countries, unless such is a fact.

2. Representing, directly or indirectly, that respondents provide potential purchasers of their services with an evaluation or appraisal of the patentability, merit or marketability of their inventions or ideas, unless respondents provide fair, competent, and objective evaluations or appraisals of such inventions or ideas.

3. Representing, directly or indirectly, that corporations or other business organizations are seeking inventions, new products or new product ideas through respondents, or that respondents have any special access to such corporations or other business organizations, unless respondents are regularly retained by corporations or other businesses to find new product ideas. Where respondents represent that they have access to, or are retained by, specific corporations or business organizations, respondents must in fact be retained by those corporations or organizations.

4. Representing, directly or indirectly, that any person, firm, organization, governmental agency or official has endorsed, used, or has used and been satisfied with respondents' services, unless such is a fact and such person, firm, organization, governmental agency or official has given prior written consent for such representation.

5. Misrepresenting any material aspect of respondents' services or business practices.

II

It is further ordered, That respondents cease and desist from:

1. Representing, directly or indirectly, that respondents will develop or refine inventions or ideas for new products submitted to them by their customers, unless respondents disclose in conjunction with and adjacent to such representations the following statement:

Our role in the development of your idea or invention is limited solely to the preparation of illustrations and drawings.

Such statement shall be made in a clear and conspicuous manner in print at least as large as the print containing the representation; or in the broadcast media, the statement shall be read at a rate of speed at least as slow as the slowest part of the advertisement.

2. Representing, directly or indirectly, that respondents introduce, promote or negotiate with manufacturers regarding clients' ideas or inventions, unless respondents disclose in conjunction with and adjacent to such representations the statement set forth in paragraph 5 below.

3. Making, directly or indirectly, any earnings or success claims for respondents' clients generally, or for any specific client, unless respondents disclose in conjunction with and adjacent to such representations the statement set forth in paragraph 5 below.

4. Representing, directly or indirectly, that potential purchasers of respondents' services may or will receive financial gain from an idea or invention, unless respondents disclose in conjunction with and adjacent to such

representations the statement set forth in paragraph 5 below.

5. Failing to disclose the following statement as required by paragraphs 2, 3, and 4:

"In (*date*), we sold our complete service to (*total number*) customers. Of these, (*number*) received more money from our services than they paid us."

Such statement shall be made in a clear and conspicuous manner in print at least as large as the print containing the representation; or in broadcast media, the statement shall be read at a rate of speed at least as slow as the slowest part of the advertisement; and the following definitions shall apply:

(a) "Total number" includes all clients who contracted for respondents' services during any three of the five calendar years preceding the calendar year in which the representation is made: *Provided*, That clients who contracted only for preliminary product research need not be included. All numbers shall be stated in Arabic numerals.

(b) "Date" shall be the three calendar years selected for purposes of (a) above.

III

It is further ordered, That respondents shall include the disclosure statement set forth in Appendix A at least once in pamphlets, brochures, and other promotional literature, excluding media advertisements:

1. This disclosure shall be made in a clear and conspicuous manner,

(a) In print at least as large as the largest print in the promotional literature other than respondents' name, but in no case smaller than 10 point boldface type;

(b) Set off by a black or colored border that contains only the disclosure statement; and

2. For purposes of the disclosure statement depicted in Appendix A, the following definitions shall apply:

(a) "Total number" includes all clients who contracted for respondents' services during any three of the five calendar years preceding the calendar year in which the promotional literature is distributed; provided that clients who contracted only for preliminary product research need not be included. All numbers shall be stated in Arabic numerals.

(b) "Date" shall be the years selected for purposes of (a) above.

3. If respondents provide fair, competent, and objective evaluations or appraisals, they may omit from the disclosure statement the following language: "We do not evaluate the merits of your idea or tell you whether it can be patented or marketed."

IV

It is further ordered, That respondents shall:

1. Furnish a retainable duplicate copy of the Appendix A disclosure statement with each research agreement, development and marketing contract or other client service contract. Such disclosure statement shall be set forth either on the contract itself or in a separate document that contains no other information and that is attached to and easily detachable from the contract.

2. Have each prospective purchaser of respondents' services acknowledge in writing on the contract or on the separate disclosure document, as appropriate, the receipt of the disclosure statement in Appendix A.

V

It is further ordered, That respondents shall furnish the notice of cancellation set forth in Appendix B to each purchaser of respondents' services, including purchasers of preliminary product research agreements, development and marketing contracts or other client service contracts: *Provided*, That such notices need not be furnished and such rights do not apply when all contact between respondents and a prospective purchaser prior to execution of any such agreement or contract is by mail and/or telephone.

1. The notice of cancellation shall be made in the following manner,

(a) The notice of cancellation form shall be furnished in duplicate, attached to the contract and easily detachable.

(b) The notice shall be in at least 10 point boldface type with a heading in 16 point extra-boldface type.

2. Within ten (10) days after receipt of a signed notice of cancellation, respondents shall refund all monies that have been paid to respondents pursuant to the cancelled transaction.

VI

It is further ordered, That respondents shall maintain the following records for a three-year period and make them available for examination and copying by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours:

1. A copy of each advertisement, each radio script, and each television script and film published or disseminated by respondents.

2. Records disclosing the date or dates each advertisement, script or film was published or disseminated.

3. The name and address of each publication or broadcast media disseminating each advertisement, script or film.

4. A copy of each brochure, flyer or other type of promotional literature published or disseminated by respondents.

5. Copies of signed disclosure statements made pursuant to Part IV of this order.

6. Copies of signed notices of cancellation made pursuant to Part V of this order.

7. Copies of all product research agreements, development and marketing contracts, and other client service contracts.

VII

It is further ordered, That respondents shall:

1. Forthwith deliver a copy of this Order, incorporating its provisions, to all present and future salespersons or other persons engaged in the sale of respondents' services and secure from each such salesperson or other person a signed statement acknowledging receipt of a copy of this Order and their written agreement to adhere thereto.

2. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

3. Promptly notify the Commission for a period of ten (10) years of the discontinuance of any business, occupation or employment concerned with the introduction, promotion development, licensing, marketing or sale of ideas or inventions and of the affiliation with any other such business, occupation or employment. Such notice shall include a description of respondents' ownership, duties and responsibilities in any other such business, occupation or employment. The expiration of this paragraph shall not affect any other obligations arising under this Order.

VIII

It is further ordered, That each individual respondent and every firm, partnership, association, corporation or other business entity that each individual respondent controls or manages, and which offers, or purports to offer, any service or program to assist a customer in making money do forthwith cease and desist from:

1. Misrepresenting, directly or indirectly, the nature or value of such service or program.

2. Misrepresenting, directly or indirectly, the earnings potential of a customer who purchases or uses such service or program.

3. Representing, directly or indirectly, that any person, firm, organization,

governmental agency or official has endorsed, used, or has used and been satisfied with such service or program, unless such is a fact and such person, firm, organization, governmental agency or official has given prior written consent for such representation.

4. Otherwise misrepresenting any material aspect of respondents' service, program or business practices.

IX

It is further ordered, That nothing herein shall relieve respondents of any obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent with any provision of this Order, respondents shall notify the Commission of such inconsistency and request advice as to compliance herewith.

X

It is further ordered, That respondents shall, within sixty (60) days after entry of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this Order.

By the Commission. Commissioner Pitofsky did not participate in consideration of this matter.

APPENDIX A

NOTICE

You should be aware that

* we do not evaluate the merits of your idea or tell you whether it can be patented or marketed;
* in (*date*), we sold our complete service to (*total no.*) customers. Of these, (*no.*) received more money from our services than they paid us;
* in addition to the money you pay us, you may have to pay attorneys' fees, Patent Office fees, and other charges in connection with our program. Ask us for complete price information.

APPENDIX B

NOTICE OF CANCELLATION

If you change your mind, you can cancel this contract within 10 business days after you signed it. If you mailed us the contract, you can cancel it within 10 business days after you put the contract in the mail.

There will be no penalty or obligation if you cancel. Within 10 days after we get your notice, we'll return any money you paid us under this contract.

To cancel this contract, sign and date this notice, or send a letter or telegram of your own telling us you want to cancel. Mail it or give it to us by midnight of the tenth business day after the contract was signed, or after you mailed the contract to us.

Send the notice, letter or telegram to:

name of seller _____

address _____

I hereby cancel this contract.

signature _____

date _____

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-3094 Filed 1-29-79; 8:45 am]

[6450-01-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

[Docket Nos. RM79-3, RM79-4]

PUBLICATION OF PRESCRIBED MAXIMUM LAWFUL PRICES UNDER THE NATURAL GAS POLICY ACT OF 1978 AND AMENDMENTS TO REGULATIONS RELATING TO MINIMUM RATE GAS

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: Notice is hereby given that the Federal Energy Regulatory Commission is publishing maximum lawful prices and inflation adjustment factors for February, March and April 1979 and is amending its regulations regarding pricing and filing requirements for minimum rate gas. The price of such gas is to be stated in terms of Mcf's rather than MMBtu's. Collection of such price is subject to the blanket affidavit filing requirements for producers.

DATES: *Effective Date:* January 25, 1979.

Comments: Written comments by March 1, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Romulo L. Diaz, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426 (202) 275-3771.

Howard Kilchrist, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426 (202) 275-4539.

AMENDMENTS TO REGULATIONS

Issued January 25, 1979.

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978 and Amendments to Regulations Relating to Minimum Rate Gas, Docket No. RM79-3, Docket No. RM79-4.

A. BACKGROUND

On December 1, 1978, the Federal Energy Regulatory Commission (Commission) issued Interim Regulations (43 FR 56448, December 1, 1978), implementing the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621, 92 Stat. 3350. Sections 271.101(a), 271.202, 271.302, 271.402(a), 271.602, 271.702, 271.802, 271.902 and 273.201(a)(1) of the interim regulations set forth the maximum lawful prices per MMBtu for deliveries made in December 1978 and January 1979. Section 271.102(c) sets forth the monthly inflation adjustment factors. Section 101(b)(6) of the NGPA requires that the Commission compute and make available maximum lawful prices and inflation adjustments at least five days before the beginning of any month for which such figures apply. Pursuant to that mandate, the Commission hereby amends its interim regulations implementing the NGPA to add to the existing price tables, prices and inflation adjustments for the months of February, March, and April 1979.

The Commission has received many comments through its written comment procedures, toll-free telephone inquiry line, and NGPA Implementation Seminars regarding pricing and filing requirements relating to minimum rate gas as defined in § 271.402(b)(a) of the interim regulations. Prices applicable to minimum rate gas were included in §§ 271.101(a) and 271.402(a) which set forth maximum ceiling prices prescribed under sections 104 and 106(a) of the NGPA for natural gas committed or dedicated to interstate commerce as of November 8, 1978. Final regulations issued by the Commission on November 17, 1978 (43 FR 55756, November 29, 1978), and amended by the Commission on December 28, 1978 (44 FR 1100, January 4, 1979) established filing requirements for collection of those prices. In response to comments received on pricing and filing, the Commission has decided to amend these regulations to restate the price for minimum rate gas and to insure that collection of that price is subject to the mandatory blanket affidavit filing requirements imposed in § 154.94(h).

B. SUMMARY OF AMENDED REGULATIONS

The interim regulations are being modified to include the maximum lawful prices and inflation adjustments for February, March, and April 1979. The subparts of Part 271 of Subchapter H of the interim regulations so affected, and the types of natural gas to which these subparts apply, are

as follows: Subpart A—Summary Tables and Caculations (§§ 271.101(a) and 271.102(c)); Subpart B—New Natural Gas and Certain Natural Gas Produced from the Outer Continental Shelf (§ 271.202); Subpart C—New, Onshore Production Wells (§ 271.302); Subpart D—Natural Gas Committed or Dedicated to Interstate Commerce (§ 271.402(a)); Subpart F—Intrastate Rollover Contracts (§ 271.602); Subpart G—High-Cost Natural Gas (§ 271.702); Subpart H—Stripper Well Natural Gas (§ 271.802); and Subpart I—Other Categories of Natural Gas (§ 271.902). Further, Part 273 of Subchapter H is amended by adding the maximum lawful prices for February, March, and April 1979 to Subpart B—Interim Collection Authority (§ 273.201(a)(1)).

The interim regulations are also being amended to express the price for minimum rate gas in terms of Mcf's rather than MMBtu's. This modification is necessary because the April 20, 1977, minimum rate of 18.0 cents per Mcf established in § 2:56b(b) of this chapter is not subject to an adjustment for Btu content, unlike the other maximum lawful prices set forth in the tables in §§ 271.101(a) and 271.402(a). In order to correctly state the price for minimum rate gas, we shall remove the category "Minimum rate gas" from the tables in §§ 271.101(a) and 271.402(a) which list the maximum lawful prices for gas subject to the provisions of sections 104 and 106(a) of the NGPA and do so in terms of MMBtu's. A separate paragraph (c)(4) has been added to § 271.402 to indicate the price per Mcf to be charged under the NGPA for minimum rate gas in December 1978, and in January, February, March, and April 1979.[1]

A conforming amendment relating to minimum rate gas is required in § 154.94(h) of the final regulations setting forth the filing requirements for producers qualifying for a maximum lawful price under section 104(b)(1)(A) or 106(a) of the NGPA. Under § 154.94(h)(1), a producer is required to file a blanket affidavit under which he may collect the applicable maximum lawful price where he has established qualification for a base rate under the Natural Gas Act. One of the prerequisites for establishment of such base rate, as set forth in § 154.94(h)(2)(ii), is that the collection of the base rate be permissible under the applicable sales contract. However, application of this rule would exclude minimum rate gas from the blanket affidavit procedures because minimum rate gas is permitted to be sold at a rate in excess of the applicable sales contract rate. In order to make it clear that the blanket affidavit filing procedure applies to minimum rate gas, we shall amend § 154.94(h)(2)(ii) to provide an exception to the requirement that the collection of the base rate be permissible under the applicable sales contract, for minimum rate gas. Affidavits previously submitted which reflect the "Applicable NGPA Rate" for minimum rate gas in terms of a price per MMBtu need not be amended to reflect that such rate is a price per Mcf. The Commission will consider such previously submitted affidavits to conform with the amendments adopted herein.

[1]For consistency with other NGPA prices, a producer may convert the price per Mcf to an MMBtu equivalent, if necessary.

C. COMMENT PROCEDURES

Although these amendments to the regulations are being issued effective immediately, interested persons are invited to submit written comments, data, views, or arguments with respect to this action. An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to March 1, 1979, will be considered by the Commission, and if appropriate, further revisions will be made. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, N.E., Washington, D.C. 20426, during regular business hours. Comments should be submitted to the FERC, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should reference Docket Nos. RM79-3 and RM79-4.

D. EFFECTIVE DATE

The Commission is making these amendments effective upon the date of issuance of this order upon a finding that good cause exists to proceed without compliance with the notice, public procedure and effective date provisions of 5 U.S.C. 553. The NGPA requires that maximum lawful prices and inflation adjustments be made available at least five days before the beginning of the month to which they apply. Unless amendments regarding minimum rate gas are made effective immediately, and prior to the termination of the 60-day period for comments on the interim regulations, producers (most of whom bill in January for deliveries made in December) may bill and file incorrectly for minimum rate gas. Thus good cause exists to make all of these amendments effective upon issuance of this order.

(Natural Gas Act, as amended, (15 U.S.C. 717 *et seq.*), Energy Supply and Environmental Coordination Act, (15 U.S.C. 791, *et seq.*), Federal Energy Administration Act, (15 U.S.C. 761, *et seq.*), Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, Pub. L. 95-91, E. O. 12009, 42 F.R. 46267).)

In consideration of the foregoing, Part 154 of Subchapter E and Parts 271 and 273 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, are amended as set forth below, effective immediately.

By the Commission.

KENNETH F. PLUMB,
Secretary.

SUBCHAPTER E—REGULATIONS UNDER NATURAL GAS ACT

PART 154—RATE SCHEDULES AND TARIFFS

§ 154.94 [Amended]

1. Section 154.94 is amended in paragraph (h)(2)(ii) by inserting at the beginning of subclause (C) the phrase, "except in the case of minimum rate gas (as defined in § 271.402(b)(9) of this chapter),".

SUBCHAPTER H—REGULATION OF NATURAL GAS SALES UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 271—CEILING PRICES

§ 271.101 [Amended]

2. Section 271.101(a) is amended by revising Tables I and II to read as follows:

[6450-01-C]

Table I - Summary of certain gas ceiling prices.

(Prices in $/MMBtu)

Subpart of Part 271	NGPA Section	Category of Gas	Maximum Lawful Price for Deliveries made in:				
			Dec. 1978	Jan. 1979	Feb. 1979	Mar. 1979	Apr. 1979
B	102	New Natural Gas, Certain OCS Gas	$2.078	$2.096	$2.116	$2.136	$2.156
C	103	New, Onshore Production Wells	1.969	1.980	1.993	2.006	2.019
G	107	High-Cost (below 15,000' only) Natural Gas	2.078	2.096	2.116	2.136	2.156
H	108	Stripper Wells	2.224	2.243	2.264	2.285	2.306
I	109	Not Otherwise Covered	1.630	1.639	1.650	1.661	1.672

Table II - Certain gas committed or dedicated to interstate commerce on November 8, 1978.

Subpart of Part 271	NGPA Section	Category of Natural Gas	Type of Sale or Contract	Maximum Lawful Price per MMBtu for Deliveries Made in:				
				Dec. 1978	Jan. 1979	Feb. 1979	Mar. 1979	Apr. 1979
D	104	Post-1974 gas	All producers	$1.630	$1.639	$1.650	$1.661	$1.672
		1973-1974 Biennium gas	Small producer	1.379	1.387	1.396	1.405	1.414
			Large producer	1.058	1.064	1.071	1.078	1.085
	106(a)	Interstate Rollover gas	Small producer	0.702	0.715	0.715	0.715	0.715
			Large producer	0.603	0.607	0.611	0.615	0.619
	104	Replacement contract gas or re-completion gas	Small producer	0.771	0.775	0.780	0.785	0.790
			Large producer	0.593	0.596	0.600	0.604	0.608
		Flowing gas	Small producer	0.393	0.395	0.398	0.401	0.404
			Large producer	0.332	0.334	0.336	0.338	0.340
		Certain Permian Basin gas	Small producer	0.462	0.465	0.468	0.471	0.474
			Large producer	0.405	0.407	0.410	0.413	0.416
		Certain Rocky Mountain gas	Small producer	0.462	0.465	0.468	0.471	0.474
			Large producer	0.393	0.395	0.398	0.401	0.404
		Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	0.368	0.370	0.372	0.374	0.376
			Other Contracts	0.344	0.346	0.348	0.350	0.352

3. Section 271.102(c) is amended to read as follows:

§ 271.102 Calculation of inflation adjustment for certain maximum lawful prices.

* * * * *

(c) *Inflation adjustment.* The following table contains the inflation adjustment applicable for each month beginning with May 1977, and ending with April 1979:

Table III - Inflation adjustment.

Month of Delivery	Factor by which price in preceding month is multiplied
1977	
May	1.00636
June	1.00636
July	1.00431
August	1.00431
September	1.00431
October	1.00463
November	1.00463
December	1.00463
1978	
January	1.00597
February	1.00597
March	1.00597
April	1.00889
May	1.00889
June	1.00889
July	1.00581
August	1.00581
September	1.00581
October	1.00581
November	1.00581
December	1.00581
1979	
January	1.00581
February	1.00667
March	1.00667
April	1.00667

4. Section 271.202 is amended to read as follows:

§ 271.202 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$2.078
January 1979	2.096
February 1979	2.116
March 1979	2.136
April 1979	2.156

5. Section 271.302 is amended to read as follows:

§ 271.302 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$1.969
January 1979	1.980
February 1979	1.993
March 1979	2.006
April 1979	2.019

6. Section 271.402 is amended in paragraph (a) to read as follows:

§ 271.402 Maximum lawful prices.

(a) *Ceiling prices.* Unless a different rate is applicable under paragraph (c) of the section, the maximum lawful price for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

NGPA Section	Category of Natural Gas	Type of Sale or Contract	Maximum Lawful Price per MMBtu for Deliveries Made in: Dec. 1978	Jan. 1979	Feb. 1979	Mar. 1979	Apr. 1979
104	Post-1974 gas	All producers	$1.630	$1.639	$1.650	$1.661	$1.672
	1973-1974 Biennium gas	Small producer	1.379	1.387	1.396	1.405	1.414
		Large producer	1.058	1.064	1.071	1.078	1.085
106(a)	Interstate Rollover gas	Small producer	0.702	0.715	0.715	0.715	0.715
		Large producer	0.603	0.607	0.611	0.615	0.619
104	Replacement contract gas or re-completion gas	Small producer	0.771	0.775	0.780	0.785	0.790
		Large producer	0.593	0.596	0.600	0.604	0.608
	Flowing gas	Small producer	0.393	0.395	0.398	0.401	0.404
		Large producer	0.332	0.334	0.336	0.338	0.340
	Certain Permian Basin gas	Small producer	0.462	0.465	0.468	0.471	0.474
		Large producer	0.405	0.407	0.410	0.413	0.416
	Certain Rocky Mountain gas	Small producer	0.462	0.465	0.468	0.471	0.474
		Large producer	0.393	0.395	0.398	0.401	0.404
	Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	0.368	0.370	0.372	0.374	0.376
		Other Contracts	0.344	0.346	0.348	0.350	0.352

§ 271.402 [Amended]

7. Section 271.402 is amended in the last line of paragraph (b)(9) by striking out "(a)" and inserting in lieu thereof, "(c)".

8. Section 271.402 is amended in paragraph (c)(1) by deleting "2.56(h)", and inserting in lieu thereof, "2.56b(h)"; in paragraph (c)(2) by deleting "(d)(1)", and inserting in lieu thereof, "(c)(1)" and in paragraph (c)(3) by deleting "(d)(1), or (d)(2)", and inserting in lieu thereof, "(c)(1), or (c)(2)".

9. Section 271.402 is amended in paragraph (c) by adding a new subparagraph (4) to read as follows:

§ 271.402 Maximum lawful prices.

* * * * *

(c) *Applicable higher rates.* * * *

(4) Notwithstanding § 270.101(b), the minimum rate for minimum rate gas (at 14.73 psia and 60°F) is the amount determined in the following table:

If delivery occurs in the calendar month of:	*The rate per Mcf for minimum rate gas is:*
December 1978	$0.203
January 1979	0.204
February 1979	0.205
March 1979	0.206
April 1979	0.207

10. Section 271.602 is amended to read as follows:

§ 271.602 Maximum lawful price.

(a) The maximum lawful price for a first sale of natural gas under an intrastate roll-over contract to which section 106(b)(1) of the NGPA applies shall be the higher of:

(1) (i) The maximum lawful price paid under the expired contract, per MMBtu, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) In the case of any month thereafter, the maximum lawful price, per MMBtu, prescribed under this paragraph for the preceding month adjusted for inflation in accordance with § 271.102; or

(2) The amount determined under the following table:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$1.121
January 1979	1.128
February 1979	1.136
March 1979	1.144
April 1979	1.152

(b) The maximum lawful price, per MMBtu, for natural gas to which section 106(b)(2) of the NGPA (relating to certain State or Indian natural gas production interests) applies shall be the amount determined in accordance with the following table in lieu of the amount determined under the table under paragraph (a)(2) of this section:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$2.078
January 1979	2.096
February 1979	2.116
March 1979	2.136
April 1979	2.156

11. Section 271.702 is amended to read as follows:

§ 271.702 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$2.078
January 1979	2.096
February 1979	2.116
March 1979	2.136
April 1979	2.156

12. Section 271.802 is amended to read as follows:

§ 271.802 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$2.224
January 1979	2.243
February 1979	2.264
March 1979	2.285
April 1979	2.306

13. Section 271.902 is amended to read as follows:

§ 271.902 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$1.630
January 1979	1.639
February 1979	1.650
March 1979	1.661
April 1979	1.672

PART 273—COLLECTION AUTHORITY; REFUNDS

14. Section 273.201(a)(1) is amended to read as follows:

§ 273.201 Transitional rule for certain new wells.

(a) *General rule.* (1) The price determined under the following table may be charged and collected for any first sale of natural gas from a new well to which this section applies:

If delivery occurs in the calendar month of:	*The maximum lawful price is:*
December 1978	$1.630
January 1979	1.639
February 1979	1.650
March 1979	1.661
April 1979	1.672

[FR Doc. 79-3097 Filed 1-29-79; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 78N-0341]

ANTIBIOTIC DRUGS

Combination Otic Solutions and Suspensions

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document revokes the provisions for certification or release of certain combination otic solutions and suspensions. The products are regarded as lacking substantial evidence of effectiveness.

DATES: Effective Monday, March 12, 1979; objections and requests for hearing by March 1, 1979.

ADDRESS: Objections and requests for hearing to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

William R. Durbin, Jr., Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER notices cited below, the Food and Drug Administration (FDA) classified certain combination otic solutions and suspensions as possibly effective or lacking substantial evidence of effectiveness for their labeled indications.

In accordance with provisions in a notice published in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623), the products were allowed to remain on the market based upon medically justified need, pending reevaluation of the published classification or completion of scientific studies to determine their effectiveness under the Drug Efficacy Study Implementation (DESI) program.

One sponsor, Burroughs Wellcome & Co., Inc., submitted testimonial letters concerning Aerosporin Otic Solution and Lidosporin Otic Solution. The

submissions provided no evidence that adequate and well-controlled studies, as required by §§ 300.50 and 314.111(a)(5)(ii) (21 CFR 300.50 and 314.111(a)(5)(ii)), had been conducted. Isolated case reports, random experience, and reports lacking the details that permit scientific evaluation cannot be considered (see § 314.111(a)(5)(ii)(c)). The submissions therefore did not support the efficacy of the firm's products.

Because no other person has submitted data or protocols or has conducted additional clinical studies on the drug products described below, the drugs are now reclassified as lacking substantial evidence of effectiveness. The temporary exemption granted by the December 14, 1972 notice, as it pertains to these drugs, is revoked in a notice appearing elsewhere in this issue of the FEDERAL REGISTER.

All of these products are antibiotic drugs subject to the provisions of section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357). If a certification regulation exists for a product listed below, the applicable regulation is cited. Products without a regulation citation have been released pending a final determination as to their effectiveness.

1. DESI 8426, published October 23, 1971 (36 FR 20546):

New Drug Application (NDA) 60-756; Aerosporin Otic Solution containing polymyxin B sulfate, acetic acid, and propylene glycol; Burroughs Wellcome & Co., Inc., 3030 Cornwallis Rd., Research Tringle Park, NC 27709 (21 CFR 448.430).

2. DESI 8674, published June 29, 1972 (37 FR 12855):

NDA 50-208; Neomycin-Polymyxin Otic with Hydrocortisone and Diperodon containing neomycin sulfate, polymyxin B sulfate, hydrocortisone, and diperodon hydrochloride; Kasco Laboratories, Inc., Cantiague Rd., Hicksville, NY 11802.

NDA 50-224; Neo-Polycin Otic Suspension containing neomycin sulfate, polymyxin B sulfate, and dyclonine hydrochloride; Dow Pharmaceuticals, Division Dow Chemical Co., P.O. Box 68511, Indianapolis, IN 46268.

NDA 50-225; Neo-Polycin HC Otic Suspension containing neomycin sulfate, polymyxin B sulfate, dyclonine hydrochloride, and hydrocortisone acetate; Dow Pharmaceuticals.

NDA 60-080; Auracort Otic Solution containing neomycin sulfate, polymyxin B sulfate, pramoxine hydrochloride, and hydrocortisone; Philips Roxane Laboratories, Division of Philips Roxane, Inc., 330 Oak St., P.O. Box 1738, Columbus, OH 43216.

NDA's 60-787, 61-669; Bro-Parin Sterile Otic Suspension containing polymyxin B sulfate, neomycin sulfate, sodium heparin, and hydrocortisone; Riker Laboratories, Inc., Subsidiary 3M Co., 19901 Nordhoff St., Northridge, CA 91324 (21 CFR 444.442c).

NDA 60-927; Florotic Otic Suspension containing nystatin, neomycin sulfate, polymyxin B sulfate, and fludrocortisone acetate; E.R. Squibb & Sons, Inc., P.O. Box 400, Princeton, NJ 08540 (21 CFR 449.450).

3. DESI 50171, published August 19, 1971 (36 FR 16129):

NDA 50-171; Lidosporin Otic Solution containing polymyxin B sulfate, lidocaine hydrochloride, and propylene glycol; Burroughs Wellcome & Co., Inc.

4. DESI 50205, published August 19, 1971 (36 FR 16130):

NDA 50-205; that part pertaining to Chloromycetin Otic containing chloramphenicol and benzocaine; Parke, Davis & Co., GPO Box 118, Joseph Campau at the River, Detroit, MI 48232 (21 CFR 455.410).

5. Two other products, not reviewed by the National Academy of Sciences-National Research Council, are identical or similar to a product named above and have been released pending a final efficacy determination. These drugs are also considered lacking substantial evidence of effectiveness for their labeled indications and are affected by this notice:

a. Otoreid-HC (NDA-60-688), containing neomycin sulfate, polymyxin B sulfate, diperodon, and hydrocortisone, Reid-Provident Laboratories, Inc., 25 Fifth St. NW., Atlanta, GA 30308; and

b. Otocort (NDA 60-730), containing neomycin sulfate, polymyxin B sulfate, hydrocortisone, and dibucaine hydrochloride, Lemmon Pharmacal Co., P.O. Box 30, Sellersville, PA 18960.

The combination of neomycin-polymyxin (neomycin sulfate and polymyxin B sulfate), which also was named in the December 14, 1972 notice, has never been approved for marketing.

In addition to the drugs named above, some of the DESI notices applied to other preparations not included in this notice. They have been either reclassified as effective or withdrawn from the market.

Accordingly, the Director of the Bureau of Drugs concludes that (1) the antibiotic drug regulations should be amended to revoke provisions for certification of all of the above named drugs that are covered by a certification regulation and (2) no certification regulation should be issued for any product named above or for any identical, similar, or related product, as defined in § 310.6 (21 CFR 310.6), that, in the absence of a certification regulation, has been released pending a final effectiveness determination. The products are no longer eligible for release.

In a continuing effort to maintain regulations that are current, the provisions for certifying chloramphenicol topical are being revoked because no requests for certification of that product have been received.

The Director has determined that this document does not contain an agency action covered by 21 CFR 25.1(b); therefore, consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-1051 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 357)) and under authority delegated to the Commissioner (21 CFR 5.1 and redelegated to the Director of the Bureau of Drugs (21 CFR 5.78), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

§ 444.442c [Revoked]

1. In Part 444 by revoking § 444.442c *Neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension; neomycin sulfate-polymyxin B sulfate-hydrocortisone-sodium heparin otic suspension* and marking it "Reserved."

PART 448—PEPTIDE ANTIBIOTIC DRUGS

2. In Part 448 by revising § 448.430 to read as follows:

§ 448.430 Polymyxin B sulfate-hydrocortisone otic solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Polymyxin B sulfate-hydrocortisone otic solution contains in each milliliter 10,000 units of polymyxin B and 5 milligrams of hydrocortisone in a suitable and harmless vehicle. Its polymyxin B sulfate content is satisfactory if it contains not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. It is sterile. Its pH is not less than 5.0 and not more than 7.0. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1), except safety.

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

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

(i) Results of tests and assays on—

(*a*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, and identity; and

(*b*) The batch for potency, sterility, and pH.

(ii) Samples required:

(*a*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 5 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the

sample for assay as follows: Dilute an accurately measured representative portion of the sample (usually 1.0 milliliter) with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except if the steroid prevents solubilization, use 0.25 milliliter of the sample in lieu of 1 milliliter and proceed as directed in paragraph (e)(2) of that section.

(3) *pH.* Proceed as directed in § 436.202 of this chapter using the undiluted solution.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

§ 449.450 [Revoked]

3. In Part 449 by revoking § 449.450 *Nystatin-neomycin sulfate-polymyxin B sulfate-fludrocortisone acetate for otic solution* and marking Subpart E "Reserved."

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

4. Part 455 is amended:

a. By revising § 455.410 to read as follows:

§ 455.410 Chloramphenicol otic.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol otic is a solution of chloramphenicol in a suitable and harmless vehicle. Each milliliter contains 5.0 milligrams of chloramphenicol. Its potency is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. Its moisture content is not more than 2 percent. Its pH is not less than 4 and not more than 8. The chloramphenicol used conforms to the standards prescribed by § 455.10(a)(1), except safety.

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

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

(i) Results of tests and asays on—

(*a*) The chloramphenicol used in making the batch for potency, pH, specific rotation, melting range, absorptivity, and crystallinity; and

(*b*) The batch for potency, sterility, moisture, and pH.

(ii) Samples required:

(*a*) The chloramphenicol used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 20 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative portion of the sample with sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

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

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the sample diluted with an equal volume of distilled water.

§ 455.510b [Reserved]

b. By revoking § 455.510b *Chloramphenicol otic; chloramphenicol topical* and marking it "Reserved."

Any person who will be adversely affected by this order may file objections to it, request a hearing, and show reasonable grounds for the hearing. It is the responsibility of every manufacturer or distributor of an antibiotic drug product to review every antibiotic order published in the FEDERAL REGISTER to determine whether it covers any product that the person manufactures or distributes.

Any person who decides to seek a hearing must file (1) on or before March 1, 1979, a written notice of appearance and request for hearing, and (2) on or before April 2, 1979, the data, information, and analyses on which the person relies to justify a hearing, as specified in § 430.20 (21 CFR 430.20). Any other interested person may submit comments on this order. The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions and denying a hearing.

All submissions under this order must be filed in five copies, identifying the Docket Number appearing in the heading of this order, with the Hearing Clerk, Food and Drug Administration (HFA-305), Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This order will become effective Monday, March 12, 1979. If objections are filed, the effective date will be extended as necessary to rule on them.

(Secs. 502, 507, 52 Stat. 1050-1051 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 357).)

In accordance with Executive Order 12044, the economic effects of this rule have been carefully analyzed, and it has been determined that the rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: January 19, 1979.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 79-2897 Filed 1-29-79; 8:45 am]

[4110-03-M]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 510—NEW ANIMAL DRUGS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) amends the regu-

lations to reflect approval of a new animal drug application (NADA) filed by Critic Mills, Inc., providing for the use of a 2-gram-per-pound tylosin premix for making complete swine feeds, and to add Critic Mills, Inc., to the list of approved NADA sponsors.

EFFECTIVE DATE: January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Critic Mills, Inc., Beardstown, IL 62618, filed an NADA (116-041V) providing for the safe and effective use of a premix containing 2 grams of tylosin (as tylosin phosphate) per pound for making complete swine feeds used to increase rate of weight gain and to improve feed efficiency. Approval of this application relies upon safety and effectiveness data contained in Elanco Product Co.'s approved NADA 12-491V. This approval does not constitute reaffirmation of the referenced NADA, nor does it constitute reaffirmation of the drug's safety and effectiveness. In addition, Critic Mills, Inc., has not previously been included in the regulations under the list of approved sponsors. The regulations are amended to include this firm.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 558 are amended as follows:

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and code number of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug listing No.
* * * * *	
Critic Mills, Inc., Beardstown, IL 62618...	023055
* * * * *	

(2) * * *

Drug listing No.	Firm name and address
* * * * *	
023055....	Critic Mills, Inc., Beardstown, IL 62618.
* * * * *	

2. In Part 558, § 558.625 is amended by adding new paragraph (b)(59) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(59) To 023055: 2 grams per pound; paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. This regulation is effective January 30, 1979.

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

Dated: January 22, 1979.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 79-3028 Filed 1-29-79; 8:45 am]

[4110-03-M]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) amends the regulations to reflect approval of a supplemental new animal drug application (NADA) filed for J. C. Feed Mills, providing for the use of a 10-gram-per-pound tylosin premix for making complete swine feeds.

EFFECTIVE DATE: January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: J. C. Feed Mills, Inc., 1050 Sheffield, P.O. Box 224, Waterloo, IA 50704, is the sponsor of an NADA (98-429V) previously approved for safe and effective use of a 2-gram-per-pound tylosin premix (tylosin as tylosin phosphate) and now additionally approved for safe and effective use of a 10-gram-per-pound tylosin premix. The premix is used to manufacture a complete swine feed, indicated for increased rate of weight gain and improved feed efficiency. Approval of this application relies upon safety and effectiveness data contained in Elanco Products Co.'s approved NADA 12-491V. This approval does not constitute reaffirmation of the referenced NADA or of the drug's safety and effectiveness. The regulations are amended to reflect this approval.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(35) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(35) To 039741: 2 and 10 grams per pound, paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective Date. This regulation is effective January 30, 1979.

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

Dated: January 22, 1979.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 79-3029 Filed 1-29-79; 8:45 am]

[1505-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7571]

PART 54—PENSION EXCISE TAX REGULATIONS

Employee Stock Ownership Plans

Correction

In FR Doc. 78-32151 appearing at page 53718 in the issue for Friday, November 17, 1978, in the first column of page 53719, in the 7th line of paragraph (iii) of § 54.4975-11(a)(3), the reference to "* * * § 54.4975(b) (10), (11), and (12) * * *" should have been "* * * § 54.4975-7 (b) (10), (11), and (12) * * *".

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY

SUBCHAPTER F—TRANSPORTATION

[DoD Directive 3005.7] [1]

PART 177—EMERGENCY REQUIREMENTS, ALLOCATIONS, PRIORITIES, AND PERMITS FOR DOD USE OF DOMESTIC CIVIL TRANSPORTATION

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Final Rule.

SUMMARY: This rule updates and expands DoD policy on emergency requirements, allocations, priorities, and permits for DoD use of domestic civil transportation covering both peacetime emergency planning and transportation operations during periods of national emergency. This revised rule clarifies assigned responsibilities of DoD components and delineates the interaction between the Departments of Defense and Transportation.

EFFECTIVE DATE: July 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Arden R. Loyd, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), Washington, D.C. 20301, Telephone 202-697-1903.

SUPPLEMENTARY INFORMATION: This revision supersedes the rule appearing in FR Document 68-10521 (33 FR 12314), August 31, 1968.

Accordingly, 32 CFR Chapter I is amended by a revision of part 177, reading as follows:

PART 177—EMERGENCY REQUIREMENTS, ALLOCATIONS, PRIORITIES, AND PERMITS FOR DOD USE OF DOMESTIC CIVIL TRANSPORTATION

Sec.
177.1 Purpose.
177.2 Applicability and Scope.
177.3 Concept.
177.4 Policy.
177.5 Responsibilities.

AUTHORITY: The provisions of this Part are issued under 5 U.S.C. 301.

§ 177.1 Purpose.

This Part is reissued to update Department of Defense (DoD) policy and guidance concerning emergency requirements, allocations, priorities and permits governing DoD use of civil transportation within the continental United States (CONUS) except that (a) provided by the Civil Reserve Air Fleet (CRAF); (b) involving the Defense Civil Preparedness Agency; and (c) related to civil works projects performed by the Corps of Engineers.

§ 177.2 Applicability and scope.

(a) The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Its provisions cover peacetime emergency planning as well as transportation operations during periods of national emergency.

§ 177.3 Concept.

The Department of Transportation (DoT) provides national emergency civil transportation policies, plans, and procedures. The Department of Defense receives emergency guidance on the use of civil transportation from the (a) Secretary of Transportation, in time of national emergency, and (b) Department of Transportation Emergency Organization (DoT EO) Regional Offices, in case of regional isolation.

§ 177.4 Policy.

(a) DoD transportation plans for and operations during national emergencies will (1) conform to national policies and guidance; and (2) be carried out by DoD organizational elements rather than by a new organizational structure created specifically for that purpose. Actual operations under the provisions of this Part will be effected in the event of an emergency.

(b) Control of transportation and traffic management by the Department of Defense will remain at the national level (see § 177.5(a)), unless conditions of isolation require independent regional action. In this case, regional authorities will assume the responsibility detailed in §177.5(b), and will act in conformance with approved plans implementing this Part.

§ 177.5 Responsibilities.

(a) *National Control.*

(1) *The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L))*, will:

(i) Establish in conjunction with the Assistant Secretary of Defense (Program Analysis and Evaluation) priorities within the Department of Defense to conform with national program priorities. These priorities will be coordinated with the Joint Chiefs of Staff (JCS).

(ii) Analyze and validate DoD short-term requirements for civil transportation received from the JCS, and ensure the coordination of the ASD(PA&E) on those requirements affecting DoD strategic mobility.

(iii) Submit requests for civil transportation, and receive alloted capability from the DoT.

(iv) Transmit allocation of civil transportation capability to the JCS, together with guidance on procurement and related comments, and ensure coordination with the ASD(PA&E).

(2) *The Assistant Secretary of Defense (Program Analysis and Evaluation)* will:

(i) Analyze, validate, and submit long-term requirements for civil transportation to the ASD(MRA&L) for subsequent submission to the DoT.

(ii) Coordinate with the DoT and the DoD Components concerned to determine data requirements and develop methods of analysis to accurately project DoD long-term civil transportation requirements.

(3) *The Joint Chiefs of Staff* will (i) review DoD transportation requirements (as submitted by the other DoD Components through the Military Traffic Management Command (MTMC)), and (ii) forward them with appropriate recommendation to the ASD(MRA&L) or ASD(PA&E), as appropriate. Upon receipt of allocations from the ASD(MRA&L), the JCS will determine the relative urgency of the requirements submitted by the DoD Components and suballocate among them in accordance with such determinations.

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

(4) *The Military Departments and other DoD Components* will:

(i) Develop and submit to the MTMC their requirements for all CONUS movements to be accomplished by civil transportation resources.

(ii) Prescribe their priorities of movement within guidance provided by the ASD(MRA&L) in coordination with the JCS.

(5) *The MTMC* will:

(i) In accordance with DoD Directive 5160.53,[1] "Single Manager Assignment for Military Traffic, Land, Transportation, and Common-User Ocean Terminals," March 24, 1967, manage the movement of passengers and cargo, consistent with established national and DoD Component movement priorities.

(ii) Consolidate, collate, and evaluate requirements from a traffic management standpoint and submit the consolidated transportation requirements with analyses indicating shortages of capability and recommended action to the JCS. After suballocation to the DoD Components by the JCS, MTMC will manage the movement of passengers and cargo in conformance with established allocations and movement priorities in coordination with the DoD Components.

(iii) Administer permits when required for the movement of passengers and cargo, in accordance with national policies and guidance.

(b) *Regional Isolation.* In the event of regional isolation during a national emergency:

(1) *Regional Representatives of DoD Components* will develop and submit their transportation requirements to the MTMC area commander, together with information as to the relative urgency of movement. If communication is not possible with the area commander, such transportation requirements will be submitted direct to the DoD Regional Military Emergency Coordinator at the Regional Preparedness Committee/Regional Resources Advisory Board (RPC/RRAB). The locations and geographical areas of responsibility for these regions are identified in enclosures (3) and (4) of DoD Directive 5030.45,[1] "Department of Defense Representation on Office of Preparedness (OP), GSA, Regional Preparedness Committee," December 14, 1973.

(2) *The MTMC area commanders* will:

(i) Consolidate, collate and evaluate requirements from a traffic management standpoint and submit such requirements, with a request for allocation, to the DoT EO Regional Office.

(ii) Manage the movement of passengers and cargo in accordance with established allocations and DoD Component movement priorities.

(iii) Inform the DoD Regional Military Emergency Coordinator of any deficit in allocations to meet requirements.

(3) *The DoD Regional Military Emergency Coordinator,* as principal DoD representative to the Federal Preparedness Agency Regional Preparedness Committee (or Office of Defense Resources Regional Resources Advisory Board) (DoD Directive 5030.45,[1]) will establish relative priorities of movement for DoD traffic and resolve matters of major policy impact, as required.

(c) *Preallocations.* General responsibilities for the preallocation of civil transport capability are the same as those responsibilities defined for national control in subsection § 177.5(a). A Memorandum of Understanding between the Departments of Defense and Transportation concerning the Defense Emergency Prestocked Bulk Fuel Distribution Plan, provides for preallocation of civil motor carrier tractor-tank trailer capability to support the plan. Specific responsibilities for preallocations to support this plan are defined as follows:

(1) The ASD(MRA&L) will serve as the primary DoD point of contact with the DoT on all matters relating to military requirements and policy coordination.

(2) The Commander, MTMC, will maintain direct liaison with DoT on allocation matters.

(3) The Commander, Defense Fuel Supply Center (DFSC), will:

(i) Maintain the plan; develop and submit requirements through the Defense Logistics Agency (DLA) for civil motor carrier tractor-tank trailer capability to support the plan.

(ii) Release civil carriers tractor-trailer after completing required workload.

(iii) Maintain direct liaison with participating carriers in matters relating to mission planning, control, and operational agreement.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

JANUARY 25, 1979.

[FR Doc. 79-3037 Filed 1-29-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 1047-8; PP 7E1996/R194]

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

Aldicarb

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide aldicarb on pecans. The regulation was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of aldicarb on pecans.

EFFECTIVE DATE: Effective on January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC (202/755-4851).

SUPPLEMENTARY INFORMATION: On December 8, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 57623) in response to a pesticide petition (PP 7E1996) submitted to the Agency by the Interregional Research project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Alabama, Georgia, Mississippi, and South Carolina. This petition proposed that 40 CFR 180.269 be amended by the establishment of a tolerance for combined residues of the insecticide aldicarb (2-methyl - 2 - (methylthio)propionaldehyde *O*-methylcarbamoyl)oxime) and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl)propionaldehyde *O*-(methylcarbamoyl)oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl)oxime in or on the raw agricultural commodity pecans at 0.5 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.269 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before March 1, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St., SW, Washington, DC 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on January 30, 1979, Part 180, Subpart C, § 180.269 is amended by adding a tolerance for residues of aldicarb on pecans at 0.5 ppm as set forth below.

Dated January 25, 1979.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart C, § 180.269 is amended by alphabetically inserting pecans at 0.5 ppm in the table to read as follows:

§ 180.269 Aldicarb; tolerances for residues.

* * * * *

Commodity:	*Parts Per million*
* * * * *	
Pecans	0.5
* * * * *	

[FR Doc. 79-3154 Filed 1-29-79; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 671—TANNER CRAB OFF ALASKA

Early Closure of Portion of Registration Area H (Cook Inlet) to Fishing by U.S. Vessels

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/Commerce.

ACTION: Final Regulation.

SUMMARY: The Director, Alaska Region ("Regional Director"), National Marine Fisheries Service (NMFS) issues a final regulation (Field Order) applicable to fishing by vessels of the United States in the Alaska Tanner crab fishery, in accordance with the fishery management plan (FMP) for Tanner Crab Off Alaska, and the regulations implementing this FMP (50 CFR 671.27(b) (see 43 FR 57419). This Field Order closes the Southern District of the Cook Inlet Registration Area to fishing for Tanner crab by vessels of the United States effective beginning at 11:59 P.M. Pacific Standard Time (PST) on January 26, 1979, rather than on April 30, 1979, as currently provided in 50 CFR 671.26(e)(2)(i). The closure remains in effect until November 1, 1979. Public comments are invited until March 29, 1979.

EFFECTIVE DATES: 11:59 P.M. Pacific Standard Time, January 26, 1979. Public comments are invited until March 29, 1979. Comments may be sent to: Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, Juneau, Alaska 99802, Telephone (907) 586-7221.

FOR FURTHER INFORMATION:

Contact Mr. Rietze at the above address.

SUPPLEMENTARY INFORMATION: The FMP for Tanner Crab off Alaska (43 FR 21170) provides for in-season adjustments to season and area openings and closures. The FMP's implementing regulations at 50 CFR Part 671 (43 FR 57149) specify in § 671.27(b) that these decisions shall be made by the Regional Director in accordance with the criteria set out in that section. On October 20, 1978, the Assistant Administrator of Fisheries, NOAA, with the approval of the Administrator, NOAA, delegated to the Regional Director authority to promulgate Field Orders making in-season adjustments.

50 CFR 671.26(e) creates six districts within Registration Area H (Cook Inlet). The districts were created, in part, to prevent overfishing of individual Tanner crab stocks by allowing closure of a particular district when the desired harvest level in that district is reached. The FMP states that there are "three Tanner crab stock units within the Cook Inlet area that are separated geographically". One of these stock units is the Southern, or Kachemak Bay, stock. 50 CFR 671.26(e)(2)(i) currently provides that the season for harvest of Tanner crab by vessels of the United States is December 1 through April 30 in the Southern District "subject to adjustment by the Regional Director pursuant to 671.27." While the overall optimum yield (OY) of 5.3 million pounds for Registration Area H has not yet been reached, the State of Alaska's 1978 Tanner crab index survey indicates that there are 2.4 to 2.5 million pounds of legal male Tanner crab available for harvest in the Southern District. Current catch rate information indicates that that amount of Tanner crab will be harvested by approximately January 27, 1979, earlier than anticipated when 50 CFR 671.26(e)(2)(i) was implemented. In order to prevent overfishing of the Tanner crab stocks in the Southern district of Registration Area H, the Regional Director has determined, in accordance with 50 CFR 671.26(b) and Department Administrative Order 218-7 (43 FR 2083), and following consultation with the Commissioner, Alaska Department of Fish and Game, that an emergency exists and that the Southern District of the Cook Inlet Registration Area should be closed at 11:59 P.M. PST on January 26, 1979 rather than on April 30, 1979.

The Regional Director further finds that, in order to protect the resource, public comment prior to issuance of this Field Order is impracticable and contrary to the public interest. However, public comments on the necessity for, and extent of, this closure will be received by the Regional Director for a period of 60-days after the effective date of the Field Order. (Address: Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802). During this 60 day period, the data and information upon which this decision is based will be available for inspection during business hours at the NMFS, Alaska Regional Office, Federal Building, Room 453, 709 West 9th Street, Juneau, Alaska.

If comments are received during the 60 day period or before the 60-day period expires, if appropriate, the Regional Director shall reconsider the necessity for the closure and, as soon as practicable after that reconsideration, shall publish in the FEDERAL REGISTER either:

(A) A notice of continued effectiveness of the closure; or

(B) A notice to modify or rescind the closure.

An environmental impact statement was prepared for the Tanner Crab off Alaska FMP and is on file with the Environmental Protection Agency.

Signed at Washington, D.C., this the 25th day of January 1979.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

In accordance with 50 CFR 671.27(h), 50 CFR 671.26(e)(2)(i) is amended by *deleting* "April 30" and *substituting* "January 26."

[FR Doc. 79-3085 Filed 1-25-79; 1:46 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1079]

[Docket No. AO-295-A33]

MILK IN THE IOWA MARKETING AREA

Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the present order provisions based on industry proposals considered at a public hearing held September 20-21, 1978. The recommended amendments would modify the definition of a "handler" and revise the basis for pooling distributing plants and supply plants. The proposed changes are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

DATE: Comments are due on or before February 20, 1979.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing: Issued September 5, 1978, published September 8, 1978 (43 FR 40028).

PRELIMINARY STATEMENT

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Iowa marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, on or before 20 days after FEDERAL REGISTER publication. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing conducted at Urbandale, Iowa, on September 20-21, 1978. Notice of such hearing was issued September 5, 1978 (43 FR 40028).

The material issues on the record of the hearing relate to:

1. Unite pooling of distributing plants.
2. Definition of a pool supply plant.
(a) Shipping percentages.
(b) Unit pooling.
3. Handler definition.
4. Producer definition.
5. Plant location adjustments.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Unit pooling of distributing plants.* The pool distributing plant definition should be changed to provide that a handler who operates two or more distributing plants may combine the plants into a unit for the purpose of meeting the pooling standards of the order.

The order now bases a distributing plant's pooling status on the proportion of its milk receipts that is disposed of as Class I route disposition and the percentage of such receipts that is disposed of in the marketing area.

A cooperative association proposed that unit pooling for distributing plants be provided by the order. Under the proposal, the receipts and dispositions, respectively, of each plant in the unit would be combined to determine wheter the unit as a whole meets the total route disposition requirement for a pool distributing plant. However, each plant in the unit would be required to have 15 percent of its receipts disposed of as route disposition in the marketing area, which is the in-area percentage presently provided by the order. The cooperative proposed that a handler who wants to pool distributing plants on a unit basis should notify the market administrator in writing prior to the first month of unit pooling.

The order changes adopted herein are basically the same as the proponent's proposal.

Proponent operates four distributing plants in the Iowa market at Rock Island, Illinois and at Cedar Rapids, Dubuque, and Waterloo, Iowa. It is the only multi-distributing plant operation in the market.

The normal practice of proponent is to dispatch milk from the farms of its members to the nearest distributing plant. In this way, given loads of milk are assigned to a specific plant for a month. By following this procedure, producers' milk is handled with a minimum of transportation cost.

However, the fluid milk needs of distributing plants can fluctuate substantially within a week, and the objective of assigning milk, as indicated, is not always achieved. A given load of milk may be reassigned to three or more plants during a month to assure that the pooling requirements of the individual plants are met.

The allocation of milk supplies among the distributing plants also is affected by the manufacture of Class II products at the distributing plants, which can affect the proportion of the milk receipts at a distributing plant that is disposed of as route disposition.

The spokesman for proponent emphasized that there is no problem of pooling supplies of member milk on the market in total. He stated that a problem exists in the uneconomic movement of milk and wasted energy that results from moving milk among the four distributing plants to achieve the correct proportion of milk receipts to route disposition at each plant to maintain pool status. In addition, proponent claimed there is a substantial operating expense in tracking the movements of milk to assure the pooling of each distributing plant.

The shifting of loads of producers' milk among the plants of a multi-plant handler can accommodate the pooling of producer milk as it has done hereto-

fore. However, doing so adds to the cost of transporting the milk, increases the cost of recordkeeping, and adds to the cost of auditing the operation. While the practical benefit to producers is the pooling of the milk, such objective can be accommodated more efficiently by the adoption of the proposal to provide unit pooling for distributing plants.

Under the unit pooling provisions provided herein, proponent's four distributing plants could be pooled as a unit, thereby eliminating the inefficient practice of moving milk among distributing plants for pooling purposes.

A further benefit of unit pooling, as indicated by proponent, is that the manufacture of Class II products could be done more efficiently by a multi-plant operator than has been the case. At present, a range of Class II products is processed and packaged at three of proponent's distributing plants. If the cooperative chose, for example, to concentrate the manufacture of cottage cheese at one of the plants, it is not likely under the present pooling standards that the plant could qualify for pooling. The unit pooling of distibuting plants, as provided herein, would provide the possibility for greater Class II product specialization at a single plant without depooling the plant.

To qualify for unit pooling, individual plants would still have to process and package fluid milk products and dispose of at least 15 percent of their receipts as route disposition in the marketing area. Also, a handler would need to notify the market administrator in writing on or before the first day of the month in which plants are to be considered as a unit of his desire for unit pooling. Unit pooling would be continued in each following month without further notification. If plants are to be added to the unit or dropped from it or if the unit is to be discontinued, the handler would need to notify the market administrator in writing on or before the first day of the month in which such change is to be effective.

2. *Definition of pool supply plant.* (a) *Shipping percentages.* The supply plant shipping percentages should not be increased. Instead, the Director of the Dairy Division should be authorized to increase or decrease the supply plant shipping percentages by up to 10 percentage points as needed to increase shipments to distributing plants for Class I use or to prevent uneconomic shipments for pooling purposes.

The order now provides, in part, that any plant shall be a pool supply plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which during the month the volume of bulk fluid milk products transferred to pool distributing plants during each of the months of September through November is 35 percent or more, and during each of the months of December through August is 20 percent or more, of the total Grade A milk received at the plant from dairy farmers and cooperative associations, including milk diverted from the plant by the plant operator.

A proprietary handler proposed that the shipping percentages be increased to 45 percent for each of the months of September through November, and to 30 percent for each of the remaining months. At the hearing, proponent modified the proposal to provide a shipping percentage of 50 percent for the months of September through November.

As an alternative, proponent proposed that the Director of the Dairy Division be authorized to increase the supply plant shipping percentages by up to 10 percentage points if he finds it necessary to obtain needed shipments. Under the proposal, the shipping percentages so increased could be decreased by the Director but only to the percentages now provided by the order. At the hearing, the handler modified the proposal to provide for a change of up to 15 percentage points during the months of September through November.

The proposal to increase the shipping percentages to a higher fixed level was opposed by another proprietary handler and by four cooperative associations. The alternative proposal was opposed by a proprietary handler and by two cooperative associations.

One cooperative modified the alternative proposal to provide that the Director of the Dairy Division, or the market administrator, be authorized to increase or decrease the shipping percentages from the present level by up to 15 percentage points if he finds such revision is necessary to obtain needed milk shipments for Class I use or to prevent unneeded shipments to distributing plants.

The spokesman for another cooperative said that the association would not oppose a provision to authorize the Director of the Dairy Division to change the shipping percentages temporarily if the change were limited to up to 10 percentage points. Also, any temporary increase in the supply plant shipping percentages should, in his view, be based on a need in the market for Class I milk.

Proponent operates a pool distributing plant at Des Moines, Iowa. About 80 percent of its utilization is Class I and about 20 percent Class II. The plant distributes fluid milk products mainly to stores, schools and other institutions. A minor part of its distribution is on home delivery routes.

Proponent is supplied primarily by four cooperatives, and the milk originates mainly in northeastern Iowa, which is the primary production area for the market. The milk is delivered direct from farms or through pumpover facilities which are not supply plants. The handler receives milk only from members of cooperative associations.

The handler claimed that he was experiencing severe shortages in the milk supply for his plant and that the shortages will be intensified rather than alleviated in the foreseeable future. He stated that the milk utilization data for the market indicate that there are adequate supplies of milk to supply his Class I needs. Nevertheless, he claimed, the reserve supply is not available to proprietary firms.

Proponent stated that nearly 66 percent of the Class I sales of the market are made by cooperative associations that operate pool distributing plants and supply plants. Also, he noted, the reserve supplies for the market are handled by the cooperatives. In these circumstances, proponent claimed, the Department has an obligation to provide order provisions that encourage cooperatives to supply milk to the limited number of proprietary firms on the market.

The handler stated that beginning in July 1978 his firm sought additional milk from some of his suppliers because Class I sales had increased and because one of the suppliers had cut back deliveries somewhat. Most of the suppliers who were asked to increase deliveries did so but not to the full extent desired by proponent. Proponent testified that as a result his plant ran short of milk on one day about a week prior to the hearing and had to cut back processing somewhat.

The proponent also testified that the proportion of milk used in Class I has declined since the Des Moines order was merged into the Iowa order effective May 1, 1977. It was pointed out that in April 1977 the Class I utilization in the Des Moines market was 42 percent, while the Class I utilization in April 1978 under the Iowa order was 38 percent. Proponent observed that the additional milk that has been pooled under the order is being used primarily for Class III use. Proponent claimed that, increasingly, cooperatives are unwilling to interrupt their manufacturing operations to supply milk for Class I use.

Also, proponent stated that the reduced blend prices under the Iowa order that have resulted from the additional milk supplies on the market have made adjoining markets more attractive to producers who traditionally had been affiliated on a direct-ship basis with the regulated markets in Iowa before the several markets were

merged under one order. Proponent introduced an exhibit into the record to show that the blend prices of the Iowa market had deteriorated over the past year relative to the Upper Midwest order.

Proponent believes that by increasing the supply plant shipping percentages additional milk will be made available to his pool distributing plant and to other proprietary distributing plants.

A proprietary handler opposed the proposals to increase the supply plant shipping percentages. The spokeswoman for the handler stated that increased shipping percentages would cause uneconomic movements of milk. She claimed that the pool supply plant operated by the handler would then be forced to haul milk solely for qualifying purposes.

A cooperative with a pool supply plant at Pine Island, Minnesota, opposed the proposal to increase the shipping percentages and the alternative proposal to authorize the Director of the Dairy Division to increase them on a temporary basis. The spokesman for the cooperative stated that higher shipping requirements would not make more milk available to Iowa pool distributing plants, as proponent claimed, but actually would cause milk to be disassociated with the market. He claimed that if the cooperative association were to ship milk from its supply plant to proponent's distributing plant as the milk is needed there, the probability is that a substantial proportion of it would be assigned to Class II. The witness indicated that the cooperative's supply plant cannot afford to ship milk to the market for Class II because the order provides for little if any transportation allowance on such shipments. This, coupled with the fact that the transportation rate provided by the order is low in relation to current transportation costs, means that the cooperative would incur a substantial transportation expense for shipments made from its supply plant. It was claimed that higher shipping requirements could result in increased costs to qualify the Pine Island supply plant for pooling, and that this would cause the cooperative to look to alternative markets, such as the Upper Midwest market where very nominal pooling requirements are provided.

The cooperative's spokesman stated further that proponent had asked for an additional supply of milk but that none had been available from the direct-delivered routes with which the association supplies Des Moines handlers. He noted that none of the direct-delivered milk of the cooperative is committed to manufacturing.

Another cooperative association that opposed the proposals introduced an exhibit which showed that suppliers of the Iowa market have supplied all of the Class I needs of the Iowa pool distributing plants. It was the witness' view that this indicates that there is an adequate supply of milk for pool distributing plants.

He reiterated the view of a previous witness that there is no economic incentive to ship milk from a supply plant for Class II use. He testified further that spot shipments of milk normally cost more than milk supplies that are acquired on a regular basis. He attributed proponent's alleged supply problem to proponent's method of operation and to his reluctance to pay prices that are normally associated with erratic demand.

The issue for consideration is whether there is an actual or potential shortage of milk for Class I use at pool distributing plants that requires an increase in the supply plant shipping percentages. Such increase would require that a greater proportion of a supply plant's receipts be shipped to a pool distributing plant to qualify the supply plant for pooling than is now the case.

Data introduced into the record established that suppliers have consistently delivered more than the Class I needs of pool distributing plants. In this connection, the proponent acknowledged that he has had an adequate supply of milk for Class I. The apparent difficulty is that proponent requires a substantial quantity of milk for Class II. While he has obtained a sufficient supply of milk for his total operation (Class I and Class II), he has had to buy some of it from his regular suppliers on a spot basis, which normally is more expensive than a committed supply of milk.

The single, specific instance of a supposed shortage of milk that proponent cited occurred on one day about a week before the hearing. He stated that he had to cut back somewhat on processing of Class II products because he did not have all the milk he needed. He later made up the lost volume on a subsequent day when milk was available.

What is significant is that proponent testified that his objective is to arrange for a basic supply of milk for a year and to make up any additional need that may occur by obtaining additional milk when the need arises. Apparently, on the single day that such additional milk was needed it was not available from suppliers, but was delivered subsequently. This demonstrates not a shortage of milk but rather the consequence of a particular method of operation.

When proponent requests a supply of milk from suppliers, whether it be a regular committed supply or a spot shipment, understandably, he wants it for his total operation, which is about 80 percent Class I and 20 percent Class II. Also, it is apparent from testimony in the record that proponent expects a milk supply for Class II use to be delivered to his plant without any charge for hauling.

The cooperatives from which proponent obtains his supply have not refused to supply him with milk. Only one has reduced deliveries, and proponent indicated that the reduction was minor. Actually, proponent's supplies have increased deliveries to him, but not in the full amount requested. What has occurred is that suppliers are reluctant to ship milk to proponent from supply plants because in doing so the shipments are likely to be allocated to Class II because of proponent's substantial Class II operation. This subjects the supply plant operator to costs he would not incur by manufacturing the milk himself. The order is structured, for economic reasons, to discourage the movement of milk from distant supply plants for Class II (or III) use.

Moreover, direct-ship milk supplies normally are committed in advance. Routes need to be assigned and deliveries scheduled if there is to be an orderly marketing of the milk. Proponent's method of operation, however, results in requests for milk as the need arises. This entails spot shipments of milk, which requires special handling arrangements that make the milk more expensive than supplies that are committed for regular delivery. Proponent has obtained such shipments from his regular suppliers. However, when he buys spot shipments from his regular suppliers, he objects to paying the prices asked because some of the suppliers also are his competitors.

Proponent claimed that he had made extraordinary efforts to acquire adequate supplies. This claim is not persuasive when considered in light of the fact that proponent has not sought a supply of milk from one of the cooperatives in the market that has a substantial portion of the market's reserve supply. Representatives of two cooperatives stated on the record that they were willing to supply milk to proponent for Class I use.

Proponent also claimed that the lower blend prices that have resulted since the merger of several orders in Iowa have made adjoining markets more attractive to producers who traditionally had been affiliated on a direct-ship basis with the individual markets. The record did not substantiate proponent's claim.

In this connection, the final decision of the Iowa order merger stated:

"The Order 63 (Quad Cities-Dubuque) and Order 79 (Des Moines) uniform prices were generally in close alignment with alternative market

uniform prices in common supply areas during 1975. But the Order 70 uniform price and the Order 78 weighted average uniform price have tended to be somewhat higher than the other uniform prices in the Iowa supply area. Consequently, at the outset of the merger of the orders, it can be expected that the uniform price under the Iowa order will be slightly higher than other order uniform prices in the supply area. This will tend to attract additional milk to the pool and thus reduce the uniform price to where it is comparable to alternative market uniform prices." [1]

Statistics and testimony presented at the hearing indicated that additional milk has been attracted to the pool.

Proponent claimed further that the blend prices of the Iowa order have deteriorated over the past year in relation to the Upper Midwest order. Yet, no group of producers has switched from the Iowa order to the Upper Midwest order as one might expect under such conditions. In fact, the operator of a supply plant at Pine Island, Minnesota, which has the Upper Midwest order as an alternative market, has continued the plant's association with the Iowa order and opposes the adoption of provisions that might force the plant to go off the Iowa market.

It is significant that no other proprietary handler testified cercerning a present or potential milk shortage for Iowa pool distributing plants. One proprietary handler specifically denied that such shortage exists or is prospective and opposed proponent's proposal to increase the shipping percentages, or in the alternative, to provide for temporary changes in the percentages.

It must be concluded that neither the market as a whole nor proponent individually has experienced a shortage of milk for Class I use that warrants an increase in the shipping standards for supply plants. We cannot agree with proponent that the Department has an obligation when establishing the pooling provisions of an order to assure individual handlers of a total supply of milk for all uses. The test of order provisions is whether fluid milk distributors are being adequately supplied with milk for Class I use. This objective is being met for the Iowa market as a whole and for proponent individually.

For these reasons, the Iowa order should not be amended to increase, on a permanent basis, the supply plant shipping percentages.

The order should be amended, however, to provide that the Director of the Dairy Division may increase or decrease the supply plant shipping percentages by up to 10 percentage points when needed to increase shipments to distributing plants for Class I use or to prevent uneconomic shipments for pooling purposes. Before making any revision, the Director should investigate the need for revision, either on his own initiative or at the request of interested persons. If the investigation shows that a revision may be appropriate, the Director should issue a notice stating that a temporary revision of the shipping standards is being considered and inviting views of interested persons with respect to the proposed revision.

The record of this hearing suggests the possibility that unforeseen changes could occur in either milk production or in Class I sales that might justify an immediate but temporary change in the supply plant shipping percentages. Under the current order provisions, a change in the shipping percentages can be made only through the hearing process or by suspension.

Changes in the relationship of milk supplies to sales could occur if a supply plant with substantial milk receipts temporarily switched from the Iowa market to some other market. The situation might warrant a temporary increase in the Iowa order shipping percentages. In such case, neither the time-consuming hearing process nor a suspension action would be appropriate. The emergency might come and go before an order amendment could be made by the hearing process. A suspension action would be incapable of increasing shipping standards because such action can be used only to delete existing provisions temporarily. The limited modification of the shipping percentages by the Director of the Dairy Division, as provided herein, would permit such a change to be made. This limited variation of the shipping percentages would provide the adaptation to current conditions which the proponent and supporters of this alternative proposal desire.

One cooperative that opposed the alternative proposal did so on the basis that the hearing process is a better basis for changing the pooling provisions and is practical because marketing conditions do not change that rapidly.

The other cooperative that opposed the alternative proposal at the hearing did so on the basis that any increase in the shipping standards that might result would increase costs for the association in maintaining the pool status of its supply plant. In a post-hearing brief, however, the representative of the cooperative elaborated on its position after evaluating the testimony and evidence in the hearing record concerning the issue. In its brief, the cooperative opposed the alternative proposal on the grounds that: (1) It would put an undue burden of responsibility on the Director of the Dairy Division, (2) the proposal does not provide a means for the Director to make a determination, (3) the hearing process is a better method of deciding shipping requirements, and (4) it would add an unknown factor to the process of supplying milk to the market, thereby creating doubt and uncertainty. The cooperative was particularly concerned about the latter point. It stressed that handlers determine the need for milk supplies prior to the fall months and that cooperatives and supply plants use these determinations to decide on the markets to which they should attach their milk supplies. In the cooperative's view, prior knowledge of shipping requirements is essential to this decision-making process.

These are valid considerations. We cannot agree, however, that the provisions provided herein would put an undue burden of responsibility on the Director of the Dairy Division. Changes in the shipping standards would not be made without a careful review of the marketing conditions involved. In addition, industry and other views would be sought and carefully studied. These procedure should provide a good foundation for any temporary revision of shipping percentages for the Iowa market.

The provisions provided herein detail the steps by which the Director can make a determination concerning a temporary revison of the Iowa supply plant shipping percentages. This should meet one of the concerns expressed by the cooperative association.

We agree that the hearing process is the preferable method of considering changes in the shipping requirements, and this is the method that is followed in considering any amendment to a Federal milk order. It provides the ideal means of public participation in considering what the provisions of a milk order should be. Nevertheless, some flexibility is desirable to deal with possible emergency situations that cannot be resolved, in a timely way, by the hearing process or by suspension procedures.

As indicated, the cooperative emphasized that handlers determine the need for milk supplies prior to the fall months, and that cooperatives and supply plants use these determinations to decide on the markets to which they should attach milk supplies. In the cooperative's view, prior knowledge of shipping requirements is essential to this decision-making process. We cannot see that provisions for a temporary change in the shipping

[1] Official notice is taken of the Secretary's decision on proposed amendments to the Des Moines, Iowa, and certain other orders that was issued on March 16, 1977 (42 FR 15849-50).

percentages would interfere with the process in any significant way.

The provisions provided herein reflect the possibility that some unforeseen circumstance might alter the relationship of supplies to sales in such a way that a temporary increase in shipping percentages is necessary to associate adequate supplies of milk with the market for fluid use. Similarly, action might be needed to reduce the percentages temporarily to prevent uneconomic shipments solely for pooling. The provisions provided herein for temporary changes in the shipping percentages will provide a desirable degree of flexibility to augment the pooling provisions for supply plants.

The temporary revision provided herein is limited to a maximum change of 10 percentage points. The handler who proposed the provisions initially modified the proposal at the hearing to provide that the shipping percentage could be changed up to 15 percentage points in the months of September through November. However, no basis was presented for differentiating the provisions on a seasonal basis. An emergency situation could occur at any time of the year and could involve uneconomic shipments of milk as well as the need to have a larger proportion of a supply plant's receipts moved to distributing plants. The changes adopted herein should be appropriate in providing the flexibility that may be needed to assure the maintenance of orderly marketing on a continuing basis.

It is possible that a temporary reduction in the shipping percentage could result in the unintended pooling of a plant that is normally regulated under another order but which also makes shipments to the Iowa market. Unless the plant operator were able to make unforeseen adjustments in his shipping arrangements, it is possible that his normal level of shipments could result in the plant meeting the reduced Iowa shipping standards. This is not conducive to orderly marketing. For this reason, it is provided that no supply plant may qualify as a pool plant due to the temporary reduction in the shipping percentage unless it had been a pool supply plant during each of the immediately preceding 3 months. A supply plant not meeting the 3-month requirement could be pooled only by meeting the regular shipping percentages for the month.

(b) *Unit pooling.* The proposal to confine the unit pooling of supply plants to plants under the control of a single handler should not be adopted.

The order now provides that two or more supply plants operated by the same handler or by one or more cooperative associations may qualify for pooling as a unit if the unit meets the same shipping requirements that are applicable to a single plant.

The proprietary handler who proposed that the supply plan shipping percentages be increased also proposed this proposal as part of a "package" to make more milk available to the distributing plants of proprietary handlers. Proponent pointed out that the supply plant unit pooling provision is presently being used by the two larger cooperatives serving the market, with a plant of each cooperative being included in one unit. The handler testified that the unit pooling provisions should be restricted as proposed because, in his view, the present provisions are not operating as intended. He stated that the purpose of the present provisions was to allow single-plant cooperatives to operate as a unit for pooling purposes. He claimed that the provision is not being used by such cooperatives but by large multi-plant cooperatives. In proponent's view, requiring the plants in a unit to be owned by a single handler offers the potential that more milk would be made available to proprietary distributing plants.

The proposal was opposed by three cooperative associations on the ground that unit pooling represents an efficient method of supplying the market with milk. In the view of the cooperatives' spokesmen, unit pooling has been a successful innovation for the market.

The Iowa order provides year-round shipping requirements for supply plants that vary seasonally. In the fall and winter of 1977, shipments by the one supply plant unit in the market substantially exceeded the shipments that would have been required of single plants in the absence of the unit provision. During the flush production months of 1978, the shipments of one of the plants in the unit declined to about 10 percent of its receipts. If the unit had not been in operation, additional shipments would have been necessary to maintain the pool status of the plant. As it was, the second plant in the unit had sufficient shipments to qualify both plants. This means that a substantial quantity of milk was available to the market when needed, but that uneconomic movements of milk in the flush to qualify the plant singly were not required.

The purpose of the provision is to facilitate the pooling of milk that is associated with the market and to do so by eliminating energy-wasting shipments solely for pooling purposes. Although proponent stated that the purpose of the provision is to allow only single-plant cooperatives to operate as a unit for pooling purposes, this is not the case. Multi-plant cooperatives may have a valid need for using unit pooling and should be able to avail themselves of this pooling arrangement.

No evidence was presented from which it may be concluded that unit pooling of supply plants by two or more cooperatives threatens the availability of an adequate supply of milk for proprietary distributing plants. Proponent testified that in 1977 his firm had no difficulty obtaining all the milk needed for its operations, both Class I and Class II. Although proponent testified that he was having difficulty in 1978 in getting a sufficient supply of milk for his total operation, the record indicates that both the market and proponent are adequately supplied, presently and prospectively, with milk for Class I needs. There is no basis for concluding that the unit pooling provision will adversely affect the availability of an adequate supply of milk for fluid purposes in the Iowa marketing area. For these reasons, the proposal is denied.

The order should not be amended to allow a proprietary handler operating a supply plant to form a supply plant unit with one or more cooperatives. A proposal to do so was made by a trade association of proprietary plants. As originally proposed, the proposal also would have allowed unit pooling for a distributing plant and one or more supply plants. Proponent dropped this aspect of the proposal at the hearing.

The proposal was opposed by three cooperative associations supplying the Iowa market.

While the proposal was sponsored by a trade association of about 30 proprietary plants, only four of the plants are interested in being associated with the Iowa pool by means of the proposed order change. The four plants are in Grant County, Wisconsin, which is in the southwestern part of the State. The plants, which manufacture cheese, are now regulated by the Chicago Regional order.

The witness for proponent stated that in the Grant County area the Iowa blend price is about 20 cents higher than the Chicago blend price. He indicated that the four cheese plant operators experience strong competition from the Iowa market for milk supplies and that they must pay extra money from plant earnings to keep their producers. He stated that the cost of transporting milk from any of the four plants to Iowa distributing plants makes it economically impractical for the cheese plants to ship milk to such distributing plants.

The purpose of the proposal, as stated by proponent, is to enable the plants to associate with the Iowa market through unit pooling. In this way, he said, the plants could share in the Iowa Class I sales and obtain funds from the Iowa pool to pay their Grade A producers the Iowa blend

price. In proponent's view, this would enable the plants to retain their Grade A producers in competition with the Iowa market and thereby assure the plants of a continuing supply of milk for cheese manufacture. Proponent's spokesman stated that the plants would be willing to pay a qualifying charge to an Iowa cooperative and ship some Grade A milk (a minimum quantity) to the market for Class I use. He testified that when Grade A producers in the Grant County area associate themselves on a direct-ship basis with the Iowa market they incur transportation costs to get their milk delivered to Iowa pool distributing plants. If proponent's proposal were adopted; the milk of such producers could be pooled under the Iowa order without having to be shipped.

The spokesman for the four plants testified that adoption of the proposal would make additional milk available to the market to supply any Class I shortage and also would provide access to additional manufacturing capacity for reserve milk not needed for fluid use.

It is significant that proponent testified that adoption of the unit pooling proposal by the four proprietary plants would make additional milk available to the Iowa market to supply any shortage of milk for Class I use. The record established that there is no shortage of milk for Class I use in the Iowa market and there is not likely to be in the foreseeable future. Also, there is no basis in the record of this hearing to conclude that the Iowa market is having any problem with the disposition of surplus milk that would require the additional manufacturing capacity that proponent inicated would be a benefit to the market if the proposal were adopted. Adoption of the proposal is not needed for these reasons.

It is observed that the operating function of the four proprietary plants is to manufacture cheese and that the chief interest of the plant operators is to assure a continuing supply of Grade A milk for the plants. Their proposal is aimed at obtaining funds from the Iowa pool to help the plant operators in paying competitive prices to producers in the Grant County, Wisconsin, area to keep them associated with the cheese plants. Any milk that would be supplied to the Iowa fluid market under the scheme would be merely incidental to the plan, and would be the least quantity possible since the primary objective of the plants is to manufacture cheese. From the record it cannot be concluded that the primary function of the plants, or even a minor function, would be to supply the Iowa market with any part of its fluid milk needs.

The unit pooling that is now provided by the order enables cooperative associations that are supplying the fluid milk needs of the market to perform the function more effeciently. Such cooperatives organize the supply of Grade A producers who are associated with the Iowa market and arrange for the necessary transportation. They deliver milk to distributing plants in the quantities agreed upon with the plants and dispose of the milk not needed for fluid use. These marketwide balancing activities are in contrast to the four cheese plants whose function, understandably, is to secure a supply of milk to manufacture their specialty products and to market them effectively.

The present unit pooling provisions of the order also accommodate any proprietary handler whose primary function is to supply the fluid milk needs of the market. In such instance, the handler may unit pool two or more of his supply plants to achieve the same supply efficiencies previously described for cooperative associations.

It is concluded that the present unit pooling provisions of the order are operating effectively, as intended, and that the record of this hearing does not establish the need to revise the provisions as proposed by the four proprietary plants. Accordingly, the proposal is denied.

3. *Handler definition.* Section 1079.9(c) of the handler definition should be revised to include a cooperative association that receives bulk tank milk at a producer's farm for delivery to its *own* pool plant. Also, § 1079.9(b) should be revised to include a cooperative association that diverts milk from its *own* pool plant.

The present handler definition provides in § 1079.9(c) that a cooperative association shall be the handler for milk that it receives for its account from the farm of a producer for delivery to the pool plant of *another* handler in a tank truck owned and operated by, or under the control of, such cooperative. Also, a cooperative association is the handler under § 1079.9(b) for producer milk that it diverts to a nonpool plant from the pool plant of *another* handler. For milk that is received at or diverted from the pool plant of a cooperative association, the order provides that such receipts and diversions shall be reported on an individual plant basis in the same way that proprietary handlers report receipts and diversions for their plants.

A cooperative association that operates four distributing plants and a supply plant that are regulated under the order proposed the adopted changes to simplify its accounting for milk and butterfat. Proponent claimed that these changes would allow it to include on a single report informaton that now must be segregated for inclusion in several reports.

A proprietary handler opposed the proposal to permit a cooperative association to be a handler under § 1079.9(b) for milk that it diverts to a nonpool plant from its own pool plant. The handler opposed the proposal in connection with his general position that the order should make more milk available to proprietary distributing plants.

The order should permit a cooperative association to submit a single report that includes all of its receipts of milk from producers and all of its diverted milk, irrespective of whether the milk is associated with plants of other handlers or the cooperative's own plants. The proponent cooperative association maintains at its headquarters records of its total operations for the market. Such information includes the total pounds and butterfat test of milk received from each producer and data regarding deliveries of such milk to pool plants and diversions to nonpool plants. Since different loads of milk from the same group of producers usually go to several plants during the month (including the cooperative's own pool plants, pool plants of other handlers and nonpool plants), it is necessary for the cooperative to determine which loads of milk were associated with each of its own pool plants, including diversions from such plants to nonpool plants. This information is then reported to each of the cooperative's plants and added to the information contained in the individual plant's report. Specifying that the cooperative association shall be a handler pursuant to § 1079.9(b) and (c) with respect to the quantity of milk received at producers' farms for delivery to its own pool plants or diverted from such plants to nonpool plants would eliminate this extra bookkeeping expense.

The opposition of the proprietary handler to the adoption of the proposal is without merit. The single purpose of the handler in opposing the proposal was to make more milk available to proprietary distributing plants. As indicated in this decision, the pool distributing plants serving the market are presently and prospectively adequately supplied with milk. Accordingly, the basis advanced by proponent for denying the proposal does not provide the ground for doing so.

Making a cooperative association the § 1079.9(c) handler on deliveries of milk to its own distributing plant also is desirable for the purpose of permitting these deliveries to be counted as qualifying shipments for pooling a supply plant of the cooperative. The order now provides that milk that is direct-delivered by a cooperative from farms to the pool plant of another

handler may be counted in determining the pool plant status of the cooperative's supply plant. At present, these provisions are suspended through April 1979. The effect of the suspension has been to permit the direct-deliveries by a cooperative from farms to its own distributing plant to be included as a qualifying shipment for pooling a cooperative association's supply plant.

It is appropriate that such deliveries be included as qualifying shipments for pooling a cooperative association's supply plant. Proponent operates a reload station near Davenport, Iowa, a pool supply plant at Dubuque, Iowa, and a pool distributing plant at Rock Island, Illinois. The provisions provided herein will enable the cooperative to ship milk directly from producers' farms to the nearby Rock Island distributing plant and have such deliveries count in qualifying the supply plant at Dubuque. Otherwise, quantities of the milk close to the Rock Island plant would have to be directed elsewhere to provide room at the plant for qualifying shipments from the supply plant. This would entail energy-wasting movements of milk by the cooperative which supplies a substantial proportion of the fluid milk needs of the Iowa market. The provisions provided herein will make these uneconomic shipments of milk unnecessary.

The witness for another cooperative association proposed that diversions by a cooperative association from its own distributing plant not be included in the plant's receipts for purposes of determining its pool plant status. The order now provides that milk diverted by a cooperative association from the distributing plant of another handler not be included in the plant's receipts for purposes of determining the plant's pool plant status. However, when a cooperative association diverts milk from its own distributing plant, the milk is considered as a diversion from the plant and must be accounted for separately from diversions by the cooperative association from other plants.

The witness for the association testified that prior to February 1, 1978, the cooperative association had supplied a proprietary handler's pool distributing plant with its total fluid milk requirements. Milk in excess of the handler's needs was diverted to the cooperative's manufacturing plant as producer milk. At that time none of the diverted milk was included in the handler's receipts for pooling purposes.

On February 1 the cooperative association acquired this distributing plant and now the diversions are included in the plant's receipts. Thus, he stated, the status of pooling the same quantity of milk has changed. Although the total amount of milk diverted by the cooperative is within the diversion limitations that would apply to a §1079.9(b) handler the cooperative is having difficulty keeping the distributing plant pooled because its diversions cause the plant to fall below the minimum route disposition percentages. The witness claimed that the cooperative could deliver the producer milk to another handler's pool plant and then divert the milk. This, he stated, would be a wasteful exercise.

It is not necessary to include diversions in a plant's receipts when the diverting cooperative operates the plant and exclude such diversions when diverted from another handler's plant. Diversion limitations are set forth in the order that limit the total quantity of producer milk a cooperative association may divert. These provisions effectively limit diversions by a cooperative association to an appropriate level without the necessity of including such diversions as part of the plant's receipts.

4. *Producer definition.* A proposal to amend the "producer" definition of the order should not be adopted.

The producer definition of the order provides that a producer is a dairy farmer who produces Grade A milk and whose milk is received at a pool plant or diverted from a pool plant. The definition excludes a producer-handler and a government institution (such as a university) that produces milk.

A proprietary handler proposed that the definition be amended to exclude a dairy farmer from being an Iowa order producer during the months of January through August if the dairy farmer had been a producer under the St. Louis-Ozarks, Central Illinois, or Southern Illinois orders during the preceding months of September through December. The orders cited provide for seasonal incentive payment plans, which are commonly referred to as "Louisville" plans.

A seasonal incentive payment plan provides that a specified amount of money be withheld from the total pool value in each of several spring months and put into a special fund. In each of several fall months, a proportion of the total amount withheld is paid to producers. The plan is intended to encourage more even production throughout the year.

The proposal was presented by the proprietary handler as part of a package of proposals aimed at making additional supplies of milk available to proprietary distributing plants. In proponent's view, the Iowa market should not absorb seasonal reserve supplies of milk from the three nearby Louisville plan markets. Proponent claimed that this occurs when some of the cooperatives that supply the Iowa market shift producers to those markets in the fall "payout" months and bring them back to the Iowa market for the other months of the year. It was claimed that this shifting of producers tends to lessen the availability of milk supplies in that the Iowa blend prices are depressed "further" during the surplus production months from the influx of producers and during the short production period producers are leaving the market.

Proponent's view is that the proposed change is consistent with the Iowa promulgation decision which established supply plant pooling standards that require continuous association of supply plants with distributing plant outlets. A specific portion of the Iowa final decision previously referred to was quoted as a basis for this view. The quotation is as follows:

". . . the pooling standards should require pool milk to be continuously associated with the fluid use outlets as a basis of pooling. Otherwise, excessive supplies of milk could be tied up for manufacturing use at Iowa locations when it is needed for fluid use in Iowa or in more southerly deficit markets. This would tend to force shipment of milk from the more northerly reserve milk supply areas of Minnesota and Wisconsin for bottling use which would entail greater transportation costs.

"Additionally, pooling standards that require continuous association with distributing plant outlets need to be maintained so that the reserve milk supplies in the production area that are pooled on more southerly markets will not be shifted to the Iowa pool during the flush production season. Any such shift of milk supplies seasonally could be accomplished rather easily by handlers who operate pool plants in both markets. Moreover, the seasonal incentive payment plans in the Central Illinois, Southern Illinois, and St. Louis-Ozarks Federal order markets result in seasonal uniform price differences that would encourage such shifts of milk to the Iowa pool in the absence of shipping requirements."[2]

The proposal was opposed by two cooperatives supplying the Iowa market on the ground that the shifting of some producers to other markets in the fall and winter months does not adversely affect the availability of milk to meet the Class I needs of the Iowa market.

It is significant that the supply plant shipping standards of the Iowa order were intended to deal with the above-mentioned circumstances. One of the issues in this proceeding is whether such shipping standards should be increased. The additional issue presented by proponent is

[2] 42 FR 15850

whether the producer definition of the order needs to be amended as an additional means of dealing with the above-mentioned circumstances. In this connection, proponent's statement of the need to adopt the proposal rests on an alleged serious shortage of milk for Class I at the distributing plants of proprietary handlers. This proposed change of proponent is one of several designed to assure greater supplies.

Proponent testified that some producers had been shifted off the Iowa market to the three markets cited in the fall of 1977, and that this had depleted the availability of milk for fluid use in the Iowa market. In September 1977, presumably after the producers had shifted, the Iowa market had a Class I utilization of 50 percent of producer receipts. For the months of October, November, and December, it was 50 percent, 52 percent, and 49 percent, respectively. There is no basis for determining from the record precisely how much the total supply of milk for the Iowa market was depleted by a shift of some producers to other markets. However, it cannot be concluded that whatever shift occurred resulted in a shortage of milk for Class I use.

Proponent pointed particularly to the fact that an Iowa supply plant at Sully, Iowa (relatively close to Des Moines) had been shifted to the St. Louis market in the fall months of 1977. He stated that the producers who supply the plant had previously supplied him with milk. However, the record suggests that this source of supply for proponent's plant was discontinued several years ago when proponent substantially reduced purchases from the cooperative that operates the Sully plant. In any case, at the time of the hearing, the Sully plant was associated with the Iowa market and the operators testified that it had already been decided to keep it associated with the Iowa market.

It was concluded earlier in this decision that there is no shortage of milk for Class I either for the market or for the proponent. As the alleged severe shortage of milk was the chief basis advanced by proponent for adopting the proposal to amend the producer definition, there is no basis for doing so in this record.

The representative of a cooperative testified that in the past his association had shifted some producers from the Iowa market in the fall months to the Central and Southern Illinois markets. The spokesman stated that it had already been decided at the time of the hearing that the quantity of milk involved would not be increased this year.

One of the cooperatives that opposed the proposal is a substantial supplier of milk to the St. Louis-Ozarks market and the Iowa market. A spokesman for the cooperative testified that during the fall and winter months the cooperative supplements the supply for the relatively large St. Louis-Ozarks market with milk from southeastern and eastern Iowa and from Kansas, Wisconsin and Minnesota. This has been a practice for the past 10 years. To require continuous association of the eastern Iowa supply with the Iowa market would mean that milk from the producers involved would have to be received first at the supply plant at Sully, Iowa, which would involve an uneconomic movement of milk in the opposite direction from where the milk is needed as a seasonal supplemental supply.

For this reason the proposal is denied and further, it is not apparent from this record that the proposal is needed as an adjunct to the supply plant pooling provisions of the order, as claimed by proponent. Accordingly, the proposal is denied.

5. *Plant location adjustments.* The proposal to change the pricing zone for Boone and Story Counties, Iowa, from Zone 1 to Zone 2 should not be adopted. The proposed zone change would have reduced the Class I price 7 cents per hundredweight in these two counties.

Two regulated handlers who operate distributing plants at Boone, in Boone County, proposed the change in pricing zones. The witness for the two handlers testified that prior to December 1971, Boone and Story Counties were priced 10 cents below Des Moines. However, at a public hearing held in 1971, a Des Moines handler proposed that this minus location adjustment be removed. The witness claimed that apparently since there was no opposition to the proposal, the minus 10 cents was removed effective December 1, 1971. He contented that there was no economic evidence provided at the 1971 hearing to support the zone change.

The witness testified that the Boone handlers distribute milk only in Boone and Story Counties and that they compete extensively with handlers to the south and north of them. He cited handlers in Des Moines and Marshalltown, Iowa, and Rochester, Minnesota, with whom they compete. He contended that the present pricing structure places the two handlers at a competitive disadvantage with these major competitors.

On the basis of this record, it is concluded that the price in Boone and Story Counties should continue to be the same as the price at Des Moines. The primary contention of the Boone handlers is that the current pricing structure puts them at a competitive disadvantage with plants in Des Moines and Rochester that distribute milk in Boone and Story Counties. With respect to Des Moines handlers, this would not appear to be the case since the Boone and Des Moines handlers have the same Class I price. In addition, the Des Moines handlers bear the cost of transporting the packaged fluid milk products about 40 miles to deliver it to outlets in the Boone-Story area. Proponents' witness acknowledged that it costs more than 7 cents per hundredweight to deliver packaged products that distance.

With respect to the competitive situation with the Rochester plant, it is noted that the cost of transporting packaged fluid milk products is at least 1.5 cents per hundredweight per 10 miles, which is the location adjustment rate provided under the order. Under the Upper Midwest order, the Rochester plant has a Class I differential of $1.12 per hundredweight. Since Rochester is about 200 miles from Boone, the cost of transporting milk from Rochester to Boone is at least 30 cents per hundredweight. Thus, the Rochester plant has an effective Class I differential of $1.42 at Boone compared to a Class I differential of $1.40 under the Iowa order at Boone.

These figures refute proponents' argument that the order prices put Boone at a disadvantage with its competition from Des Moines and Rochester.

The cooperative association that supplies milk to the Boone handlers opposed the proposal. The witness for the cooperative testified that if the Class I differential at Boone were lowered 7 cents, it is questionable whether the Boone handlers could obtain an adequate supply of milk since producers would take a 7-cent reduction in price. He claimed it is unlikely that producers would accept such a decrease in price because producer milk could be shifted from Boone to Des Moines at the same transportation cost. Therefore, even if the order price were reduced, as proposed, in all probability the Boone handlers would still have to pay the same effective price to the cooperative equal to what they are paying now.

At the time the Iowa orders were considered for merger, an identical proposal was presented by proponents, which was denied. Substantially the same arguments were presented at that time as were presented in this proceeding, and no new points were raised for consideration. There is no basis on the current record for adopting the proposal.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs,

proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they conflict with those set forth below.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions of it would be the same as those contained in the order that is proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Iowa marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1079.7, paragraph (a)(2) is revised, a new paragraph (a)(3) is added, and paragraph (b) is revised to read as follows:

§ 1079.7 Pool plant.

* * * * *

(a) * * *

(2) Not less than 15 percent of such receipts are disposed of as route disposition (except filled milk) in the marketing area; and

(3) A unit consisting of at least two plants of a handler shall be considered as one distributing plant for the purpose of meeting the requirements of this paragraph if:

(i) Fluid milk products are processed and packaged at each plant;

(ii) Each plant meets the requirements of paragraph (a)(2) of this section; and

(iii) The handler notified the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month to month thereafter without further notification. To add plants to the unit, to drop them, or to discontinue the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made.

(b) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool supply plant") that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which during the month the volume of bulk fluid milk products transferred to pool distributing plants during each of the months of September through November is 35 percent or more and during each of the months of December through August is 20 percent or more of the total Grade A milk received at the plant from dairy farmers and handlers described in § 1079.9(c), including milk diverted therefrom by the plant operator pursuant to § 1079.13, subject to the following conditions:

(1) The shipping percentages of this paragraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if he finds that such revision is necessary to result in needed shipments to pool distributing plants for Class I use, or to prevent uneconomic shipments, subject to the following conditions:

(i) Before making such a finding, the Director shall investigate the need for revision either on his own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, he shall issue a notice stating that the revision is being considered and invite data, views, and arguments; and

(ii) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to this subparagraph unless it had been a pool supply plant during each of the immediately preceding three months.

(2) For plants located within the States of Iowa, Minnesota, Wisconsin, or that portion if Illinois north of Interstate 80, the shipping requirements of this paragraph may also be met in the following ways:

(i) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1079.9(c);

(ii) A proprietary handler may include as qualifying shipments milk diverted pursuant to § 1079.13(d) to pool distributing plants;

(iii) The operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under other Federal orders, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to pool distributing plants under this order; and

(iv) Two or more supply plants operated by the same handler or by one or more cooperative associations may qualify for pooling as a unit by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant if the handler submits a written request to the market administrator prior to the first day of September requesting that such plants qualify as a unit for the period of September through August of the following year.

The request shall list the plants to be included in the unit in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire unit for pooling, the plant last on the list shall be excluded from the unit, followed by the plant next-to-last on the list, and continuing in this sequence until remaining plants on the list have met the minimum shipping requirements. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following August unless the plant fails subsequently to qualify for pooling or the handler submits a written request to the market administrator prior to the first day of the month that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from the unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through August. No plant may be added in any subsequent month through the following August to a unit that qualifies in September.

* * * * *

2. In § 1079.9, paragraphs (b) and (c) are revised as follows:

§ 1079.9 Handler.

* * * * *

(b) Any cooperative association with respect to milk of a producer that is diverted for the account of the cooperative association from a pool plant in accordance with § 1079.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant in a tank truck owned and operated by, or under the control of, such cooperative association. If the milk is delivered to the pool plant of another handler, the plant operator may be the handler for such milk if both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will purchase such milk on the basis of weights determined from its measurements at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative at the location of the pool plant to which such milk is delivered;

* * * * *

3. In § 1079.42, paragraph (e) is revised as follows:

§ 1079.42 Classification of transfers and diversions.

* * * * *

(e) *Transfers by a handler described in § 1079.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1079.9(c) to a pool plant shall be classified pursuant to § 1079.44 pro rata with producer milk received at the transferee-handler's plant.

4. In § 1079.60, paragraph (g) is revised as follows:

§ 1079.60 Handler's value of milk for computing uniform price.

* * * * *

(g) Subtract, for a handler described in § 1079.9(c) the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a handler's pool plant during the month.

5. In § 1079.71, paragraph (a)(2)(i) is revised as follows:

§ 1079.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(i) The value at the uniform price, as adjusted pursuant to § 1079.75, of such handler's receipts of producer milk and milk received from a handler described in § 1079.9(c). In the case of a handler described in § 1079.9(c), less the amount due from handlers pursuant to § 1079.73, exclusive of differential butterfat values; and

* * * * *

NOTE.—This recommended decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.

Signed at Washington, D.C., on: January 25, 1979.

JAMES E. SPRINGFIELD,
Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-3170 Filed 1-29-79; 8:45 am]

[3410-34-M]

Animal and Plant Health Inspection Service

[9 CFR Part 91]

ANIMAL EXPORT REGULATIONS

Mexican and Canadian Ports of Embarkation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the animal export regulations by deleting the provisions relating to certain Mexican and all Canadian border ports of embarkation. These border ports of embarkation no longer appear necessary for the exportation of animals to Mexico and Canada because such countries have ports of entry and require inspection of animals prior to their importation into their respective countries, and this country inspects such animals at their point of origin. This document also proposes to correct oversights and typographical errors which exist in the present animal export regulations. The intended effect of this action is to remove the requirement that animals be exported to Mexico and Canada through specified border ports of embarkation and to correct oversights and errors in the present regulations.

DATE: Comments on or before April 2, 1979.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Harold A. Waters, USDA, APHIS, VS, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to (21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b): 37 FR 28464, 28477; 38 FR 19141, the Animal and Plant Health Inspection Service is considering amending Part 91, Title 9, of the Code of Federal Regulations.

It is proposed that § 91.3(a) of the regulations be amended to remove the requirement that animals being exported to Mexico and Canada must be exported through ports of embarkation listed in § 91.3(a) or through ports designated in special cases by the Deputy Administrator. Both Canada and Mexico have inspection stations at their borders with the United States and at all other places at which they will accept shipments of animals. Animals being exported from the United States to Mexico or Canada are inspected by representatives of those respective countries at such inspection stations, and, prior to entry into those countries, the animals must meet the requirements of the respective country. The Department presently inspects such animals at the location from which such animals are originally moved for export. A requirement that such animals must be exported through ports of embarkation listed in § 91.3(a) or through ports designated in special cases by the Deputy Administrator and be inspected again by the Department appears to be a needless duplication of effort.

This proposal would also delete certain Mexican and all Canadian border ports listed in § 91.3(a)(3) and (4). The Canadian ports of embarkation would no longer be necessary since this proposal would remove the requirement that animals being exported to Canada be exported through such ports of embarkation. Ports of embarkation along the Mexican border would no longer be necessary for exports intended for Mexico since this proposal would remove the requirement that animals being exported to Mexico be exported through such ports of embarkation. However, the Mexican border ports of Brownsville, Laredo, Eagle Pass, Del Rio, and El Paso, Texas, would be retained for exports by land intended for countries other than Mexico but transiting Mexico.

Present footnote 3 and references thereto would be deleted. This footnote provides an address at which further information regarding Canadian border ports listed in § 91.3(a)(4) may be obtained. This footnote would no

longer be necessary since this proposal would delete the list of Canadian border ports contained in § 91.3(a)(4).

A new footnote 3 would be added to inform affected persons where they may obtain a list of cooperating State-Federal laboratories.

This proposal would amend § 91.6(a) to exclude animals being exported to Mexico or Canada from the requirement that all animals offered for exportation to any foreign country must be inspected by a Veterinary Services veterinarian at an export inspection facility at a port designated in § 91.3(a), or at a port or inspection facility designated by the Deputy Administrator in a special case under § 91.3(b). This requirement would no longer be necessary since this proposal would remove the requirement that animals being exported to Mexico or Canada be exported through such export inspection facilities. Further, representatives of Mexico and Canada presently inspect animals being exported from the United States into their respective countries.

Present § 91.6(d) states that the requirements of § 91.6(a) and (b) shall not apply in the case of animals offered for exportation to Canada through ports along the United States-Canada land border designated in § 91.3(a)(4) or for exportation to Mexico through ports along the United States-Mexico land border designated in § 91.3(a)(3) if the animals are accompanied by an origin health certificate issued and endorsed in accordance with the requirements of § 91.4(a). Section 91.6(c) would no longer be necessary since this proposal would delete the requirement that animals being exported to Mexico or Canada be exported through ports of embarkation designated in § 91.3(a) or (b). Therefore, it is proposed that § 91.6(d) be deleted.

This proposal would amend § 91.3(c)(1) by requiring that inspection facilities at ports of embarkation designated under § 91.3(a) and (b) have a roof adequate to protect the animals from inclement weather over at least three-fourths of the pens and alleys and over all of the inspection area. The present regulation contains a similar requirement in § 91.3(c)(3). This proposal would delete the reference to roof requirements in § 91.3(c)(3). The Department believes that it is more appropriate to place the roof requirements in § 91.3(c)(1) because this subparagraph contains requirements for floors, fences, gates and other parts of the facility. Further, this proposal would add the requirement that the roof cover the entire inspection area. This additional requirement is believed to be necessary because the animals spend a significant amount of time in the inspection area and a roof over such area is necessary to protect the animals being inspected and the persons conducting such inspection from inclement weather. This will also facilitate the inspections during inclement weather.

The proposal would amend § 91.3(b) to add as a condition for designation as a special port by the Deputy Administrator the requirement that the exporter can show to the satisfaction of the Deputy Administrator that the animals to be exported would suffer undue hardship if they are required to be moved to a port of export listed in § 91.3(a). This requirement would be added as a further justification for designation of special ports as ports of embarkation by the Deputy Administrator and should discourage the unnecessary use of this procedure. The reference to the Bureau of Customs has been changed to Director of Customs because it is the Director and not the Bureau who must concur with the Deputy Administrator. Further, the references to designation of inspection facilities in § 91.3(b) has been deleted since only ports having proper inspection facilities are designated as ports of embarkation.

This proposal would amend § 91.3(c)(3) to require that there be a separate area in each facility available for inspection and identification of the animals. This requirement would be added so that animals to be inspected and identified could be separated from the other animals in the facility and thereby facilitate such inspection and identification. This proposal would also amend § 91.3(c)(3) to require that pens and animal restraining devices sufficient for the inspection and identification of each animal be provided in this area of the facility. Presently, § 91.3(c)(3) specifies that a squeeze chute or similar restraining device and a crowding pen or pens be available for individual animal inspection and identification. As written § 91.3(c)(3) is ineffective because squeeze chutes and crowding pens are not necessary or effective for the inspection and identification of all animals. this proposal would correct this situation by requiring that pens and restraining devices shall be provided which are sufficient for the inspection and identification of each animal.

Section 91.4(a) currently requires that animals intended for exportation to Mexico or Canada be accompanied by an origin health certificate to the port of embarkation. Since this proposal would delete the requirement that animals intended for exportation to Mexico or Canada be exported through ports of embarkation, it is proposed that § 91.4(a) be amended to require that such animals be accompanied by the origin health certificate to the United States border. Other minor editorial changes were made for clarity and ease of reading in § 91.4(a).

It is proposed that § 91.4(b) be amended to exclude animals being exported to Canada or Mexico from the requirement that they be inspected, tested, or treated in the manner prescribed in Part 91 prior to the movement of the export shipment to the export inspection facility. This requirement would no longer be necessary since this proposal would delete the requirement that animals being exported to Mexico or Canada be exported through such export inspection facilities. However, these inspection, testing and treatment requirements would be replaced by requiring that all animals intended for export to Canada or Mexico be inspected, tested, or treated in the manner prescribed in Part 91 prior to the movement of the animals from the State of origin. Certain other amendments would be made for editorial reasons.

It is also proposed that the reference to "§ 91.5(b)(5)" in § 91.4(b) and the reference to "§ 915" in § 91.4(c), typographical errors, be corrected to read "§ 91.5(b)" and "§ 91.5" respectively, as originally intended.

It is also proposed that the last sentence in § 91.4(c) be amended to require that the test for brucellosis be conducted in a cooperating State-Federal laboratory in accordance with the Recommended Brucellosis Eradication Uniform Methods and Rules. the Uniform Methods and Rules allow blood samples to be tested by cooperating State-Federal laboratories or by such persons as may be authorized to conduct the standard agglutination tests or card tests. All samples initially tested at other than a cooperating State-Federal laboratory are required to be submitted and confirmed at the cooperating State-Federal laboratory. Under the present regulations some exporters have exported animals after the standard agglutination test and card tests were run but prior to their confirmation in a cooperating State-Federal laboratory. It was not the intent of this Department that animals be exported prior to confirmation of tests at a cooperating State-Federal laboratory. In order to eliminate this continuing problem, this proposal would amend § 91.4(c) to require that blood samples be tested only in a Cooperating State-Federal laboratory.

It is proposed that § 91.4(d) be amended to use the word "animals" rather than "livestock," since the word "animals" is defined in Part 91 and the word livestock is not. This proposal conforms with what was originally intended.

It is also proposed that § 91.4(d) be amended to strike the words "from the premises of origin to the port of embarkation", because this proposal

would not require animals intended for exportation to Canada or Mexico to be exported through such ports of embarkation.

For this reason it is also proposed that the first sentence in § 91.4(e) be amended to require that animals enroute to Canada or Mexico as well as those enroute to ports of embarkation, can be unloaded only into a facility which shall have been cleaned and disinfected with a disinfectant approved under § 71.10 of this Chapter, under the supervision of an inspector or an accredited veterinarian prior to such unloading.

It is also proposed that § 91.4(e) be amended to apply to animals unloaded for any purpose. As presently written, § 91.4(e) only applies to animals unloaded for feed, water, and/or rest. The Department believes that the purpose for unloading the animals has no bearing on cleaning and disinfecting requirements and therefore proposes to delete the words "for feed, water, and/or rest".

It is proposed that § 91.5(a)(2) be amended to exclude steers and spayed heifers from the brucellosis testing requirements. While steers and spayed heifers over six months of age can contract brucellosis, they do not present a risk of the spread of brucellosis because they are not sexually active animals.

Accordingly, Part 91, Title 9, Code of Federal Regulations, would be amended in the following respects:

1. In § 91.3, the second sentence of paragraph (a), would be amended; (a)(3) would be amended; (a)(4) would be deleted; paragraph (b) would be amended; a sentence would be added to the end of (c)(1), and the first two sentences of (c)(3) would be amended as follows:

§ 91.3 Ports of embarkation and export inspection facilities.

(a) * * * All animals, except animals being exported to Mexico or Canada, shall be exported through said ports or through ports designated in special cases under paragraph (b) of this section:

* * * * *

(3) *Border ports.* Brownsville, Laredo, Eagle pass, Del Rio, and El Paso, Texas.

(4) [Deleted]

* * * * *

(b) In special cases, other ports may be designated as ports of embarkation by the Deputy Administrator, with the concurrence of the Director of Customs, when the exporter can show to the satisfaction of the Deputy Administrator that the animals to be exported would suffer undue hardship if they are required to be moved to a port of embarkation listed in § 91.3(a). Such ports shall be designated only if the inspection facilities are approved as meeting the requirements of paragraph (c) of this section.

* * * * *

(c) * * *

(1) *Materials.* * * * The facility shall have a roof adequate to protect the animals from inclement weather over at least three-fourths of the pens and alleys and over all of the inspection area.

* * * * *

(3) *Inspection implements.* The facility shall have a separate area available for inspection and identification of the animals. Pens and animal restraining devices shall be provided in this area which are sufficient for the inspection and identification of each animal. * * *

2. In § 91.4, paragraphs (a), (b), and (d) are revised. Paragraph (c) is amended by changing the reference to "§ 915" to read "§ 91.5", and the last sentence (including footnote 3) would be amended as set forth below, and in paragraph (e) the first sentence is amended as set forth below:

§ 91.4 General export requirements.

(a) All animals intended for exportation to a foreign country, except animals intended for exportation to Mexico or Canada, shall be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation to Mexico or Canada shall be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. The origin health certificates shall certify that the animals were inspected within the 30 days prior to the date of the movement of the animals for export, and were found to be sound, healthy, and free from evidence of communicable disease and exposure thereto. The origin health certificates shall be endorsed by an authorized Veterinary Services veterinarian in the State of origin. The origin health certificates shall individually identify the animals in the shipment as to species, breed, sex, and age, and if applicable shall also show registration name and number, tattoo markings, or other natural or acquired markings.

(b) *Inspection.* All animals in each export shipment, except animals intended for export to Mexico or Canada, shall have been inspected, tested, or treated in the manner prescribed in this Part prior to the movement of the export shipment to the export inspection facility. All animals in each export shipment intended for export to Mexico or Canada shall have been inspected, tested, or treated in the manner prescribed in this Part prior to the movement of the animals from the State of origin. The Deputy Administrator may, upon request of the appropriate animal health official of the country of destination, waive the tuberculosis and brucellosis tests referred to in §§ 91.5(a) (1) and (2), 91.5(b), and 91.5(c) of this Part when he finds such tests are not necessary to prevent the exportation of diseased animals from the United States.

* * * * *

(c) *Testing.* * * * The test for brucellosis shall be conducted in a cooperating State-Federal laboratory [3] in accordance with the Recommended Brucellosis Eradication Uniform Methods and Rules.[1]

(d) *Movement in cleaned and disinfected carriers or containers.* The origin health certificate accompanying animals shall be accompanied by a statement from the issuing accredited veterinarian or inspector that the means of conveyance or container has been cleaned and disinfected since last used for animals with a disinfectant approved under § 71.10 of this Chapter, prior to loading, or that the carrier or container has not previously been used in transporting animals.

(e) *Clean and disinfected facilities for unloading animals.* Animals intended for exportation to Mexico or Canada or en route to a port of embarkation shall be unloaded only into a facility which shall have been cleaned and disinfected with a disinfectant approved under § 71.10 of this Chapter, under the supervision of an inspector or an accredited veterinarian prior to such unloading. * * *

3. Section 91.5(a)(2) would be amended to read:

§ 91.5 Specific export requirements.

(a) * * *

(2) *Brucellosis.* All cattle over six months of age shall be negative to a test for brucellosis conducted as prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis" [4] or "Supplemental Test Procedures for the Diagnosis of Brucellosis"; [4] except, that such tests are not required for official vaccinates of dairy breeds under 20 months of age, official vaccinates of beef breeds under 24 months of age, or steers and spayed heifers.

4. Section 91.6(a) would be amended to read as follows, and (d) would be deleted.

---

[1] * * *

[2] * * *

[3] A list of cooperating State-Federal laboratories may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Hyattsville, Maryland 20782.

§ 91.6 Inspection of animals for export.

(a) All animals offered for exportation to any foreign country, except Mexico or Canada, shall be inspected by a Veterinary Services veterinarian at an export inspection facility at a port designated in § 91.3(a), or at a port or inspection facility designated by the Deputy Administrator in a special case under § 91.3(b).

* * * * *

(d) [Deleted]

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 825, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, D.C., this 23rd day of January 1979.

Note.—This proposed rulemaking has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations". While this action has not been designated "significant" under those criteria, an approved Draft Impact Analysis Statement has been prepared and is available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. 301-436-8695.

M. T. GOFF,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-2854 Filed 1-29-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 211]

[Docket No. ERA-R-78-3]

SMALL REFINER BIAS

Proposed Amendments to Entitlements Program to Reduce the Level of Benefits Received; Extension of Time to File Written Comments

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of extension of time to file written comments.

SUMMARY: On November 14, 1978, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a notice of proposed rulemaking and public hearing which contained proposed amendments to the entitlements program to reduce the level of benefits available under the small refiner bias (43 FR 54632, November 22, 1978). In that notice, the deadline set for submission of written comments was January 22, 1979. The ERA hereby extends the time for filing written comments on its proposed rulemaking to February 5, 1979.

DATE: The time for filing written comments is extended to February 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Fred Wolgel, Office of General Counsel, Department of Energy, Room 5134, Washington, D.C. 20461, 202-633-8820.

Issued in Washington, D.C., January 24, 1979.

DOUGLAS G. ROBINSON,
Assistant Administrator, Regulations & Emergency Planning, Economic Regulatory Administration.

[FR Doc. 79-3035 Filed 1-29-79; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 545]

[No. 79-63]

FEDERAL SAVINGS AND LOAN SYSTEM

Policy on Branching

JANUARY 24, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Bank Board proposes to remove the 100 mile restriction on branching of Federal savings and loan associations within a state. The Board believes that revoking the 100-mile restriction will enhance consumer services and promote competition.

DATE: Comments must be received by: March 16, 1979.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552 (202-377-6440).

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board's policy on branching of Federal savings and loan associations allows establishment of branch offices or mobile facilities only within 100 miles of the association's home office unless a state policy is less restrictive. Very few states presently restrict branching beyond 100 miles of the association's home office.

Proponents of retention of this restriction have maintained that it protects small state-chartered associations from aggressive competitive pressures. They also maintain that relaxation of the 100-mile restriction for Federal associations would place state associations at a disadvantage because they would continue to be subject to restrictive state banking department policies.

On the other hand, the restriction encumbers the Bank Board's strong pro-branching policy by requiring unequal treatment of branching applications from Federal associations in states with restrictive branching policies.

After careful analysis, the Bank Board has determined that any branch office which meets the criteria for branching should receive due consideration without arbitrary constraints. The Bank Board believes that revoking the 100-mile restriction in § 556.5(b)(3) of the Regulations for the Federal Savings and Loan System (12 CFR 556.5(b)(3)) will enhance consumer services and promote competition.

Accordingly, the Federal Home Loan Bank Board hereby proposes to revoke 12 CFR 556.5(b)(3).

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. § 1454). Reorg. Plan No. 3 of 1947, 12 FR 4931; 3 CFR 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 79-3106 Filed 1-29-79; 8:45 am]

[6720-01-M]

[12 CFR Parts 545, 561, and 563]

[No. 79-62]

FEDERAL SAVINGS AND LOAN SYSTEM AND FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Investment in Farmers' Home Administration Rural Housing Program Guaranteed Loans

JANUARY 24, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed amendments.

SUMMARY: These proposed regulations would authorize Federal savings and loan associations to invest in Farmers' Home Administration Rural Housing Program guaranteed loans on terms acceptable to the guaranteeing agency under certain conditions. The regulations would also authorize Fed-

eral associations and other institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation to invest in such loans with loan-to-value ratios exceeding 90 percent of value without the usual requirement of private mortgage insurance or special reserves. The Bank Board's present regulations do not permit significant investment in such loans, and the Bank Board believes it would be beneficial both to savings and loan associations and the communities they serve to allow fuller participation in this program.

DATE: Comments must be received by: March 2, 1979.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G. Street, NW., Washington, D.C. 20552. Comments available for public inspection at this address.

FOR FURTHER INFORMATION, CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Telephone number (202) 377-6440.

SUPPLEMENTARY INFORMATION: These amendments would add a new § 545.6-27 to the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545) and revise §§ 545.6-7(b) and 545.8(a)(1)(v). New § 545.6-27 would authorize Federal associations to invest in first-lien loans on residential real estate under the Farmers' Home Administration ("FmHA") Rural Housing Program, subject to specified limitations. These limitations are reflected in a technical revision of § 545.6-7(b) ("Percentage limitations for specific types of loans"). The revision of § 545.8(a)(1)(v) would authorize Federal associations to invest in unsecured loans under the program repayable on terms acceptable to FmHA.

The proposed amendments would also revise §§ 561.15(b), 561.17(a) and 563.9-7(b) of the Rules and Regulations for Insurance of Accounts (12 CFR Parts 561 and 563). The unguaranteed portion of slow loans which are guaranteed under this program would be included as scheduled items (§ 561.15(b)) and as specified assets (561.17(a)). The revision of § 563.9-7(b) excludes secured loans under the program which comply with new § 545.6-27 from the otherwise applicable requirement under § 563.9-7(a) of private mortgage insurance or a specific reserve for loans over 90% of value.

Accordingly, the Bank Board hereby proposes to amend 12 CFR Parts 545, 561, and 563 by adding a new § 545.6-27 and amending §§ 545.6-7(b), 545.8(a)(1)(v), 561.15(b), 561.17(a) and 563.9-7(b), as described below.

§ 545.6-7 [Amended]

1. Amend the second sentence of § 545.6-7(b) by deleting the last "and" and inserting immediately before the period at the end the following: ", and § 545.6-27 (Farmers' Home Administration Rural Housing Program guaranteed loans)".

2. Add new § 545.6-27 as follows:

§ 545.6-27 Farmers' Home Administration Rural Housing Program guaranteed loans.

(a) A Federal association may invest in first-lien loans on residential real estate in its regular lending area guaranteed under the Farmers' Home Administration (FmHA) Rural Housing Program without regard to the loan-to-value-ratio, stated-maturity, and private-mortgage-insurance-or-reserve requirements of this part: *Provided*, (1) At least 80 percent of the principal amount and accrued interest of each loan is guaranteed by FmHA under the program; (2) the loan terms are acceptable to FmHA; and (3) such investment will not cuase the aggregate outstanding balance of the non-guaranteed portions of all such loans held by the association to exceed one-half of its net worth.

(b) Federal associations shall maintain records to verify compliance with the requirements for each investment made under paragraph (a) of this section including the loan note guarantee, lender's agreement, and a certification by an officer of the association that the investment limitation has not been exceeded.

§ 545.8 [Amended]

3. Amend the first sentence of § 545.8(a)(1)(v) by inserting immediately before the period at the end the following: "; except that Farmers' Home Administration Rural Housing Program guaranteed loans made pursuant to § 545.6-27 of this part shall be repayable on terms acceptable to the guaranteeing agency."

4. Revise § 561.15(b) to read as follows:

§ 561.15 Scheduled items.

* * * * *

(b) 20 percent of slow loans which are insured or guaranted, or secured by a first lien on low-rent housing; 20 percent of guaranteed obligations upon which one or more interest payments due have not been paid; and 100% of the unguaranteed portion of slow loans which are Farmers' Home Administration Rural Housing Program loans under § 545.6-27 of this chapter.

* * * * *

§ 561.17 [Amended]

5. In § 561.17(a), remove the penultimate "and" and insert immediately before the period at the end the following: ", and less the guaranteed portion of loans which are Farmers' Home Administration Rural Housing Program loans under § 545.6-27 of this chapter.

§ 563.9-7 [Amended]

6. In § 563.9-7(b) insert immediately before the period at the end the following: ", or to investment in Farmers' Home Administration Rural Housing Program guaranteed loans complying with § 545.6-27 of this chapter".

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 79-3105 Filed 1-29-79; 8:45 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Amortization and Payment of Loans to Members

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to provide an exception to the provision of 12 CFR 701.21-2. (Amortization and payment of loans to members), which require monthly payments for lines of credit established for members of Federal credit unions. The exception will permit payments on lines of credit at intervals greater than 1 month where appropriate to coincide with the borrower's receipt of income.

DATES: Comments must be received on or before February 24, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, Room 4202, 2025 M Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT:

Layne L. Bumgardner, Office of Examination and Insurance at the above address. Telephone (202) 254-8760.

SUPPLEMENTAL INFORMATION: 1. On August 4, 1977, the Administration adopted the current provisions in 12 CFR 701.21-2(a) and 12 CFR 701.21-3(b)(2) which require that approved lines of credit to credit union members provide for a monthly payment. At the time of issuing the final regulation the Administration recognized the primary purpose of a line of credit in a Federal credit union as being a vehicle for providing improved delivery of credit for consumer goods and services to credit union members. For this reason, the Administration determined that a line of credit must be repaid on at least a monthly basis.

2. Since the regulations requiring monthly repayment on lines of credit have been in effect, the Administration has received numerous letters objecting to the requirement as overly restrictive in view of the permissive provisions of Pub. L. 95-22. The objections were received from credit unions servicing employee groups whose members were paid or received income on an irregular basis over the course of the year. These credit unions had provided loans to their members with repayment terms which coincided with their members' receipt of income prior to the issuance of the line of credit regulations.

3. In view of the above objections the Administration has reviewed the existing regulation and determined that an exception to the monthly payment requirement on lines of credit is appropriate. The exception only applies to lines of credit which are extended to persons who receive their income at intervals greater than 1 month. Furthermore, the exception for repayment of lines of credit to a corporate central by its member has been removed from §§ 701.21-2(a) and 701.21-3(b)(2), and now appears in § 701.21-2(b)(2).

4. Section 701.21-1(e) has been reworded to require the documentation of the interval at which a borrower receives income in the loan file. This section also has been amended to clearly require that a member's creditworthiness be documented in the loan file. Section 701.21-1(a)(4) defines a "loan file" as a file which includes a borrower's application for a loan or line of credit. Since an application is used to determine creditworthiness of the borrower, the Administration believed that the regulation was sufficiently clear. However, it has come to the Administration's attention that in certain instances credit union officials have interpreted the requirement of including an application in the loan file as not requiring complete documentation of the borrower's creditworthiness on the application.

LAWRENCE CONNEL,
Administrator.

JANUARY 24, 1979.

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

Accordingly, it is proposed that 12 CFR Part 701 be amended as follows:

§ 701.21-1 [Amended]

1. By rewording § 701.21-1(e) to read as follows:

* * * * *

(e) The loan files of a Federal credit union shall contain evidence of the creditworthiness of the borrower and any endorser, the value of any security provided by a borrower, and the amount of funds and the interval at which the borrower receives funds which are intended to be relied upon for repayment of a loan or line of credit.

2. By deleting the wording "other than a member credit union" in the second sentence of § 701.21-2(a).

3. By adding the following subparagraphs after the end of § 701.21-2(b)(2)(ii):

(b) * * *

(2) * * *

(iii) A line of credit may provide for required payments at intervals of greater than 1 month, but not greater than 12 months, where appropriate to coincide with the member/borrower's receipt of income.

(iv) A line of credit extended by a Corporate Central Federal credit union to its member credit union may provide for required payments at intervals of not greater than 12 months.

4. By deleting the word "monthly" and the wording "(or annual payments in the case of a line of credit extended by a Corporate Central Federal credit union to its member credit unions)" in § 701.21-3(b)(2).

[FR Doc. 79-3096 Filed 1-29-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 102]

[Docket No. 78P-0096]

COMMON OR USUAL NAME FOR NONSTANDARDIZED FOOD

Merluccius Productus

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The agency proposes to establish "Pacific hake" or "North Pacific hake" as the common or usual name for food fish of the species *Merluccius productus* (*M. productus*). This action is prompted by a petition submitted to the Food and Drug Administration (FDA) by the Pacific Coast Task Force for Whiting Nomenclature. The intent of this proposal is to provide for the orderly marketing of food fish of the species *M. productus* under a name that is understood and acceptable to consumers.

DATES: Written comments by April 2, 1979; proposed effective date of the final regulation based on this proposal is the date of publication of the final regulation in the FEDERAL REGISTER.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: FDA has received a petition from the Pacific Coast Task Force for Whiting Nomenclature requesting that a common or usual name regulation be established that would permit the fish species *M. productus* to be marketed as "whiting."

FDA has also received correspondence in support of this petition. Copies of the petition and correspondence in support of the petition have been placed on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

The petition proposed that Part 102 (21 CFR Part 102) be amended by adding the following new section:

§ *102.2*—

The common or usual name of the food fish, genus *Merluccius*, derived from the following species, is as follows:

Scientific name and Common or usual name
Merluccius productus—Whiting. Pacific whiting, North Pacific whiting; Hake. Pacific hake, North Pacific hake.

Technically, the regulatory language proposed by the petition would permit fish of the *M. productus* species to be marketed under any of six different common or usual names. This is clearly an unacceptable approach to establishing a common or usual name regulation because of the confusion, probably not intended by the petitioner,

that this would create for consumers. From the text of the petition, it can be assumed that the intent of the request is to permit *M. productus* to be sold under the common name "whiting." Indeed, all of the petition's arguments are directed at justifying the sale of *M. productus* as "whiting" and not by any other name.

The petition states that historically the name "whiting" was used exclusively for fish of the species *M. bilinearis* and that the name "hake" was used to identify all other *Merluccius* species. The petition also admits that the name most frequently used in the literature in connection with fish of the genus *Merluccius* is "hake."

The petition argues that as the need for additional low-cost fillet blocks for processing into sticks and portions arose, other *Merluccius* species were permitted to be marketed in the United States as "whiting." Accordingly, the petition contends, the name "whiting" is recognized and established as the common name for most *Merluccius* species and, therefore, *M. productus* should be permitted to be marketed under the same name.

The petition further contends that the taxonomic similarities of *M. productus* to other *Merluccius* species that are identified as whiting add support to the practice of using the name "whiting" as the common name to identify the species *M. productus.*

Noting that *M. productus* identified as "whiting" is already imported into this country, the petition presents evidence of the economic benefit to the American fisherman if *M. productus* were allowed to be marketed as "whiting."

FDA recognizes the broad, underlying economic issues involved in this proposal. However, FDA is also concerned that extension of the term "whiting," with or without any modifiers, to *M. productus* may result in consumer deception or confusion.

The agency is aware that *M. productus* is commonly identified as "Pacific hake" or "North Pacific hake" in the fishing trade and in the literature. Furthermore, FDA has no evidence to suggest that *M. productus* is not recognized by consumers as "Pacific hake."

In addition, several articles in the literature indicate that there is a high incidence of abnormally mushy texture in *M. productus* caught off the coasts of Washington and Oregon, and that this texture may adversely affect the acceptability of this fish for food.

Although the name "whiting" has been used to identify fish of certain *Merluccius* species such as *M. hubbsi, M. gayi,* and *M. capensis,* it does not follow that *M. productus* should be marketed under the same name if in fact consumers perceive a significant distinction between *M. productus* and other *Merluccius* species.

FDA is concerned that distinction of *M. productus* from other *Merluccius* species is needed because of possible differences in edibility characteristics. FDA is therefore proposing on its own initiative, to establish a common or usual name regulation requiring fish of *M. productus* to be identified as "Pacific hake" or "North Pacific hake" as the common or usual name of this food fish.

Although the agency is proposing "Pacific hake" or "North Pacific hake" as the common or usual name for *M. productus* neither "Pacific whiting" nor "North Pacific whiting" has been ruled out as an acceptable name.

FDA is therefore specifically asking for comment from consumers concerning their understanding of the terms "Pacific hake" and "whiting." Consumers are urged to respond concerning their knowledge of the differences or similarities between the two food fish and whether those differences are sufficient to render it a deceptive practice to permit marketing of *M. productus* under the name "whiting" of "Pacific whiting."

Information not furnished by the petition but used in consideration of the petition is on file in this office of the Hearing Clerk, FDA.

The potential environmental effects of this action have been carefully considered, and the agency has concluded that the action will not significantly affect the quality of the human environment. Under § 25.1(f)(12) (21 CFR 25.1(f)(12)), the agency has determined that this action does not require the preparation of an environmental impact statement and analysis report.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040–1042 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321, 343, 371(a))— and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 102 be amended by adding new § 102.46 to read as follows:

§ 102.46 Pacific hake.

"Pacific hake," or "North Pacific hake," is the common or usual name of the food fish *Merluccius productus.*

Interested persons may, on or before April 2, 1979 submit to the Hearing Clerk (HFA-350), 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.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: January 26, 1979.

WILLIAM F. RANDOLPH
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-3209 Filed 1-29-79; 8:45 am]

[4110-03-M]

[21 CFR Parts 172, 182, and 184]

[Docket No. 78N-0223]

ADIPIC ACID

Proposed Affirmation of GRAS Status as a Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to affirm the generally recognized as safe (GRAS) status of adipic acid as a direct human food ingredient. The safety of this ingredient has been evaluated under the agency's comprehensive safety review. The proposal would list the ingredient as a direct food substance affirmed as GRAS.

DATE: Comments by April 2, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of direct and indirect human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposals (see the FEDERAL

REGISTER of July 26, 1973 (38 FR 20040)), initiating this review. Under this review, the safety of adipic acid has been evaluated. In accordance with the provisions of § 170.35(21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of this ingredient.

Adipic acid (1, 4-butanedicarboxylic acid or hexanedioic acid) is reported to be a minor constituent of butter. It has also been found in other fats as a product of oxidative rancidity and in beet juice. Adipic acid has the lowest acidity of any of the acids commonly used in foods, and it has appreciable buffering capacity in the range of pH 2.5 to 3.0. Adipic acid is prepared by the nitric acid oxidation of cyclohexanol or cyclohexanone or a mixture of the two.

Under regulations published in the FEDERAL REGISTER of January 31, 1961 (26 FR 938), adipic acid is listed in § 182.1009 (21 CFR 182.1009) as GRAS for use in food as a buffer and neutralizing agent. The Food and Drug Administration also has issued an opinion letter recognizing the GRAS status of sodium adipate as a buffer and neutralizing agent.

Adipic acid has also been regulated for other specific food additive uses by issuance of the following regulations: (1) in § 172.515 (21 CFR 172. 515), as a synthetic flavoring substance and adjuvant; (2) in § 175.105 (21 CFR 175.105), as a component of adhesives; (3) in § 175.300 (21 CFR 175.300), as a component of resinous and polymeric coatings; (4) in § 175.320 (21 CFR 175.320), as a component of resinous and polymeric coatings for polyolefin films; (5) in § 177.1200 (21 CFR 177.1200), as a component of cellophane; (6) in § 177.1680 (21 CFR 177.1680), as a component of polyurethane resins; and (7) in § 177.2420 (21 CFR 177.2420), as a component of cross-linked polyester resins.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which adipic acid is used and the levels of usage. Information from surveys of consumer consumption was obtained and combined with the manufacturing information to obtain an estimate of consumer exposure to adipic acid. The amount of adipic acid used in food in 1970 was 8.6 million pounds, about 2.5 times the amount used in 1960.

Adipic acid has been the subject of a search of the scientific literature from 1920 to the present. The parameters used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 66 abstracts was reviewed and 14 particularly pertinent reports have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (the Select Committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Adipic acid labeled with carbon-14 in the 1- and 2-carbon positions and given by stomach tube (250 mg per kg body weight) to fasted male albino rats was almost completely absorbed and up to 70 percent of the radioactivity was exhaled as carbon dioxide within 24 hours. Tissues of the test animals sacrificed at 24 hours contained very little residual radioactivity. Highest activity appeared in the liver and kidneys. Radioactive metabolic products in the urine were identified as urea, glutamic acid, lactic acid, β-ketoadipic acid and citric acid. Some adipic acid also was excreted in the urine. The presence of β-ketoadipic acid suggested that adipic acid is metabolized by β-oxidation. Other evidence in the support of this mechanism was the appearance of succinic acid in the urine of rats fed carbon-14 labeled adipic acid and injected intraperitoneally with malonic acid to inhibit the oxidation of succinic acid. Evidence that acetate is a metabolite of adipic acid was the presence of labeled acetyl-α-phenyl-α-aminobutyric acid in the urine of rats after feeding α-phenyl-α-aminobutyric acid and carbon-14 labeled adipic acid. However, after feeding labeled carbon dioxide in the form of radioactive sodium bicarbonate some of the same metabolic products were isolated from the urine as were found after feeding labeled adipic acid. This indicates that such metabolic products are not necessarily derived directly from adipic acid but may be biosynthesized via carbon dioxide from adipic acid.

Adult rats given 2.4 g adipic acid per kg body weight by stomach tube each day for four weeks excreted 60 to 70 percent of the dose daily in the urine. Excretion dropped essentially to zero within 24 hours after the last feeding. Whole-body analysis of the rats 72 hours after the last feeding disclosed no accumulation of adipic acid in the body tissues. Whole-body analysis of young, growing rats fed the same level of adipic acid for four weeks gave a similar result.

Urinary excretion by rabbits was determined after administration of adipic acid (2.4 g per kg body weight) by stomach tube on two successive days. Collection and analysis of the urine for six days starting on the day of the first treatment showed that an average of 53 percent of the administered dose was excreted unchanged. Excretion reached a maximum on the second day and dropped to zero on the fifth day. In another study, it was found that an average of 61 percent of sodium adipate (0.23 to 0.74 g per kg) injected subcutaneously into rabbits was excreted unchanged in the urine within 24 hours; some increase in urinary oxalic acid was observed.

In four dogs given subcutaneous injections of 10 g of sodium adipate in doses of 250 mg (135 to 200 mg per kg) twice daily for five days, 50 percent of the compound was isolated from the urine.

Rats apparently do not develop a greater capacity to metabolize adipic acid when it is fed over a long period. Animals previously fed the compound for 20 to 25 weeks and those not previously receiving adipic acid were fed 400 to 800 mg per day (1.3 or 2.7 g per kg) for 14 days. The proportion of adipic acid excreted was about equal for the two groups.

In an investigation by Kabelitz of the effect of the dicarboxylic acids on oxalic acid excretion in human adults, the administration of 50 g (0.84 g per kg body weight) adipic acid by stomach tube caused no increase in the urinary excretion of oxalic acid in the two subjects studied. Addition of 150 g of butter, olive oil, lard or margarine to the standard diet for five days prior to administration of the adipic acid did not affect urinary excretion of oxalic acid. Weitzel administered up to 7.3 g (120 mg per kg) of adipic acid per day to three human subjects and concluded that much of the adipic acid was metabolized in the body. In later experiments he administered several dicarboxylic acids, including adipic acid, to human subjects at levels of 40 to 100 mg per kg daily for periods up to nine days. Over 50 percent of the adipic acid was excreted unchanged in the urine of four subjects. No adverse effects of adipic acid ingestion were reported.

The acute toxicity of adipic acid has been determined for various routes of administration in mice, rats, and rabbits. A value of 1900 mg per kg was established as the LD_{50} following oral administration to 39 adult male albino mice as a 6 percent suspension in 0.5 percent aqueous methyl cellulose. The intravenous injection of a 2 percent aqueous solution at a rate of 0.01 ml per second to 39 mice gave an LD_{50} of 680 mg per kg. The LD_{50} for intraperitoneal administration of adipic acid to mice was 275 mg per kg.

In rats given adipic acid orally, the average lethal dose was between 2.43 and 4.86 g per kg. The lower dose produced stomach distension and diarrhea which lasted about 24 hours. At the higher dose, the animals died 10 to 30 hours after feeding. Two determinations of acute toxicity in rats were reported in a recent study. In each case adipic acid was suspended in 0.85 percent saline and given orally by intubation in male rats of average weight about 250 g. An acute LD_{50} of 940 mg per kg was determined by administration of single doses (100 to 3000 mg per kg) to six groups of five rats each. In a second experiment no signs of toxicity were observed after a single dose of 5 g per kg was given to ten rats indicating an acute LD_{50} greater than 5 g per kg. A subacute LD_{50} (14 days) of 3.61 g per kg was established following administration of daily dosages of 3.60 to 5.60 g per kg for five days to five groups of six rats each and observation for a total period of 14 days.

Administered subcutaneously to rabbits, 1 to 2 g per kg of adipic acid was mildly nephropathic, as indicated by changes in blood composition and decreased output of phenolsulphonthalein. Renal function was recovered completely within 48 hours.

No changes in growth rate or in other outward manifestations as compared to controls were found in 55 female rats (92 g average initial weight) fed up to 40 mg (440 mg per kg) adipic acid daily in their diet for four weeks. Of 69 male rats, initial weight 50 g, fed 200, 400, and 800 mg (4 to 16 g per

kg) sodium adipate daily for five weeks as a dietary component, only those receiving the highest level exhibited signs of toxicity: depressed growth, severe diarrhea, and unkempt appearance. In another study in the same laboratory, young male and female rats given 400 mg (8 g per kg body weight) adipic acid daily for 33 weeks in their diet were not adversely affected. Pregnant rats in this group were able to bear and nurse their young. Young rats (54 g initial weight) fed an inferior diet consisting of crushed wheat supplemented with cod liver oil showed substantial growth impairment when adipic acid at a level of 400 mg per animal per day was included in the diet.

In a 90-day feeding test, young male albino rats were given a laboratory meal diet supplemented with 0.1, 1.0 and 5.0 percent adipic acid and female rats were fed the laboratory meal supplemented with 1.0 percent adipic acid. No adverse effects were noted at the 0.1 and 1.0 percent levels (up to 1.7 g per kg of body weight) but marked retardation of growth resulted at the 5.0 percent level (up to 8 g per kg). Since there was no alteration of food intake and no marked gross pathology at sacrifice, it is assumed that the low pH and high acid consumption at the 5 percent adipic acid level might have influenced food digestion and utilization.

As compared to control animals, young rats given 243 mg adipic acid (up to 3.4 g per kg) daily for four weeks did not differ in growth rate or appearance. A comparable study on adult rats given 730 mg (2.4 g per kg) daily showed no effect on weight or health of the animals.

Young male rats of the Carworth Farm strain were placed on either a basal laboratory diet or on the basal diet supplemented with 0.1, 1, 3, or 5 percent (50, 500, 1500, or 2500 mg per kg) adipic acid or 3 or 5 percent citric acid for two years. Female rats received the diet supplemented with 1 percent adipic acid. During the first several weeks, but not subsequently, the weight gains for the groups given 3 to 5 percent adipic or citric acid were significantly less than those of the controls. After sacrifice, microscopic examination was made of the thyroid, lungs, heart, liver, spleen, kidneys, adrenals, stomach, small intestine, large intestine, pancreas, bone marrow, and testes or ovaries and uterus. There was no difference in organ weights as compared to controls and no significant pathology observed that could be related to ingestion of adipic acid.

In testing of adipic acid for teratogenic effects, pregnant female albino CD-1 outbred mice were given up to 263 mg of adipic acid per kg body weight by oral intubation on day 6 through day 15 of gestation. No discernible effects were observed on nidation or on maternal or fetal survival. The number of abnomalities in the soft and skeletal tissues of the test groups did not differ from the number occurring spontaneously in sham-treated controls. Similar negative results were reported in studies of pregnant female Wistar-derived albino rats given up to 288 mg adipic acid per kg body weight by oral intubation daily from the 6th through the 15th day of gestation, and on pregnant hamsters given daily oral administration of up to 205 mg adipic acid per kg body weight on day 6 through day 10 of gestation.

Adipic acid showed no teratogenic activity when injected into the developing chick embryo at 0 and 96 hours of incubation either via air cell or yolk at dosages up to 300 mg per kg of egg.

Mutagenicity studies on adipic acid were conducted utilizing three mammalian test systems: (1) host-mediated assay in mice with *Salmonella typhimurium* TA-1530 and G-46 and *Saccharomyces cerevisiae* D-3 as test organisms; (2) cytogenic studies in rats; and (3) dominant lethal assay in rats. Adipic acid was administered by oral intubation at dosage levels of 3.75, 37.5 and 375 mg per kg body weight in the *in vivo* tests for both the acute (1 dose) and subacute studies (1 dose per day for five days). Mutagenic tests also were conducted *in vitro* using *S. typhimurium* TA-1530 and G-46, and *S. cerevisiae* D-3 as test organisms; *in vitro* cytogenetic studies using human embryonic lung cultures were performed at 2.0, 20.0, and 200.0 mcg adipic acid per ml. Adipic acid exhibited no mutagenic activity in any of the tests except for tests at acute levels with *S. cerevisiae* D-3 in which a weak positive response was observed.

All of the available safety information on adipic acid has been carefully evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

Investigations on animals and humans show that adipic acid is readily absorbed from the alimentary tract. Much of the absorbed compound is rapidly excreted in the urine but a substantial portion is oxidized to carbon dioxide. The intermediate products formed indicate that it is metabolized by the same route as the fatty acids.

The tolerance of animals to adipic acid is comparable to that of certain normal metabolites such as citric acid. Adipic acid caused no harmful effects in animals in long-term tests in which it was added to the diet in amounts up to at least 1 percent (500 mg per kg body weight per day). This is over 500 times the daily per capita intake estimated from the poundage reported to be used in food in 1970. The available evidence suggests that the metabolism of adipic acid in man is comparable to that of laboratory animals.

It is the conclusion of the Select Committee that there is no evidence in the available information on adipic acid that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future. Based upon his own evaluation of all available information on adipic acid, the Commissioner concurs with this conclusion. The Commissioner therefore concludes that no change in the current GRAS status of adipic acid is justified.

The Commissioner also concludes that the information generated for this safety review forms a sound scientific basis for affirming the GRAS status of adipic acid as a synthetic flavoring agent and adjuvant. Authority for this use now appears in § 172.515. Therefore, the Commissioner proposes to delete the entry for this substance from that section, as it would be superfluous. He also proposes to delete the entry (21 CFR 182.1009) for adipic acid as a multiple purpose food substance, as this section would also be superfluous.

Copies of the scientific literature review on adipic acid, and the report of the Select Committee are available for review at the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151, as follows:

Title	Order No.	Price Code	Price*
Adipic acid (Scientific literature review)	PB-230-305/AS	A03	$4.50
Adipic acid (Select Committee report)	PB-266-279/AS	A02	4.00
Adipic acid (Mutagenic evaluation)	PB-245-466/AS	A07	7.25
Adipic acid (Teratogenic evaluation)	PB-221-802	A03	4.50
Adipic acid (Teratogenic evaluation, rabbit)	PB-267-202/AS	A02	4.00

*Price subject to change.

This proposed action does not affect the present use of adipic acid for pet food or animal feed.

After careful consideration of the specifications for adipic acid in the Food Chemical Codex, the Commissioner concludes that they need improvement relative to current standards. Specifically, the Commissioner proposes the adoption of two identity tests and a narrower melting point range for food-grade adipic acid. These changes are specified in the proposed rule. In addition, the Commissioner concludes that the assay test for adipic acid can be significantly improved, and he requests comments from interested persons on improved assay tests that are more specific for adipic acid.

The GRAS status of sodium adipate as a buffer and neutralizing agent was recognized in an FDA opinion letter issued in 1964. However, the Commissioner is unaware of certain information which, in accordance with § 170.35, is required in order to affirm the GRAS status of sodium adipate. In particular, the Commissioner is un-

aware of the manufacturing methods and food-grade specifications for sodium adipate, the food categories in which it is used, and the usual and maximum use levels in each food category. Because the absence of this information precludes the definition of conditions of safe use, this proposal does not affirm the GRAS status of sodium adipate. Interested persons may include the information described above in any comments submitted in response to this proposal. The Commissioner does not consider himself bound by the 1964 opinion letter. Therefore, if the Commissioner does not receive the information required to affirm the GRAS status of sodium adipate, he may, upon the effective date of the proposed regulation, consider sodium adipate to be a food additive within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s)).

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

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

§ 172.515 [Amended]

1. In § 172.515 *Synthetic flavoring substances and adjuvants*, by deleting the entry for "Adipic acid; 1, 4-butanedicarboxylic acid" from the list of substances in paragraph (b).

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.1009 [Deleted]

2. By deleting § 182.1009 *Adipic acid.*

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

3. By adding new § 184.1009 to read as follows:

§ 184.1009 Adipic acid.

(a) Adipic acid ($C_6H_{10}O_4$, CAS Reg. No. 000124-04-9) is also known as 1, 4-butanedicarboxylic acid or hexanedioic acid. It is prepared by nitric acid oxidation of cyclohexanol or cyclohexanone or a mixture of the two.

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

(1) The melting range of the ingredient is 151° to 153° C.

(2) The test substance is derivatized to its corresponding amide. The amide is purified by recrystallization from water or aqueous ethanol. The melting range of this substance is 219° to 220° C.

(3) The test substance is derivatized to its corresponding *p* bromophenacyl ester. The ester is purified by recrystallization from ethanol. The melting range of this substance is 153° to 154° C.

(c) The ingredient is used as a flavoring agent as defined in § 170.3(o)(12) of this chapter, leavening agent as defined in § 170.3(o)(17) of this chapter, and pH control agent as defined in § 170.3(o)(23) of this chapter.

(d) The ingredient is used in foods at levels not to exceed good manufacturing practice in accordance with § 184.1(b)(1). Current good manufacturing practice results in maximum levels, as served, of 0.05 percent for baked goods as defined in § 170.3(n)(1) of this chapter, 0.005 percent for nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter, 5.0 percent for condiments and relishes as defined in § 170.3(n)(8) of this chapter, 0.43 percent for dairy product analogs as defined in § 170.3(n)(10) of this chapter, 0.3 percent for fats and oils as defined in § 170.3(n)(12) of this chapter, 0.0004 percent for frozen dairy desserts as defined in § 170.(n)(20) of this chapter, 0.55 percent for gelatin and puddings as defined in § 170.3(n)(22) of this chapter, 0.1 percent for gravies as defined in § 170.3(n)(24) of this chapter, 0.27 percent for meat products as defined in § 170.3(n)(29) of this chapter, 1.3 percent for snack foods as defined in § 170.3(n)(37) of this chapter, and 0.02 percent or less for all other food categories.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in reponse to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before March 27, 1979, submit to the Hearing Clerk (HFA-305), 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.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on July 10, 1973. Reference material is on file at the Federal Register Library.

Dated: January 22, 1979.

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

[FR Doc. 79-3030 Filed 1-29-79; 8:45 am]

[4110-03-M]

[21 CFR Parts 182 and 186]

[Docket No. 78N-0255]

SODIUM OLEATE AND SODIUM PALMITATE

Proposed Affirmation of GRAS Status as Indirect Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Commissioner of Food and Drugs proposes to affirm sodium oleate and sodium palmitate as generally recognized as safe (GRAS) when used as indirect human food ingredients. The safety of these ingredients has been evaluated in a comprehensive safety review being conducted by the agency. The proposal would list sodium oleate and sodium palmitate as indirect human food substances affirmed as GRAS.

DATE: Comments by April 2, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and

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

Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is conducting a comprehensive safety review of human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner has issued several notices and proposals (see the FEDERAL REGISTER of July 26, 1973 (38 FR 20040)) initiating this review. Under this review, the agency has evaluated the safety of sodium oleate and sodium palmitate. In accordance with the provisions of § 170.35 (21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of these ingredients for indirect human food use.

Oleic acid (an 18-carbon mono-unsaturated fatty acid) and palmitic acid (a 16-carbon saturated fatty acid) occur as triglyceride esters of natural fats and oils. In some fats and oils oleic acid is present at levels greater than 30 percent. In most animal fats, however, palmitric acid is the principal saturated fatty acid.

Sodium oleate is the sodium salt of oleic acid and exists as a white to yellowish powder with a slight tallow-like odor. Sodium palmitate is the sodium salt of palmitic acid and exists as a white to yellow powder. The sodium salts of oleic and palmitic acids (commonly referred to as soaps) are the products of alkaline hydrolysis of animal and vegetable fats and oils. However, sodium oleate and sodium palmitate are prepared commercially by mixing and heating food grade oleic or palmitic acid with flaked sodium hydroxide.

Under § 182.90 (21 CFR 182.90) soap (sodium oleate and sodium palmitate) is a GRAS substance migrating to food from paper and paperboard products (see regulations published in the FEDERAL REGISTER of June 17, 1961 (26 FR 5421)). FDA has also issued an opinion indicating that sodium oleate is GRAS when used as a component of lubricants with incidental food contact complying with § 178.3570 (21 CFR 178.3570). The sodium salts of fatty acids complying with § 172.860 (21 CFR 172.860) and/or oleic acid derived from tall oil fatty acids complying with § 172.862 (21 CFR 172.862) are also approved under § 172.863 (21 CFR 172.863) for use in food as binders, emulsifiers, and anticaking agents.

Sodium salts of fatty acids are also approved for use in various food-packaging materials. They are listed in § 175.105 (21 CFR 175.105) as components of adhesives, in § 176.170 (21 CFR 176.170) as components of paper and paperboard in contact with aqueous and fatty foods, in § 177.1200 (21 CFR 177.1200) as components of cellophane, in § 177.2260 (21 CFR 177.2260) as components of resin-bonded filters, in § 177.2600 (21 CFR 177.2600) as components of rubber articles intended for repeated use, and in § 178.3910 (21 CFR 178.3910) as components of surface lubricants used in the manufacture of metallic articles. Sodium oleate is listed in § 175.300 (21 CFR 175.300) as a component of resinous and polymeric coatings.

Other GRAS fatty acid salts are not addressed in this proposal. They will be considered in GRAS proposals on tallow, vegetable oils, and vitamin D, and on specifications such as aluminum, magnesium, and zinc.

No data on possible intakes of sodium oleate or sodium palmitate resulting from their use in food-packaging materials have been found. However, FDA concludes that only minute amounts of these ingredients might enter the human food supply as migrants from paper and paperboard packaging materials, and that the amounts would be extremely small in comparison with the substantial quantities of oleic and palmitic acids and sodium that are ingested daily as natural components of food.

Sodium salts of fatty acids have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 148 abstracts was reviewed and 32 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (the Select Committee), chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

No information directly concerned with the absorption, metabolism, excretion, or acute toxicity of sodium oleate and sodium palmitate as such was found by the Select Committee. However, the following three studies are relevant:

Carroll and Richards fed rats for 16 days on diets containing various sources of fat and found that oleic acid was less well absorbed (73 percent) than triolein (99 percent); 40 percent of fed palmitic acid was absorbed while only 22 percent of fed tripalmitin was absorbed. These percentages were based on analyses of feces for unabsorbed lipids. Dietary doses of the fats were approximately 1.2 to 1.4 g per rat per day (about 7 to 8 g per kg per day).

Bergstrom *et al.* administered by gastric intubation 0.5 ml of 1-^{14}C oleic acid (about 1.8 g per kg) to 250 g male rats with cannulated thoracic ducts. After 24 hours, an average of 78 percent of the labeled oleic acid had been absorbed. Of the absorbed oleic acid recovered in lymph from the thoracic duct, about 2 percent was in the form of phospholipids. About 16 percent of the carbon-14 label was recovered as expired $^{14}CO_2$ in 24 hours.

Similar experiments were conducted by Bloom *et al.* who administered ^{14}C-palmitic acid in corn oil enterally. Thoracic duct cannulations were performed on ten male rats, six received the free fatty acid and four received tripalmitin. In 19 to 24 hours, 81 to 95 percent of the labeled palmitic acid was recovered from the thoracic duct lymph. An additional four rats were prepared by cannulation of their larger mesenteric lymph ducts; 69 to 84 percent of the labeled palmitic acid was recovered from the fatty acid fraction of the intestinal lymph.

Oleic and palmitic acids are components of many foods and GRAS food ingredients. Their sodium salts dissociate in the gastrointestinal tract and the fatty acid moieties are transported into the mucosal cells, where they are esterified into triglycerides. A small amount of the free fatty acids is dispersed in the chylomicrons and transported into the general circulation.

Few studies have been reported concerning the sodium salts of oleic or palmitic acids as such, and these, as well as relevant studies on the feeding of the corresponding fatty acids, have usually employed dosage levels that are orders of magnitude higher than would be expected in food due to migration of these salts from packaging materials.

Chauchard *et al.* reported that feeding sodium oleate to rats daily at 22 percent of their diet (about 22 g per kg per day) increased the excitability of the neuromuscular system, shortened nerve chronaxia, and increased muscle chronaxia. The effect was observed within 48 hours after starting the diet. The authors ascribed the effect to a dietary lipid imbalance and found it to be neutralized by addition of B vitamins. Lecoq *et al.*, in continuance of this work, observed similar effects after subcutaneous injection of sodium oleate (dose not indicated) and found that they could be reversed or prevented by daily oral administration of 100 to 200 μg doses of nicotinamide, pyridoxine or pantothenic acid. In neither study was the no-effect level of sodium oleate on neuromuscular excitability determined.

Sunde reported that chicks receiving 5 percent oleic acid in their diet (about 6 g per kg per day) for four weeks showed improved feed utilization and no adverse effects.

Flesch found that the administration of 10 ml of oleic acid (about 2.5 g per kg body weight) by stomach tube every other day for four days to four albino rabbits resulted

in hair loss, scaling seborrheic lesions on the ears and one death. Doses of 2.5 ml of oleic acid (about 0.6 g per kg) were without adverse effects.

Herting *et al.* fed weanling Holtzman rats a diet containing palmitic acid as 50.4 percent of the ration (about 50 g per kg body weight per day). The palmitic acid was 58 to 60 percent absorbed. Lipogranulomas were produced in adipose tissue within eight weeks. The occurrence of lipogranulomas was greater in the fat associated with the testis or ovary than in that of other tissues. Foreign body-type reactions in perigonadal fat were noted in four of five animals observed for 24 weeks. Simular results were obtained with other saturated fats (stearic acid, ethyl stearate and hydrogenated lard) when fed at about the same levels. When the saturated fat in the diet was replaced with 20 percent corn oil, prompt diminution and eventual disappearance of the lipogranulomas were observed. The investigators ascribed the effect to dietary imbalance produced by a high lipid diet of saturated fatty acids. Experiments at lower dietary levels were not conducted.

Renaud gave seven rats a hyperlipemic diet (32 percent butter; 5 percent cholesterol) supplemented by 5 percent palmitic acid (about 4.6 g per kg body weight per day of palmitic acid) for a six-week period. To initiate thrombosis, a *Salmonella typhosa* endotoxin was injected at the end of the feeding period. Palmitic acid was the most hyperlipemic of the common fatty acids used in these experiments which also included caprylic, lauric, myristic, and stearic acids. Stearic acid was the most thrombogenic, followed by palmitic acid. Robertson *et al.* injected five week-old male and female albino mice subcutaneously with a 5 percent emulsion of oleic acid in 0.25 and 0.5 ml volumes weekly (about 12 to 15 g per kg body weight) for 60 weeks. The growth rate of the animals was normal.

Carroll and Noble fed Sprague-Dawley and Wistar rats a diet supplemented with 15 percent oleic acid (initially about 15 g per kg body weight). They appeared to develop normally and their general health appeared good after five months. Progressive reduction in spermatogenesis, and prolonged estrous cycles occurred but most females bore living young. In general, the animals resembled those subjected to diets deficient in essential fatty acids.

No studies of the carcinogenicity, mutagenicity, or teratogenicity of sodium oleate or sodium palmitate have come to the attention of the Select Committee. It is noted, however, that Nakahara found an intraperitoneal injection of 0.5 ml of a 1 percent solution of sodium oleate in mice (about 0.25 g per kg body weight) to increase their resistance to growth of subsequently transplanted Bashford adenocarcinoma 63. Sodium oleate produced no significant increase in the resistance to cancer already *In situ*. Sodium palmitate at about the same dosage was without effect in these experiments.

Qualified scientists of the Select Committee have carefully evaluated all of the available safety information on sodium oleate and sodium palmitate. The Select Committee believes that:

Although there are no data available to the Select Committee on the amounts of sodium oleate and sodium palmitate used in fabricating food containers or the amounts that might migrate to food therefrom, it is evident that the amount of these compounds that could transfer to foodstuffs in the package would be many orders of magnitude below the quantities of the respective fatty acids normally present as triglycerides in many foods. The sodium salts of the fatty acids are toxicologically indistinguishable from the latter when consumed in small amounts. The Select Committee recognizes that large amounts of the free fatty acids can distort the physiological processes in a system that is organized to absorb and utilize the triglycerides, but such excesses would not be expected from the use of sodium oleate and sodium palmitate as food packaging material ingredients.

The Select Committee concludes that no evidence in the available information on sodium oleate and sodium palmitate demonstrates, or suggest reasonable grounds to suspect, a hazard to the public when those substances are used as ingredients of paper and paperboard used for food packaging in the manner now practiced or as they might be expected to be used for such purposes in the future. Based upon his own evaluation of all available information on these salts, the Commissioner agrees with this conclusion and therefore finds that no change in the current GRAS status of these salts is justified. Additionally, although the use of sodium oleate as a component of lubricants with incidental food contact was not addressed explicitly in the Select Committee report, the Commissioner concludes that the information developed during the Select Committee safety review also forms a sound basis for affirming this use of sodium oleate as GRAS.

Copies of the scientific literature review on sodium salts of fatty acids and the report of the Select Committee are available for review at the Office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price*
Sodium Salts of Fatty Acids (scientific literature review)	PB-241-968/AS	A05	$6.00
Sodium Oleate and Sodium Palmitate (Select Committee report).	PB-276-414/AS	A02	$4.00

* Price subject to change.

This proposed action does not affect the present use of sodium oleate and sodium palmitate in pet food or animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 182 and 186 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.90 [Amended].

1. In § 182.90 *Substances migrating to food from paper and paperboard products* by deleting the entry for "Soap (sodium oleate, sodium palmitate)".

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

2. In Part 186, by adding new §§ 186.1770 and 186.1771, to read as follows:

§ 186.1770 Sodium oleate.

(a) Sodium oleate ($C_{18}H_{33}O_2Na$, CAS Reg. No. 143-19-1) is the sodium salt of oleic acid (*cis*-9-octadecenoic-acid). It exists as a white to yellowish powder with a slight tallow-like odor. Commercially, sodium oleate is made by mixing and heating flaked sodium hydroxide and oleic acid.

(b) Sodium oleate shall meet the requirements of § 172.863 of this chapter.

(c) The ingredient is used as a constituent of paper and paperboard used for food packaging, and as a component of lubricants with incidental food contact in accordance with § 178.3570 of this chapter.

(d) The ingredient is used at levels not to exceed good manufacturing practice in accordance with § 186.1(b)(1).

§ 186.1771 Sodium palmitate.

(a) Sodium palmitate ($C_{16}H_{31}O_2Na$, CAS Reg. No. 408-35-5) is the sodium salt of palmitic acid (hexadecanoic acid). It exists as a white to yellow powder. Commercially, sodium palmitate is made by mixing and heating flaked sodium hydroxide and palmitic acid.

(b) Sodium palmitate shall meet the requirements of § 172.863 of this chapter.

(c) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(d) The ingredient is used at levels not to exceed good manufacturing practice in accordance with § 186.1(b)(1).

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of these ingredients in food under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also contitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before April 2, 1979 submit to the Hearing Clerk (HFA-305), 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.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order.

Dated: January 22, 1979.

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

[FR Doc. 79-2898 Filed 1-29-79; 8:45 am]

[4110-03-M]

[21 CFR Part 1020]

[Docket No. 75N-0046]

DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

Proposed Amendment to Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the performance standard for diagnostic x-ray systems to modify the beam quality (half-value layer) provision of the standard for dental x-ray systems designed for use with intraoral image receptors. The purpose of this amendment is to reduce unnecessary x-radiation exposure to the patient that can result from low voltage, low filtration dental x-ray systems.

DATES: Comments by April 30, 1979, the Food and Drug Administration proposes that the final amendment become effective 1 year after date of publication of the final rule in the FEDERAL REGISTER.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

John C. Taschner, 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.

SUPPLEMENTARY INFORMATION: Many investigators have measured the x-ray exposure to patients or phantoms exposed to dental radiographs to determine those refinements of technique that would result in minimum patient exposure while yielding maximum diagnostic information. The influence of beam quality (waveform, peak accelerating potential, and filtration) on patient exposures and image characteristics has been the focus of numerous investigations, summarized in a literature review by Saulnier and Barr (Ref. 1). A study by Lee (Ref. 2) showed marked increases in the entrance skin, mandibular bone marrow, thyroid, eye, and integral doses as the peak tube potential was decreased from 72 to 44 kilovolts peak (kVp). The entrance skin dose, for example, is approximately 7 times higher for the low-kilovoltage technique, although the amount of exposure at the film for both cases is about the same. There was little apparent difference in the doses as the tube potential was raised from 72 kVp to 91 kVp. The results of this study are in good agreement with those reported by Alcox and Jameson (Ref. 3) in a study conducted under clinical conditions. These studies show that among today's acceptable dental radiographic practices, those employing the lowest peak tube potentials and the least filtration will deliver the greatest radiation doses per film to the dental patient. These high-dose techniques are permitted by current voluntary standards (Refs. 4 and 5) and § 1020.30(m)(1) (21 CFR 1020.30(m)(1)) of the diagnostic x-ray system performance standard.

The higher entrance skin doses result from the fact that more than half of the photons in the spectrum of a low kilovoltage beam are below 27 kiloelectron volts (keV). These photons are readily absorbed by the intervening tissues between the skin and film, contributing heavily to patient dose, but are relatively inefficient in producing a radiographic image. For example, 20 and 40 keV photons have approximately the same mass absorption coefficient in silver, yet the absorption coefficient of the 20 keV photon is 8 times higher in soft tissue and 12 times higher in bone than that of the 40 keV photon, even though the amount of exposure required at the x-ray film to produce a satisfactory dental radiograph is about the same (Ref. 2).

The FDA proposes to amend § 1020.30(m)(1) to require that the half-value layer (HVL) of the useful beam of all dental x-ray systems operating at 70 kVp and below be equivalent to at least 1.5 millimeters (mm) of aluminum Al). Dental x-ray systems operating above 70 kVp would continue to meet the requirements of Table I of § 1020.30(m)(1). The current provisions of the standard require a minimum HVL of 1.2 mm Al at 50 kVp and 1.5 mm Al at 70 kVp. The 50 kVp systems currently produce a normalized entrance skin-to-film exposure ratio of about 18 to 1, a greater ratio than the FDA believes should be tolerated. (Even higher entrance skin-to-film ratios may occur at kilovoltages lower than 50 kVp.) By establishing 1.5 mm Al as the lower HVL limit, the entrance skin-to-film ratio can be reduced to about 13 to 1, closer to the 10 to 1 ratio proposed as the maximum in a draft amendment distributed by the Bureau of Radiological Health (BRH) in October 1975. To achieve an HVL of 1.5 mm Al at 50 kVp, the total filtration in the primary x-ray beam would be about 2.5 mm Al equivalent.

The FDA has taken several actions allowing interested persons to participate in the development of the proposed amendment. The basic concept was presented by BRH on September 19, 1974 at the 12th meeting of the Technical Electronic Product Radi-

ation Safety Standards Committee (TEPRSSC). A notice of intent to amend the beam quality provision of the standard with respect to dental x-ray systems, published in the FEDERAL REGISTER of June 19, 1975 (40 FR 25830), invited the public to participate in the development of the proposed amendment by submitting written comments concerning the amendment. A draft of the proposal and supporting rationale was reviewed on September 18, 1975 at the 13th meeting of TEPRSSC. This draft was subsequently distributed on October 1, 1975 to manufacturers, professional associations, State radiation control agencies, and other interested persons on the Bureau's mailing list, inviting comment on the proposal. The draft, the comments received, and the summary of advisory committee meetings are on file with the Hearing Clerk, FDA. In developing this proposal, FDA has considered all comments received on the notice of intent and the October 1, 1975 draft amendment and rationale document. A summary of the comments and the FDA's responses follows:

1. Several comments recommended establishing a minimum peak tube potential (kVp) provision for dental x-ray machines rather than changing the HVL requirements of § 1020,30(m). Suggested minimum values ranged from 50 to 65 kVp.

The purpose of establishing HVL requirements specifically for dental x-ray systems designed for use with intraoral image receptors is to provide x-ray beam qualities that would yield the maximum diagnostic information with the minimum dose to the patient. The FDA believes that to adopt the suggestions would simply cause the elimination of low kilovoltage dental x-ray machines.

2. Several comments disagreed with establishing minimum HVL requirements based on an arbitrary set entrace skin-to-film exposure ratio of 10. They argued that this approach, while eliminating low kilovoltage, low filtration techniques that are responsible for high patient exposure, would permit the use of high kilovoltage, low filtration techniques that would result in patient exposures greater than those presently allowed. These comments, in general, disagreed with the proposal to lower the current minimum HVL requirements at the high kilovoltages but supported increasing the minimum HVL requirements at the lower kilovoltages to upgrade the beam quality of these dental x-ray systems.

The FDA agrees with these comments and has modified the proposed amendment accordingly.

3. Two comments from State radiation control agencies expressed concern that their regulations, which require 2.5 mm Al filtration at 70 kVp and above and 1.5 mm Al filtration below 70 kVp, would be in conflict with the proposed amendment. One comment also stated that dental x-ray equipment meeting the current beam quality standard would become substandard after the effective date of the final amendment and questioned whether the States should allow continued use of such equipment.

The revised x-ray beam quality amendment would apply only to dental x-ray systems manufactured on or after the effective date of the amendment and that operate at about 70 kVp and below. According to section 360F of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263n), State regulations would have to be identical if they apply to newly manufactured x-ray systems and address the same aspect of performance.

Manufacturers' and assemblers' reports filed at BRH from August 1974 through June 1976 indicate that only about 10 percent of the dental x-ray systems currently in use or in the "used" equipment market would not meet the proposed amendment, if the amendment were to be applied by States to equipment purchased before the effective date of the amendment. Because these x-ray systems have been shown to contribute unnecessary x-ray exposure, the FDA encourages State regulatory agencies to consider actions that would require these x-ray systems either to be modified to meet the new proposed provisions or to be phased out of use.

4. One comment asked whether manufacturers would be permitted to comply with the amendment before the effective date.

It is FDA's policy to permit manufacturers to comply with a performance standard for electronic products or an amendment to a standard after its publication as a final rule in the FEDERAL REGISTER but before the effective date if the manufacturers have filed appropriate amendments to their reports under Part 1002 (21 CFR Part 1002). In this case, compliance with the amendment would also be compatible with compliance with existing regulations. Therefore, although the FDA proposes that the amendment will not become effective until 1 year after it is published, manufacturers could adopt performance requirements compatible with the amendment at any time, and the FDA encourages early compliance.

5. One comment stated that establishing different HVL requirements for dental x-ray systems designed for intraoral and extraoral film radiography would prevent a practitioner from using a dental x-ray system for both techniques.

Generally, x-ray systems not capable of operating at 70 kVp and above are unsuitable for extraoral film radiography. For those dental x-ray systems that are designed for the higher kVp range (70 kVp and above), the current minimum beam quality requirements in the standard would be met.

6. One comment stated that the proposed HVL requirements may create difficulties in taking certain intraoral radiographs, namely (a) sialography, (b) detection of low-contrast foreign bodies, (c) fluid study of sinus examination, and (d) soft tissue examinations in general. These examinations all require low tube potentials (40 to 50 kVp) with very little filtration (0.5 to 1 mm Al). If these examinations are made with heavily filtered x-rays at 50 kvp, the exposure times must be increased substantially due to the low tube current of most dental x-ray machines, resulting in unacceptable motion unsharpness in the radiographs.

Little evidence was presented in the written comments received by BRH in regard to the need, based on imaging demands, for the continued allowance for low kilovoltage, low filtration dental x-ray systems. Radiographic practice using these units has repeatedly been shown to result in considerably greater radiation doses to the dental patient. According to assemblers' reports filed at BRH, the low kilovoltage, low filtration dental x-ray systems constituted only about 10 percent of total market from August 1974 through June 1976. The need for such systems is, therefore, not significant, and most dental radiographers do without such equipment. In exceptional cases in which there is a need for equipment that deviates from the standard, a manufacturer could apply for a variance under § 1010.4 (21 CFR 1010.4).

Accompanying the October 1, 1975 draft beam quality amendment was a proposal that would establish a minimum x-radiation exposure rate requirement for dental x-ray systems designed for use with intraoral image receptors. The specific value of 300 milliroentgens (mR) in 2 seconds or less was chosen to provide the capability of making a bitewing radiograph of an adult patient using dental radiographic film of American National Standards Institute Speed Group D in not more than about 3 seconds with dental x-ray equipment that would meet the draft beam quality requirement. Comments received in response to the draft proposal indicated that the minimum exposure rate of 600 mR in 2 seconds or less would seem to be more suitable.

The FDA is withdrawing the proposed exposure rate requirement because there seems to be no need for it at this time. At present there are no dental x-ray machines being manufactured or imported into the United States that are limited to 50 kVp or less. Therefore, it would appear that certified x-ray systems now being marketed in the United States would meet the minimum exposure rate value of 600 mR in 2 seconds or less while, at the same time, complying with the new beam quality requirement.

REFERENCES

1. Saulnier, V. E. and J. H. Barr, "Compact Foreign-Made X-Ray Generators: An Evaluation of Their Acceptability for Effective Dental Radiography. I. A Review of the Literature," *Oral Surgery, Oral Medicine and Oral Pathology*, 38(5):810-818, November 1974.

2. Lee, W., "Comparative Radiation Doses in Dental Radiography," *Oral Surgery, Oral Medicine and Oral Pathology*, 37(6):962-968, June 1974.

3. Alcox, R. W. and W. R. Jameson, "Patient Exposures from Intraoral Radiographic Examinations," *Journal of the American Dental Association*, 88:568-579, March 1974.

4. National Council on Radiation Protection and Measurements, "Dental X-ray Protection," NCRP Report No. 35, Washington, DC, March 9, 1970; available from NCRP Publications, P.O. Box 4867, Washington, DC 20008.

5. American National Standards Institute, "Dental X-ray Equipment," ANSI MD 156.26, 1975, American National Standards Institute, New York; available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The FDA carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file in Docket No. 75N-0046 with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 as amended (42 U.S.C. 263f)) and under authority delegated to the Commissioner (21 CFR 5.1(a)(3)), it is proposed that Part 1020 be amended in § 1020.30 by revising paragraph (m)(1) to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(m) * * *

(1) *Half-value layer.* (i) Except for any dental x-ray system designed for use with intraoral image receptors and manufactured on or after (a date 1 year after publication of the final regulation in the FEDERAL REGISTER), the half-value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the values shown in Table I.

(ii) For any dental x-ray system designed for use with intraoral image receptors and manufactured on or after (a date 1 year after publication of the final regulation in the FEDERAL REGISTER), the half-value layer (HVL) of the useful beam shall not be less than 1.5 millimeters of aluminum up to and including measured potentials of 70 kilovolts peak. Above 70 kilovolts peak, the half-value layer of the useful beam shall not be less than the value shown in Table I.

(iii) If it is necessary to determine a half-value layer at an x-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made. Positive means [2] shall be provided to insure that at least the minimum filtration needed to achieve the above beam quality requirements is in the useful beam during each exposure.

TABLE I

Design operating range (Kilovolts peak)	Measured potential (Kilovolts peak)	Half-value layer (Millimeters of aluminum)
Below 50	30	0.3
	40	0.4
	49	0.5
50 to 70	50	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

* * * * *

Interested persons may, on or before April 30, 1979 submit to the Hearing Clerk (HFA-305), 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.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: January 22, 1979.

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

[FR Doc. 79-2899 Filed 1-29-79; 8:45 am]

[2] In the case of a system which is to be operated with more than one thickness of filtration, this requirement can be met by a filter interlock with the kilovoltage selector which will prevent x-ray emission if the minimum required filtration is not in place.

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-73-75]

INVESTMENT CREDIT—QUALIFIED PROGRESS EXPENDITURES

Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to qualified progress expenditures for the investment credit. Changes in the applicable tax law were made by sections 301 and 302 of the Tax Reduction Act of 1975 (Pub. L. 94-12, 89 Stat. 26), sections 1701(b) and 1703 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1520), and section 311(a) of the Revenue Act of 1978. These regulations provide the public with the guidance needed to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 2, 1979.

The amendments under the Tax Reduction Act of 1975 are proposed to be effective for taxable years ending after December 31, 1974. The amendments under the Tax Reform Act of 1976 are proposed to be effective for taxable years ending after December 31, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-73-75) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Richard L. Mull of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202-566-4454, not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 46 and 47 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to certain changes made by sections 301 and 302 of the Tax Reduction Act of 1975 (89 Stat. 26), sections 1701(b) and 1603 of the Tax Reform Act of 1976 (90 Stat. 1520), and section 311(a) of the Revenue Act of 1978. The proposed regulations are to be issued under the authority contained in section 7805 of the Code (68A Stat. 917, 26 U.S.C. 7805), section 38(b) of the Code (76 Stat. 962, 26 U.S.C. 38), section 46(d)(6) of the Code (89 Stat. 42, 26 U.S.C. 46), and section 47(a)(3)(C) of the Code (89 Stat. 43, 44, 26 U.S.C. 46).

Prior to the Tax Reduction Act of 1975 (1975 Act), a taxpayer could claim the investment credit for qualified property only when the property was placed in service. This rule delayed the benefits of the investment credit for property that took a number of years to construct well beyond the time payments for construction were actually made by the taxpayer. Section 302 of the 1975 Act adds a new section 46(d) to the Code to resolve this problem.

Under section 46(d), a taxpayer may elect to claim the investment credit prior to the time the property is place in service for qualified progress expenditures made by the taxpayer for construction (either by the taxpayer or by another person for the taxpayer) of progress expenditure property. Progress expenditure property is property that has a normal construction period of 2 years or more and that will be new section 38 property having at least a 7-year useful life in the hands of the taxpayer when it is placed in service.

In general, if the taxpayer constructs property himself, qualified progress expenditures are amounts properly chargeable to capital account each year for construction. If another person constructs property for the taxpayer, qualified progress expenditures include amounts paid each year to the other person to the extent they represent construction completed by the other person during the year. Cost accounting records may be evidence of progress made in construction by the other person. However, the taxpayer may not have access to the manufacturer's cost accounting records. Thus, architectural or engineering estimates will also be evidence of progress.

The election to claim the investment credit for qualified progress expenditures may be made for taxable years ending after December 31, 1974, and applies only to progress expenditures made after Januare 21, 1975. The election applies to all progress expenditure property and, in general, cannot be revoked.

Section 1.46-5 (relating to limitation in case of certain regulated companies under section 46(f)), as proposed February 2, 1972, will be redesignated as § 1.46-6 when published as a Treasury decision. The proposed regulations add a new § 1.46-5 to provide rules for claiming the investment credit under section 46(d) for qualified progress expenditures. Under these rules, qualified progress expenditures made during a taxable year are added to the taxpayer's qualified investment otherwise determined under § 1.46-3 for that year. However, qualified progress expenditures made in taxable years beginning before 1980 are not allowed in full in computing the credit in the year they are made, but are phased-in over a 5-year period.

The proposed regulations amend §§ 1.47-1 and 1.47-3 to provide rules for recapturing investment credit for progress expenditure property. In general, those rules are similar to the rules for recapture for other section 38 property. However, a special rule is provided for recapture for certain sale-leaseback transactions.

The proposed regulations contained in this document also reflect certain amendments made by section 301 of the 1975 Act, sections 1701(b) and 1703 of the Tax Reform Act of 1976 (1976 Act), and section 311(a) of the Revenue Act of 1978. Section 301 of the 1975 Act provides an alternative limitation on the amount of tax liability that may be offset by investment credit for public utility property. Sections 701(b) and 1703 of the 1976 Act provide a similar limitation for railroad and airline property. Under the proposed regulations, the alternative limitation is applied to progress expenditure property that is public utility, railroad, or airline property. Section 301 or the 1975 Act also provides that the 10-percent credit applies to qualified progress expenditures. Section 311(a) of the Revenue Act of 1978 extends the 10-percent credit permanently.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place with be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is Richard L. Mull of the legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.46-3 is amended by adding a new sentence at the end of paragraph (a)(1) to read as follows:

§ 1.46-3 Qualified investment.

* * * * *

(a) *In general.* * * *

(1) * * * See § 1.46-5 for special rules for progress expenditure property.

* * * * *

Par. 2. A new § 1.46-5 is added immediately after § 1.46-4 to read as follows:

§ 1.46-5 Qualified progress expenditures.

(a) *In general.* (1) This section applies to taxable years ending after December 31, 1974.

(2) Under section 46(d), a taxpayer may elect to take the investment credit for qualified progress expenditures (as defined in paragraph (d) of this section). In general, qualified progress expenditures are amounts paid for construction of progress expenditure property. The taxpayer must reasonably estimate that the property will take at least 2 years to construct and that the useful life of the property will be 7 years or more. Qualified progress expenditures may not be taken into account if made before the later of (i) January 22, 1975, or (ii) the first taxable year to which an election under section 46(d) applies. In general, qualified progress expenditures are not allowed for the year property is placed in service, nor for the first year or any subsequent year recapture is required under section 47(a)(3). However, a transferee of the taxpayer is entitled to qualified progress expenditures in the year recapture is required and in subsequent years, if the transferee would otherwise be entitled to qualified progress expenditures. There is a percentage limitation on qualified progress expenditures for taxable years beginning before January 1, 1980.

(b) *Reduction of qualified investment.* Under section 46(c)(4), a taxpayer must reduce qualified investment for the year property is placed in service by qualified progress expenditures taken into account by that person or a predecessor. A "predecessor" of a taxpayer is a person whose election under section 46(d) carries over to the taxpayer under paragraph (g)(3) of this section.

(c) *Definition of progress expenditure property*—(1) *In general.* The term "progress expenditure property" means property constructed by or for the taxpayer, with a normal construction period (as defined in paragraph (c)(2) of this section) of 2 years or more. The taxpayer must reasonably believe that the property will be new section 38 property with a useful life of 7 years or more when placed in service.

(2) *Normal construction period*—(i) The term "normal construction period" means the period the taxpayer reasonably expects will be required to construct the property. The 2-year period begins on the date physical work on construction of the property commences and ends on the date the property is available to be placed in service. The normal construction period does not include, however, construction before January 22, 1975, nor construction before the first day of the taxable year for which an election under section 46(d) is in effect. Physical work on construction of property does not include preliminary activities such as planning or designing, securing financing, exploring, researching, or developing.

(ii) For purposes of section 46(d), the term "construction" means building or manufacturing property from materials and component parts. "Construction" does not include activities such as cultivating orchards, raising livestock, or creating a motion picture film or video tape. Thus, no qualified progress expenditures are allowed for those activities.

(iii) In general, taxpayers should refer to normal industry practice in estimating the normal construction period of particular items. A different period may be used if special circumstances exist making it impractical to make the estimate on the basis of normal industry practice. The estimate must be based on information available at the close of the taxable year in which physical work on the property began, or at the close of the first taxable year for which an election under section 46(d) is in effect, whichever is later. If the estimate is reasonable when made, the actual time it takes to complete the work is, in general, irrelevant in determining whether property is progress expenditure property. However, if there is a significant error in estimating the normal construction period, it may be evidence that the estimate was unreasonable when made. The taxpayer must attach to its tax return a statement of the basis relied upon in estimating the normal construction period.

(iv) The normal construction period of property ends on the date it is expected the property will be available to be placed in service. Property is considered available to be placed in service when construction is completed and the property is available for its assigned function or available for delivery to the site of its assigned function. It is not necessary that property be in a state of readiness for a specifically assigned function. Nor is it necessary that it actually be delivered to the site of its assigned function.

(v) In determining whether property has a normal construction period of 2 years or more, property that will be placed in service separately is to be considered separately. For example, if two ships are contracted for at the same time, each ship is considered separately under this paragraph. However, for property that will be placed in service as an integrated unit, the taxpayer must determine the normal construction period of the integrated unit. If the normal construction period of the integrated unit is 2 years or more, the normal construction period of each item of new section 38 property that is a part of the integrated unit is considered to be 2 years or more. Property is part of an integrated unit only if the operation of that item is essential to performance of the function to which the unit is assigned. The normal construction period for an integrated unit begins on the date the normal construction period of the first item of new section 38 property that is part of the unit begins. The period ends on the date the last item of new section 38 property that is part of that unit is available to be placed in service. The normal construction period of a unit, thus, may be 2 years or more, even if no part of the unit has a normal construction period of 2 years or more.

(3) *Examples.* Paragraph (c)(2) of this section may be illustrated by the following examples:

Example (1). On July 1, 1974, corporation X begins physical work on construction of a machine with an estimated useful life when placed in service of more than 7 years. For its taxable year ending June 30, 1975, X makes an election under section 46(d). For purposes of determining on June 30, 1975, whether the machine is "progress expenditure property", the normal construction period is treated as having begun on January 22, 1975. Thus, the machine will be considered to be progress expenditure property on June 30, 1975, only if the estimated time required to complete construction after June 30 is at least 18 months and 22 days (*i.e.*, 2 years less the period January 22, 1975, through June 30, 1975).

Example (2). (i) On January 1, 1976, corporation X begins construction of a pipeline. The pipeline is in 2 sections. One section extends from city M to city N. The other extends from city N to city O. Oil will be transferred to storage tanks at both city N and city O. Corporation X also begins construction on January 1, 1976, of a pumping station necessary to operation of the pipeline from city M to city N. Construction of a pumping station necessary to operation of the pipeline from city N to city O begins on June 30, 1977. For 1976, corporation X makes an election under section 46(d).

(ii) The section of pipeline from city M to city N and the associated pumping station will be available to be placed in service on January 1, 1977. Construction of the section of the pipeline from city N to city O will be completed on June 30, 1977. However, that section of the pipeline will not be available to be placed in service until completion of the associated pumping station on January 1, 1978.

(iii) The section of pipeline from city M to city N and the section from city N to city O must be considered separately in determining the normal construction period of the property. Each section will be placed in service separately. However, each section of the pipeline and the associated pumping station may be considered an integrated unit. The pumping stations are essential to operation of each section of pipeline. Each section of pipeline and the associated pumping station is placed in service at the same time.

(iv) The section of pipeline from city M to city N is not progress expenditure property, because the normal construction period of that unit is only 1 year (January 1, 1976, to January 1, 1977).

(v) The section of pipeline from city N to city O and the associated pumping station is progress expenditure property, because the normal construction of that integrated unit is 2 years (January 1, 1976, to January 1, 1978). It is immaterial that neither the construction period of that section of pipeline (January 1, 1976 to June 30, 1977) nor the construction period of the associated pumping station (June 30, 1977 to January 1, 1978) is 2 years.

(4) *New section 38 property with a 7-year useful life*—(i) The taxpayer must determine if property will be new section 38 property with a useful life of 7 years or more when placed in service. The determination must be made at the close of the taxable year in which construction begins or at the close of the first taxable year to which an election under section 46(d) applies, whichever is later.

(ii) The determination of whether property will be "new section 38 property" (within the meaning of §§ 1.48-1 and 1.48-2) must be based on the reasonably expected use of the property by the taxpayer. There is a presumption that property will be new section 38 property if it would be new section 38 property if placed in service by the taxpayer when the determination is made. For example, in determining if property is an integral part of manufacturing under section 48(a)(1)(B)(i),

it will be presumed property will be new section 38 property if the taxpayer is engaged in manufacturing when the determination is made. Also, significant steps taken to establish a trade or business will be evidence the taxpayer will be engaged in that trade or business when the property is placed in service.

(iii) The determination of whether property will have an estimated useful life of 7 years or more when placed in service must be made by applying the principles of § 1.46-3(e). If the estimated useful life is less than 7 years when the property is actually placed in service, the credit previously allowed under section 46(d) must be recomputed under section 47(a)(3)(B).

(d) *Definition of qualified progress expenditures*—(1) *In general.* A taxpayer's qualified progress expenditures are the sum of (i) qualified progress expenditures for self-constructed property (determined under paragraph (d)(2) of this section), plus (ii) qualified progress expenditures for nonself-constructed property (determined under paragraph (d)(3) of this section). Only amounts includible under § 1.46-3(c) in the basis of new section 38 property may be considered as qualified progress expenditures.

(2) *Self-constructed property*—(i) "Qualified progress expenditures" for self-constructed property (as defined in paragraph (d)(5) of this section) are amounts properly chargeable to capital account in connection with that property. In general, amounts paid or incurred are chargeable to capital account if under the taxpayer's method of accounting they are properly includible in computing basis under § 1.46-3. Amounts treated as an expense and deducted in the year they are paid or incurred are not chargeable to capital account.

(ii) In general, expenditures for materials or other property to be used in construction of self-constructed property are not properly chargeable to capital account until consumed or physically attached in the construction process. Materials that have neither become a part of nor been delivered to the site of the property, but which have been irrevocably allocated to construction of that property are properly chargeable to capital account. Materials are not to be considered irrevocably allocated to use in self-constructed property until physical work has begun on construction of that property. Mere bookkeeping notations are not sufficient evidence that the necessary allocation has been made. Once physical work has begun, materials or other property designed specifically for the self-constructed property may be considered irrevocably allocated to construction of that property at the time of manufacture. In addition, an item delivered to the site of construction may be considered irrevocably allocated if it would be economically impractical to remove the item to another project. For example, assume pumps are delivered to locations on a tundra pipeline. If it costs $1,500 to manufacture the pumps, but it costs $2,500 to remove them to a Seattle construction site, the pumps would be treated as irrevocably allocated to construction of the pipeline. A taxpayer's procedure for determining the time when an item is properly chargeable to capital account for self-constructed property is a method of accounting. Under section 446(e), the method of accounting, once adopted, may not be changed without consent of the Secretary.

(iii) The taxpayer shall maintain detailed records which permit specific identification of the amounts properly chargeable by the taxpayer during each taxable year to capital account for each item of self-constructed property.

(3) *Nonself-constructed property*—(i) In general, "qualified progress expenditures" for nonself-constructed property (as defined in paragraph (d)(6) of this section) are amounts paid by the taxpayer to the manufacturer, but only to the extent progress is made in construction. If the taxpayer pays his own employees to do some of the work, those expenditures are also considered qualified progress expenditures for nonself-constructed property. Qualified progress expenditures for nonself-constructed property do not include amounts paid to another person for construction if those amounts are treated as an expense and deducted in the year in which they are paid.

(ii) If several manufacturers or contractors do work in connection with the same property, section 46(d)(3)(B) must be applied separately to amounts paid to each person. For example, assume the taxpayer contracts with 3 persons to build an item of equipment. The taxpayer contracts with A to build the frame, B to build the motor, and C to assemble the frame and motor. Section 46(d)(3)(B) must be applied separately to amounts paid to A, B, and C.

(iii) For purposes of section 46(d)(3)(B)(i), amounts paid during the taxable year to another person for construction of nonself-constructed property may be in the form of money or property. However, property given as payment may be considered only to the extent it will be includible under paragraph (c) of § 1.46-3 in the basis of the nonself-constructed property when it is placed in service. Qualified progress expenditures under section 46(d)(3)(B)(i) do not include amounts that are merely incurred; they must actually be paid.

(iv) Qualified progress expenditures do not include any amount paid to another person (the "payee") for construction if the amount is paid out of funds borrowed directly or indirectly from the payee. Amounts borrowed directly or indirectly from the payee by any perosn that is related to the taxpayer (within the meaning of section 267) or that is a member of the same controlled group of corporations (as defined in section 1563(a)) will be considered borrowed indirectly from the payee. Similarly, amounts borrowed under any financing arrangement that has the effect of making the payee a surety will be considered amounts borrowed indirectly by the taxpayer from the payee.

(v) Under section 46(d)(3)(B)(ii), payments made in any taxable year may be considered qualified progress expenditures for nonself-constructed property only to the extent they are attributable to progress made in construction (percentage of completion limitation). Architectural or engineering estimates will be evidence of progress made in construction. Cost accounting records also will be evidence of progress. Progress will be presumed to occur not more rapidly than ratably over the normal construction period. However, the taxpayer may rebut the presumption by clear and convincing evidence to the contrary.

(vi) If, after the first year of construction, there is a change in either the total cost to the taxpayer or the total cost of construction by another person, the taxpayer must recompute the percentage of completion limitation on the basis of revised cost. However, the recomputation will affect subsequent taxable years only. The recomputation remains subject to the presumption of pro rata completion.

(vii) If for any taxable year, the amount paid to another person for construction of an item of property under section 46(d)(3)(B)(i) exceeds the percentage of completion limitation in section 46(d)(3)(B)(ii), the excess is treated as an amount paid to the other person for construction for the succeeding taxable year. If for any taxable year the percentage of completion limitation for an item of property exceeds the amount paid to another during the taxable year for construction, the excess is added to the percentage of completion limitation for that property for the succeeding taxable year.

(viii) The taxpayer must maintain detailed records which permit specific identification of the amounts paid to each person for construction of each item of property and the percentage of construction completed by each person for each taxable year.

(4) *Example.* Paragraph (d)(3) of this section may be illustrated by the following example.

Example. (i) Corporation X, a calendar year taxpayer, agrees to build an airplane for corporation Y to be delivered on December 31, 1984. The airplane is nonself-constructed progress expenditure property. Physical work on construction begins on January 1, 1980.

(ii) The cost of construction to corporation X is $500,000. The contract price is $55,000. Corporation Y makes a $110,000 payment in each of the years 1980 and 1981, and $85,000 payment in 1982, and $135,000 payment in 1983, and a $110,000 payment is 1984.

(iii) For 1980, corporation Y makes an election under section 46(d). Progress is presumed to occur ratably over the 5-year construction period, which is 20 percent in each year. Twenty percent of the contract price is $110,000. The percentage of completion limitation for each year, thus, is $110,000.

(iii) For each of the years 1980 and 1981, the $110,000 payments may be treated as qualified progress expenditures. The payments equal the percentage of completion limitation.

(iv) For 1982, the $85,000 payment may be treated as a qualified progress expenditure, because it is less than the percentage of completion limitation. The excess of the percentage completion limitation ($110,000) over the 1982 payment ($85,000) is added to the percentage of completion limitation for 1983. One hundred and ten thousand dollars minus $85,000 equals $25,000. Twenty-five thousand dollars plus $110,000 equals $135,000, which is the percentage of completion limitation for 1983.

(v) For 1983, the entire $135,000 payment may be treated as a qualified progress expenditure. The payment equals the percentage of completion limitation for 1983.

(vi) For 1984, no qualified progress expenditures may be taken into account, because the airplane is placed in service in that year.

(5) *Definition of self-constructed property*—(i) Property is "self-constructed property" if it is reasonable to believe that more than half of the construction expenditures for the property will be made directly by the taxpayer. Construction expenditures will be considered made "directly" by the taxpayer only if the taxpayer uses his own employees to construct the property. Construction expenditures made directly by the taxpayer include wages and overhead attributable to construction of that property. Construction expenditures made by the taxpayer to a contractor or manufacturer, in general, will not be considered made directly by the taxpayer. Thus, the cost of component parts, such as boilers and turbines, which are purchased and merely installed or assembled by the taxpayer, will not be considered expenditures made directly by the taxpayer for construction. However, expenditures for basic construction materials, such as sheet metal, lumber, glass, and nails, which are used by employees of the taxpayer to construct progress expenditure property, will be considered made directly by the taxpayer.

(ii) The determination of whether property is self-constructed or nonself-constructed property is to be made at the close of the taxable year in which physical work on construction of the property begins, or the close of the first taxable year to which an election under this section applies, whichever is later. Once it is reasonably estimated that more than half of construction expenditures will be made directly by the taxpayer, the fact the taxpayer actually makes half, or less than half, of the expenditures directly will not affect classification of the property as self-constructed property. Similarly, once a determination has been made, classification of property as self-constructed property is not affected by a change in circumstances in a later taxable year. However, a significant error unrelated to a change in circumstances may be evidence that the estimate was unreasonable when made.

(iii) For purposes of determining whether more than half of construction expenditures of an item of property will be made directly by the taxpayer, the taxpayer may take into account only expenditures properly includable by the taxpayer in the basis of the property under the provisions of § 1.46-3(c). Thus, property is self-constructed property only if more than half of the estimated basis of the property to be used for purposes of determining the credit allowed by section 38 is attributable to expenditures made directly by the taxpayer.

(6) *Nonself-constructed property defined.* For purposes of this section, the term "nonself-constructed property" means property that is not self-constructed property. Thus, property is nonself-constructed property if it is reasonable to believe that only half, or less than half, of the expenditures for construction will be made directly by the taxpayer.

(e) *Alternative limitations for public utility, railroad, or airline property.* The alternative limitations on qualified investment under sections 46(a)(7), (8), and (9) for public utility, railroad, or airline property (whichever applies), apply in determining the credit for qualified progress expenditures. The determination of whether progress expenditure property will be public utility, railroad, or airline property (whichever applies) when placed in service must be made at the close of the taxable year in which physical work on construction begins or at the close of the first taxable year for which an election under section 46(d) is in effect, whichever is later. If the taxpayer is in a trade or business described in section 46(c)(3)(B), section 46(a)(8), or section 46(a)(9) (whichever applies) at that time, it is evidence the property will be public utility, railroad, or airline property when placed in service.

(f) *Leased property.* A lessor of progress expenditure property may not elect under section 48(d) to treat a lessee (or a person who will be a lessee) as having made qualified progress expenditures.

(g) *Election*—(1) *In general.* The election under section 46(d)(6) to increase qualified investment by qualified progress expenditures may be made for any taxable year ending after December 31, 1974. Except as provided in paragraph (g)(2) of this section, the election is effective for the first taxable year for which it is made and for all taxable years thereafter unless it is revoked with the consent of the Commissioner. Except as provided in paragraphs (g) (2) and (3) of this section, the election applies to all qualified progress expenditures made by the taxpayer during the taxable year for construction of any progress expenditure property. Thus, the taxpayer may not make the election for one item of progress expenditure property and not for other items. If progress expenditure property is being constructed by or for a partnership, electing small business corporation (as defined in section 1371(b)), trust, or estate, an election under section 46(d)(6) must be made separately by each beneficiary, partner, or shareholder, respectively. The election may not be made by a partnership or electing small business corporation, and may be made by a trust or estate only if the trust or estate in determining its tax liability would be allowed investment credit under section 38 for property subject to the election. The election of any partner, shareholder, beneficiary, trust, or estate will be effective, even if a related partner, shareholder, beneficiary, trust, or estate does not make the election.

(2) *Time and manner for making election.* An election under section 46(d)(6) must be made by filing a written statement with the original return for the first taxable year ending after December 31, 1974 to which the election will apply. In general, the election may not be made on an amended return filed after the time prescribed for filing the original return (including extensions) for that taxable year. However, an election under this section may be made or revoked by filing a statement with an amended return filed on or before [90 days from the date of publication of the Treasury decision] if the due date for filing a return for a taxable year ending after December 31, 1974, is before [90 days from the date of publication of the Treasury decision]. The written statement filed with the tax return (or

amended return) must be signed and contain the following information:

(i) The taxpayer name and taxpayer identification number (under section 6109 of the Code),

(ii) A statement that the taxpayer is making the election under section 46(d)(6), and

(iii) A list of all progress expenditure property, indicating whether the property is self-constructed property (as defined in paragraph (d)(5) of this section) or nonself-constructed property (as defined in paragraph (d)(6) of this section).

(3) *Carryover of election in certain transactions.* In general, an election under section 46(d)(6) does not carry over to the transferee of progress expenditure property. However, if under section 47(b) the property does not cease to be progress expenditure property because of the transfer, the election will carry over to the transferee. If so, the election will apply only to the property transferred.

(h) *Partnership, electing small business corporation, and trusts or estates*—(1) *In general.* Each partner, shareholder, trust, estate, or beneficiary of a trust or estate that makes an election under section 46(d) may take into account its share of qualified progress expenditures (determined under paragraph (h)(2) of this section) made by the partnership, electing small business corporation, trust, or estate. In determining qualified investment for the year the property is placed in service, the basis of the property is apportioned as provided in §§ 1.46-3(f), 1.48-6, or 1.48-5 (whichever applies). Each partner, shareholder, trust, estate, or beneficiary that made the election must reduce qualified investment under section 46(c)(4) for the year the property is placed in service by qualified progress expenditures taken into account by that person.

(2) *Determination of share of qualified progress expenditures.* The share of qualified progress expenditures of each partner, shareholder, trust, estate, or beneficiary that makes an election under section 46(d) must be determined in accordance with the same ratio used under §§ 1.46-3(f)(2), 1.48-5(a)(1) or 1.48-6(a)(1) (whichever applies) to determine its share of basis (or cost). The last sentence of § 1.46-3(f)(2)(i) must be applied by referring to the date on which qualified progress expenditures are paid or chargeable to capital account (whichever is applicable).

(3) *Examples.* Paragraph (h) may be illustrated by the following examples.

Example (1). (i) Corporation X contracts to build a ship for partnership AB that qualifies as progress expenditure property. The contract price is $100,000. Physical work on construction of the ship begins on January 1, 1980. The ship is placed in service on December 31, 1983.

(ii) The AB partnership reports income on the calendar year basis. Partners A and B share profits equally. For A's taxable year ending December 31, 1980, A makes an election under section 46(d). B does not make the election.

(iii) For each of the years 1980, 1981, 1982, and 1983, the AB partnership makes $25,000 payments to corporation X. The payments made in 1980, 1981, and 1982 are qualified progress expenditures. The 1983 payment is not a qualified progress expenditure, because the ship is placed in service in that year.

(iv) For each of the years 1980, 1981, and 1982, A may take into account qualified progress expenditures of $12,500. A had a 50 percent partnership interest in each of those years.

(v) For 1983, A and B's share of qualified investment is $50,000 each. Qualified investment for the ships is $100,000. A and B's shares are $50,000 each, because each had a 50 percent partnership interest in 1983. However, A must reduce its $50,000 share for 1983 by $37,500, which is qualified progress expenditures taken into account by A. B's share is not reduced, because B did not take into account qualified progress expenditures.

Example (2). (i) The facts are the same as in example (1) except that on June 30, 1983, the partnership agreement is amended to allow a new partner, C. The partners agree to share profits equally. The partners' interest in the ship is the same as their interest in profits.

(ii) For each of the years 1980, 1981, and 1982, A may take into account qualified progress expenditures of $12,500 because A has a 50 percent partnership interest in those years.

(iii) For 1983, A, B, and C's share of qualified investment is $33,333 each, because each had a 33⅓ percent partnership interest in that year. A must reduce its share to zero, because it took $37,500 into account as qualified progress expenditures. In addition, the excess of the $37,500 over the $33,333 applied as a reduction is subject to recapture under section 47(a)(3)(B). B and C's shares are not reduced, because neither taxpayer took into account qualified progress expenditures.

(i) [Reserved]

(j) *Limitation on qualified progress expenditures for taxable years beginning before 1980*—(1) *In general.* (i) Under section 46(d)(7), qualified progress expenditures for any taxable year beginning before January 1, 1980, are limited. The taxpayer must apply the limitation under section 46(d)(7) on an item by item basis. In general, the taxpayer may take into account the applicable percentage (as determined under the table in section 46(d)(7)(A)) of qualified progress expenditures for each of those years. In addition, the taxpayer may take into account for each of those years 20 percent of qualified investment for each of the preceding taxable years determined without applying the limitations of sections 46(d)(7).

(k) The applicable percentage under section 46(d)(7)(A) may be applied only for one taxable year that ends within a calendar year in determining qualified investment for an item of progress expenditure property. For example, calendar year partners of a calendar year partnership may increase qualified investment for 1976 by 30 percent of qualified progress expenditures made in 1975 for an item of property. If the partnership incorporates in 1976 and the taxable year of the corporation begins on July 1, 1976, and ends on June 30, 1977, qualified investment of the corporation for its taxable year beginning on July 1, 1976, cannot be increased by 20 percent of the 1975 expenditure.

(2) *Example.* Paragraph (j) may be illustrated by the following example:

Example. (i) Corporation X contracts with A on January 1, 1976, to build an electric generator that qualifies as nonself-constructed progress expenditure property. A will build the generator at a cost of $125,000. Corporation X agrees to pay A $150,000. Corporation X reports income on the calendar year basis. Corporation X makes an election under section 46(d) for 1976. Physical work on construction begins on January 1, 1976. Corporation X makes payments of $30,000 to A for construction of the generator in each of the years 1976, 1977, 1978, 1979, and 1980. A incurs a cost of $25,000 in each of those years for construction of the property. The property is placed in service in 1980.

(ii) For 1976, qualified investment for corporation X in the generator is $12,000, which is 40 percent of the payment made in 1976.

(iii) For 1977, corporation X may increase qualified investment by $24,000. Eighteen thousand dollars of that amount is 60 percent of the 1977 payment. The remaining $6,000 is 20 percent of the $30,000 payment made in 1976.

(iv) For 1978, corporation X may increase qualified investment by $36,000. Twenty-four thousand dollars of that amount is 80 percent of the 1978 payment. The remaining $12,000 is 20 percent of the $30,000 payment made in 1976, plus 20 percent of the $30,000 payment made in 1977.

(v) For 1979, corporation X may increase qualified investment by $48,000. Thirty thousand dollars of that amount is 100 percent of the 1979 payment. The remaining $18,000 of that amount is 20 percent of the $30,000 payments made in each of the years 1976, 1977, and 1978.

(vi) Qualified investment for corporation X for 1980 is $30,000. The $30,000 is the basis (or cost) of the generator ($150,000), reduced by qualified progress expenditures allowed with respect to that property ($120,000).

(k) *Ten percent credit*—(1) *In general.* The 10-percent credit applies to qualified progress expenditures made after January 21, 1975. For self-constructed progress expenditure property, the 10-percent credit applies in the year the property is placed in service to a portion of the qualified investment that remains after reduction for qualified progress expenditures under section 46(c)(4). The 10 percent ap-

plies only to the portion of the remaining qualified investment in the self-constructed property that is attributable to construction after January 21, 1975. For nonself-constructed progress expenditure property, the 10-percent credit applies in the year the property is placed in service to the entire portion of qualified investment that remains after the reduction for qualified progress expenditures. However, the 10-percent credit applies to nonself-constructed property only if the property is acquired and placed in service after January 21, 1975.

(2) *Example.* Paragraph (k) may be illustrated by the following example:

Example. (i) Corporation X agrees to build a ship for corporation Y. The ship is nonself-constructed property and corporation Y makes an election under section 46(d). Construction begins in 1973. The ship is acquired and placed in service in 1980. The contract price is $400,000.

(ii) For 1975, 1976, 1978, and 1979, qualified progress expenditures total $250,000. The 10-percent credit applies to those expenditures.

(iii) For 1980, qualified investment for the ship is $400,000, which is the contract price. Corporation Y must reduce qualified investment by $250,000, which is the amount of qualified progress expenditures. The 10-percent credit applies to the $150,000 of qualified investment that remains after the reduction for qualified progress expenditures.

Par. 3. Section 1.47-1 is amended by adding a new sentence at the end of paragraph (a)(1)(i) and by adding a new paragraph (g) to read as follows:

§ 1.47-1 Recomputation of credit allowed by section 38.

(a) *General rule*—(1) *In general.* (i) * * * For special rules relating to recomputation of credit allowed by section 38 if progress expenditure property (as defined in § 1.46-5(c)) ceases to be progress expenditure property with respect to the taxpayer, see paragraph (g) of this section.

* * * * *

(g) *Special rules for progress expenditure property.* Under section 47(a)(3), a recapture determination is required if property ceases to be progress expenditure property (as defined in § 1.46-5(c)). Property ceases to be progress expenditure property if it is sold or otherwise disposed of before or after it is placed in service. For example, cancellation of the contract for progress expenditure property or abandonment of the project by the taxpayer will be considered a "disposition" within the meaning of § 1.47-2. A cessation occurs if progress expenditure property ceases to be property that will be section 38 property with a useful life of 7 years or more when placed in service. In general, a sale and leaseback is treated as a cessation. However, see paragraph (g)(2) of § 1.47-3 for special rules for certain sale and leaseback transactions. Recapture determinations for progress expenditure property are to be made in a way similar to that provided under §§ 1.47-1 through 1.47-6. Reduction of qualified investment must begin with the most recent credit year (*i.e.,* the most recent taxable year the property is taken into account in computing qualified investment under § 1.46-3 or 1.46-5).

Par. 4. Section 1.47-3 is amended by redesignating paragraph (g) as paragraph (g)(1) and adding a new paragraph (g)(2) to read as follows:

§ 1.47-3 Exceptions to the application of § 1.47-1.

* * * * *

(g) *Sale-and-leaseback transactions*—(1) *In general.* * * *

(2) *Special rule for progress expenditure property.* The sale and leaseback (or agreement or contract to leaseback) of progress expenditure property (including any contract rights to the property), in general, will be treated as a cessation described in section 47(a)(3)(A) with respect to the seller-lessee. However, a sale and leaseback (or agreement or contract to leaseback) will not be treated as a cessation to the extent qualified investment passed through to the lessee under section 48(d) in the year the property is placed in service equals or exceeds qualified progress expenditures for the property taken into account by the lessee. If a sale-leaseback transaction is treated as a cessation, qualified investment must be reduced and the credit recomputed, beginning with the most recent credit year (*i.e.,* the most recent year property is taken into account in computing qualified investment under § 1.46-3 or 1.46-5). The amount of the reduction is the amount, if any, by which qualified progress expenditures taken into account by the lessee in all prior years exceeds qualified investment passed through to the lessee under section 48(d).

JEROME KURTZ,
Commissioner of Internal revenue.

[FR Doc. 79-3001 Filed 1-29-79; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 230]

WHALING

Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Proposed Rulemaking.

SUMMARY: At its 30th Annual Meeting held in London on June 26-30, 1978, the International Whaling Commission (the "IWC") adopted an amendment to the Schedule of the International Convention for the Regulation of Whaling, 1946 (the "Convention") which established a quota for the taking of the Bering Sea stock of bowhead whales for calendar year 1979 of 18 landed or 27 struck, whichever occurs first. Under the rules of procedure of the IWC, the Schedule to the Convention containing the 1979 quota became effective, on October 19, 1978.

On April 3, 1978, the National Oceanic and Atmospheric Administration "NOAA" promulgated regulations under the Whaling Convention Act of 1949, 16 U.S.C. 916 et seq. (the "Act"), which allocated the then available 1978 quota among the nine Alaskan villages which engage in subsistence whaling (43 FR 13883, amended May 24, 1978, 43 FR 22213, further amended on August 29, 1978, 43 FR 38609. Those regulations expired December 31, 1978. These proposed rules are to implement the 1979 management program.

DATE: Comments may be submitted on or before March 1, 1979.

ADDRESSES: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

William P. Jensen, Marine Mammal Program Manager, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, Telephone: (202) 634-7461.

SUPPLEMENTARY INFORMATION: Prior to 1977, the IWC Schedule exempted the Native subsistence harvest of bowhead whales from its otherwise total prohibition on the hunting of bowheads. In 1977, the IWC removed that exemption and established a 1978 quota of 12 landed or 18 struck, whichever occurred first. In response to the action of the IWC, the United States, in cooperation with Alaskan Eskimos and other interested groups, mounted research, management and weapons improvement programs. The results of those programs are set forth in extensive detail in a publication entitled *A Special Report to the International Whaling Commission: Bowhead Whales* (U.S. Department of Com-

merce, NOAA, June 1978) (the "Report").

The Report concluded that, based upon observation made in Spring, 1978, the population of the stock of bowhead whales which migrates past Alaskan Eskimo whaling villages is in the range of 1,783-2,865 whales, with 2,264 bowheads considered the best available estimate. These figures were considerably higher than the population estimate of approximately 1,300 which was used by the IWC in establishing the 1978 quota.

At the 30th Annual Meeting of the IWC, the U.S. Commissioner, on the basis of the results of the population figures appearing in the Report, requested an increase in the bowhead quota for the 1979 calendar year, and the IWC agreed.

Regulations in effect during 1978 allocated the available quotas to the whaling villages. Reassignments were made in the course of the whaling season to distribute equitably the available quotas to the villages. A similar allocation system is proposed herein for the 1979 season based upon the harvest statistics for 1978.

Regulations in effect in 1978 contemplated formal application and issuance of licenses to Eskimo whalers under the provisions of the Act. It was recognized that geographic and cultural factors dictated that normal licensing procedures be modified. In spite of accommodations made to facilitate implementation of a licensing system, time and geographic difficulties prevented issuance of formal licenses during 1978. Consequently, in 1979 NOAA is proposing to confer a license to whale upon each whaling captain through the promulgation of these regulations.

Representatives of the Assistant Administrator will contact native whaling captains before and during the whaling season to obtain the information necessary to complete the reports described in § 230.76.

The regulations proposed for 1979 have been streamlined and simplified to facilitate understanding and compliances in accordance with Executive Order 12044. NOAA will continue to seek the cooperation of the Alaska Eskimo whaling community to implement those regulations. NOAA considers the fee for a whaling license set forth in the Act inappropriate for subsistence whaling under a quota and therefore proposed that it be waived.

In order to assure participation from those members of the public sector affected by the proposed regulations, NOAA will issue a press release announcing the publication of the proposed regulations and will also send copies of the proposed regulations directly to the Alaska Eskimo Whaling Commission, the village councils of Savoonga, Gambell, Wales, Kivalina, Point Hope, Wainwright, Barrow, Kaktovik, and Nuigsut, and to U.S. conservation organizations. In addition, meetings with those interested will be held in Washington, D.C. and Alaska.

In order to assure that final regulations are published in time to allow field personnel an opportunity to implement the regulations before the beginning of the spring bowhead hunt, it will not be possible to provide the 60 day comment period for significant regulations proposed by Executive Order 12044. The Administrator of NOAA has approved reducing this comment period to 45 days. A Draft Supplemental Environmental Impact Statement has been prepared with respect to these amendments.

1. 50 CFR Part 230 is proposed to be amended by revising § 230.10(b) to read as follows:

§ 230.10 Licenses and scientific permits.

* * * * *

(b) No permit or license shall be issued except as provided in § 230.13 and §§ 230.70 through 230.77. Licenses issued under § 230.73 shall be governed solely by the requirements of §§ 230.70 through 230.77.

2. 50 CFR Part 230 is proposed to be amended by revising § 270.70—270.77 and the undesignated center heading to read as follows:

SUBSISTENCE

Sec.
230.70 General.
230.71 Definitions.
230.72 Prohibited acts.
230.73 Licenses.
230.74 Quotas.
230.75 Salvage of Stinkers.
230.76 Reporting by Whaling Captains.
230.77 Penalties.

AUTHORITY: Whaling Convention Act (WCA 16 U.S.C. 916a-1).

SUBSISTENCE

§ 230.70 General.

The provisions of §§ 230.70 through 230.77, which govern subsistence whaling for bowhead whales, shall expire on December 31, 1979.

§ 230.71 Definitions.

(a) As used in §§230.70 through 230.77 of this Part 230:

(1) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration;

(2) "Bowhead" means a whale of the Bering Sea stock of bowhead whales, *Balaena mysticetus;*

(3) "Calf" means any bowhead which is less than 21 feet in length as measured from the point of the upper jaw and the notch between the tail flukes;

(4) "Landing" means bringing a bowhead or any parts thereof onto the ice or land in the course of whaling operations;

(5) "Whaling captain" or "captain" means any Indian, Aleut, or Eskimo domiciled in a whaling village who is in charge of a vessel and a whaling crew;

(6) "Stinker" means a dead unclaimed bowhead found upon a beach, stranded in shallow water, or floating at sea;

(7) "Strike" means hitting a bowhead with a harpoon, lance, or explosive dart;

(8) "Whaling" means the hunting, striking, harassing, killing, or landing of bowheads, but does not include the salvage or processing of any stinker;

(9) "Whaling crew" means those persons under the control of a captain, who collectively participate as a unit in whaling;

(10) "Whaling village" means any of the villages of Gambell, Savoonga, Wales, Kivalina, Point Hope, Wainwright, Barrow, Nuigsut, and Kaktovik in the State of Alaska; and

(11) "Wasteful manner" means a method of whaling which is not likely to result in the landing of a struck bowhead or which does not include all reasonable efforts to retrieve the bowhead.

§ 230.72 Prohibited acts.

(a) No person shall engage in whaling except a whaling captain licensed pursuant to § 230.73 or a member of a whaling crew under the control of a captain.

(b) No whaling captain shall engage in whaling for any calf or any bowhead whale accompanied by a calf.

(c) No whaling captain shall engage in whaling in a wasteful manner.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in native subsistence whaling.

(f) No whaling captain shall continue to whale after, (1) the quota set forth in § 230.74 for his village of domicile is reached, or (2) the license under which he is whaling is suspended as provided in § 230.73(b).

(g) No whaling captain shall claim domicile in more than one whaling village.

(h) No person may salvage a stinker without complying with the provisions of § 230.75.

(i) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart which does not bear a permanent distinctive mark identifying the captain as the owner thereof.

§ 230.73 Licenses.

(a) A license is hereby issued to a whaling captain.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with these regulations.

§ 230.74 Quotas.

(a) During the calendar year 1979, the quota for bowheads is allocated among whaling villages as follows:

(1) Savoonga—2 whales landed or 3 struck, whichever occurs first;

(2) Gambell—2 whales landed or 3 struck, whichever occurs first;

(3) Wales—1 whale landed or 1 struck, whichever occurs first;

(4) Kivalina—1 whale landed or 2 struck, whichever occurs first;

(5) Pt. Hope—2 whales landed or 3 struck, whichever occurs first;

(6) Wainwright—2 whales landed or 3 struck, whichever occurs first;

(7) Barrow—5 whales landed or 7 struck, whichever occurs first;

(8) Kaktovik—2 whales landed or 3 struck, whichever occurs first;

(9) Nuigsut—1 whale landed or 2 struck, which ever occurs first.

(b) When the number of bowheads struck or landed by whaling captains domiciled in a whaling village equals the quota for such whaling village as set forth in paragraph (a) of this section, whaling by all captains domiciled in that whaling village shall cease. All license holders shall be notified promptly by the Assistant Administrator for Fisheries using all reasonable means of communication. Licenses held by whaling captains domiciled in a whaling village which has reached its quota shall not be valid after the quota for that whaling village has been reached.

(c) If for any reason the landing or struck quota for whaling villages is not reached, the part of the quota which remains may be reassigned by the Assistant Administrator to a second whaling village: *Provided*, that if any other whaling village has exceeded its quota, the Assistant Administrator shall not reassign the quota if he determines that it is likely to result in the total number of whales landed or struck exceeding the bowhead quota then in effect under the Schedule to the International Convention for the Regulation of Whaling. In making such reassignment, the Assistant Administrator shall consult with representatives of as many whaling villages as time reasonably permits.

§ 230.75 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He shall provide promptly to the Assistant Administrator or his representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.76 Reporting by whaling captains.

(a) A representative of the Assistant Administrator may request each whaling captain licensed pursuant to § 230.73 to provide a written statement of his name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance and explosive dart. Representatives of the Assistant Administrator may provide each captain a form approved by the Assistant Administrator to facilitate reporting under this paragraph.

(b) Each whaling captain shall provide to appropriate representatives, on request, an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a bowhead whale and where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information.

(1) The number, dates, and locations of each strike, attempted strike, or landing;

(2) The length (as measured from the point of the upper jaw and the notch between the tail flukes), the extreme width of the flukes, and the sex of the bowhead(s) landed;

(3) The length and sex of a fetus, if present in a landed bowhead whale;

(4) An explanation of circumstances associated with the striking or attempted striking of any bowhead whale not landed; and

(5) The number of bowhead whales sighted by the whaling captain or any member of the whaling crew.

§ 230.77 Penalties.

Any person who whales in contravention of these regulations, or violates any other provision of the Whaling Convention Act shall be subject to the penalties set forth in 16 U.S.C. 916e and 916f, and any other penalties provided by law.

Dated: January 24, 1979.

JACK W. GEHRINGER,
Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 79-3036 Filed 1-29-79; 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.

[6050-01-M]

ACTION

COMPETITIVE DEMONSTRATION GRANTS

Availability of Funds

The Office of Policy and Planning of ACTION announces the availability of funds for fiscal year 1979 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, Title I, Part C, 42 U.S.C. 4992).

Applications are due by 5 p.m. on April 30, 1979. All applications received by that time and date, or postmarked five (5) days before that date by the U.S. Postal Service, will be considered. Applications received by the closing date which are complete and conform to the requirements of this program announcement, will be competitively reviewed for the award of approximately twenty (20) grants. The purpose of the competitive process is to identify and support innovative volunteer service projects which have potential for widespread use.

Only applications from private nonprofit incorporated organizations and public agencies will be considered.

A. Objectives of These Special Volunteer Programs

To strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform constructive volunteer service; to test or demonstrate new or improved volunteer delivery systems or methods; to encourage wider volunteer participation particularly on a short-term basis and to identify particular segments of the poverty community which could benefit from volunteer efforts.

Priority consideration will be given to demonstration projects emphasizing the needs of displaced spouses and victims of family violence; deinstitutionalization of the elderly, mentally retarded, mentally ill, imprisoned, and terminally ill; economic development through the use of rural credit unions, cooperative farms, and better methods of food and energy production; and rural energy needs, especially modification of low-income persons' energy consumption habits, helping poor people gain access to weatherization assistance, reduction of utility rates through citizen action, and acquiring alternative energy sources.

Projects emphasizing activities other than those set forth above will be considered for award if they meet the described objectives of the Special Volunteer Programs, but will not receive priority consideration.

B. Eligible Applicants

State and local government agencies and private non-profit incorporated organizations.

C. Available Funds and Scope of Grants

Subject to the availability of fiscal year 1979 funding, approximately $750,000 will be available for approximately twenty (20) grants ranging in size from approximately $15,000 to $200,000. They will be awarded for periods of not more than twelve (12) months. Subject to the availability of funds and if warrented by the nature of the project additional 12-month continuation grants may be awarded after competitive review.

Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amount of funds available, or any part thereof, for demonstration grants under the Special Volunteer Programs.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated against the general criteria outlined below, as well as more specific evaluation criteria which are included in the application kit (see section E below).

—Promise of developing innovations or knowledge in areas of priority, and of significance to national program development.

—Carefully formulated measurable time phased objectives and feasibility of methods for meeting those objectives.

—Capability of proposed staff.

—Likelihood of completion of project within proposed timetable.

—Feasibility of proposed budget.

—Potential for replication of the project model; plans for implementation and dissemination of results of project, including any products for use by others.

—Commitment from collaborating agencies and organizations where such could be expected to contribute to the value or success of the project.

—Adequacy of plans for data gathering and evaluation.

—While applicants are not required to contribute a specific portion of project costs, they are encouraged to do so. Applicants capable of such contributions should specify the sources and amounts of non-federal contributions, and the sources and nature of in-kind non-federal contributions.

E. Availability of Forms

To be eligible for consideration, an application must be prepared and submitted in accordance with this announcement and the forms, instructions and program guidelines contained in the grant application kit. The kit may be obtained on or after January 31, 1979, by written request, from the Chief, Grants Branch, Room P-200, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C. 20525. To expedite requests, please furnish a self-addressed gummed label, including "RGA No. 79-02," on the label. Telephone requests will not be honored. Kits will be sent only to private non-profit organizations and public agencies.

Requests for copies of the application kit will be honored if received within twenty (20) calendar days after date of availability referenced above. Requests received after this date will be filled on a first-come, first-served basis until the supply is exhausted.

F. Application Review Process

All eligible applications which have been submitted by the deadline date (see section G below) will be reviewed and rated by an ACTION headquarters rating panel composed of a minimum of three (3) ACTION and/or other Federal agency staff members with expertise in special volunteer programs. The highest rated applications will be submitted to the ACTION Assistant Director for Policy and Planning for final selection. The grant awards will be made by the Chief, Grants Branch, ACTION.

Prior to making final selections, the Assistant Director for Policy and Planning will transmit to the appropriate ACTION Regional and State Directors

copies of the best qualified grant applications along with the panel's evaluation criteria, for their review and comment. Their comments will be used by the Assistant Director in making the final selections.

G. APPLICATION SUBMISSION AND DEADLINE

One signed original and two (2) copies of all completed applications must be submitted to the Chief, Grants Branch, at the above address. Applications are due not later than 5 p.m. EDST, April 30, 1979. All applications received by that date, or postmarked on or before April 25 by the U.S. Postal Service, will be considered.

Applications which do not conform to this announcement, or are received late, or are incomplete, will not be accepted for review.

Date of Signature: January 24, 1979.

SAM BROWN,
Director.

[FR Doc. 79-3083 Filed 1-29-79; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

INTERIM DESIGNATION

Designation on an Interim Basis of the Eastern Iowa Grain Inspection & Weighing Service, Inc.

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice announces the designation on an interim basis of the Eastern Iowa grain Inspection & Weighing Service, Inc., as an official agency to provide grain inspection services under the U.S. Grain Standards Act, as amended, for the area normally serviced by the Kankakee Grain Inspection Bureau, Inc., effective January 15 through midnight, February 13, 1979.

DATE: Interim Designation Effective January 15 through February 13, 1979.

FOR ADDITIONAL INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 14th & Independence Avenue, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: As a result of administrative action resulting in a consent order, the designation of the Kankakee Grain Inspection Bureau is suspended effective January 15 through midnight February 13, 1979.

In order to provide an orderly continuation of needed official grain inspection services, the Eastern Iowa Grain Inspection & Weighing Service, Inc., Blue Grass, Iowa, has been granted a designation on an interim basis to provide official grain inspection services effective January 15 through midnight February 13, 1979, for the area normally serviced by the Kankakee Grain Inspection Bureau, Inc. Requests for service during this time period from applicants normally serviced by the Kankakee agency should be directed to Eastern Iowa Grain Inspection & Weighing Service, who will be operating out of the Kankakee Grain Inspection Bureau's office at 550 North Fifth Avenue, P.O. Box 102, Kankakee, Illinois 60901, (815) 932-2851, or at Eastern Iowa's office at R.R. #1, Box 588, Blue Grass, Iowa 52726, (319) 322-7149.

On February 14, 1979, the interim designation will terminate and the Kankakee Grain Inspection Bureau, Inc., will resume providing official inspection services in its area.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); 7 CFR 26.99; 7 CFR 26.101)

Done in Washington, D.C. on: January 24, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-3113 Filed 1-29-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Cancellation of Designation of the Plainview Grain Inspection and Weighing Service, Inc.—Official Designation of Plainview Grain Inspection & Weighing Service, Inc.—Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the cancellation of designation of the Plainview Grain Inspection and Weighing Service, Inc., the official agency owned by a grain exchange at Plainview, Texas, and the designation of a new official agency which is owned by Robert W. Davis, Edna H. Davis, and A. W. DeBerry, which will retain the name of Plainview Grain Inspection & Weighing Service, Inc., to perform grain inspection services under the U.S. Grain Standards Act, as amended, effective October 25, 1978. This notice also proposes a geographic area within which the agency will operate.

DATE: Comments by March 16, 1979:

FOR ADDITIONAL INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, 14th & Independence Avenue, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

On August 18, 1978, a notice was published in the FEDERAL REGISTER (43 FR 27574) announcing that (1) the Plainview Grain Inspection and Weighing Service, Inc., Plainview, Texas, requested that its designation as an official inspection agency be transferred to Robert W. Davis, Chief Inspector of the agency, Edna H. Davis, and A. W. DeBerry, licensed inspectors with the agency; and (2) Mr. Davis et al have applied for designation in accordance with Section 7(f)(1) of the Act (7 U.S.C. 79(f)(1)) to operate as an official agency which will retain the name of the Plainview Grain Inspection & Weighing Service, Inc.

Interested persons were given until September 18, 1978, to submit written views and comments with respect to the requested transfer of designation and/or to apply for designation to operate as an official agency at Plainview, Texas. No comments were received regarding the August 18, 1978, notice. No additional applications were received, other than the application from Mr. Davis et al.

The FGIS has conducted the required investigation of the Plainview Grain Inspection & Weighing Service, Inc., which included onsite reviews of their inspection points (specified service points).

NOTE: Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result of this investigation and after due consideration of the request for transfer, the Plainview Grain In-

spection & Weighing Service, Inc., owned by Mr. Davis et al was selected for designation under the Act to perform official inspection functions (other than appeal inspection), not including official weighing, and the designation of the Plainview Grain Inspection and Weighing Service, Inc., was canceled, effective October 25, 1978.

A document designating the Plainview Grain Inspection & Weighing Service, Inc., as an official agency was signed on October 25, 1978. Said designation also includes an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned to the Plainview Grain Inspection & Weighing Service, Inc., on an interim basis pending final determination in this matter is:

Bounded on the North by: The northern Deaf Smith County line from State Route 214 east to U.S. Route 385; U.S. Route 385 south to Farm to Market Road (FM) 1062; FM 1062 east to State Route 217; State Route 217 east to the Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River southeast to the northern Briscoe County line; the Briscoe County line east; the northern Hall County line east to U.S. Route 287;

Bounded on the East by: U.S. Route 287 southeast to the eastern Hall County line; the Hall County line south; the southern Hall County line west to the eastern Motley County line; the Motley County line south;

Bounded on the South by: The southern Floyd County line west; the southern Motley County line west; the western Floyd County line north to FM 37; FM 37 west to FM 400; FM 400 north to FM 1914; FM 1914 west, including Hale Center, Texas, to FM 179; FM 179 south to FM 37; FM 37 west to U.S. Route 84; U.S. Route 84 northwest to FM 303; and

Bounded on the West by: FM 303 not including Sudan, Texas, north to U.S. Route 70; U.S. Route 70 west to the western Lamb County line the Lamb County line north; the northern Lamb County line east to the western Castro County line; the Castro County line north to the southern Deaf Smith County line; the Deaf Smith county line west to State Route 214; State Route 214 north to the northern Deaf Smith County line.

Interested persons may obtain maps of the proposed geographic area from the Compliance Division, Delegation and Designation Branch.

The specified service points of the Plainview Grain Inspection & Weighing Service, Inc., are 1100 North Broadway Street, P.O. box 717, Plainview, Texas 79072; and Progressive Road (1 block west of Highway 60), Hereford, Texas 79045. These service points are located within the agency's proposed geographic area. a specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspector is located. The designation document provides for the inclusion of service points which may be established in the future within the agency's assigned geographic area.

Publication of this notice does not preclude future amendment of this designation, consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to the Plainview Grain Inspection & Weighing Service, Inc. All views or comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 14th & Independence Avenue, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials submitted should be mailed to the Director not later than March 16, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 4, Pub. L. 94-582, 90 Stat. 2868 (7 U.S.C. 75a); sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 24, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc 79-3112 Filed 1-29-79; 8:45 am]

[3410-11-M]

Forest Service

MODOC GRAZING ADVISORY BOARD

Cancelled Meeting

The Modoc Grazing Advisory Board meeting set for February 15, 1979 is hereby cancelled. The meeting will be rescheduled for a later date.

KENNETH C. SCOGGIN,
Forest Supervisor.

JANUARY 22, 1979.

[FR Doc. 79-3031 Filed 1-29-79; 8:45 am]

[3410-16-M]

Soil Conservation Service

AUTHORIZATION FOR WATERSHED PLANNING

A concerned State Conservationist of the Soil Conservation Service has been authorized to provide planning assistance to local organizations for the indicated watershed. The State Conservationist may proceed with investigations and surveys as necessary to develop watershed plans under authority of the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and in accordance with requirements of the National Environmental Policy Act of 1969, Pub. L. 91-190.

Persons interested in this project may contact the State Conservationist listed below:

Waimanalo Watershed, Island of Oahu, Hawaii State Conservationist—Jack P. Kanalz, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii 96850

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program.)

Dated: January 19, 1979.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs.

[FR Doc. 79-3002 Filed 1-29-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

CHALLENGE AIR TRANSPORT, INC.

Application for an All-Cargo Air Service Certificate

JANUARY 24, 1979.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 9, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 34327, from Challenge Air Transport, Inc. of Miami, Florida for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application on or before February 20, 1979. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It

shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-3124 Filed 1-29-79; 8:45 am]

[6320-01-M]

KODIAK—WESTERN ALASKA AIRLINES

Final Subsidy Mail Rate

This is an order tentatively proposing a final subsidy mail rate for Kodiak-Western Alaska Airlines, Inc., for annual periods beginning July 1, 1978, and thereafter.

AGENCY: Civil Aeronautics Board.

ACTION: Summary of Order (79-1-156 establishing a final subsidy mail rate for Kodiak-Western Alaska Airlines, Inc., for annual periods beginning July 1, 1978, and thereafter.

SUMMARY: The Board adopted an order directing Kodiak-Western Alaska Airlines, Inc., (KWA) to show cause why an annual subsidy mail rate of $411,283 should not be established for that carrier for annual periods beginning July 1, 1978, and thereafter. The order also proposes a new payment formula which is designed to distribute the subsidies in amounts roughly proportional to the carrier's seasonal needs for subsidy support.

DATES: Parties must file notices of objection by February 5, 1979 and must file objections by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

John R. Hokanson or James Craun, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5132.

SUPPLEMENTARY INFORMATION: A final subsidy mail rate for KWA for the period December 16, 1976, through June 30, 1978, will be proposed in a separate order to be issued later.

The complete text of Order 79-1-156 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-1-156 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

PHYLLIS T. KAYLOR,
Secretary.

JANUARY 24, 1979.

[FR Doc. 79-3123 Filed 1-29-79; 8:45 am]

[6320-01-M]

[Docket 33115, et al.; Order 79-1-68]

BRANIFF AIRWAYS, INC. ET AL.

Applications for Amendments to Certificates of Public Convenience and Necessity; Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of January 1979.

In the matter of applications of Braniff Airways, Inc., Hughes Airwest, American Airlines, Inc., Western Air Lines, Inc., Trans World Airlines, Inc., Continental Air Lines, Inc., Northwest Airlines, Inc., Allegheny Airlines, Inc., Ozark Airlines, Inc. (Dockets 33115, 33298, 33202, 33315, 33524, 33543, 33607, 33674, 33671, 33996, 34067) for amendment of their certificates of public convenience and necessity pursuant to section 401 of the Federal Aviation Act of 1958, as amended.

Beginning on July 31, 1978, with an application from Braniff Airways for authority to provide nonstop service between Salt Lake City, on the one hand, and Denver and Dallas/Fort Worth, on the other (Docket 33115), we have received numerous applications requesting authority to serve Salt Lake City markets. In all, we have received applications from eleven carriers for authority to serve Salt Lake City and twenty-six points in the continental United States. The markets requested by each applicant are contained in appendix A.*

The Utah Air Travel Commission (UATC) has demonstrated great interest in the requests for new Salt Lake City authority and has on several occasions informed us of its position on the matters raised. Essentially, it opposes an all-points Salt Lake City service investigation because of the delay that it would cause in securing air service to its top priority markets, and reserves the right to seek expedited treatment for those priority markets.[1] It sees an immediate need for service to St. Louis, Atlanta, Dallas/Fort Worth, Boise, Albuquerque, and Eugene,[2] and has also specifically requested expedited treatment for the salt Lake City-Albuquerque-San Antonio market.[3]

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to award multiple permissive authority on a Category II subsidy-ineligible basis in the Salt Lake City-Albuquerque/Atlanta/Boise/Dallas/Fort Worth/San Antonio markets and to grant the applications of Allegheny, American, Braniff, Continental, Airwest, Northwest, Ozark, Western, TWA, to the extent that they request authority in these markets, and any other fit, willing and able applicants, whose fitness, willingness and ability can be established by officially noticeable data.[4] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

These markets are those for which the community is most interested in having new authority now. Therefore, in the interest of expedition, this order will be limited to these markets.[5,6] We will deal with the remaining requests for Salt Lake City authority in subsequent proceedings.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications

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* Appendices A through C filed as part of the original document.

[1] *See* Answer of the UATC to Western's motion to consolidate, October 6, 1978, Docket 33524.

[2] *See* Answer of the UATC to American's motion to consolidate, October 13, 1978, Docket 33315.

[3] *See* Answer of the UATC to Airwest's petition for show cause order, October 16, 1978, Docket 33202.

[4] Officially noticeable data consist of information filed with us under section 302.24(m) of our Rules of Practice. Applicants whose cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that Allegheny, American, Braniff, Continental, Airwest, Northwest, Ozark, Western, and TWA are citizens of the United States and are fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[5] The Salt Lake City-St. Louis market has already received consideration in Order 78-10-98, Oct. 10, 1978 and the Salt Lake City-Eugene exemption application of Frontier Airlines (Docket 33608) was granted in Order 78-12-71, December 11, 1978.

[6] The carriers requesting authority in each of these markets appear in Appendix B. A summary of the pleadings filed by each of the carriers relating to the above five markets is found in Appendix C.

the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if they served the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority, but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[7] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in Section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[8] See our general conclusions about the benefits of multiple permissive authority in *Improved Service to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objectives of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to satisfy unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.[9]

Notwithstanding the foregoing tentative conclusions in support of multiple permissive authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to, satellite airport questions and the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluations submitted by Braniff, Airwest, Western, Northwest and Continental in their applications, to which no answers have been filed, we find that our decision to award them authority does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of other applications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections. We remind objectors that under the 1978 Act they have the burden of proving why the awards proposed here will not be consistent with the public convenience and necessity.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificates of public convenience and necessity of the following carriers so as to authorize them to provide nonstop operations between the points listed, as follows:

a. Allegheny Airlines for Route 97 between Salt Lake City, on the one hand, and Albuquerque, Atlanta and Dallas/Fort Worth, on the other;

b. American Airlines for Route 4 between Salt Lake City, on the one hand, and Albuquerque, Dallas/Fort Worth and San Antonio, on the other;

c. Braniff Airways for Route 9 between Salt Lake City, on the one hand, and Dallas/Fort Worth, on the other;

d. Continental Air Lines for Route 29 between Salt Lake City, on the one hand, and Albuquerque and San Antonio on the other;

e. Hughes Airwest for Route 76 between Salt Lake City, on the one hand, and Albuquerque, Dallas/Fort Worth and San Antonio, on the other;

f. Northwest Airlines for Route 3 between Salt Lake City, on the one hand, and Albuquerque, Atlanta, Boise, Dallas/Fort Worth and San Antonio, on the other;

g. Ozark Air Lines for Route 107 between Salt Lake City, on the one hand, and Albuquerque, Atlanta, Boise, Dallas/Fort Worth and San Antonio, on the other;

h. Trans World Airlines for Route 2 between Salt Lake City, on the one hand, and Albuquerque, on the other;

i. Western Air Lines for Route 19 between Salt Lake City, on the one hand, and Albuquerque, Atlanta, Boise, Dallas/Fort Worth and San Antonio, on the other;

and amending, to grant any of the authority in issue, the certificates of any

[7] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[8] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

[9] In the Boise-Denver case, Docket 32115, the issue arose as to how many more carriers the Boise airport can now accommodate. An initial decision was served on December 28, 1978. Interested persons may comment on the Boise airport issue as it concerns this case.

other fit, willing and able applicants the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings and conclusions, or certificate amendments set forth here, to file and serve upon all persons listed in paragraph 9, no later than February 26, 1979, a statement of objections, together with a summary of testimony, statistical data and other material expected to be relied upon to support the stated objections; answers shall be due no later than March 8, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action; [10]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We grant the motions of Braniff, Airwest, American, Western, TWA, Continental, Northwest, Allegheny and Ozark to consolidate their applications to the extent that they request authority in the markets at issue here;

6. We grant TWA's motion to sever its Salt Lake City-St. Louis and Salt Lake City-Denver applications from its Salt Lake City-Albuquerque/St. Louis/Denver application in Docket 33543;

7. We direct American, TWA, Continental, Northwest, Allegheny, Ozark and any other applicant for the authority in issue to file the data set forth in footnote 7 no later than February 9, 1979; and

8. We will serve a copy of this order upon all persons named in the service lists of Dockets 33115, 33298, 33202, 33315, 33524, 33543, 33674, 33607, 33671, 33996, and 34067.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[11]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-3119 Filed 1-29-79; 8:45 am]

[10] Since provision is made for the filing objections to this order, we will not entertain petitions for reconsideration.

[11] All Members concurred.

[6320-01-M]

[Docket 32774; Order 79-1-99]

NORFOLK-VIRGINIA BEACH-PORTSMOUTH-CHESAPEAKE-SUFFOLK PARTIES

Petition for Investigation Into Service Cuts Proposed by United Air Lines, Inc.; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 18th day of January, 1979

On May 31, 1978, the Norfolk Parties[1] filed a petition, under sections 404(a) and (b) of the Federal Aviation Act, for an investigation into the service cuts proposed by United Air Lines in the Norfolk-Washington (National Airport) market. Petitioners request a hearing on their complaint or, in the alternative, an order to show cause directing United to give up five of its slots at Washington National Airport to another carrier willing to supply replacement services.

In support of their petition, the Norfolk Parties contend that the elimination of United's flights between Norfolk and Washington National Airport effective June 9, 1978, would leave the market with grossly inadequate service;[2] that neither Baltimore-Washington International Airport nor Dulles International Airport meets the needs of the market; that United is the largest carrier of passengers in the Norfolk-Washington National Airport market;[3] the schedule pattern in the market was already deficient before United proposed to cut its service and will be seriously inadequate after the cutbacks;[4] that while the decrease in frequencies amounts to only 35.7 percent, the reduction in capacity amounts to nearly 40 percent because three of the remaining flights are operated with YS-11 aircraft with a seating capacity of only 58; that the cutbacks are planned during a period of peak demand; that the need for service to National Airport is based in part on the fact that Norfolk is the headquarters for the United States Atlantic Fleet and for NATO Supreme Allied Command Atlantic Operations; that Norfolk is also dependent on National Airport as a connecting hub and gateway to other cities; that the use of other airports would greatly inconvenience Norfolk passengers since such travel would involve a backhaul; and that Norfolk's efforts to obtain replacement service have been hampered by the combination of the lack of available slots at the National Airport and the price ceilings imposed by the Board in the *Domestic Passenger-Fare Investigation.* Norfolk attached to its petition numerous letters opposing the cutback in service by United.

Answers to the petition were filed by the Department of Defense and by United. DOD supports the petition, stating that over 13,000 official DOD travelers per year use Norfolk-Washington air service, with the greatest damand for reservatons in the early morning and evening hours; that curtailment of the current service will be detrimental to many DOD passengers in the performance of essential military travel; that serious disruption to casual travel of Navy, Marine Corps, and civilian workers and their dependents, who make up over 30 percent of the Tidwater population, is probable, particularly during peak holiday periods; and that neither Baltimore-Washington International Airport nor Dulles International Airport is as convenient for such travel, given that the vast majority of official travel of the DOD between Norfolk and Washington s for business at the Pentagon or in downtown Washington, D.C.

United contends that it is not the major participant in the Norfolk-Washington National market;[5] that is fulfilling its certificate requirements by serving the Washington area through Baltimore and Dulles International Airports;[6] that it is United's intent to deemphasize local schedules in the market whild placing more emphasis on service between Norfolk and more distant destinations; that the service cutbacks it has made are not a violation of the Act; that the alternative request of the Norfolk Parties for an order to show cause why it should not give up five of its slots at National Airport is without merit; and that the petititon should be dismissed.

The Norfolk Parties filed a motion for leave to file an otherwise unauthorized document,[7] to which was attached a reply to United's answer. They contend that the data used to support the argument that United is not participating in a large percentage of Norfolk-Washington, traffic are misleading and were taken from an unrepresentative year;[8] and that the

[1] The Norfolk Port and Industrial Authority, the City of Norfolk, City of Suffolk, City of Virginia Beach, Chesapeake Chamber of Commerce, Norfolk Chamber of Commerce, Portsmouth Chamber of Commerce, Suffolk Chamber of Commerce, and Virginia Beach Chamber of Commerce.

[2] The remaining service would be two daily round trips by National Airlines and two and one-half round trips daily by Piedmont Aviation.

[3] The Parties indicate that during 1977 United enplaned and transported about 36 percent of the traffic carried by the three certificated carriers on nonstop flights in the market.

[4] The petition refers to gaps in departures from Norfolk between 10:45 a.m. and 9:50 p.m., and to Norfolk between 9:25 a.m. and 1:45 p.m. and between 5:45 p.m. and 9:45 p.m.

[5] United states that during 1976 it carried only 19 percent of the local and connecting passengers between Norfolk and Washington according to O&D survey data, and that for the same year, its on-board traffic consisted of only 22 percent local passengers with the balance of 78 percent consisting of through or beyond passengers.

[6] United plans to move its flights from Naitonal Airport to Balitmore, adding its service to four daily round trips by Allegheny Airlines in the Norfolk-Baltimore market.

[7] We will grant the motion.

[8] Norfolk states that 1976 represented a low point for United in terms of both traffic and service in the Norfolk-Washington market.

unwillingness of United to give up some of its slot allocations at National Airport to a replacement carrier should not be countenanced by the Board.

On July 24, 1978, the Norfolk Parties filed a petition in Docket 21866 (*Domestic Passenger-Fare Investigation*) for a waiver from our rate-making policies to the extent necessary to allow them to bid at higher than Phase 9 prescribed fares for carrier services in the Norfolk-Washington market. Specifically, they propose to seek contract arrangements with a willing carrier or carriers to replace the loss of United's service in that market. They contend that they need relief from DPFI fare ceilings in order to attract service, and that even under our proposed rule-making (EDR-353, PDR-52, and PSDR-51),[9] only a modest increase above DPFI levels would be permissible in a market of this nature. They seek permission to bid much higher for the services (or particular flights such as peak period movements) of a willing carrier or carriers in the Norfolk-Washington National market.[10] Finally, they filed a motion to consolidate the waiver request with their petition in Docket 32774.

We have decided to dismiss Norfolk's petition. After is was filed, Congress passed the Airline Deregulation Act of 1978. Under the new Act, maximum reliance is placed on competitive market forces and actual and potential competition to provide needed service (section 102(a) (4) and (9)). Further, a new comprehensive program has been created, in section 419, to guarantee that essential air services are provided to smaller communities, where necessary with direct subsidy. In this more competitive climate carriers have the freedom to reduce or eliminate service at points or in markets except where "essential air transportation" would be impaired. Under these circumstances, the adequacy of service provision can no longer be used to fix a carrier's frequencies above the "essential" level.[11]

We recognize, however, that Washington is a major destination for Norfolk travelers, and by this order we are inviting applications for authority in the Norfolk-Washington (National Airport) market.[12] Such applications may be in the form of certificate amendment or exemption requests. We intend to process certificate applications by show-cause procedures if circumstances permit.[13] With a total of 199,130 O&D plus connecting passengers in 1977, or 545 passengers per day, the market might very well be attractive to potential new entrants. Such service may be more feasible for a carrier other than United with a different route structure or aircraft fleet mix. We will act upon any applications filed in response to this order as expeditiously as possible.

In addition to their petition, the Norfolk Parties filed a waiver request which would permit a higher-than-normal fare in the Norfolk-Washington market. As indicated in footnote 9, *supra*, we have adopted a new policy for domestic fares designed to permit maximum flexibility according to the needs of particular markets. The new section dealing with upward fare flexibility, 399.33(a), is purposely broad: "coach fare proposals priced above this ceiling or the upper limits specified under section 399.31(h) should be suspended *unless otherwise justified*" (emphasis added).[14] This new fare policy establishes a suspend-free ceiling, but it does not preclude just and reasonable and otherwise lawful increases above the ceiling. Thus, any carrier is free to file for an increased fare in the Norfolk-Washington market. Whether the characteristics of this market could justify higher prices cannot, of course, be determined on this record. Norfolk's petition for a waiver is therefore moot and will be dismissed.[15]

ACCORDINGLY,

1. We dismiss the petition filed by the Norfolk Parties in Docket 32774;

2. We dismiss the petition filed by the Norfolk Parties in Docket 21866 for a waiver of the rate making policies and the motion to consolidate the petition with the petition in Docket 32774;

3. We grant the motion of the Norfolk Parties for leave to file an otherwise unauthorized document; and

4. We will serve this order on United Air Lines; National Airlines; Piedmont Aviation; all other certificated carriers; the Norfolk Parties; the Department of Defense; and the Postmaster General.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:[16]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-3118 Filed 1-29-79; 8:45 am]

[9] On August 25, we adopted as a final rule, PS-80, effective September 5, 1978, which amends Part 399 regarding domestic passenger fare levels and structures and discount fares.

[10] They state that they request waiver authority to permit the approval of any fare proposal in this market agreed to by them in a contract with the carrier or carriers involved. They propose to negotiate with interested carriers (including United) and enter into an appropriate agreement or agreements which would specify both an agreed fare level and an agreed service level.

[11] We note that historically, before the passage of the 1978 Act, we relied primarily on competition to assure adequacy of service.

[12] We are aware of the views expressed by Norfolk that the slot allocation situation at National Airport will prevent replacement service. The whole matter of allocation of slots at congested airports is under review by the FAA and our staff, and Norfolk will be free to participate in any proceeding which may be undertaken to deal with this question. It is a complex problem that cannot be considered on an *ad hoc* basis, and we will not here require United to give up any of its slots at National Airport.

[13] In the case of carriers or applicants not holding combination certificates, we will make a preliminary investigation to determine whether we should proceed, in the first instance, by show-cause procedures, or whether we should set such applications before an Administrative Law Judge for full hearing.

[14] Justifications could relate to particular operating factors, special market needs, higher cost service, etc.

[15] Consideration will, of course, be given to the views of Norfolk and DOD filed in connection with any subsequent tariff proposal to establish fares above the ceiling.

[16] All Members concurred.

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Electronic Instrumentation Technical Advisory Committee will be held on Wednesday, February 14, 1979, at 9:30 a.m. in Room 4833, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975, October 21, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee will meet only in Executive Session to discuss matters

properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

For further information, contact Mr. Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4738.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Electronic Instrumentation Technical Advisory Committee and of any subcommittees thereof was published in the FEDERAL REGISTER on December 27, 1978 (43 FR 60328).

Dated: January 25, 1979.

LAWRENCE J. BRADEY,
Acting Director, Office of Export Administration, Bureau of Trade Regulation, Department of Commerce.

[FR Doc. 79-3164 Filed 1-29-79; 8:45 am]

[3510-25-M]

HARDWARE SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, February 14, 1979, at 9:00 a.m. in Room 4833, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Hardware subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the Charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) Maintenance of the processor performance tables and further investigation of total systems performane; and (2) Investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee meeting agenda has four parts:

GENERAL SESSION

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of work program for the current year.

EXECUTIVE SESSION

4. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41073).

For further information, contact Mr. Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4738.

Copies of the minutes of the open portion of the meeting can be obtained by calling Mrs. Margaret Cornejo, Operations Division, Office of Export Administration (202) 377-2583.

Dated: January 25, 1979.

LAWRENCE J. BRADY,
Acting Director, Office of Export Administration, Bureau of Trade Regulation, Department of Commerce.

[FR Doc. 79-3165 Filed 1-29-79; 8:45 am]

[3510-25-M]

TECHNOLOGY TRANSFER SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5

U.S.C. App. (1976), notice is hereby given that a meeting of the Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, February 14, 1979, at 1:00 p.m. in Room 4833, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee was initially established on April 10, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) world wide availability and actual utilizaton of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Technology Transfer Subcommittee was formed to examine the impact of transferring Automatic Data Processing technology to Communist destinations.

The Subcommittee meeting agenda has four parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Review of possible future activities for the Subcommittee for 1979.
(4) Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (4) the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determinations to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41072).

For further information, contact Mr. Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4738.

Copies of the minutes of the open portion of the meeting can be obtained by calling Mrs. Margaret Cornejo, Operations Division, Office of Export Administration (202) 377-2583.

Dated: January 25, 1979.

LAWRENCE J. BRADY,
Acting Director, Office of Export Administration, Bureau of Trade Regulation, Department of Commerce.

[FR Doc. 79-3166 Filed 1-29-79; 8:45 am]

[3510-08-M]

National Oceanic and Atmospheric Administration

PROPOSED ALASKA COASTAL MANAGEMENT PROGRAM

Public Hearings on Draft Environmental Impact Statement

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) Prepared on the Proposed Alaska Coastal Management Program.

The hearing schedule is:

Tuesday, February 27, 1979, 2:00 p.m. and 7:00 p.m., Alaska Court & Office Building, Supreme Court Room A, Juneau, Alaska.
Wednesday, February 28, 1979, 2:00 p.m. and 7:00 p.m., Anchorage Historical & Fine Arts Museum, 121 West 7th Avenue, Anchorage, Alaska.

The views of interested persons and organizations on the adequacy of the impact statement and/or the Proposed Alaska Coastal Management Program are solicited, and may be expressed orally or in written statements. Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (phone: 202/634-4253), so that an appearance schedule may be prepared. In addition, requests for presentations will be accepted immediately prior to the hearing. Presentations are scheduled on a first-come, first-served basis, and should be limited to ten minutes in order to assure that all views can be heard. Office of Coastal Zone Management staff may wish to question speakers following the conclusion of his/her statement. If time permits, additional statements (and general discussion) may be scheduled at the conclusion of presentations. No verbatim transcript of the hearing will be maintained; but staff present will record the general thrust of the remarks.

As part of his review of the Alaska Coastal Management Program, the Assistant Administrator for Coastal Zone Management will consider fully all comments received at these hearings, as well as written statements submitted to, and received by OCZM on or before March 5, 1979. As part of the procedures leading toward approval of this program, a Final Environmental Impact Statement will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines which reflect his consideration of these comments. All written comments received by OCZM prior to the deadline will be included in the FEIS.

Dated: January 24, 1979.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

[FR Doc. 79-3159 Filed 1-29-79; 8:45 am]

[3510-60-M]

National Telecommunications and Information Administration

FREQUENCY MANAGEMENT ADVISORY COUNCIL

Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on February 15, 1979, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street, N.W., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street, N.W.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 11 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The agenda items for the meeting will be:

(1) Approval of the Draft Record of the January 10, 1979 meeting.

(2) FMAC study of the proposed Communications Act of 1978—progress report, review and discussions.

(3) Any other business of the Council.

(4) Scheduling of the next meeting.

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public. Each person will be limited to 10 minutes. More extensive questions or comments should be submitted in writing before February 14th. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request.

Inquiries may be addressed to the Council Contral Officer, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 268, 1325 "G" Street, N.W., Washington, D.C. 20005, telephone 202-724-3301.

Dated: January 25, 1979.

LLOYD C. DOBSON,
Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 79-3111 Filed 1-29-79; 8:45 am]

[3710-08-M]

DEPARTMENT OF DEFENSE

Department of the Army

HISTORICAL ADVISORY COMMITTEE

Open Meeting

1. In accordance with Section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.
Date: 6 April 1979.
Place: Conference Room, 6A-092, Forrestal Building, Washington, DC 20314.
Time: 1000-1140; 1345-1515.
Proposed Agenda: 1000-1140—Review of historical activities. 1345-1515—Discussion of activities and executive session of the committee.
Purpose of meeting: The committee will review the past year's historical activities based on reports and manuscripts received throughout the year and formulate recommendations through the Chief of Military History to the Chief of Staff, US Army and the Secretary of the Army for advancing the purposes of the Army Historical Program.

2. Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intentions to attend the April 6 meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to LTC J. H. Ferguson, Advisory Committee Management Officer for the Chief of Military History, Room 6B-018, Forrestal Building, Washington, DC 20314.

Dated: January 17, 1979.

JAMES H. FERGUSON,
LTC, IN, Executive Officer

[FR Doc. 79-3099 Filed 1-29-79; 8:45 am]

[3810-70-M]

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON ENDURING STRATEGIC COMMUNICATIONS, COMMAND AND CONTROL AND INTELLIGENCE

Advisory Committee Meeting

The Defense Science Board Task Force on Enduring Strategic Communications, Command and Control and Intelligence will meet in closed session on 23 February, 1979 in Colorado Springs, Colorado.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on Enduring Strategic Communications, Command and Control and Intelligence has been scheduled for 23 February 1979 to review Aerospace Defense Command command and control systems and related plan and studies. The Task Force is focusing on the long term problems in strategic communications, command and control and intelligence and will complement concurrent studies being performed by Strategic Air Command and the United States Navy.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board Task Force meeting concerns matters listed in Section 552(c) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, DOD/WHS.

JANUARY 25, 1979.

[FR Doc. 79-3033 Filed 1-29-79; 8:45 am]

[3810-70-M]

DEFENSE SCIENCE BOARD TASK FORCE ON ENDURING STRATEGIC COMMUNICATIONS, COMMAND AND CONTROL AND INTELLIGENCE

Advisory Committee Meeting

The Defense Science Board Task Force on Enduring Strategic Communications, Command and Control and Intelligence will meet in closed session on 21 and 22 February 1979 in Omaha, Nebraska.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on

scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on Enduring Strategic Communications, Command and Control and Intelligence has been scheduled for 21 and 22 February 1979 to review Strategic Air Command command and control systems and related plans and studies and to receive subcommittee progress reports. The Task Force is focusing on the long term problems in strategic communications, command and control and intelligence and will complement concurrent studies being performed by Strategic Air Command and the United States Navy.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board Task Force meeting concerns matters listed in Section 552d(c) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, DOD/WHS.

JANUARY 25, 1979.

[FR Doc. 79-3034 Filed 1-29-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM78-12; Order No. 17-A]

ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Order Confirming the Incentive Rate of Return Mechanism and Denying Petition for Reconsideration and Clarification

JANUARY 17, 1979.

I. BACKGROUND

On December 1, 1978, in Order No. 17 (in the above-referenced docket), the Federal Energy Regulatory Commission (Commission) appended certain Incentive Rate of Return (IROR) terms and conditions to the conditional certificates of public convenience and necessity for the Alaska Natural Gas Transportation System (ANGTS). These conditions were developed pursuant to a rulemaking. An original notice (May 8, 1978) and a revised notice (September 15, 1978) of proposed rulemaking were issued soliciting comments on the IROR mechanism. The Commission in Order No. 17 solicited further comments and scheduled an oral argument before the Commission on the sole issue of the inclusion of an allowance for funds used during construction (AFUDC) in the Cost Performance Ratio of the IROR mechanism. Written comments were received on December 19, 1978, from three interested parties: (1) the Alaskan Northwest Natural Gas Transportation Company, a Partnership; (2) the Northern Border Pipeline Company, and (3) the Office of Regulatory Analysis, Federal Energy Regulatory Commission. Representative of these same parties presented oral arguments to the Commission on December 21, 1978. Members of the Commission attending were Don S. Smith (presiding), Charles B. Curtis, Georgiana Sheldon, and Matthew Holden, Jr. This order affirms the terms and conditions in Order No. 17 and provides additional information concerning future proceedings to implement the IROR mechanism.

II. AFUDC IN THE COST PERFORMANCE RATIO

In their comments on the revised notice of September 15, the project sponsors (Alaskan Northwest and Northern Border) stated that the IROR mechanism as proposed in the revised notice was unacceptable to the sponsors and would result in the sponsors seeking Federal financial assistance. The major area of concern to the sponsors was the inclusion of AFUDC in the Cost Performance Ratio and a consequent reduction in the IROR if there are delays in construction. In response to valid criticisms and in order to make AFUDC consistent with other cost components in the Cost Performance Ratio, the Commission in Order No. 17 made four changes to or clarifications of the IROR mechanism. These are:

1. AFUDC will be calculated from a Real Rate of Return on equity and debt, after removing the effects of inflationary expectations, instead of the nominal or current dollar rates.
2. The IROR will not be reduced for delays occurring prior to the granting of a final certificate of public convenience and necessity by the Commission.
3. The Change in Scope procedure, to be the subject of a separate rulemaking, ". . . will absolve the project sponsors of responsibility for delays which are clearly the fault of the government." [1]
4. The rulemaking on Change in Scope will also address the issue of ". . . what other delays and cost increases are truly beyond the project sponsors' control.[2]

The net effect of these adjustments to the IROR mechanism is to greatly reduce the penalty for delay. However, because of the importance given to the AFUDC issue by the sponsors, the Commission concluded that submittal of additional written comments and presentation of oral arguments were appropriate before a final ruling on this matter.

[1] Order No. 17, *op. cit.* mimeo p. 6.
[2] *Ibid.*

III. RESOLUTION OF THE AFUDC ISSUE

Upon consideration of the written and oral views and comments received on the AFUDC issue, it is this Commission's judgment that AFUDC should remain in the Cost Performance Ratio as provided by the Commission in Order No. 17. In reaching this judgment the Commission is appreciative of the incentive effects discussed by the Commission's Office of Regulatory Analysis (ORA) but is at least equally influenced by a factor discussed during the oral argument by both the Office of Regulatory Analysis [3] and Alaskan Northwest,[4] sponsor of the Alaskan segment of the ANGTS: namely, the relationship of the Commission's decision to the Canadian IROR mechanism.

The filed capital costs which are to form the basis for the Canadian IROR mechanism are specified in Annex III to the "Agreement between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline." [5] These filed costs, which are to be in the denominator of the Canadian IROR mechanism's Cost Performance Ratio,[6] contain an allowance for AFUDC. Similar treatment for the sponsors of the U.S. segments requires inclusion of AFUDC in the IROR Cost Performance Ratio for the U.S. companies.

While deciding that AFUDC should be included in the Cost Performance Ratio, the Commission, as previously stated,[7] is sympathetic to the project sponsors' concerns about delays caused by the government. As specified in Order No. 17, it is the Commission's intention that the Change in Scope procedure will hold the project sponsors harmless for delays caused by the government.

In proceeding to resolve the remaining issues, the Commission observes that the consumer of gas delivered by the ANGTS shares with the project sponsors an interest in a regulatory environment that provides a fair distribution of the risks and benefits associated with the ANGTS, because of the potential impact of that environment on consumer costs. Both the project sponsors and gas consumers

[3] Oral Argument held December 21, 1978, in Docket No. RM78-12, Tr. 21.
[4] *Ibid.*, Tr. 40.
[5] This Agreement was made a part of the Decision and Report to Congress on the Alaska Natual Gas Transportation System; Executive Office of the President, Energy Policy and Planning; transmitted to the Congress under the provisions of the Alaska Natural Gas Transportation Act, September 22, 1977. The Agreement is pp. 47-83 of the *Decision.*
[6] "Proposed Approach to Incentive Rate of Return for the Northern Pipeline"; Canada, National Energy Board; October 5, 1978; p. 2 of Regulations.
[7] Order No. 17, mimeo p. 6.

have a legitimate right to identify which delays and cost increases are the fault of the government and which are the fault of the project sponsors, and to hold each accountable for its actions. Thus, providing a credible, fair regulatory environment is an important to gas consumers as it is to the project sponsors. The Commission's complete IROR mechanism will contribute to such an environment.

CERTIFICATION PROCEDURES AND SCHEDULES

The Commission notes the view, expressed by counsel for the Alaskan Northwest Natural Gas Transportation Company, that

[n]o assessment of the [impact on private financing] of the December 1 order [Order No. 17] is possible until the related issues which have been carved out for later resolution have been answered.[8]

The Commission shares this view and recognizes its role in resolving the remaining issues. Indeed, the discussion presented herein regarding certification procedures and schedule is an expression of the Commission's intention to expedite resolution of the remaining issues.

The Commission understands that putting the various pieces of the IROR mechanism in place one at a time, by means of Order No. 17, the Change in Scope procedure, and so forth, makes it somewhat difficult for the project sponsors to evaluate the overall impact of the IROR mechanism on the project as an investment proposition. In this regard, the Commission takes note of the sponsors' Joint Petition for Reconsideration and Clarification,[9] which in effect requests deferral of final Commission action on the matters addressed in Order No. 17 until more of the IROR pieces are in place.[10]

Against this request the Commission must balance Northwest Alaskan's concerns about "* * * delay and its Siamese twin, uncertainty." [11] The Commission does not anticipate that its resolution of any of the matters addressed by Order No. 17 (or by this Order) will change. Therefore, in the interest of providing some certainty about the matters which the Commission has previously addressed, and in the interest of focussing the efforts of both the Commission and other interested parties on the matters which remain to be resolved, the Commission denies the sponsors' request for reconsideration.

The Commission also understands the project sponsors' concerns that the equity support for expenditures required to develop the project to the point of filing for final certification is difficult to generate if "[t]he equity sponsors must invest their equity to find out if their equity investment is sound." [12] The Commission is willing to do what it properly can to expedite the certification process or to modify it so as to reduce risk to investors in a manner consistent with the Commission's general mandate to protect the public interest. With regard to the procedure and timetable for determining the various rates of return and the overall IROR schedule, the Commission offers the following elaboration upon its comments on this subject in Order No. 17:

1. Project company tariff/Operation Phase Rate determination: The Commission expects a report by the end of January 1979 from the Alaskan Delegate on tariff issues in the context of the risk allocation framework during the operation phase. That report should provide sufficient discussion to serve as framework for setting the Operation Phase Rate, as well as for acting on the project sponsors' proposed tariff.

Upon completion of the report, the Commission will order filing of tariff applications by a date certain for each segment of ANGTS. The Commission expects to circulate concurrently to interested parties for comment the tariff filings and the Delegate's report, then to act on the tariff filings according to an expedited schedule to be specified in the Commission's Order.

Upon approval of the project company tariff, the Commission will immediately begin a rulemaking for setting the Operation Phase Rate. The Commission will order that the filing from the project sponsors contain enough information about their intended financing plan to allow an evaluation of financial risks along with all operation phase risks.

2. Non-incentive Rate determination: The Alaskan Delegate should also report to the Commission within 30 days of issuance of this order regarding project risks during construction other than those associated with the IROR mechanism. The Commission intends to utilize this report as the basis for a rulemaking to determine the Project Risk Premium.

The Project Risk Premium added to the Operation Phase Rate comprises the Non-Incentive Rate. As the Non-Incentive Rate is used to compute AFUDC during the pre-construction period, establishing this rate should allow the project sponsors to evaluate the potential return on project development expenditures.

3. Change in Scope Procedure/Center Point/IROR Risk Premium/Marginal Rate: the Alaskan Delegate advises that these issues are strongly interrelated, and there is no obvious procedural route other than sequentially resolving them. The Commission restates its request that the Alaska Delegate work with the project sponsors to develop a schedule and procedure to resolve these matters and to report to the Commission. The Commission will then order a schedule and procedure to provide guidance to the applicants, the Commission staff, and other interested parties.

4. Certification Cost and Schedule Estimates: The Commission recognizes that certain key considerations in establishing the Certification Cost and Schedule Estimates have not yet been determined. For the Alaska segment, the principal outstanding issues are the proximity of the gas pipeline to the oil pipeline, the maximum allowable operating pressure, and application of the environmental and other technical stipulations; for Northern Border, the stipulations are the principal problem. The Alaskan Delegate advises that these matters are approaching resolution, as is the question of cost estimate formats for their submission.

The Commission also recognizes that some aspects of the cost estimates will not be known with any degree of precision prior to completion of the sponsors' project development program, some months hence. The Commission expects, however, that the changing reliability of the Certification Cost and Schedule Estimates can best be handled through the Change in Scope procedure and establishment of the Center Points for Northern Border and the Alaska segment. Accordingly, the Commission plans to order filing of the Certification Cost and Schedule Estimates no later than 60 days after resolution of the principal issues enumerated in the previous paragraph.

V. FINDINGS

(1) After reviewing the written comments and oral arguments submitted pursuant to Commission Order No. 17, the Commission finds that modification of the terms and conditions set forth in Order No. 17, which are appended to the conditional certificates of public convenience and necessity for the Alaska Natural Gas Transportation System issued by order on December 16, 1977 (Docket Nos. CP78-123, *et al.*), is not warranted.

[8] Oral Argument, Tr. 9.

[9] Joint Petition of Northern Border Pipeline Company and Alaskan Northwest Natural Gas Transportation Company for Reconsideration and Clarification, filed December 29, 1978, in Docket No. RM78-12.

[10] The present petition is being reviewed by the Commission in its discretion, since Section 10 of the Alaska Natual Gas Transportation Act (15 U.S.C. section 719(h)) makes no provision for rehearing. Our actions herein should not be construed as indicating that the standards and procedures of judicial review under the Natural Gas Act are in any way applicable to Order No. 17.

[11] Oral Argument, Tr. 7.

[12] Oral Argument, Tr. 10.

(2) The Joint Petition for Reconsideration and Clarification, filed December 29, 1978, is hereby denied.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565, E.O. No. 12009, 42 F.R. 46267 (September 15, 1977), Natural Gas Act, 15 U.S.C. sections 717, *et seq.*, Alaska Natural Gas Transportation Act, 15 U.S.C. section 719(g)).

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3020 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. E-9408]

AMERICAN ELECTRIC POWER SERVICE CORP.

Conference

JANUARY 19, 1979.

Take notice that on February 7, 1979, a conference of all parties in the above entitled docket will be convened at 10:00 a.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426. The conference is being convened at the request of counsel for American Electric Power Service Corporation and will be for the purpose of discussing any further procedures which may be neccessary due to the lapse of time from the Initial Decision issued in the docket on February 23, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3010 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-134]

EASTERN SHORE NATURAL GAS CO.

Adjustment to Rates and Charges

JANUARY 23, 1979.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on January 15, 1979, tendered for filing the following revised tariff sheets:

To be Effective February 1, 1979
Ninth Revised Sheets No. 5 and No. 6
Superseding Eighth Revised Sheets No. 5 and No. 6
Ninth Revised Sheets No. 10, No. 11 and No. 12

The revised tariff sheets track a similar filing by Eastern Shore's supplier Transcontinental Gas Pipe Line Corporation (Transco).

Copies of this filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 30, 1979. 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 available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3012 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. ES78-23]

EDISON SAULT ELECTRIC CO.

Application

JANUARY 23, 1979.

Take notice that on January 15, 1979, Edison Sault Electric Company, a Michigan corporation qualified to do business in that State, with its principal business office in Sault Ste. Marie, Michigan, filed an application pursuant to Section 204 of the Federal Power Act, seeking authority to issue up to $1,300,000 of short-term notes to be issued from time to time on or before December 31, 1979, with a final maturity date not later than December 31, 1980.

The short-term debt will be used to provide interim financing for Company's construction program.

Any person desiring to be heard or to make any protests with reference to said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D. C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before February 5, 1979. The application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3011 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. ES79-22]

GULF STATES UTILITIES CO.

Application

JANUARY 23, 1979.

Take notice that on January 15, 1979, Gulf States Utilities Company (Applicant) filed an application seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of $75,000,000 principal amount of First Mortgage Bonds, via competitive bidding. Applicant is incorporated under the laws of Texas with its principal business office at Beaumont, Texas, and is engaged in the electric utility business in portions of Louisiana and Texas. Natural gas is purchased at wholesale and distributed at retail in the City of Baton Rouge and vicinity.

The proceeds from the sale of the new securities will be used to pay off the Company's outstanding commercial paper and short-term notes previously authorized by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 5, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3013 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. ER77-533]

LOUISIANA POWER & LIGHT CO.

Intent to Act

JANUARY 22, 1979.

On December 22, 1978, Louisiana Power & Light Company (LP&L) renewed its motion for reconsideration of the Commission's order issued October 18, 1978, which dismissed as moot LP&L's motion to disqualify Wallace E. Brand and the law firm of Pearce & Brand from continued representation of the cities of Winnfield, Vidalia, Jonesville, Louisiana (Cities) in the above docketed proceeding. The Commission intends to issue an order on LP&L's request. Therefore, the motion shall not be deemed denied under § 1.12(e) of the Commission's Rules.

In order to aid the Commission in its determination of the issue, counsel for Cities is requested to respond to the motion within ten days from the date of this order.

The Commission orders:

LP&L's renewed motion for reconsideration of the Commission's order issued October 18, 1978, shall not be deemed denied under § 1.12(e) of the Commission's Rules.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3014 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. RA79-10]

MILLTOWN SKELGAS, INC.

Filing of Petition for Review Under 42 U.S.C. 7194

JANUARY 23, 1979.

Take notice that Milltown Shelgas, Inc. on December 21, 1978 filed a Petition for Review under 42 U.S.C. section 7194(b) (1977 Supp.) from an order of the Secretary of Energy, issued on November 24, 1978, denying in part, exception relief from the Mandatory Petroleum Price Regulations.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before February 12, 1979 file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through Gaynell C. Methvin, Deputy General Counsel for Enforcement, Department of Energy, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3015 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket Nos. E-8586 and E-8587]

PUBLIC SERVICE CO. OF INDIANA, INC.

Extension of Time

JANUARY 22, 1979.

On January 11, 1979, the Public Service Company of Indiana filed a motion for an extension of time to answer the "Motion for Order on Remand" filed in this proceeding on January 3, 1979, by Crawfordsville, Frankfort, Logansport and Peru, Indiana. The motion states that counsel for the movants do not oppose the requested extension.

Upon consideration, notice is hereby given that an extension of time is granted to and including January 31, 1979 for the filing of answers to the January 3, 1979 motion.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3016 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. RA79-5]

SABRE REFINING, INC.

Filing of Petition for Review Under 42 U.S.C. 7194

JANUARY 23, 1979.

Take notice that Sabre Refining, Inc., on January 8, 1979 filed a Petition for Review under 42 U.S.C. Section 7194(b) (1977 Supp.) from an order of the Secretary of Energy issued on November 3, 1978, denying in part, exception relief from the Mandatory Petroleum Allocation Regulations.

Copies of the petition for review have been served on the Secretary, Department of Energy.

Any person desiring to be heard with reference to such filing should on or before February 12, 1979 file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through Gaynell C. Methvin, Deputy General Counsel for Enforcement, Department of Energy, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, North Capitol St., N.E., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3017 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. ER 78-76]

SOUTHERN CO. SERVICES

Filing of Proposed Settlement Agreement

JANUARY 23, 1979.

Take notice that on January 11, 1979, the Southern Company Services, Inc. filed a proposed Settlement Agreement concerning settlement of the issues raised in its newly filed Amendment No. 1 to the Southern Company System Procedures Under the Intercompany Interchange Contract. Also filed were new computational and support schedules attendant to the Amendment No. 1. all for calendar year 1978. The proposed amendment was filed with the Commission on November 30, 1977.

The proposed settlement was filed with the Presiding Administrative Law Judge.

On January 12, 1979, the Presiding Administrative Law Judge certified the proposed Settlement Agreement to the Commission for its consideration and determination.

The proposed Settlement Agreement would have Southern Company Services, Inc. (SCSI) and Mississippi Power Company, Gulf Power Company, Georgia Power Company, and Alabama Power Company (Operating Companies of the Southern Company and signatories to the Intercompany Interchange Contract (IIC)) file computational and support schedules in order to incorporate in the determination of the monthly capacity rates, a rate of return on common equity of 13.25 percent for Alabama, Georgia, and Gulf Power Companies and 13.50 percent for Mississippi Power Company. Furthermore, the Operating Companies will amend the filed computational and support schedules to incorporate in the determination of the monthly capacity rates a change in the treatment of Account 281 which concerns Accelerated Amortization. This change is in accordance with the Commission's Opinion No. 12, *Minnesota Power and Light Company* (1978), and the Order Approving the Settlement Agreement in Docket No. ER77-86 (1978).

The Operating Companies will calculate the capacity payments between themselves and the Pool for 1978 at the revised monthly capacity rates shown in Exhibit No. 1 to the Settlement Agreement. All refunds will be made with interest at 9 percent per annum from the date of each monthly payment.

Any person wishing to do so may submit comments in writing concerning the proposed Settlement Agreement to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 on or before February 12, 1979. The proposed Settlement Agreement is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3018 Filed 1-29-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-99]

TRANSCONTINENTAL GAS PIPE LINE CO.

Order Approving and Adopting Settlement

JANUARY 19, 1979.

I. SUMMARY

We here adopt the settlement resulting from an offer by Transcontinental Gas Pipe Line Company (Transco) which has been accepted by most of the parties to this proceeding. We have considered the points raised by those who object and have determined, over those objections, that the curtailment plan embodied in the settlement is equitable. We have evaluated the alternatives to the settlement and conclude that acceptance of the settlement is the course of action that most advances the public interest.

The matter is before us because of the Court's remand in *State of North Carolina* v. *FERC*, Nos. 76-2102, *et al.* (D.C. Cir. July 13, 1978) [1] of a permanent curtailment plan promulgated in October 1976 by the Federal Power Commission (FPC) for the Transco system. The Court in *State of North Carolina* directed that the actual current impact on end-use at the burner-tip be considered in the "implementation of a curtailment plan for the Transco system" [2] and required that the issuance of compensation be considered on its merits based on an adequate record. [3] Except for the compensation issue (which will be the subject of further proceedings), acceptance of the settlement ends further consideration of this remand.

The present order is the second one in this docket in as many weeks. Our order of January 4, 1979 [4] expressed the Commission's interpretation of the settlement offer with particular emphasis on the relationship of the settlement to Title IV of the Natural Gas Policy Act of 1978 (NGPA) relating to curtailment priorities. We sought the parties' further comments on the settlement as construed in the January 4, 1979 order. We required the submittal of affidavits by Transco's customers indicating the end-use impact of the proposed settlement plan. Oral argument on the settlement and the order was set for January 12. The January 4 order expressed the hope that the parties would give serious consideration to the settlement offer as a long-term resolution of the controversies over a curtailment plan for Transco's system. The comments, affidavits and oral presentation of the parties all indicate that they have done so.

The proposal we accept today was formulated by Transco, its customers, and other parties to the proceeding before us. Our acceptance is of the settlement as a whole. Except to the extent our January 4, 1979 order interpreting various provisions of the settlement may have done so, we have not modified, varied or deleted any of the terms of that proposal. Of course, as clearly stated in the January 4 order, the Commission cannot be bound by the settlement, if and to the extent, it may in the future be found to conflict with our statutory duties. We believe on the basis of the submissions and the oral argument that the Commission's interpretation of the settlement is understood and accepted by the parties.

The Commission has evaluated the settlement initiated by Transco and its customers in accordance with Section 4 of the Natural Gas Act. We have obtained considerable information about Transco's curtailment situation in the seven years that this proceeding has been ongoing before this Commission and the FPC. The settlement must be evaluated in light of the complex and unsuccessful search during that period for a resolution of the disputes among the components of the Transco system.

We have also been provided with a thorough picture of the Transco system's current gas supply and demand status. We have examined the proposed settlement, the two rounds of comments submitted by the parties in November 1978, the comments and affidavits of customers and parties submitted January 11, 1979, and the oral presentations of January 12, 1979 which provided yet further information about the proposed settlement. Our examination of these materials, consideration of the Court remand and the extensive record developed in this docket over the last seven years, leads us to conclude that the settlement constitutes a reasonable means of resolving the curtailment controversies on the Transco system.

It is in the public interest to end this long-running litigation that extends back to 1972 and our evaluation has lead us to conclude that accepting the proffered settlement is the most feasible method to achieve this result. Moreover, we think that the settlement holds the promise, together with Transco's improved supply situation, of bringing stability and certainty to Transco's curtailment situation for some time into the future.

II. SCOPE OF THIS ORDER

This order encompasses all pending curtailment matters on the Transco system with only two exceptions.[5] Included are the remand in *State of North Carolina*, the Settlement Agreement, Motions filed on August 11 and October 18, 1978 [6] and matters not finally resolved by the FPC at the time of adoption of the current plan.[7]

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[1] All references herein are to the Court's July 13 slip opinion without renumbering of footnotes to reflect the one added (footnote 20, p. 21) by the *per curiam* order issued August 29, 1978. The opinion is reported in advance sheet form at 584 F.2d 1003 (December 18, 1978). The advance sheets do not reflect the August 29, 1978 amendment.

[2] *Id.* at 26.

[3] *Id.* at 31.

[4] *Transcontinental Gas Pipe Line Corporation*, Docket No. RP72-99, Order Interpreting Proposed Settlement, Requesting Comments and Setting Oral Argument (issued January 4, 1979).

[5] The first is the pending appeal in *Transcontinental Gas Pipe Line Corporation, et al.*, v. *FERC* No. 74-2036 (D.C. Circuit). *See*, Article VIII of Settlement Agreement. The second is Docket No. RP75-51 (Investigation of Revised Curtailment Level on the System of Transcontinental Gas Pipeline Corporation). *See*, Initial Decision, June 21, 1977.

[6] The North Carolina Group (State of North Carolina and North Carolina Utilities Commission, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and North Carolina Natural Gas Corporation) filed with the Commission on August 11, 1978, a motion to modify Transco's curtailment plan. Numerous answers were filed in response to this motion, most of them in opposition thereto. On October 18, 1978, two members of the North Carolina Group, the State of North Carolina and North Carolina Utilities Commission, filed two motions seeking action on the remand. The first of these two motions requested that we set the second one (seeking immediate imposition of revised interim plan of curtailment) for consideration the week of October 23. We denied the first motion by order issued October 27, 1978. We now deny the remaining motions. In general, the motions argue that *State of North Carolina* mandates revision of the Opinion No. 778 plan in advance of hearing. Various candidate plans were proposed. We do not agree that change in advance of hearing is required by the Court's decision. Opinion No. 778 was remanded, not reversed. Also, one of the options urged upon us by the North Carolina Group and apparently assumed as the norm by the Court in *State of North Carolina*—pro rata or proportionate curtailment—has been affected by the passage in the interim of the NGPA. However, it is unnecessary for us to here guage the full extent of the NGPA's impact on that option. The substantial opposition registered to such a plan, particularly when contrasted with the support for the proposed settlement, indicates it is not a viable alternative in this case.

[7] The permanent curtailment plan established by the FPC in Opinion No. 778 (October 8, 1976) and Opinion No. 778-A (December 8, 1976) was based upon end-use principles and was implemented on a fixed-base period; however, since the hearing record did not reflect the same end-use profiles as ultimately selected, the FPC instituted a data verification committee (DVC) to assist in preparing a revised fixed end-use base period. A number of issues were returned to the DVC for initial examination (and were not therefore encompassed by the Court's July 13, 1978 decision). An extensive series of DVC reports and FPC and Commission orders have ensued, as well as several petitions for appellate review. The current status of these matters are as follows: Three

Footnotes continued on next page

III. SUMMARY OF SETTLEMENT

Our January 4, 1979 order contained a detailed summary of the settlement. Accordingly, we limit our discussion here to the main features of the proposal.

The settlement contains a simple and certain method for allocating supplies. It specifies the allocation for each customer at varying supply levels. The plan will continue in effect so long as annual supplies available to the so-called large volume customers remain above 636,440 Mdt. (Article II).[8] Transco has indicated that this level will be exceeded for 1978-1979 and that it expects to stay at or above 636,440 Mdt for three to four years thereafter.[9]

The settlement proposal is designed to achieve several objectives. Transco summarized these in its November 22, 1978 submittal.

"The 'Offer of Settlement * * * was developed as a means of allocating the available supplies on the Transco system for the next several years in a manner which protects actual high priority markets on the system without the necessity of a lenghty data collection and hearing process. One indication that the settlement will actually protect the high priority markets on the system is the fact that, as a result of a recent survey of its customers, Transco has determined that, barring some unforeseen extraordinary circumstance, the allocation procedures set forth in the settlement will enable all of its distribution customers to serve their high priority markets without the necessity of those customers acquiring emergency supplies for this coming winter. The responses of the customers in this regard have been specifically conditioned upon approval of the settlement * * *." [10]

The settlement is comprehensive. It will clear the Commission's and the D.C. Circuit's docket of matters relating to the Opinion No. 778 plan and is also designed to minimize future litigation over the effects of the NGPA by anticipating, through revised allocations, the requirements under that Act as best they can be foreseen at this time.[11] Our January 4 order endorsed this approach and provided our views thereon. No one has objected to that order.[12] We incorporate Section III of that order herein. That material is attached hereto as Appendix "A".

IV. COMMISSION ACCEPTANCE OF SETTLEMENT

A. BACKGROUND

Establishment of pipeline curtailment plans has been a regulatory responsibility most of this decade. Early on, the Supreme Court in *FPC* v. *Louisiana Power & Light Co.*, 406 U.S. 621, 643 (1972) recognized the necessity for the Commission to have the latitude to make pragmatic judgments reflecting the needs arising in particular curtailment situations. The Court stated:

"Since curtailment programs fall within the FPC's responsibilities under the head of its 'transportation' jurisdiction, the Commission must possess broad power to devise effective means to meet these responsibilities. FPC and other agencies created to protect the public interest must be free, 'within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.'" (citing *FPC* v. *Natural Gas Pipe Line Co.*, 315 U.S. 575 (1942)).

Louisiana Power & Light's emphasis on pragmatism, applicable originally to selection of procedures for use in processing curtailmants, has equal application to the substantive formulation of such plans.[13] Moreover, it has been widely recognized that the Commission must be permitted some latitude to experiment in evolving just and reasonable curtailment plans, particularly when it is called upon to approve a settlement which is the product of extensive negotiations among the parties.[14] Transco is a case study in that experimentation. A number of interim plans formulated by the pipeline and its distributors on a year-to-year basis and submitted as settlements, were approved by the FPC. The exception to this process—the rejection by the FPC of a proposed interim settlement with a compensation feature—was ultimately overturned by the Court.[15] The FPC's quest for an acceptable curtailment plan for the Transco system ended in October 1976 when it promulgated the Opinion No. 778 plan as a permanent plan.

This Commission has now been advised in the *State of North Carolina* case that the Opinion No. 778 plan could not stand as a *permanent* plan unless reaffirmed, based on required end-use impact assessments and after full consideration of the compensation issue. Thus, the matter of Transco's curtailment plan was to some extent reopened on July 13, 1978 by virtue of the Court's decision. The actions which this Commission would have taken in compliance with that directive at the time of its issuance are relatively clear. In order to provide full record support for an Opinion No. 778 type end-use plan, we would have referred the matter to an Administrative Law Judge for compilation of a record to compare, based on 1977-1978 end-use data, the impacts of the Opinion 778 plan with a pro rata plan. In addition, that comparison would have included an assessment of the impacts of both types of plans assuming their operation in 1972-1973 base period. Moreover, an examination of the reasons why market profiles had changed from 1973 to 1978 would have been required. Data on changes in supplies occurring since the base period would also have been required in order to provide the Commission with all the information needed to make a current determination on the issue of treatment of full versus partial requirements customers.

State of North Carolina, alone, requires consideration of these matters. *But*, the *State of North Carolina* decision is not the only consideration that we now have before us when considering probable revisions to the Transco curtailment plan. The NGPA will affect such a plan and should be considered at this time.

We have recently considered the effects of the *State of North Carolina* decison and the NGPA in another curtailment case which, like this one, has had a long history. In *United Gas Pipe Line Company* (Opinion 32 and Opinion 32-A),[16] we determined that we had to return that case to the Judge and directed a conference of the parties in order to determine how best to proceed in light of these new judicial and statutory requirements.

We took our action in *United* reluctantly: "To continue a case that has

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Footnotes continued from last page

issues are in hearing: (1) Ceiling on Lost and Unaccounted for Gas, (2) Farmers Chemical Base Period Use of Gas and (3) Classification of Make-up Air Heaters. A fourth issue dealing with "intercompany transfers" was returned to us by Court order, September 22, 1978 for further examination by the DVC. A fifth category involving similar questions is the DVC report of January 30, 1978 (submitted per our Order of November 17, 1977). Some of these items (*e.g.*, items 2 and 3) may be affected by the new legislation. All five items deal with the remanded interim plan which will be superseded by the settlement plan. Acceptance of the settlement ends Commission consideration of these items. Article IX of the settlement stipulates that related Court appeals will be withdrawn.

[8] Article VI of the settlement governs allocation to small volume customers. While entitlements for this class of customers are the same for the first year as Opinion No. 778, the flexibility provisions incorporated in Article VI make the settlement attractive for members of this group. *See*, p. 6, *infra*.

[9] Transco statement filed January 9, 1979.

[10] Miller affidavit attached to Transco Answer, November 22, 1978, at p. 1. The affidavits filed on January 11, 1979 support this view.

[11] January 4, order at 13.

[12] This not to say, however, that there is no opposition to the settlement. Philadelphia Gas Works has opposed it. We deal with its objection, *infra*.

[13] The Supreme Court in *Louisiana Power & Light* emphasized the importance of the Commission utilizing: * * * each pipeline's unique knowledge of its customer's needs, ability to substitute other fuel sources, and other relevant considerations. (406 U.S. at 645).

[14] *See, e.g., Philadelphia Gas Works* v. *FPC*, 557 F.2d 840 (D.C. Cir. 1977).

[15] *Consolidated Edison* v. *FPC*, 511 F.2d 372, 381 (D.C. Cir. 1974).

[16] Docket Nos. RP71-29 *et al.* (Phase II) issued October 31, 1978, and November 2, 1978.

been in process so long and so extensively is an exceedingly difficult and unhappy decision. The Commission has searched long and hard but unsuccessfully for an alternative to this decision . . ." [17] The proposed settlement now before us was developed based on Transco's and the parties' consideration of the Court's decision and the NGPA. It must therefore receive our most serious consideration as an alternative to the course we were required to follow in *United*. Our purpose is to determine whether the proposed settlement "promises to fulfill the Commission's announced objectives." [18] In the curtailment area, as highlighted by *States of North Carolina* and the NGPA, these objectives focus principally on protection of high priority end-uses. We evaluate the settlement and the limited opposition to it with special attention to this consideration.

B. ANALYSIS

The principal opponent of the settlement as interpreted and construed by our January 4, 1979 order is Philadelphia Gas Works (PGW). It is the only party at this point to argue that continuation of the Opinion No. 778 plan with its concomitant requirement for hearings to consider the impact assessments required by the *State of North Carolina* is a superior alternative to the settlement. We have previously outlined what continuation of the Opinion No. 778 plan would involve.[19] We turn now to a consideration of the proposed settlement to see whether the basic objective of protection for high priority end-users is secured by that plan.

PGW urges that the impact assessment requirement of *State of North Carolina* [20] is applicable to the proposed settlement. We agree, but, unlike PGW, believe that the information supplied in the course of this proceeding provides a basis for making the requisite assessment. We do not contend that the impact assessment information provided by Transco's customers is necessarily of such detail as to support promulgation by this agency of a detailed end-use plan such as that represented by Opinion No. 778. However, in the context of the settlement proposal which enjoys the overwhelming support of Transco's customers, the assessment is adequate. It indicates no unacceptable impacts to any party will accrue under the proposed settlement. Moreover, it will mitigate some of the impacts urged as accruing under the existing Opinion No. 778 plan. For example, industrial plants that would cease to receive gas this winter with continuation of the Opinion No. 778 plan will now receive gas by virtue of the settlement allocations.[21]

Our assessment is tailored to the "particular circumstances" [22] of this case. The parties were in negotiations on the settlement in September-October, 1978. Transco filed its offer of settlement October 31. Because of operational concerns relating to changing Transco's curtailment plan after the winter season had commenced, Commission action was requested by November 30.[23] Our January 4, 1979 order sought to balance the need for expedition caused by these operational concerns with our perceived need for an additional round of comments by the parties on the settlement as construed and interpreted in that order.[24]

As to the impact assessment requirement, our January 4 order stated:

"Considerable information has been submitted which addresses this concern (*e.g.*, EIA Form 50 material provided by the staff and the comments of the parties on the proposed settlement). However, additional information as to the impact of the proposed plan on end-use is desirable. *Accordingly, we are directing that each of Transco's customers file an affidavit with the Commission on this subject by January 11, 1979.* What we desire, given the brief time period allowed, is each customer's best available assessment of the plan's impact. We do not specify a rigid format. However, each affidavit must include a discussion of the distributor's ability to serve its residential, commercial and industrial customers as a result of deliveries contemplated under the settlement through October 31, 1979. Impacts such as potential shut-down of industrial facilities should also be noted." (p. 18).

Assessment affidavits were required of all Transco customers. We first consider those of the small volume customers. The affidavit registering support for the settlement submitted by the Northeast Georgia Gas Section of the Georgia Municipal Association on behalf of approximately one-half [25] of all Transco's small volume customers is representative of comments of the whole group:

"Terms of the original settlement [in 1973] provide base date figures for the G/OG customers of TRANSCO in amounts necessary to serve their high priority customers at that time. These provisions have been extended without increase from year to year through annual settlements [and were perpetuated by Opinion No. 778]. These entitlements have been adequate to serve our high priority markets in most cases with the supplement of 268 gas in some cases.

This year's settlement provides relief in the exchange of entitlements between G/OG customers and provides for increases in high priority loads beyond 1979/80 provided TRANSCO's supply remains at or above 680 BCF.

Lacking a settlement, all of these cities would be locked in on entitlements established in 1973 and would not permit the cities to continue fully serving existing high priority markets, nor attach any future high priority markets. Some high priority industries served would have to resort to higher priced alternate fuels or 268 gas. With the uncertainty of inflation, this could result in economic dislocations." (Affidavit, January 8, 1979.)

As stated earlier, this affidavit is representative of the view of the other members of the small volume class of customers. Accordingly, we conclude as to them that the impacts accruing under the plan are acceptable.

Similarly, none of the affidavits submitted by the large volume customers indicate that the settlement plan will jeopardize the ability of these customers to provide service to high priority needs. The only possible adverse impact noted—including that by PGW—will be the increased use of supplemental supplies by those distributors who will receive less gas under the settlement plan than under the Opinion No. 778 plan, if it were continued in effect. These impacts are offset by the statement of a number of distributors that acceptance of the settlement plan will permit them to reduce or eliminate purchases which would otherwise be required in order to continue service to high priority requirements.[26]

In terms of the impact assessment process employed in this case, the Public Service Commission of the State of New York stated:

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[17] *United*, Opinion 32, (slip opinion, p. 27).

[18] *Michigan Consolidated Gas Company* v. *FPC*, 283 F.2d 204, 224 (D.C. Cir. 1960).

[19] *Supra*, pp. 11–12.

[20] The Opinion 778 plan was remanded in *State of North Carolina* for the Commission to "first, *determine* and second, *consider* the impact of the opinion on ultimate users in the implementation of the curtailment plan for the Transco system." *State of North Carolina* at 26.

[21] *See*, Comments and affidavits of the Commission of Public Works of The City of Laurens, Fort Hill Natural Gas Authority, and the City of Union, South Carolina, filed January 11, 1979.

[22] *Lousiana Power & Light Co.*, *supra*, p. 10.

[23] Transco as well as the parties, by comments submitted November 13 and November 22, emphasized the necessity for prompt action if the settlement was to be viable.

[24] January 4, 1979 Order at 2.

[25] Seventeen member cities are included in the affidavit. Two of the cities are in Alabama.

[26] *See, e.g.*, City of Shelby, North Carolina (affidavit, January 8, 1979); Consolidated Edison (affidavit, January 10, 1979); Public Works of City of Laurens, South Carolina, Fort Hill Natural Gas Authority, and the City of Union, South Carolina (affidavits submitted January 11, 1979); Eastern Shore Natural Gas Company (affidavit, January 11, 1979); Lynchburg Gas Company (affidavit, January 10, 1979); City of Danville, Virginia (affidavits January 8, 1979 and October 27, 1978); Public Service Company of North Carolina, Inc. (affidavit, January 9, 1979); South Jersey Gas Company (affidavit, January 10, 1979) and Southwestern Virginia Gas Co. (affidavit, January 9, 1979). Transco's sole direct served industrial customer will also be able to reduce its emergency purchases. *See* affidavit of Owens-Corning Fiberglass Corporation dated January 11, 1979.

"[T]he statements already made by Transco's customers coupled with the additional data to be provided by them and Transco pursuant to the Commission's order, constitutes in our view appropriate pragmatic compliance with the Court mandate in [*State of North Carolina*] that the Commission revaluate the current impact of any Transco curtailment plan." [27]

We agree. The process used in compiling the material for our assessment of the effects of the plan is a "pragmatic" one "called for by [the] particular circumstances" of this case, *Louisiana Power & Light.*[28] Moreover, the settlement and the result it produces are clearly consistent with the spirit of the *State of North Carolina* decision.

As to the impact of the settlement on PGW, it is true that the company will receive less gas under the settlement than it would under the Opinion No. 778 plan in its present form. However, a substantial question exists as to whether, assuming a hearing, the Opinion No. 778 plan would not be revised along the lines of the settlement.

We here quote from our January 4, 1979, order on this point (pp. 16-19):

"The Court observed that in accordance with the October 1976 tariff filing, PGW was a 'favored' customer who also has access to other pipelines supplies (besides Transco's). (footnote omitted). The Court's remand, of course, would require that we consider whether adjustments should be made in that circumstance based on an examination to determine whether

'* * * without the shift effected in the name of end use by the 778 plan, any of the five favored customers would have insufficient *pipeline* gas to serve high-priority uses which could be served by the disfavored customers absent the transfer.' (Slip Op. 24, emphasis added).

Transco, in its reply comments, provides the following information which would appear to effectively negate PGW's opposition to the settlement.

'With respect to Philadelphia Gas Works, staunch and consistent advocate of the Opinion No. 778 plan despite the fact that it has been remanded by the Court of Appeals, (footnote omitted) no contention is made by PGW that the basic allocations provided by the settlements will not permit PGW to serve fully its markets without resort to emergency gas. Indeed, as shown by the attached statement by Mr. Miller, PGW would be receiving this winter from its *pipeline* sources substantially more gas than it received last year and it is Mr. Miller's opinion that PGW will be able to serve its markets under the offer of settlement without acquiring emergency gas.' (footnote omitted) (Transco Answer at page 2, emphasis ours)."

In sum, Transco's November 22, 1978 analysis indicated PGW would be in an improved situation this winter as compared with last year, taking into account pipeline supplies currently available from both Transco and Texas Eastern. While the precise figures as to PGW's total *pipeline* supply are in conflict,[29] we find, based on our knowledge of the supply situation of Transco, Texas Eastern and PGW (as indicated in its oral presentation and affidavit) that the variance in the figures is not significant. Even assuming PGW's figures, the impact on PGW of the revised allocations incorporated in the settlement plan when compared with those under the Opinion No. 778 plan would not be material.[30] It is evident, as PGW's affidavit states, that as between the two plans, PGW will use more supplemental supplies under the settlement than it would otherwise. This impact is not unique to PGW.[31] However, other customers similarly situated to PGW now desire to have this settlement approved. We believe that their decisions, based on impacts similar to those of PGW, deserve considerable weight.[32]

We therefore accept the settlement over PGW's objection.[33] However, it should be clearly understood that we do not suggest that PGW's position is wholly without merit.[34] Rather, PGW's views must in this instance give way in order to permit adoption of an equitable alternative superior to the course PGW would have us follow.[35]

We now turn to the question of whether the settlement should be made binding on all parties to the proceeding. The settlement and our order of January 4, 1979 shall be construed as binding on all parties. In this regard, State of North Carolina and the North Carolina Utilities Commission suggested at oral argument [36] that they might have statutory duties under North Carolina statutes [37] which could come into conflict with Article VIII of the settlement, if they were bound by it. We gather, however, that such conflict does not presently exist.[38] If such a conflict should arise in the future, we request that North Carolina immediately bring the matter to our attention so that it may then be evaluated in accordance with our Jan-

[27] Comments of the Public Service Commission of the State of New York upon Commission Order Interpreting Proposed Settlement, dated January 10, 1979 at pp. 1-2.

[28] *Supra*, pp. 9-10.

[29] Our comparison is of volumetric information listed at Tr. 6973, 7038-39, 7060-61. A good part of this conflict dealt with Texas Eastern's supply situation. In that regard, we take official notice of the telegram sent to this Commission November 1, 1978 by Texas Eastern: "This is to advise that commencing approximately 8:00 a.m. (E.S.T.) November 2, 1978, the curtailment on Texas Eastern's system will be temporarily discontinued. The curtailment will be reinstated as circumstances require". It seems reasonably clear to us that since both Texas Eastern and Transco are enjoying improved supply situations, PGW will have more gas made available to it this year than last, notwithstanding a minor reduction to it of Transco volumes under the settlement (as compared to Opinion No. 778).

[30] *See, Pennsylvania Gas & Water Co.* v. *FPC*, 463 F. 2d 1242, 1246 (D.C. Cir. 1972).

[31] *See*, for example, affidavits of Public Service Electric and Gas Company, January 10, 1979 and Brooklyn Union, January 11, 1979.

[32] PGW has also argued that the settlement plan can not be adopted unless the existing Opinion No. 778 plan is determined to be unjust and unreasonable based on an assessment of the impacts of that plan. We disagree. The proposed plan was formulated by Transco and its customers and proposed to us for our examination to determine whether the plan is in the public interest as constituting a just and reasonable plan. The submittal is plainly in the nature of a section 4 filing. Thus the requirement for deciding whether the existing plan is unjust and unreasonable does not apply. *See, Southern Natural Gas Company* v. *FPC*, 557 F.2d 1122 (5th Cir. 1977).

[33] We are empowered to do so where we determine, based on substantial record evidence, that the settlement is just and reasonable. *Placid Oil Co.* v. *FPC*, 483 F.2d 880 (5th Cir. 1973) *Aff'd sub nom. Mobil Oil Co.* v. *FPC*, 417 U.S. 283, 313 (1974). The material recently provided by the parties to this proceeding, alone, supports the conclusion that the settlement and the curtailment plan embodied therein constitutes a reasonable means of resolving the long-standing controversies relating to curtailment on the Transco system. We also apply our experience and expertise, a significant part of which has been gained in dealing with Transco's situation, in confirming this result.

[34] This statement also applies to the earlier opposition expressed by Elizabethtown Gas Company. We do not minimize their concern nor contribution to this proceeding. Again, however, their proposal is a less attractive one than the settlement.

[35] PGW also argues that Section 605, "Conserved Natural Gas" of the Public Utility Regulatory Policies Act of 1978 operates to prevent our acceptance of the settlement. This section provides that in the event of curtailment plan revision and update based on current use, the original base period volumes will be maintained (subject to emergency allocation) where reductions in current actual use are demonstrated by the distributor to be attributable to conservation measures implemented by the distributor. Other than argue the applicability of this provision, PGW has made no attempt to show how (or to what extent) the provision would inure to its benefit. Under these circumstances and in the context of an otherwise unanimous settlement, we cannot agree that the section precludes our acceptance of the settlement.

[36] Tr. 6990.

[37] We know of no statutory responsibilities placed on North Carolina by the NGPA which would be affected by the settlement. Since we are not ourselves waiving any statutory obligations under the NGPA, we would accord similar treatment to North Carolina should it prove appropriate.

[38] The Initial Comments of State of North Carolina and North Carolina Utilities Commission filed November 13, 1978 indicate (p. 3) that their principal problem with the waiver of rights provision is its "permanent" nature. They indicate an inability to waive such rights as they may have under the NGPA "for the indefinite future."

uary 4, 1979 order which recognizes that future adjustments may be appropriate where based on "unforeseen circumstances." [39] Accordingly, the State of North Carolina and the North Carolina Utilities Commission will be bound by the settlement and the January 4, 1979 order.

As a concluding matter, we address a concern raised by some of the parties in their January 11, 1979 comments (*e.g.*, Brooklyn Union and Long Island Lighting Company) or in oral argument (Penn Gas & Water, Tr. 7009-7010). This item also deals with treatment of future requests for adjustment of the curtailment plan based on "unforeseen circumstances." [40] Brooklyn Union, for example, asks us in accepting the settlement, to clarify our January 4 order to the extent of indicating that "changes result[ing] from the voluntary relinquishment of supply by Transco customers, unjustified failure to maintain or secure non-Transco supplies or voluntary attachment of new or additional loads" [41] will not constitute an "unforseen circumstance" as that term is used in the January 4 order.

We agree the foregoing factors identified by Brooklyn Union should not serve as a basis for future adjustment of the settlement plan. Certainly, they were not within our contemplation when we issued the January 4, 1979 order indicating that requests based on "unforseen circumstances" would be considered. Rather, our concern was principally as to the scope of NGPA as ultimately determined through implementing regulations.[42]

V. Compensation

State of North Carolina remanded the matter of compensation to us for further consideration.[43] However, since we have not decided whether to examine the compensation issue through a general rulemaking [44] or by individual proceedings, we defer setting the compensation issue for hearing at this time. In this regard we would expect to rule shortly upon the appropriate procedural course to be followed.

The Commission finds and orders: The settlement offer filed by Transco October 31, 1978, as construed and interpreted by the Commission's order of January 4, 1979 in this docket, is hereby approved and adopted by the Commission in accordance with this order as a just and reasonable curtailment plan. The Commission will require that tariff sheets implementing the Settlement be filed within 10 days of the date of this order. The Commission also finds it appropriate to waive its regulations to the extent necessary to permit the tariff sheets to become effective as of November 1, 1978.

By the Commission.

Kenneth F. Plumb,
Secretary.

Appendix "A" to "Order Approving and Adopting Settlement" Issued January 19, 1979

This Appendix A is the attachment referred to at page 9 of the January 19, 1979 order and consists of a quotation from the Commission's "Order Interpreting Proposal Settlement, Requesting Comments and Setting Oral Argument" issued in this docket January 4, 1979. The part of the January 4, 1979 order here quoted is Section III dealing with Article VIII of the Settlement. That Section is as follows:

III. Article VIII of Settlement

A. Background

Brooklyn Union Gas Company (Brooklyn Union) stated in its initial comments that it considered Article VIII to be of vital importance in achieving stability for all customers on the Transco system. The Company emphasized the necessity for agreement by all *the parties* to this provision. Article VIII distinguishes between the obligations of *parties* and representations made by *customers* of Transco. As will be made clear, we believe Brooklyn Union's principal concerns should be over the representation of the customers. Because of the importance of this Article, we set it out in full.

"Article VIII

Resolution of Pending Issues and Satisfaction of High Priority Requirements

The *parties* hereto agree that, except for the compensation questions reserved in Article VII hereof and in the pending appeal in *Transcontinental Gas Pipe Line Corporation, et al.* v. *F.E.R.C.*, No. 742036 in the United States Court of Appeals for the District of Columbia Circuit, all pending curtailment issues on Transco's system in Docket No. RP7299, whether related to the court remand referred to in Article I hereof or related to outstanding Commission orders concerning issues not resolved by Opinion Nos. 778 and 778-A, shall be deemed to be resolved by this Agreement in a manner consistent with the Natural Gas Act and the Natural Gas Policy Act of 1978. In addition, all *customers* presently expect that, during the effectiveness of this Agreement, adequate supplies from Transco and other sources, including but not limited to emergency gas supplies, will permit service to all high priority consumers. Therefore, while this Agreement remains in effect under the terms of Article II hereof, the *parties* agree that no modifications of the curtailment plan embodied in this Agreement and, except for emergency relief as defined in Section 13.3 of the General Terms and Conditions of Transco's FERC Gas Tariff, no relief from the effect of the curtailment plan embodied in this Agreement shall be sought either under 2.78(b) of the Commission's General Policy and Interpretations promulgated under the Natural Gas Act or under Title IV of the Natural Gas Policy Act of 1978." (Emphasis Ours).

In sum, this provision has two components. It is intended to wipe the slate clean of all pending curtailment matters except those identified pertaining to compensation. The matters resolved by this part of Article VIII basically pertain to the Opinion 778 plan. The second aspect of this Article relates to the proposed plan and future conduct relating to it. In this latter area, the comments indicate that at least one basic purpose of the provision is to assure that the distribution companies who have received substantial additional gas under the settlement would not be able at a later date to submit requests for allocations under the NGPA which were intended to be covered by the settlement. Avoidance of a double recovery is Article VIII's aim.

The distinction made in Article VIII between parties and customers takes on significance when assessing the comments received on the proposed settlement. It appears to us that the customers about which Brooklyn Union is perhaps rightly concerned have responded in a manner consistent with the provision which states that to the extent dependent on the settlement, supplies received would be adequate to serve all high priority requirements—including those recognized under the NGPA. For example, North Carolina Natural indicated in its initial comments that the volumes allocated under the settlement agreement would be sufficient and that by utilizing its full storage capacity, it "should be able to serve under normal weather conditions its essential firm markets for both the winter periods and the annual periods, including the Farmers Chemical Association nitrogen fertilizer facility at Tunis, North Carolina.[14] On the other hand, Farmers Chemical, a party to the curtailment proceeding but not a directly-served customer of Transco, states that while it has no objection to the allocations, it is not waiving rights under the NGPA, including the right to have Trans-

[39] The January 11, 1979 comments of PGW (p. 2) express a reservation by PGW of its rights under the NGPA. We have made the settlement binding on all parties and thus cannot recognize this reservation. However, We do not now foreclose the possibility that PGW's present position may be one factor to be considered in the future should PGW file for adjustment under the NGPA. As stated in our January 4, 1979 Order, we would expected to do that which is "reasonable under the circumstances" (p. 12).

[40] January 4 order p. 6-13 (attached). *See* particularly, pp. 8-9, 11-13.

[41] Tr. 6969.

[42] Several of these have since been published in draft form. *See*, Notice of Proposed Rulemaking on "Interim Regulations for the Implementation of Section 401 of the Natural Gas Policy Act of 1978", Docket No. RM79-13, issued January 10, 1979; and "Proposed Regulation for the Implementation of Section 401 of the NGPA of 1978", Docket No. RM79-15, issued January 12, 1979.

[43] PGW has raised an objection to that portion of the settlement largely excluding compensation from its operation (Initial Comments, p. 6) on grounds that this issue should not be severed from consideration of volumetric allocations. However, as in the case of other PGW objections, we feel that the benefits of the alternative presented by the settlement proposal outweigh the detriment PGW outlines.

[44] *See*, Preliminary Notice of Proposed Rulemaking, Docket No. RM78-4, issued November 20, 1977. *See also, El Paso Natural Gas Company*, Order Denying In Part And Granting In Part Application For Rehearing, January 13, 1978 at p. 6.

[14] Initial Comments, North Carolina Natural Corporation, November 13, 1978, at 1.

co's allocations to conform with the new law.[15] But Farmers Chemical's assertion as to reservation of right under the NGPA is immaterial since its supplier, North Carolina Natural, has indicated that it will have adequate supplies to meet Farmers Chemical's requirements.

North Carolina Natural, Public Service Company of North Carolina and Piedmont, however, do express a reservation about one aspect of Article VIII. Fundamentally, they note that the proposed plan could become a *de facto* permanent plan if Transco's future supplies continue as projected. They urge a limit on the time during which the plan would be impervious to change based on the NGPA. In addition, they suggest that it should not serve as a bar if circumstances arise which were not reasonably foreseeable. But all state, in essence, that it is not their desire that Article VIII be abolished or that its basic intent be distorted. Piedmont, for example, states that it "agrees that the allocations in the settlement Agreement should be considered permanent except in the event of circumstances not presently reasonably foreseeable."[16] We think that these are reasonable, responsible requests. We believe our interpretation of Article VIII and its relation to the NGPA adequately recognizes these concerns without sacrificing the benefits of certainty and stability which would otherwise accrue under the settlement.

One party who is not a customer—the State of North Carolina and the North Carolina Utilities Commission (filing jointly)—takes exception to Article VIII. This exception is mitigated somewhat by the statement that North Carolina is unable to waive for the *indefinite future*, whatever rights may be granted to it by the new statutes (referring to NGPA). We respect North Carolina's views as a representative of the ultimate consumer in the State of North Carolina. We are not certain, however, that North Carolina's reservation is material in a light of the comments by distributors in the State of North Carolina who, as customers of Transco, offer representations more nearly in compliance with the spirit of Article VIII.[17]

The views of another party—also not a customer—are pertinent. The New York Public Service Commission, by reply comments supporting the settlement, states:

"We recognize that a number of parties otherwise supporting or not objecting to the Transco proposal have raised questions or caveats with respect to Article VIII. Since New York supports the Article as a necessary and integral part of any settlement, we wish to set forth our views thereon. We do not read Article VIII as binding upon the Commission in the event it determines that regulations adopted pursuant to Section 401-403 of the NGPA require modifications to an effective curtailment plan. We do understand Article VIII to reflect the understanding of the parties that the Transco plan was drafted in the light of the provisions of the NGPA and that accordingly they will not initiate action to upset the plan on grounds that they might be entitled to additional gas from Transco under such general regulations as may be prescribed under the new Act. We can understand that, as indicated in the Piedmont comments, circumstances not presently reasonably foreseeable might arise during the period in which the settlement is in operation which might justify a petition to reopen the proceeding. But there obviously is no settlement if those parties securing significant immediate benefits in terms of additional gas could within a year or so demand more on the basis of the regulations adopted pursuant to the NGPA." (Comments p. 2-3)

We believe the standards set forth below for dealing with NGPA requests post-settlement are generally consistent with the views expressed by the New York Public Service Commission.

B. Article VIII and NGPA

We start with the fundamental assumption that, as between the parties, the waiver of rights provision of Article VIII may be given effect.[18] As to its application to this agency, we make clear at this point that we would not be bound by Article VIII, if (and to the extent) we are in the future presented with the situation where performance of our statutory duties (under either the Natural Gas Act or the National Energy Act) is found to conflict with this provision. Most, if not all the parties, appear to recognize that this must be the case.

The NGPA and other legislative initiatives constituting the National Energy Act are newly enacted and their full effect cannot be reasonably foreseen at this time. In the curtailment area, the relevant provisions of the NGPA are contained in Sections 401 and 402. Implementation of Section 402 (industrial process gas) will require substantial end use information which is not now uniformly available on an updated basis. It thus is not of immediate concern.

Implementation of Section 401, however, must be accomplished to the maximum extent practicable not later than 120 days[19] after the date of enactment of the NGPA. At that time, it will be necessary to consider whether the then existing curtailment plans of interstate pipelines can adequately protect essential agricultural users from curtailment. Under these circumstances, we cannot now say whether the deliveries under the subject settlement would meet all the ultimate requirements of Section 401. However, it would be the Commission's intent to fully consider the impact on this settlement in implementing Section 401 for Transco's customers. In other words, we would attempt to maintain the integrity of the settlement to the extent reasonable under the circumstances.[20]

For example, in the case of a customer[21] who indicated acquiescence in Article VIII but later sought modification based on the NGPA, such a request would be examined, assuming it complied with the basic provisions of the NGPA such as Title IV, to determine whether a double recovery was being sought by the customer.[22] In this in-

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[15] Comments of Farmers Chemical Association, Inc., November 13, 1978, at 1.

[16] Initial Comments of Piedmont Natural Gas Company, Inc., November 13, 1978, at 1.

[17] There *may* be an exception. The sole entity, who is both a customer and a party, to register unqualified opposition to Article is the City of Danville, Virginia. Danville in *its initial comments* stated: "Danville supports the settlement plan with the following qualifications. The allocated volumes are not sufficient to serve the City's high priority markets, but at least the allocations are better than under the Opinion 778 plan. We cannot possibly agree, as Article VIII requires, to waive any right of the City has under law, *i.e.*, the Natural Gas Policy Act of 1978." (Comments of the City of Danville, Virginia, filed November 14, 1978, at p. 4.) Transco, by reply, states that "The winter and annual allocations to the City of Danville in the first year, when combined with the available supplies of gas under FPC Order No. 533 and FERC Order No. 2 will provide more than enough gas for Danville to serve its residential and commercial customers and industrial customers utilizing natural gas for feedstock, process and plant protection purposes." Transco, (Miller Affidavit at p. 3.) Danville received 2697 Mdt in 1977-1978. Under Opinion 778, in 1978-1979, they would receive 3170 Mdt; under the settlement they will receive 4167 Mdt. It is thus clear Danville will receive a significant increase under the settlement relative to its size. The question of possible additional allocations may be moot since Danville in Reply Comments filed November 24, 1978 states:

"Apparently some parties were concerned that Danville's reservation about Article VIII indicated acceptance of the curtailment plan's volumes, along with an intent to see additional volumes because of rights under the [NGPA]. In clarification, Danville's reservation on Article VIII simply means that the Commission cannot be prohibited by a settlement agreement among Transco's customers from carrying out its responsibilities under the Natural Gas Act, the [NGPA] or any other law.

"* * * Danville continues to support the settlement agreement as a long-term plan * * *" (Reply Comments, pp. 1-2)

[18] Some elements of Article VIII are analogous to provisions which have previously been approved by this Commission. For example, the settlement in *Southern Natural*, Opinion No. 5, Opinion And Order Approving Settlement Describing Permanent Curtailment Plan, Docket No. RP 74-6 *et al.* (November 17, 1977) approved a provision which provides that plan may not be contested for a period of two years. (Slip Op. at 22).

[19] Proposed regulations dealing with § 401 will issue very shortly.

[20] At the same time, proponents of Article VIII must recognize that the settlement would not be considered to be inviolate. In the past, the FPC and this Commission have attempted to recognize unique load characteristics, customer blend and operating requirements of individual pipelines in the formulation of curtailment plans. In promulgating rules for the implementation of Title IV of the NGPA, the Commission will continue to adhere to that policy. Indeed, Section 502(c) of the NGPA contemplates such exceptions to our rules "as may be necessary to prevent special hardship, inequity, or on an unfair distribution of burdens."

[21] We assume ultimate consumers who are neither parties nor customers would not be directly affected by the provision. It does not bar such rights as they may have under the NGPA, but rather appears to re-direct them, at least in the first instance, to the distributor-customer.

[22] Transco's Answer also includes this pertinent statement: "If the Commission should approve the settlement embodied in the offer, it would be the intent of Transco to strive to protect the integrity of this settlement, including the provisions of Article VIII, based upon circumstances existing at the present time and reasonably foreseeable for the future. While we would not expect the Commission to attempt to waive any of

Footnotes continued on next page

stance, a customer's representation by comments submitted in this proceeding would be measured against those contained in the application. A full explanation of any discrepancies would be required.

We believe the views we have expressed are consistent with NGPA requirements. That Act will, of course, affect curtailment plans. However, it does not require that adjustments be blindly made, but rather "to the maximum extent practicable." [22] The settlement proposal is consistent with this concept to the extent it anticipates requirements under the NGPA (as best they can be foreseen at this time) and provides for modification of the existing Opinion No. 778 plan at this time.

[FR Doc. 79-3019 Filed 1-29-79; 8:45 am]

[6540-01-M]

Economic Regulatory Administration

[Docket Nos. ERA-R-77-3 and ERA-R-77-7]

FINAL ENVIRONMENTAL IMPACT STATEMENT CONCERNING MOTOR GASOLINE DEREGULATION AND AN AMENDMENT TO THE MANDATORY PETROLEUM PRICE REGULATIONS ALLOWING REFINERS TO ALLOCATE INCREASED COSTS TO GASOLINE (THE GASOLINE "TILT").

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: The Economic Regulatory Administration of the Department of Energy announces the availability of a final environmental impact statement (EIS) on the pending proposals to deregulate motor gasoline and to amend the Mandatory Petroleum Price Regulations to allow refiners to allocate increased costs to gasoline (the gasoline "tilt").

FOR FURTHER INFORMATION CONTACT:

William E. Caldwell (Economic Regulatory Administration), Department of Energy, 2000 M Street, Room 2304, Washington, D.C. 20461, (202) 254-8034.

William L. Webb (Media Relations), Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 634-2170.

Robert J. Stern, NEPA Affairs Division, Department of Energy, 20 Massachusetts Avenue, Washington, D.C. 20545, (202) 376-5998.

J. Thomas Wolfe (Office of General Counsel), Department of Energy, 20 Massachusetts Avenue, Room 8217, Washington, D.C. 20545.

SUPPLEMENTARY INFORMATION

I. Background

On November 17, 1978, DOE issued a notice of availability of a "Draft Environmental Impact Statement: Motor Gasoline Deregulation" (43 F.R. 54125, November 20, 1978). On December 5, 1978, DOE issued a notice of availability of a draft environmental impact statement on an amendment to the Mandatory Petroleum Price Regulations allowing refiners to allocate increased costs to gasoline (the gasoline "tilt") (43 F.R. 57609, December 8, 1978). Each of these two notices referred to the same EIS, which considers both the gasoline tilt and deregulation proposals. DOE held a public hearing on this draft EIS on December 19, 1978, and received written comments thereafter. In accordance with the provisions of the National Environmental Policy Act, DOE has considered all the comments received on the draft EIS, and has prepared a final EIS which addresses the environmental consequences that may result from the gasoline tilt and motor gasoline deregulation, and their reasonably available alternatives.

II. Availability of Final EIS

Copies of the final environmental impact statement can be obtained from ERA's Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, between the Hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, copies are available for public review in the DOE Freedom of Information Reading Room, GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies have been provided to the Environmental Protection Agency, other interested Federal agencies, State Clearinghouses, persons who commented on the draft EIS, and others known to be interested in the final EIS.

Issued in Washington, D.C. January 29, 1979.

David J. Bardin,
Administrator,
Economic Regulatory Administration.

[FR Doc. 79-3371 Filed 1-29-79; 12:25 pm]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1048-1]

ADMINISTRATOR'S TOXIC SUBSTANCES ADVISORY COMMITTEE

Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of Open Meeting.

SUMMARY: There will be a meeting of the Administrator's Toxic Substances Advisory Committee from 9:00 a.m. to 5:00 p.m. on Friday, February 16, 1979. The meeting will be held in Room 3906, Waterside Mall, EPA, 401 M Street, SW., Washington, D.C. and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan Vogt, Executive Secretary Administrator's Toxic Substances Advisory Committee, Office of Toxic Substances (TS-793), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Telephone: (202) 426-7861.

SUPPLEMENTAL INFORMATION: The purpose of this meeting is to discuss matters related to EPA's implementation of the Toxic Substances Control Act (Pub. L. 94-469). The agenda includes:

1. EPA procedures concerning risk assessment
2. Proposed Section 5 Premanufacture Notification rules
3. Draft EPA Guidance for Premanufacture Testing
4. Other matters concerning the implementation of the Toxic Substances Control Act

The meeting will be open to the public and time will be set aside for public comments. Any member of the public wishing to present an oral or written statement should contact Ms. Susan Vogt at the address or phone number listed above.

Dated: January 24, 1979.

Steven D. Jellinek,
Assistant Administrator for Toxic Substances.

[FR Doc 79-3153 Filed 1-29-79; 8:45 am]

Footnotes continued from last page

its statutory responsibilities and while it is always possible that unforeseen changed circumstances could intervene Transco would expect that any private party and any state and local governmental body would have an extremely heavy burden of persuasion if such party accepts the present fruits of the settlement and later attempts to overcome any essential feature of the settlement." (*Id.* p. 3-4) The standard announced above in the text of this order should not necessarily be equated with that of "an extremely heavy burden of persuasion." However, the Commission would accommodate the settlement solution where possible.

[22] NGPA sections 401-402. *See also,* H. R. Rep. No. 95-1752, 95th Cong., 2d Sess. 112-115 (October 19, 1978).

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

EXECUTIVE COMMITTEE MEETING

The next Executive Committee Meeting will be on Thursday, February 15, 1979, 9:30 a.m. in Conference Room 7200, Nassif Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Acceptance of FY-79 First Quarter Financial Statement.
4. New business.

SPECIAL COMMITTEE NO. 73

"Minimum Performance Standards (MPS) Marine Omega Receiving Equipment"

Notice of 5th Meeting, Thursday, February 22, 1979—9:30 a.m., Conference Room 7200, Nassif (DOT) Building, 400 Seventh St., S.W. (at D Street), Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Reports of Working Groups.
4. Reviews of draft MPS

M. H. Carpenter, Co-Chairman, CDR T. P. Nolan, Co-Chairman, Maritime Institute of Technology & Graduate Studies, Linthicum Heights, Maryland 21090, Phone: (301) 636-5700.

SPECIAL COMMITTEE NO. 71

"VHF Automated Radiotelephone Systems"

Notice of 15th Meeting, Tuesday, February 27, 1979—10:00 a.m. (Full day meeting), Conference Room A-110, F.C.C. Annex, 1229-20th Street, N.W., Washington, D.C.

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Review of Digital Selcall Functions and Formats.
4. Discussions of cost elements for Selcall base Automated Radiotelephone Systems.
5. U.S. Coast Guard presentation of safety-related requirements to be served in an automated VHF/UHF system.

John J. Renner, Chairman SC-71, Advanced Technology Systems, Inc., 3426 N. Washington Blvd., Arlington, VA. 22201, Phone: (703) 525-2664.

SPECIAL COMMITTEE NO. 74

"Digital Selective Calling"

Notice of 2nd Meeting, Wednesday, February 28, 1979—9:30 a.m., Conference Room 7200, Nassif (DOT) Building, 400 Seventh St., S.W. (at D Street), Washington, D.C.

AGENDA

1. Committee organization.
2. Establishment of Working Group goals.
3. Review of timetable.

Captain B. F. Hollingsworth, Chairman, SC—74, U.S. Coast Guard Headquarters, Washington, D.C., Phone: (202) 426-1345.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are perferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-3110 Filed 1-29-79; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[No. 79-60]

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

Renewal of Charter

Pursuant to the provisions of Section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a), the following notice has been adopted by the Federal Home Loan Bank Board for publication in the FEDERAL REGISTER:

Pursuant to the provisions of Section 9 of the Federal Advisory Committee Act (5 U.S.C. App. I), and the implementing regulations issued by the Office of Management and Budget, the Federal Home Loan Bank Board, having determined, that the continuation of the Federal Savings and Loan Advisory Council is in the public interest in connection with the performance of the duties imposed on it by law, hereby renews the existence of the Federal Savings and Loan Advisory Council for two years to January 31, 1981, and in connection therewith reissues the following charter (which appears as Section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a)) to the said Council:

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

CHARTER

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Bank Board biannually determines, as a matter of formal record, with timely notice in the FEDERAL REGISTER, to be in the public interest in connection with the performance of duties imposed on the Council by law. The Council shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act. The Council shall consist of one member for each Federal Home Loan Bank district to be elected annually by the Board of directors of the Federal Home Loan Bank in such district and twelve members to be appointed annually by the Bank Board to represent the public interest. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Bank Board for actual subsistence expenses, not to exceed $50.00 per day and transportation and other incidental travel expenses in accordance with the Federal Travel Regulation, as amended. The Council shall meet in Washington, District of Columbia, at least twice a year and oftener if requested by the Bank Board. The Council may select its chairman, vice chairman, and secretary, and adopt methods of procedure, and shall have power—

(1) To confer with the Bank Board on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and the Federal Savings and Loan Insurance Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Bank Board and the Federal Savings and Loan Insurance Corporation.

The Federal Home Loan Bank Board also has directed, in connection with the foregoing, that—

1. The Federal Savings and Loan Advisory Council's estimated budget of $46,000 shall be paid for by the self-supporting Federal Home Loan Bank System, and none of its annual operating costs shall be charged to or paid by the United States;

2. The said Charter of the Federal Advisory Council shall not be amended, altered, or repealed except by Congress or by the Federal Home Loan Bank Board; and

3. The said Charter shall terminate on January 31, 1981, unless reissued prior to that date by the Federal Home Loan Bank Board.

THE SAVINGS AND LOAN ADVISORY COUNCIL,
J. J. FINN,
Executive Secretary.
THE FEDERAL HOME LOAN BANK BOARD,
RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 79-3093 Filed 1-29-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

PRIVACY ACT OF 1974

System of Records

Notice is hereby given that the Federal Maritime Commission pursuant to 5 U.S.C. 552a(e)(4) and (11) of the Privacy Act of 1974 (Pub. L. 93-579), proposes to adopt the following additional notice of system of records.

Interested parties may participate in this proceeding by filing with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573 on or before February 19, 1979 an original and 15 copies of their views and comments pertaining to the routine use portion of the notice. All suggestions for changes in the text should be accompanied by drafts of the language thought necessary to accomplish the desired changes and should be accompanied by supportive statements and arguments. If no comments are received on or before March 1, 1979, the routine uses described herein will be adopted as proposed by the Commission.

FRANCIS C. HURNEY,
Secretary.

FMC-22

System name:

Investigatory Files—FMC.

System location:

Bureau of Enforcement, FMC, 1100 L Street, N.W., Washington, D.C. 20573. Records may also be located at the FMC District Offices listed in the Appendix.

Categories of individuals covered by the system:

Records may be maintained on individuals involved in investigations and enforcement actions instituted by the Federal Maritime Commission. These individuals could include employees, owners, officers and directors of steamship companies, ocean freight forwarders, shippers, consignees, brokers and other entities associated with ocean transportation. Included would be individuals alleged to have violated the Shipping Act, 1916; the Intercoastal Shipping Act, 1933; the Federal Water Pollution Control Act, 1972; the Trans-Alaska Pipeline Authorization Act, 1973; and Public Law 89-777, insofar as they relate to certification; and regulations and/or orders of the Commission. Also included would be individual applicants routinely investigated in connection with licenses and certificates issued by the FMC pursuant to its statutory authority.

Categories of records in the system:

Reports from law enforcement or investigative agencies, investigators, or sources of information; investigative and intelligence data; documented violations; warning letters and information regarding applications for certification and licensing, if appropriate. Includes any information on alleged or proven violators of the statutes or parts thereof over which the FMC has jurisdiction.

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

1. In the event that a system of records maintained by the FMC to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an FMC decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed, as a routine use to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of such joint committee.

6. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

7. A record in this system may be transferred, as a routine use, to the Civil Service Commission: for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in paper form in filing cabinets.

Retrievability:

Information filed by case of subject file. Records pertaining to individuals are accessed by reference to the Bureau of Enforcement's name—relationship index system.

Safeguards:

Records are located in locked metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Files are maintained in buildings that have 24 hour security guards.

Retention and disposal:

Retained for a reasonable period of time. Disposition is recorded.

System manager and address:

Director, Bureau of Enforcement, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

Record access procedures:

Persons wishing to obtain information on the procedures for gaining access to records, contesting the contents of these records, or appealing initial determinations, may contact or address their inquiries to: Privacy Act Officer, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

Contesting record procedures:

See record access procedures above.

Record source categories:

Individual shippers, carriers, freight forwarders, those authorized by the individual to furnish information, trade sources, investigative agencies,

investigative personnel of the Bureau of Enforcement and other sources of information.

APPENDIX

Atlantic District, Federal Maritime Commission, 6 World Trade Center, Suite 614, New York, New York 10048.
Pacific District, Federal Maritime Commission, 525 Market Street, Suite 2520, San Francisco, CA 94105.
Gulf District, Federal Maritime Commission, P.O. Box 30550, New Orleans, LA 70190.
Great Lakes District Office, Federal Maritime Commission, Customs Building, 610 South Canal Street, Chicago, IL 60607.
Puerto Rico District Office, Federal Maritime Commission, U.S. District Courthouse, Federal Office Building, Rm. 762, Carlos Cardon Street, Hato Rey, Puerto Rico 00917.

[FR Doc. 79-3103 Filed 1-29-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78N-0339; DESI 502051

DRUG AND HUMAN USE: DRUG EFFICACY STUDY IMPLEMENTATION

Otic Preparation Containing Chloramphenicol

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice announces that chloramphenicol otic solution is effective for the indication described below.

EFFECTIVE DATE: January 30, 1979.

ADDRESS: Communications forwarded in response to this notice should be identified with the reference number DESI 50205, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857.

Amendments (identify with NDA number): Division of Anti-Infective Drug Products (HFD-140), Rm. 12B-45, Bureau of Drugs.

Requests for opinion regarding the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

William R. Durbin, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 50205) published in the FEDERAL REGISTER of August 19, 1971 (36 FR 16130), the Commissioner of Food and Drugs announced his conclusions pursuant to evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drug:

NDA 50-205; Chloromycetin Otic containing chloramphenicol and benzocaine; Parke, Davis & Co., Joseph Campau at the River, Detroit, MI 48232.

The notice stated that the drug was possibly effective for the treatment of superficial bacterial infections of the external ear. Parke Davis later amended its new drug application to provide for a reformulated single-ingredient product containing chloramphenicol. The amendment was approved on May 16, 1975.

Based upon a review of all available evidence, the Director of the Bureau of Drugs concludes that this drug is safe and effective for the indications set forth below. Elsewhere in this issue of the FEDERAL REGISTER the agency is amending 21 CFR 455.410 to provide for the reformulated product. Batches of drugs for which certification is requested should provide for labeling containing the following Indications section:

Chloramphenicol otic is indicated for the treatment of superficial infections of the external auditory canal caused by susceptible strains of various gram-positive and gram-negative organisms including:

Staphylococcus aureus, Escherichia coli, Haemophilus influenzae, Pseudomonas aeruginosa, Aerobacter aerogenes, Klebsiella pneumoniae and Proteus speices.

Deeper infections should be treated with appropriate systemic antibiotics.

Batches of such drugs with labeling bearing indications other than those published in this announcement are no longer acceptable for certification or release.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-1051 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 357)) and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70)

Dated: November 10, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 79-2894 Filed 1-29-79; 8:45 am]

[4110-03-M]

[Docket No. 78N-0340]

DRUGS FOR HUMAN USE; DRUG EFFICACY STUDY IMPLEMENTATION

Revocation of Exemption for Continued Marketing of Otic Combinations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption under which certain combination otic solutions and suspensions have been allowed to remain on the market, labeled for their less-than-effective indications, beyond the time limit established for implementation of the Drug Efficacy Study. The exemptions are no longer needed as the effectiveness classifications of these products have now been resolved.

EFFECTIVE DATE: January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

William R. Durbin, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a final rule, appearing elsewhere in this issue of the FEDERAL REGISTER, FDA is revoking provisions for the certification or release of certain combination otic solutions and suspensions. These drugs, described below, have been allowed to remain on the market beyond the time limit established for implementation of the Drug Efficacy Study on the condition that manufacturers undertake additional clinical studies to determine their effectiveness. The temporary exemption to permit continued marketing was announced in a notice published in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623). One sponsor, Burroughs Wellcome, submitted numerous testimonial letters about its products. The submissions provided no evidence that adequate and well-controlled studies as described in 21 CFR 314.111(a)(5)(ii) and 21 CFR 300.50 had been conducted. Isolated case reports, random experience, and reports lacking the details that permit scientific evaluation cannot be considered (21 CFR 314.111(a)(5)(ii)(c)). The submissions therefore did not support the efficacy of the firm's products. Since no other person has submitted additional data, or conducted the necessary studies, the exemption granted by the December 14, 1972 notice is hereby revoked for the following combination

otic solutions and suspensions in Category IV.

1. DESI 8426 published October 23, 1971 (36 FR 20546).

NDA 60-756; Aerosporin Otic Solution containing polymyxin B sulfate, acetic acid, and propylene glycol; Burroughs Wellcome & Co., Inc., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.

2. DESI 8674 published June 29, 1972 (37 FR 12855).

NDA 50-208; Neomycin-Polymyxin Otic with Hydrocortisone and Diperodon containing neomycin sulfate, polymyxin B sulfate, hydrocortisone, and diperodon hydrochloride, Kasco Laboratories, Inc., Cantiague Rd., Hicksville, NY 11802.

NDA 50-224; Neo-Polycin Otic Suspension containing neomycin sulfate, polymyxin B sulfate and dyclonine hydrochloride; Dow Pharmaceuticals, Division Dow Chemical Co., P.O. Box 68511, Indianapolis, IN 46268.

NDA 50-225; Neo-Polycin HC Otic Suspension containing neomycin sulfate, polymyxin B sulfate, dyclonine hydrochloride and hydrocortisone acetate; Dow Pharmaceuticals.

NDA 60-080; Auracort Otic Solution containing neomycin sulfate, polymyxin B sulfate, pramoxine hydrochloride and hydrocortisone; Philips Roxane Laboratories, Division of Philips Roxane, Inc., 330 Oak St., P.O. Box 1738, Columbus, OH 43216.

NDA 60-787; 61-669; Bro-Parin Sterile Otic Suspension containing polymyxin B sulfate, neomycin sulfate, sodium heparin, and hydrocortisone; Riker Laboratories, Inc., Subsidiary 3M Co., 19901 Nordhoff St., Northridge, CA 91324.

NDA 60-927; Florotic Otic Suspension containing nystatin, neomycin sulfate, polymyxin B sulfate, and fluorocortisone acetate; E. R. Squibb, P.O. Box 400, Princeton, NJ 08540.

3. DESI 50171 published August 19, 1971 (36 FR 16129).

NDA 50-171; Lidosporin Otic Solution containing polymyxin B sulfate, lidocaine hydrochloride, and propylene glycol; Burroughs Wellcome & Co., Inc.

4. DESI 50205 published August 19, 1971 (36 FR 16130).

NDA 50-205; that part pertaining to Chloromycetin Otic containing chloramphenicol and benzocaine; Parke, Davis & Co., GPO Box 118, Joseph Campau at the River, Detroit, MI 48232.

In addition to the drugs named above, some of the DESI notices referred to other products in this exempt category that have been either reclassified as effective or withdrawn from the market as follows: VoSol Otic Solution (NDA 12-179) and VoSol *HC* Otic Solution (NDA 12-770) were reclassified as effective for certain indications in a notice (DESI 12179) published in the FEDERAL REGISTER of July 19, 1974 (39 FR 26462). Coly-Mycin S Otic (NDA 50-356), Cor-Otic PN Ear Drops (NDA 90-263), Cortisporin Otic Drops (NDA 60-613), Pyocidin Otic Drops (NDA 61-606) and Cortomixin Sterile Ear Drops (NDA 60-719) were reclassified as effective for certain indications in a notice (DESI 8674) published in the FEDERAL REGISTER of August 9, 1973 (38 FR 21513). Revocation of provisions for certification or release of Achromycin Ear Solution (NDA 50-275) and Terramycin-Polymyxin Otic Powder (NDA 61-087) was published in the FEDERAL REGISTER of September 19, 1974 (39 FR 33665). The combination of neomycin-polymyxin (neomycin sulfate and polymyxin B sulfate) has never been approved for marketing. Reformulated Chloromycetin Otic (NDA 50-205) is classified as effective in a notice appearing elsewhere in this issue of the FEDERAL REGISTER.

Inasmuch as the temporary exemption for the products is no longer relevant, it is hereby revoked. Accordingly, the December 14, 1972 notice is amended by deleting the following section:

IV. COMBINATION OTIC SOLUTIONS OR SUSPENSIONS

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701, 52 Stat. 1052-1053 as amended, 1055-1056 as amended (21 U.S.C. 355, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: January 23, 1979.

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

[FR Doc. 79-2893 Filed 1-29-79; 8:45 am]

[4110-03-M]

[Docket No. 78N-0382]

ETHICON, INC.

Premarket Approval of Ethilon/Nurolone Nylon (Nonabsorbable) Surgical Sutures

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device amendments of 1976 of Ethilon/Nurolone Nylon (Nonabsorbable) Surgical Sutures sponsored by Ethicon, Inc., Somerville, NJ. After reviewing the General and Plastic Surgery Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 1, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Keith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The sponsor, Ethicon, Inc., Somerville, NJ submitted an abbreviated new drug application (ANDA) for permarket approval of Ethilon/Nurolone Nylon (Nonabsorbable) Surgical Sutures to FDA on August 19, 1976. The application was reviewed by the General and Plastic Surgery Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On July 10, 1978, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 540-574), nonabsorbable surgical sutures (nylon) were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)), nonabsorbable surgical sutures (nylon) are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the FEDERAL REGISTER of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regarded as new drugs.

A summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above).

OPPORTUNITY FOR ADMINISTRATIVE REVIEW

Section 515(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of FDA's decision to approve

this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition must be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by notice published in the FEDERAL REGISTER. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before March 1, 1979, file with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 1979.

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

[FR Doc. 79-3021 Filed 1-29-79; 8:45 am]

[4110-35-M]

Health Care Financing Administration

MEDICARE AND MEDICAID HOSPICE PROJECTS

Extension of Closing Dates for Hospice Project Applications

On October 27, 1978, we announced our intention to conduct demonstration projects with organizations providing hospice services. (See 43 FR 50376) Closing dates for project applications were January 15, 1979, for applications from hospice programs, and January 29, 1979, for applications from Medicaid State agencies.

We are extending the closing date and time for such applications. In order to be considered for selection under the invitation for participation in the demonstration project, applications must be received by the Project Grants Branch at the address shown below not later than 4:30 p.m., Washington, D.C. time, Wednesday, February 28, 1979. No applications received after 4:30 p.m. on February 28, 1979, will be accepted with the exception of those sent by registered, certified, or express mail and postmarked at least 5 working days in advance of this closing date, The U.S. Postal Service postmark on the package will establish the date the application was mailed.

Please address or deliver applications to: Health Care Financing Administration, Project Grants Branch, Room 4200-C, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

On the outside of the envelope, clearly indicate "Hospice Project."

This address should not be altered. Additions of an employee's name or other designations can result in misrouting and delayed receipt, in which case the application will not be considered timely. Also, applicants planning to deliver applications by hand are reminded that the Project Grants Branch office will not accept any hospice project applications after 4:30 p.m. on February 28, 1979.

The original invitation and instructions for the project specified that separate applications are required for Medicare and Medicaid participation in the hospice projects. The hospice program must submit the application directly to HCFA for Medicare participation. *Only the Medicaid State agency* can legally apply to HCFA for Medicaid participation. The State agency will have to review each hospicer program application; therefore, hospice programs that have not already done so should contact the State Medicaid agency as soon as possible in order to give the State agency ample time to complete its application. Some State agencies may have already submitted their applications in accordance with the original closing date. In such cases, an amended Medicaid application may be submitted.

Dated: January 24, 1979.

LEONARD D. SCHAEFFER,
Administrator, Health Care Financing Administration.

[FR Doc. 79-3007 Filed 1-29-79; 8:45 am]

[4110-83-M]

Health Resources Administration

Annual Reports of Federal Advisory Committees

Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources Administration Federal Advisory Committee has been filed with the Library of Congress:

NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue, S.W., Washington, D.C. 20201, Telephone (202) 245-6791. Copies may be obtained from Ms. S. Judy Silsbee, Office of the Administrator, Health Resources Administration, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-7175.

Dated: January 22, 1979.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 79-3005 Filed 1-29-79; 8:45 am]

[4110-83-M]

NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, (5 U.S.C. Appendix I), the Health Resources Administration announces the rechartering by the Secretary, HEW, on January 4, 1979, of the National Council on Health Planning and Development.

Authority for this Council is continuing and a charter will be filed in accordance with section 14(b)(2) of Pub. L. 92-463 no later than January 4, 1981.

Dated: January 22, 1979.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 79-3003 Filed 1-29-79; 8:45 am]

[4110-83-M]

NATIONAL ADVISORY COUNCIL ON NURSE TRAINING

Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, (5 U.S.C. Appendix I), the Health Resources Administration announces the rechartering by the Acting Secretary, HEW, on January 12, 1979, of the National Advisory Council on Nurse Training.

Authority for this Council is continuing and a charter will be filed in accordance with section 14(b)(2) of

Pub. L. 92-463 no later than December 24, 1980.

Dated: January 22, 1979.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 79-3004 Filed 1-29-79; 8:45 am]

[4110-84-M]

Health Services Administration

PROJECT GRANTS FOR HOME HEALTH SERVICES

Announcement of Availability of Grants

The Health Services Administration announces that competitive applications are being accepted for home health services project grants and demonstration grants for the training of home health personnel under the authority of sections 339(a) and 339(b) of the Public Health Service Act (42 U.S.C. 255).

DEVELOPMENT AND EXPANSION OF SERVICES

Section 339(a) authorizes grants to public and private nonprofit entities for support of the development and expansion of home health services as defined in Section 1861(m) of the Social Security Act in areas in which such services are not otherwise available. A continuing resolution, H. J. Res. 1139, makes continuing appropriations for fiscal year 1979 of $5 million available for the award of grants under this section.

Regulations governing such grants, published in the FEDERAL REGISTER on June 3, 1977 (42 FR 28692), state that the Secretary of Health, Education, and Welfare will give preference to approvable applications for projects that will serve catchment areas in which a high percentage of the population is elderly, medically indigent, or both (referred to below as "preference areas") (*see*, 42 CFR 51e.107).

Applications which propose to serve preference areas, as defined in the regulations, will be considered for funding during the first of two funding cycles. Only those applications proposing to serve preference areas will be accepted for review during the first funding cycle. However, it is anticipated that during the second cycle funds will be available for both the funding of projects which propose to serve preference areas, and those which propose to serve non-preference areas. Completed applications must be received at the appropriate Regional Office by March 1, 1979. Applications must be received by the appropriate Health Systems Agency(s) (for both grant cycles) at least 60 days prior to the date applications are to be submitted to the Regional Office. Grant applications for the second funding cycle must be received at the Reginal Office by June 1, 1979.

TRAINING OF PERSONNEL

Section 339(b) of the Public Health Service Act authorizes the Secretary to make demonstration grants to public and nonprofit private entities to assist them in training professional and paraprofessional personnel to provide home health services. H. J. Res. 1139 makes a continuing appropriation of $1 million for fiscal year 1979 available for implementation of the Home Health Services Training Program. The Secretary has determined that this appropriation will be available for the award of grants to projects for training home health aides. Grant applications must be received at the Regional Office by may 1, 1979. Applications must be received by the appropriate Health Systems Agency(s) at least 60 days prior to the date applications are to be submitted to the Regional Office.

Instructions and related information may be obtained from the representatives of the Home Health Services Program at the appropriate Department of Health, Education, and Welfare Regional Office (as set forth below). Representatives may be contacted for consultation and technical assistance relative to the development of an application for each of the home health services grant authorties. Regulations which will, among other things, establish procedures for the approval of applications for training grants will be forthcoming. Until regulations are issued, all information and guidance provided is subject to the qualification that it reflects preliminary policies only; subsequent policies reflected in the regulations may require revisions in applications.

Dated: January 22, 1979.

GEORGE I. LYTHCOTT, M.D.
Administrator, Health Services Administration.

Ms. Rita Pope, DHEW/PHS/Region I, Division of Health Services Delivery, Primary Health Care, Rm. 1409, John F. Kennedy Federal Bldg., Boston, Massachusetts 02203, 617-223-5845.

Ms. Barbara Hinck, DHEW/PHS/Region II, Division of Health Services Delivery, Primary Health Care, 26 Federal Plaza, New York, New York 10007, 212-264-2540.

Mr. Walter Ihle, DHEW/PHS/Region III, Division of Health Services Delivery, Primary Health Care, P.O. Box 13716, Philadelphia, Pennsylvania 19101, 215-596-1570.

Ms. Pat Atkinson, DHEW/PHS/Region IV, Division of Health Services Delivery, Primary Health Care, 101 Marietta Towers, Atlanta, Georgia 30323, 404-221-2032.

Ms. Susan Kamp, DHEW/PHS/Region V, Division of Health Services Delivery, Primary Health Care, 300 South Wacker Drive, Chicago, Illinois 60606, 312-353-1723.

Mrs. Vicki Wright, DHEW/PHS/Region VI, Division of Health Services Delivery, Community Health Development, 1200 Main Tower Building, 17th Floor, Dallas, Texas 75202, 214-655-6530.

E. June Smith, R.N., DHEW/PHS/Region VII, Division of Health Services Delivery, Family and Child Services, 601 E. 12th St., 5th Fl. W., Kansas City, Missouri 64106, 816-374-5777.

Mr. Michael Oliva, DHEW/PHS/Region VIII, Division of Health Services Delivery, Primary Health Care, 1961 Stout Street, Denver, Colorado 80094, 303-837-4781.

Mr. Gordon Soares, DHEW/PHS/Region IX, Division of Health Services Delivery, 50 United Nations Plaza, Rm. 304, San Francisco, California 94102, 415-556-1371.

Ms. Norma Ewan, DHEW/PHS/Region X, Division of Health Services Delivery, Family and Child Health, 1321 Second Avenue, Mail Stop 506, Seattle, Washington 98101, 206-442-1020.

[FR Doc. 79-3006 Filed 1-29-79; 8:45 am]

[4110-92-M]

Office of Human Development Services

FEDERAL COUNCIL ON THE AGING, LONG TERM CARE COMMITTEE

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 1, sec. 10, 1976) that the Long Term Care Committee of the Council will hold a meeting on Tuesday, February 20, 1979 from 9:30 a.m. to 12:30 pm., Room 339A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

The agenda will consist of a discussion of issues in long term care with representatives of Federal Departments.

Further information on the Council may be obtained from the FCA Secretariat, Federal Council on the Aging, Washington, D.C. 20201, telephone 202-245-0441. FCA meetings are open for public observation.

Dated: January 22, 1979.

NELSON H. CRUIKSHANK,
Chairman, Federal Council on the Aging.

[FR Doc. 79-3026 Filed 1-29-79; 8:45 am]

[4110-08-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

REPORT ON BIOASSAY OF DIBUTYLTIN DIACETATE FOR POSSIBLE CARCINOGENICITY

Availability

Dibutyltin diacetate (CAS 1067-33-0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of dibutyltin diacetate was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as a catalyst for polymerization reactions and as a stabilizer for chlorinated organic compounds. Dibutyltin diacetate was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, there was no conclusive evidence for the carcinogenicity of dibutyltin diacetate in male Fischer 344 rats or B6C3F1 mice of either sex. The loss of tissues taken from high dose female rats in this bioassay precluded an evaluation of the carcinogenicity of dibutyltin diacetate to female Fischer 344 Rats.

Single copies of the report, Bioassay of Dibutyltin Diacetate for Possible Carcinogenicity (T.R. 183), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research.)

Dated: December 21, 1978.

THOMAS E. MALONE,
Acting Director,
National Institutes of Health.

[FR Doc. 79-2575 Filed 1-29-79; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF P-NITROSODIPHENYLAMINE FOR POSSIBLE CARCINOGENICITY

Availability

p-Nitrosodiphenylamine (CAS 156-10-5) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of p-nitrosodiphenylamine was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as a rubber vulcanization accelerater and as an intermediate in the manufacture of other chemicals. p-Nitrosodiphenylamine was administered in the feed, at either of two concentrations to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, p-nitrosodiphenylamine was carcinogenic when administered in the diet to male B6C3F1 mice, causing hepatocellular carcinomas. The chemical was also carcinogenic in male Fischer 344 rats, causing liver neoplasms. No evidence was provided for the carcinogenicity of p-nitrosodiphenylamine in female B6C3F1 mice or in female Fischer 344 rats.

Single copies of the report, Bioassay of p-Nitrosodiphenylamine for Possible Carcinogenicity (T.R. 190), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research.)

Dated: December 21, 1978.

THOMAS E. MALONE,
Acting Director,
National Institutes of Health.

[FR Doc. 79-2574 Filed 1-29-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

ILLINOIS

[Docket No. NFD-661; FDAA-3068-EM]

Emergency Declaration and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of an emergency for the State of Illinois (FDAA-3068-EM), dated January 16, 1979, and related determinations.

DATED: January 16, 1979.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Acting Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974: (88 Stat. 143); notice is hereby given that on January 16, 1979, the President declared an emergency as follows:

> I have determined that the impact of an abnormal accumulation of snow resulting from a series of blizzards and snowstorms in the State of Illinois is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of Illinois.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert E. Connor of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Illinois to have been adversely affected by this declared emergency.

The Counties of:

Boone	Lake
Bureau	LaSalle
Carroll	Lee
Cook	McHenry
DeKalb	Ogle
DuPage	Peoria
Grundy	Putnam
Henry	Stephenson
JoDaviess	Whiteside
Kane	Will
Kendall	Winnebago

The period of emergency assistance is hereby limited to a maximum of five days, from 12:01 AM on the date of the President's declaration, January 16, 1979, except in those cases where unusual circumstances warrant extensions of time.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX
Federal Disaster
Assistance Administration.

[FR Doc. 79-3108 Filed 1-29-79; 8:45 am]

[4210-01-M]

KENTUCKY

[Docket No. NFD-660 FDAA-568-DR]

Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This notice amends the Notice of major disaster declaration for the Commonwealth of Kentucky (FDAA-568-DR), dated December 12, 1978.

DATED: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: The Notice of major disaster for the Commonwealth of Kentucky dated December 12, 1978, and amended on December 17, 20, and 31, 1978, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 12, 1978.

The County Of: Jefferson

Federal assistance extended under this designation will be for emergency chemical waste disposal assistance only.

(Catalog of Federal Domestic Assistance No. 14, 701, Disaster Assistance.)

WILLIAM H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 79-3109 Filed 1-29-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Wyoming 65876]

WYOMING

Application

JANUARY 18, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 36 N., R. 93 W.,
Sec. 19, lot 2 and SW¼NE¼, SE¼NW¼.

The proposed pipeline will transport natural gas produced from the #7-19 Federal Fuller well, at a location in the SW¼NE¼ of section 19 into an existing Madden F26 natural gas pipeline located in lot 2 section 19, T. 36 N., R. 93 W., Fremont County, Wyoming.

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, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-3032 Filed 1-29-79; 8:45 am]

[4310-31-M]

Geological Survey

[General Mining Order No. 2]

Requirements for Exploration and Reclamation Plans On Federal and Indian Lands for All Minerals Except Oil and Gas, Geothermal Resources, and Coal

AGENCY: Department of the Interior, Geological Survey.

ACTION: Proposed Issuance of General Mining Order No. 2.

SUMMARY: In carrying out lease management responsibilities under provisions of the Mining Leasing Acts, the Conservation Division requires specific information in exploration and reclamation plans to assure protection of water resources, nonmineral resources, and the environment. Accordingly, this proposed General Mining Order establishes uniform exploration and reclamation plan requirements for operations on Federal and Indian lands for solid minerals except coal. Compliance with these requirements will be mandatory for all plans submitted on or after the effective date of this Order and will ensure that all plans are consistent with and responsive to existing regulations and terms of exploration permits for protection of water resources, other nonmineral resources, the environment, and reclamation of areas affected by operations.

DATES: In order to implement more fully the purposes and objectives of operating regulations for exploration and reclamation, all concerned parties representing the mining industry and the general public are invited and encourage to submit comments and suggested modification or amendments to the proposed General Mining Order No: 2. Written comments and suggested modifications or amendments must be received on or before April 2, 1979.

ADDRESSES: Comments should be sent to: Acting Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT:

Mr. Andrew V. Bailey, Chief, Branch of Mining Operations, Conservation Division, U.S. Geological Survey, National Center, MS 620 Reston, Virginia 22092 (703) 860-7506.

DRAFTING INFORMATION: The primary author of this proposed Order is Mr. Brinton C. Brown, Chief, Orders Section, Conservation Division, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 860-7506.

GENERAL MINING ORDER NO. 2

Under the authority contained in 25 CFR Parts 171 and 177 and 30 CFR Part 231, operations other than casual use on Federal and Indian mining leases and permits issued under the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351 et seq.); Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099); and the various statutes relating to mining on Indian lands may be conducted only in accordance with a plan approved by the appropriate Mining Supervisor of the Geological Survey (GS). Casual use, as used in this Order, means activities which do not cause significant surface disturbance or damage to lands, water resources, other resources, and improvements. Such activities do not include the use of heavy equipment, explosives, or vehicular movement off established roads and trails.

Five copies of all plans shall be submitted to the appropriate Mining Supervisor showing in detail the proposed prospecting, exploration, testing, reclamation, and abandonment operation to be conducted. All plans shall be consistent with and responsive to the regulations and the requirements of the exploration permit or lease for the protection of mineral and nonmineral resources; for the proper filling, plugging, or sealing of drill holes; and for the reclamation of the surface of the lands affected by the

operation. Each plan will be evaluated on its individual merits, within the context of the provisions in the permit or lease.

If circumstances warrant or if development of an exploration and reclamation plan for the entire operation is dependent upon unknown factors which cannot, or will not, be determined except during the progress of the operation, a partial plan may be approved by the Mining Supervisor and supplemented and approved from time to time. A partial plan shall include all of the information in the outline which is available with an explanation of why the missing information is not available and when it will become available.

All data and plans submitted under this Order shall be available for inspection under the Freedom of Information Act, as amended, except geological and geophysical data and interpretations of such data, maps, trade secrets, financial information, and related files for which the permittee or lessee requests proprietary status, provided that such status is determined by the Mining Supervisor to be warranted and is approved by the Director, GS, Department of the Interior, or his designee. If any confidential information is included in the exploration plan and identified as such by the permittee or lessee, it shall be considered in accordance with provisions of 43 CFR Part 2. Proprietary information to be kept confidential shall be clearly identified by the permittee or lessee by marking the top of each page of the document with the words "CONFIDENTIAL INFORMATION." All pages so marked shall be physically separated from the other portions of the exploration and reclamation plan.

Before submitting an exploration and reclamation plan for approval, the permittee should have a brief informal meeting with the Mining Supervisor, appropriate State representative, if required, and a representative from the surface managing agency so that each can state their objectives, expectations, and answer questions that arise. After the meeting, the permittee or lessee should have a better idea of how much detail is required for each of the various parts of the plan outline.

Exploration plans may be required to be revised or supplemented at any time by the Mining Supervisor to adjust to changed conditions or to correct oversights. If the operator seeks to change an approved plan, he shall submit a written statement including appropriate maps and other information justifying the proposed revision to the Mining Supervisor for approval of the change. In a case where multiple use is involved, the appropriate Oil and Gas or Geothermal Supervisor will also participate in the approval process.

All plans submitted for approval shall show the following information as appropriate to the proposed or existing operation:

GENERAL

1. Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered.

2. Permit or lease identification numbers.

3. Location of operations by State, county, and either latitude and longitude to the nearest 10 seconds of the northeastern most part of the lease, or quarter-quarter section, township, and range of the northeasternmost point on the lease or permit area.

4. List MSHA, EPA, State, or other local permit numbers and any other documents necessary for operations with their status and approval dates, and a statement of other legal documents that are a basis for legal right to commence operations.

5. Identify contractors by name who will perform operations under this exploration plan.

6. Names and addresses of surface owners.

7. Status of surface use and access agreements from public right-of-ways to the lease or permit land.

EXPLORATION PLAN

A. DESCRIPTION OF THE AREA TO BE EXPLORED

(1) A brief description of topography, geology, soil characteristics, water, vegetation, fish, wildlife (particularly threatened and endangered species), and any other pertinent features that may be affected by the proposed exploration and the method for monitoring the effects.

(2) A description of the present land use within and adjacent to the area of exploration.

(3) Suitable maps and/or aerial photographs showing existing topographic, historical, cultural, and drainage features, the proposed location of drill holes, trenches, drifts or entries, access roads, and other items as required by the Mining Supervisor.

(4) Copy of archeological and cultural resource clearances, if required by the surface managing agency or other Government Agency.

B. PROPOSED EXPLORATION ACTIVITY

(1) A narrative description of the method of exploration; size, types and quantity of equipment to be used; methods of handling drilling fluids and muds, blowout preventers, character, amount and time of use of explosives or fire, including safety precautions which will be taken during their use.

(2) Estimated timetable for each phase of the work and final completion of the program.

(3) General description of the method of preparing the exploration site, e.g., excavation and stockpiling of topsoil. Include location and size of areas upon which vegetation will be removed or soil will be laid bare, grading and clearing of drill sites, excavation of reserve pits, dimensions of individual drill sites, access road building operations, and capacity, character, standards of construction and size of all structures, and facilities to be built.

(4) General description of the method of testing: metallurgical or solution mining testing (in situ), beneficiation testing or other testing.

C. ABANDONMENT AND RECLAMATION

(1) Method for plugging drill holes.

(2) Measures to be taken for surface reclamation which shall take into account the impact of the proposed operation on adjacent land uses and shall include, as appropriate:

(a) A reclamation schedule.

(b) Method of grading, backfilling, and contouring including road abandonment, cross-ditching, and access barricades, if appropriate.

(c) Method of soil preparation, fertilizer, and mulch application.

(d) Type and mixture of shrubs, trees, grasses, or legumes to be planted.

(e) Method of planting, including quantity and spacing.

D. MEASURES FOR PREVENTING POLLUTION

(1) *Surface Waters.* A description of the surface waters of the area and planned controls during construction and operation for compliance with all applicable Federal and State water quality standards to prevent degradation of streams, ponds, lakes, rivers, wetlands, or other surface waters, including:

(a) Avoidance of cuts or fills near or in streams or wetlands which will result in siltation or debris accumulation.

(b) Planned crossings of perennial streams, lakes, wetlands, and/or rivers, including crossing methods.

(c) Planned road surfacing material including status of roads, either permanent or temporary.

(d) A plan for prevention of siltation of surface waters by using water bars, catch-basins, plant cover, and other methods.

(2) *Groundwater.* An assessment of the probable impacts of the anticipated operation upon the groundwater quality and quantity of the area and plans to minimize the impacts.

(3) *Other.* Measures to be taken to prevent or control fire, soil erosion,

pollution of air, damage to fish and wildlife or their habitat and other natural resources, hazards to public health and safety, damage to land improvements, and damage to scenic, historical cultural, and archeological values.

E. MAPS

All maps and aerial photos submitted in connection with exploration plans shall include the following information as appropriate to the proposed operation:

(1) Mine name, if applicable; permittee's or lessee's name; permit or lease number or numbers; county and either section, township(s), and range(s), or latitude and longitude; and permit or lease boundary lines.

(2) Map scale, register of map extension dates, and true north designation.

(3) Legend describing all symbols on map.

(4) Public survey of land lines and corners. If the project includes an exploratory mine, show distance and bearing from mine opening to appropriate section corner. Also include location of pilot plant or testing sites, if any.

(5) Locations and surface elevations of drillholes.

(6) Identification number, symbol, or letter and location of each survey station.

(7) The mine workings (if applicable) and conceptual mine plans (if available).

(8) Topographic, historical, cultural, and natural drainage features; roads and vehicular trails; name of watershed and location of perennial and intermittent surface streams or tributaries.

(9) Location of all roads and surface structures to be built for exploration project. Show existing roads that will be used, proposed drill hole access roads that must be constructed, if any, and pipelines or other facilities.

W. A RADLINSKI.
Acting Director.

Dated: January 23, 1979.

[FR Doc. 79-3098 Filed 1-29-79; 8:45 am]

[4310-31-M]

KNOWN RECOVERABLE COAL RESOURCE AREA

McCallum, Colo., Revision

Effective May 25, 1978, and pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (P.L. 94-377, August 4, 1976), Federal Lands within the State of Colorado have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(6) COLORADO

Revised McCallum (Colorado) Known Recoverable Coal Resource Area (KRCRA); May 25, 1978, 179,242 acres were added within the KRCRA. Total area now classified for leasing is 226,015 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: January 22, 1979.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 79-3084 Filed 1-29-79; 8:45 am]

[4310-31-M]

KNOWN RECOVERABLE COAL RESOURCE AREA

Wasatch Plateau, Utah, Revision

Effective March 1, 1977, and pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (P.L. 94-377, August 4, 1976), Federal lands within the State of Utah have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(44) UTAH

Revised Wasatch Plateau (Utah) Known Recoverable Coal Resource Area (KRCRA); March 1, 1977; 56,613 acres were added within the KRCRA. Total area now classified for leasing is 353,453 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: January 22, 1979.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 79-3086 Filed 1-29-79; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before January 19, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by February 9, 1979.

CHARLES HERRINGTON,
Acting Keeper of the National Register.

ALASKA

Kobuk Division

Point Hope, *Ipiutak Archeological District.*

ARKANSAS

Jefferson County

Pine Bluff, *Trulock-Cook House*, 703 W. 2nd Ave.

CALIFORNIA

Mariposa County

Yosemite Village vicinity, *Mc Gurk Cabin*, S of Yosemite Village.

DELAWARE

Kent County

St. Jones Neck Multiple Resource Area, various locations in County.

FLORIDA

Dade County

Hialeah, *Hialeah Park Race Track*, E. 4th Ave.

KENTUCKY

Bell County

Middlesboro vicinity, *Cumberland Gap Historic District*, E of Middlesboro on U.S. 25 (also in Tennessee and Virginia).

MASSACHUSETTS

Barnstable County

Chatham vicinity, *Monomoy Point Lighthouse*, Monomoy National Wildlife Refuge.

MINNESOTA

Goodhue County

Rural Goodhue County Multiple Resource Area.

Wabasha County

Lake City vicinity, *Rahilly, Patrick Henry, House*, 3 mi. W of Lake City on SR 15 (boundary increase).

MISSISSIPPI

Adams County

Natchex vicinity, *Mount Repose*, N of Natchez on MS 555.

Lauderdale County

Meridian, *Highland Park*, roughly bounded by 15 and 19th Sts., 37th and 42nd Aves.

MISSOURI

Jackson County

Raytown, *Rice-Tremonti House*, 8801 E. 66th St.

Miller County

St. Elizabeth vicinity, *Boeckman Bridge*, SE of St. Elizabeth over Big Tavern Creek.

Morgan County

Gravois Mills vicinity, *Old St. Patrick's Church*, S of Gravois Mills on SR 0.

Platte County

Parkville, *Mackay Building*, Park College campus.

St. Louis County

Bridgeton, *Payne-Gentry House*, 4211 Fee Fee Rd.

NEVADA

Carson City (independent city)

Sadler, Gov. Reinhold, House, 310 Mountain St.

NEW JERSEY

Cape May County

Avalon, *Avalon Life Saving Station*, 76 W. 15th St.

Monmouth County

Asbury Park, *Asbury Park Convention Hall*, Ocean Ave.

Morris County

Long Valley, *German Valley Historic District*, NJ 24.

Union County

Berkeley Heights, *Littel-Lord Farmstead*, 23 and 31 Horseshoe Rd.

NEW MEXICO

Anasazi Sites Within the Chacoan Interaction Sphere Thematic Resources, various locations in state.

TEXAS

El Paso County

El Paso, *Toltec Club*, 602 Magoffin Ave.

Val Verde County

Del Rio and vicinity, *San Felipe Springs Irrigation System.*

[FR Doc. 79-2720 Filed 1-29-79; 8:45 am]

[4310-05-M]

Office of Surface Mining Reclamation and Enforcement

AVAILABILITY OF MINE PLAN

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Major Modification of Existing Coal Mining and Reclamation Plan.

SUMMARY: Pursuant to § 211.5(b) of Title 30, CFR, Notice is hereby given that the Office of Surface Mining has received the following mine plan for a coal mining and reclamation operation on Federal coal lands:

LOCATION OF LANDS

Applicant—Western Energy Company.
Mine Property Name—Colstrip Mine "Area B".
State—Montana.
County—Rosebud.
OSM Reference Number—MT 0002-6.
General Description of Affected Lands—853.4 Acres in Sec. 4, 9 & TIN in R41E of the Montana Principal Meridian.

This application is available for public review in the library of Region V Offices of the Office of Surface Mining, Room 270, Post Office Building, 1823 Stout Street, Denver, Colorado.

This Notice is issued at this time for the convenience of the public. The OSM has not yet determined whether the plan is adequate and may, during the course of its reviews, request additional information. Any additional information so obtained will also be available for public review. Prior to a final decision on this mine plan, the Office of Surface Mining will issue a Notice of Pending Decision pursuant to § 211.5(c)(2) of Title 30, Code of Federal Regulations. Copies of the mining plan are also being sent to the offices of the Bureau of Land Management and the Geological Survey in Billings, Montana.

DATES: Comments on or objections to the plan should be received by the Region V office on or before March 1, 1979.

ADDRESSES: Comments should be sent to the Regional Director, Office of Surface Mining and Reclamation and Enforcement, Region V, 1823 Stout Street, Denver, Colorado 80202.

PAUL L. REEVES,
Deputy Director.

[FR Doc. 79-3116 Filed 1-29-79; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will

take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, employment and Training Administration, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 29th day of January 1979.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING JANUARY 23, 1979

Name of applicant and location of enterprise	Principal product or activity
The Egging Company Greeley, Colorado.	Farm machinery and other metal products.

[FR Doc. 79-3155 Filed 1-29-79; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[Docket No. M-78-131-C]

JEWELL RIDGE COAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Jewell Ridge Coal Corporation, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its No. 11 mine in Buchanan County, Va. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

(1) Soon after the purchase of haulage cars for the petitioner's mine in 1964, safety problems with their automatic chains and handles occurred. For example, the chains would become inoperable because of stiff turning conditions.

(2) At that time, the handles and bars on the haulage cars were removed and replaced with a hand bar. A hand bar is on each piece of haulage equipment and at all loading points.

(3) The petitioner contends that the hand bars now in place are more effective and safer than automatic couplers. Automatic couplers are to prevent miners from going between haulage cars. But the structure of the mine, due to a number of sharp turns, would necessitate that miners place themselves between cars if automatic couplers are mandated. The hand bars prevent such occurrences.

(4) The petitioner concludes that their hand bars will achieve no less protection than that provided by the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before March 1, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 23, 1979.

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

[FR Doc. 79-3125 Filed 1-29-79; 8:45 am]

[4510-43-M]

[Docket No. M-78-126-C]

WESTMORELAND COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Box 185, Quinwood, West Virginia, 25981, has filed a petition to modify the application of 30 CFR 75.1100 (fire fighting equipment) to its No. 7 Mine in Nicholas County, W. Va. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

(1) Due to sub-zero temperatures during the winter months, the water line provided for the No. 1 Belt at the petitioner's mine is subject to freezing from the drift inby for a distance of 4,100 feet.

(2) A freeze in the line would render the fire-fighting system ineffective and useless during an emergency and result in a diminution of safety.

(3) As an alternative, the petitioner proposes to keep this protion of the water line dry during the winter months.

(4) In an emergency, the miner stationed at the No. 2 Belt Head, a distance of 4,100 feet from the drift, would be told by the telephone to open a valve at that point to fully charge the system with water.

(5) The petitioner states that this alternative will achieve no less protection than that provided by the standard.

REQUESTS FOR COMMENTS

Persons interested in this petition may furnish written comments on or before March 1, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 23, 1979.

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

[FR Doc. 79-3126 Filed 1-29-79; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

UTAH STATE STANDARDS

Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the FEDERAL REGISTER (38 FR 1178) of the approval of the Utah Plan and the adoption of Subpart E to Part 1952 containing the decision.

The Utah Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearing(s).

3. Commission order adopting the standards and designating an effective date.

4. Providing certified copies of Rules Regulations or Standards to the Office of the State Archivist.

Section 1952.113 of Subpart E sets forth the State's schedule for adoption of Federal Standards. By letter dated December 14, 1978, from Ronald L. Joseph, Administrator, Utah Occupational Safety and Health Division, to Curtis A. Foster, Regional Administrator, and incorporated as part of the Plan, the State submitted rules and regulations concerning 29 CFR 1910.1018 for Occupational Exposure to Inorganic Arsenic, 43 FR 19584, Friday, May 5, 1978 and 43 FR 28472, Friday, June 30, 1978. These standards, which are contained in the Utah Occupational Safety and Health Rules and Regulation for General Industry, were promulgated per the requirements of Utah Code annotated 1953, Title 63-46-1, and in addition, published in newspapers of general/major circulation throughout the State. No public comment was received and no hearings held. The Standard for Occupational Exposure to Inorganic Arsenic was adopted by the Industrial Commission of Utah, Archives File Number 2998 on October 27, 1978, pursuant to Title 35-9-6 Utah Code Annotated 1953.

2. *Decison.* The State submission having been reviewed in comparison with the Federal Standards, it has been determined that the State Standards are identical to the Federal Standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado, 80294; Utah State Industrial Commission, UOSHA Offices at 448 South 400 East, Salt Lake City, Utah, 84111; and the Technical Data Center, Room N2439R, 3rd Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

The Standards were adopted in accordance with the procedural requirements of State law which permitted public comments, and further public participation would be repetitious.

This decision is effective January 30, 1979.

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

Signed at Denver, Colorado, this 4th day of January 1979.

CURTIS A. FOSTER,
Regional Administrator.

[FR Doc. 79-3122 Filed 1-29-79; 8:45 am]

[4510-28-M]

Office of the Secretary

APPLICATION FOR WORKER ADJUSTMENT ASSISTANCE

Investigations Regarding Certifications of Eligibility

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified as set forth below. 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 February 12, 1979.

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 February 12, 1979.

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, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of January 1979.

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
Bernard Screen Printing Corporation (ACTWU).	New Hyde Park, New York.	1/22/79	1/19/79	TA-W-4,733	printing of textiles
Chrysler Corporation (UAW)	Highland Park, Michigan	1/15/79	1/10/79	TA-W-4,734	engines for Chrysler cars & trucks
Disco Togs (ACTWU)	New York, New York	1/9/79	1/2/79	TA-W-4,735	retail outlet store for Suzzette Fashions, Inc.
G.C. Fashions, Inc. (ACTWU)	Glencow, Long Island, New York.	1/9/79	1/2/79	TA-W-4,736	ladies' jackets & coats
Jo Feld Fashions (ACTWU)	New York, New York	1/9/79	1/2/79	TA-W-4,737	showroom
Melmar Fashions (ILGWU)	Asbury Park, New Jersey	1/12/79	1/10/79	TA-W-4,738	Contractor of ladies' coats, suits, & jackets
Paul Hats, Inc. (workers)	Worcester, Mass.	1/19/79	1/12/79	TA-W-4,739	ladies' hats
Portec, Inc., Belting Products Division (IAM & AW).	Paducah, Kentucky	1/19/79	1/15/79	TA-W-4,740	PVC belting, cotton belting and corrugated belting
Rainette Fashions (ACTWU)	Jersey City, New Jersey	1/19/79	1/2/79	TA-W-4,741	women's raincoats and jackets
Saxwood Sportswear (ILGWU)	Deer Park, New York	1/19/79	1/15/79	TA-W-4,742	ladies' jackets
Suzzette Fashion, Inc. (ACTWU)	New York, New York	1/19/79	1/2/79	TA-W-4,743	showroom, samples, patterns, etc.
Textron, Inc., Talon Division (workers).	Meadville, Pa.	1/22/79	1/19/79	TA-W-4,744	metal and nylon zippers, buttons, snaps, hooks, & eyes for clothing, luggage, sleeping bags & footwear

[FR Doc. 79-3150 Filed 1-29-79; 8:45 am]

[4510-28-M]

APPLICATION FOR WORKER ADJUSTMENT ASSISTANCE

Investigations Regarding Certifications of Eligibility

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 absulute 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 February 12, 1979.

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 February 12, 1979.

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, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22d day of January 1979.

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
Ellen Kate Clothing Company (ILGWU).	Newburgh, N.Y.	1/16/79	1/12/79	TA-W-4727	ladies' rainwear and sportswear
LTV Corporation Hill Annex Mine & Plant (USWA).	Caulmet, Minn	1/15/79	1/1/79	TA-W-4728	iron ore concentrates
Massey-Ferguson, Inc. (UAW)	Akron, Ohio	1/15/79	1/11/79	TA-W-4729	industrial construction equipment
A. O. Smith Corp. Automotive Div. (workers).	Milwaukee, Wis	1/15/79	1/9/79	TA-W-4730	front suspension control arms for Chrysler cars & vans
U.V. Industries, Inc. Fierro Operations (USWA).	Bayard, N. Mex	1/17/79	12/20/78	TA-W-4731	copper ore and copper concentrates
Westinghouse Electric Corp. Lamp Division (workers).	Trenton, N.J	1/15/79	1/11/79	TA-W-4732	light bulbs

[FR Doc. 79-3151 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4377; TA-W-4377A]

BRENTWOOD SPORTSWEAR INC.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4377 and TA-W-4377A: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 14, 1978 in response to a worker petition received on November 9, 1978 which was filed by the Knitgoods Union, International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's sweaters, knit shirts and bathing trunks at Brentwood Sportswear, Incorporated, Philadelphia, Pennsylvania. The investigation revealed that the plant primarily produces men's sweaters and knit shirts. The investigation was expanded to include the New York, New York sales office of Brentwood Sportswear, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55013). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Brentwood Sportswear, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' sweaters, knit cardigans and pullovers increased from 20.4 million units in 1975 to 26.5 million units in 1976 and to 28.3 million units in 1977. Imports increased to 33.2 million units in the first three quarters of 1978 as compared to 22.6 million units in the first three quarters of 1977.

U.S. imports of men's and boys' knit sport and dress shirts, excluding T-shirts, increased from 66.2 million units in 1975 to 74.0 million units in 1976 and to 75.2 million units in 1977. U.S. imports increased to 82.5 million

units in the first three quarters of 1978 as compared to 54.6 million units in the same period of 1977.

A Departmental survey conducted with customers of Brentwood Sportswear, Incorporated revealed that major customers reduced their purchases of men's sweaters and knit shirts from Brentwood and increased their purchases of imported sweaters and knit shirts in 1977 compared to 1976 and in the first eight months of 1978 compared to the like period of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sweaters and knit shirts produced at the Philadelphia, Pennsylvania facility of Brentwood Sportswear, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that facility and of the New York, New York sales office of Brentwood Sportswear, Incorporated. In accordance with the provisions of the Act, I make the following certification:

All workers of the Philadelphia, Pennsylvania facility and the New York, New York sales office of Brentwood Sportswear, Incorporated who became totally or partially separated from employment on or after October 27, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-3127 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4329]

BRODY INC. OF DEKALB

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4329: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 6, 1978 in response to a worker petition received on November 1, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's fall and spring coats at Brody Incorporated of Dekalb, Dekalb, Illinois.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53851-52). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Brody Incorporated of Dekalb, its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased both absolutely and relative to domestic production in 1977 compared to 1976. Imports declined slightly, in absolute terms, in the first three quarters of 1978 compared to the same period in 1977.

The Department conducted a survey of a sample of Brody Incorporated of Dekalb's customers representing a significant proportion of sales in 1976 and in 1977. The survey revealed that some customers decreased their purchases from the subject firm while increasing purchases of imports in 1977 compared to 1976 and in the first three quarters of 1978 compared to the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the women's coats produced at Brody Incorporated of Dekalb, Dekalb, Illinois contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Brody Incorporated of Dekalb, Dekalb, Illinois engaged in employment related to the production of women's coats who became totally or partially separated from employment on or after October 30, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-3128 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4305]

CHICAGO RIVET AND MACHINE CO., COLD HEADING AND DRILLING DEPARTMENTS

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-4305: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1978 in response to a worker petition received on October 25, 1978 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing rivets and automatic rivet setting equipment at the Bellwood, Illinois plant of Chicago Rivet and Machine Company. The investigation revealed that the petition was filed only on behalf of workers engaged in the production of rivets in the Drilling and Cold Heading Departments of the Bellwood plant.

The Notice of Investigation was published in the FEDERAL REGISTER on November 7, 1978 (43 FR 51866). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Chicago Rivet and Machine Company, its customers, (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales and/or production.

None of the customers of Chicago Rivet who were surveyed purchased imported rivets in 1976, 1977 or the January-October 1978 period. Production performed at the Bellwood plant is being transferred to other domestic facilities of Chicago Rivet and Machine Company.

CONCLUSION

After careful review, I determine that all workers of the Chicago Rivet and Machine Company, Cold Heading

and Drilling Departments, Bellwood, Illinois are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-3129 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4160]

CLINTON SHIRT CORP.

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-4160: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 14, 1978 in response to a worker petition received on September 13, 1978 which was filed on behalf of workers and former workers producing shirts, skirts and sundresses for little girls at Clinton Shirt Corporation, Clinton, Kentucky. Clinton Shirt Corporation is a subsidiary of Garan, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43587). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Clinton Shirt Corporation, Garan, Incorporated, their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation indicated that declines in production at Clinton Shirt corporation resulted from production shifts among several plants of the parent firm, Garan, Incorporated. Production also changed from a relatively simple to a more complex garment.

The major product line of the Clinton Shirt Corporation plant consists of girls' knit shirts, sizes 4 to 14. Girls' shirts in infant and toddler sizes were also produced at the plant in 1976 and 1977. Production of shirts in infant and toddler sizes fell to insignificant levels at the Clinton Shirt Corporation plant during the first nine months of 1978. Girls' woven shirts and sundresses were also produced at the plant in 1978, at insignificant levels.

Clinton Shirt Corporation is part of the girls' Knit Shirt Division of Garan, Incorporated. This division expanded from two plants to three in 1978. In addition, two new plants were opened to produce infant and toddler shirts, the first late in 1976 and the second in October of 1977.

Garan, Incorporated's largest customer did not import girls' knit shirts.

CONCLUSION

After careful review, I determine that all workers of Clinton shirt corporation, Clinton, Kentucky, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc 79-3130 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4265]

COOL-RAY, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4265: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 17, 1978 in response to a worker petition received on October 13, 1978 which was filed on behalf of workers and former workers purchasing frames, shaping lenses and assembling sunglasses at Cool-Ray, Incorporated, Chelsea, Massachusetts.

The notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50271). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Cool-Ray, Incorporated, its customers, the Optical Manufacturers Association, the Sunglass Association of America, the U.S. Department of Commerce, the U.S. International Trade Commision, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of sunglasses increased from 75.6 million pairs in 1976 to 86.8 million pairs in 1977, and increased from 65.8 million pairs in the first nine months of 1977 to 73.5 million pairs in the first nine months of 1978.

The Department conducted a survey of Cool-Ray, Incorporated's customers. The survey revealed that some customers increased purchases of imported sunglasses during the period January through September 1978 compared with the same period in 1977. Some customers who increased import purchases during that period, reduced purchases from Cool-Ray, Incorporated during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with sunglasses produced at Cool-Ray, Incorporated, Chelsea, Massachusetts contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Cool-Ray, Incorporated, Chelsea, Massachusetts engaged in employment related to the production of sunglasses who became totally or partially separated from employment on or after October 10, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-3131 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4369]

EASTERN KNITTING MILLS

[TA-W-4400]

SOMERSET KNITTING MILLS, INC., PHILADELPHIA, PA.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4369 and TA-W-4400: investiga-

tions regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the act.

Investigations were initiated on November 13, 1978 and November 16, 1978 in response to worker petitions received on November 6, 1978 and November 14, 1978 which were filed by the Knitgoods Union, International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's sweaters and men's knit shirts at Eastern Knitting Mills, Blenheim, New Jersey and producing men's sweaters and knit shirts at Somerset Knitting Mills, Incorporated, Philadelphia, Pennsylvania. The investigation revealed that Somerset produces only men's sweaters.

The Notices of Investigation were published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55011, 55012-13). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Eastern Knitting Mills, Somerset Knitting Mills, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Although Eastern Knitting Mills and Somerset Knitting Mills, Incorporated are two separate companies under common ownership, sales data is not kept by individual company. The combined sales of Eastern and Somerset increased from 1976 to 1977 and increased in the January through October period of 1978 compared to the same period of 1977.

Production of sweaters and knit shirts at Eastern Knitting Mills increased in quantity in 1977 compared to 1976 and in the first ten months of 1978 compared to the like period of 1977.

Production of sweaters at Somerset Knitting Mills increased in quantity in the January through November period of 1978 compared to the same period of 1977.

CONCLUSION

After careful review, I determined that all workers of Eastern Knitting Mills, Blenheim, New Jersey and Somerset Knitting Mills, Incorporated, Philadelphia, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of January 1979.

HARRY J. GILMAN
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-3132 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-3907]

EDMOS CORP.

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-3907: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 26, 1978 in response to a worker petition received on June 22, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing double knit fabrics at Glen Cove, New York plant of Edmos Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29364-5). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Edmos Corporation, its customers, the American Textile Manufacturers Institute, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of finished fabric, including woven and knitted fabric of cotton, wool and man-mades increased in the first nine months of 1978 compared to the same period in 1977. However, the ratio of imports to domestic production has been below 2 percent for the last several years.

The Department of Labor conducted a survey of Edmos Corporation's customers. None of the customers surveyed decreased purchased of double knit fabrics from Edmos Corporation while increasing purchases of imported double knit fabrics. Most of the customers surveyed did not purchase any imported double knit fabrics.

CONCLUSION

After careful review, I determine that all workers of Edmos Corporation, Glen Cove, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-3133 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4116]

EDMOS CORP.

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-4116: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 28, 1978 in response to a worker petition received on August 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing double knit fabrics at the Whitney, South Carolina plant of Edmos Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on September 8, 1978 (43 FR 40070). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Edmos Corporation, its customers, the American Textile Manufacturers Institute, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles pro-

duced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of finished fabric, including woven and knitted fabric of cotton, wool and man-mades increased in the first nine months of 1978 compared to the same period in 1977. However, the ratio of imports to domestic production has been below 2 percent for the last several years.

The Department of Labor conducted a survey of Edmos Corporation's customers. None of the customers surveyed decreased purchases of double knit fabrics from Edmos Corporation while increasing purchases of imported double knit fabrics. Most of the customers surveyed did not purchase any imported double knit fabrics.

CONCLUSION

After careful review, I determine that all workers of Edmos Corporation, Whitney, South Carolina, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-3134 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4479]

ERNST STRAUSS, INC.

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-4479: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 6, 1978 in response to a worker petition received on November 27, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing women's coats at Ernst Strauss, Los Angeles, California. The investigation revealed that the plant primarily produces women's sportswear.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59165-66). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Ernst Strauss, Incorporated, 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 certificate of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The average number of workers increased in 1977 compared with 1976 and increased in the first eleven months of 1978 compared with the like period of 1977. Average quarterly employment increased in every quarter when compared with the same quarter of the previous year from the first quarter of 1977 through the third quarter of 1978. Production workers are paid on a piece-work basis. Payroll data indicates that the adjusted average monthly wages have not decreased significantly. There is no immediate threat of separation of workers at this plant.

CONCLUSION

After careful review, I determine that all workers of Ernst Strauss, Incorporated, Los Angeles, California are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-3135 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4026]

FARMLAND INDUSTRIES, INC.

Negative Determination Regarding Application for Reconsideration

By letters of November 20, 1978, and January 3, 1979, a union official of the Oil, Chemical and Atomic Workers International Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Farmland Industries, Inc., Fort Dodge, Iowa. The determination was published in the FEDERAL REGISTER on October 27, 1978, (43 FR 50263).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union official cites that imports of anhydrous ammonia from Russia and Mexico have caused separations from employment at Farmland Industries, Inc. He further claims that the Department's denial notice did not take into account certain projections of data, namely, (1) had imports of anhydrous ammonia in the first six months of 1978 been extended to the full year then such imports would have increased by 102,000 tons over that in 1977, and (2) had the customer survey covered all of Farmland's customers the "contributed importantly" test would have been met.

The official asserts, through personal testimony, that imports of anhydrous ammonia from Russia and Mexico occurred in 1978. The findings of the investigation, nevertheless, indicated such imports are already included in the U.S. aggregate import statistics which declined absolutely and relatively in the first half of 1978 compared to the same period in 1977, from 614,000 tons to 590,000 tons and from 7.2 percent to 6.9 percent of production, respectively. Simply to extend the half-year industry and import data to the full year, as he suggests, would be a questionable procedure.

In the Department's survey of Farmland's customers, 40 customers reported representing 30 percent of Farmland's sales in 1977. Only one small customer switched to imports of anhydrous ammonia in 1977 and his decline in purchases from Farmland was by a de minimus amount. This customer represented only one percent of Farmland's sales in 1977 and in the first six months of 1978. Not one of the other customers surveyed imported in either 1977 or 1978.

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 25th day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-3136 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4421]

FAVORITE FOOTWEAR, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4421: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiation on November 27, 1978 in response to a worker petition received on November 20, 1978 which was filed by the United Shoe Workers of America, Local Council 13 on behalf of workers and former workers producing hard sole and soft sole men's slipper shoes at Favorite Footwear, Incorporated, Long Island City, New York. The investigation revealed that the plant also produces boys' children's and ladies' slippers.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56952). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Favorite Footwear Incorporated, its customers, the American Footwear Industries Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of house slippers increased from 23.9 million pairs in 1975 to 28.0 million pairs in 1976, and decreased slightly to 27.8 million pairs in 1977 while remaining well above the 1973-1975 levels. The ratio of imports to domestic production increased from 33.9 percent in 1975 to 43.1 percent in 1976, and decreased slightly to 42.1 percent in 1977 while remaining well above the 1973-1975 levels.

The Department of Labor conducted a survey of Favorite Footwear's customers. In 1977 and 1978, many of the customers surveyed decreased purchases of slippers from Favorite Footwear and increased purchases of imported slippers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, boys', ladies' and children's slippers produced at Favorite Footwear, Incorporated, Long Island City, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Favorite Footwear, Incorporated, Long Island City, New York who became totally or partially separated from employment on or after October 14, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-3137 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4407]

FISHER CONTROLS 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-4407: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 21, 1978 in response to a worker petition received on November 14, 1978 which was filed by the United Automobile, Aerospace, and Agricultural Implement Workers of America on behalf of workers and former workers producing control valves and electonic components at the Marshalltown, Iowa plant of Fisher Controls Company

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56951-56952). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Fisher Controls 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 for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Fisher Controls consists of two operating subdivisions: E.P.C. and V.R.C. Total sales and production of Fisher Controls increased in 1977 compared to 1976. Sales and production of E.P.C. increased in 1977 compared to 1976 and in January-October 1978 compared to the same period of 1977. V.R.C. produces automatic control valves, field mounted instrumentation and pressure and gas regulators.

Only two of the surveyed customers of Fisher Controls purchase imported automatic control valves, instrumentation, or regulators and these involved very minor purchases. Customers indicated that their requirements for control valves were determined by the level of domestic and foreign capital investment, which had decreased in 1978 compared to 1977. The high technical standards and the requirement for a service network limits import competition in the domestic market.

CONCLUSION

After careful review, I determine that all workers of the Marshalltown, Iowa plant of Fisher Controls Company are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-3138 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4384]

LA MODA SPORTSWEAR

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 14, 1978 in response to a worker petition received on November 13, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at La Moda Sportswear, Paterson, New Jersey.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55013). No public hearing was requested and none was held.

The petitioner requested withdrawal of the petition in a letter. On the basis

of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C. this 14th day of January, 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-3140 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4371]

NEW YORK IMPERIAL FOUNDATIONS, INC.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4371: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 6, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing brassieres and girdles.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of New York Imperial Foundations, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. With respect to workers producing girdles and without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The ratio of imports to domestic production is small. In 1977 the ratio was 6.8 percent.

A survey of the major customers of New York Imperial Foundations, Incorporated revealed that none of the customers purchased imported girdles in 1977 and 1978.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. With respect to workers producing brassieres, it is concluded that all of the requirements have been met.

U.S. imports of brassieres, bralettes, and bandeaux increased from 8,751 thousand dozens in 1976 to 9,507 thousand dozens in 1977 and increased from 7,067 thousand dozens in the first three quarters of 1977 to 7,918 thousand dozens in the same period of 1978. The ratio of imports to domestic production increased from 51.7 percent in 1976 to 59.3 percent in 1977.

A survey of the major customers of New York Imperial Foundations, Incorporated revealed that some customers increased purchases of imported brassieres in the first eleven months of 1978 compared to the same period of 1977, while decreasing purchases from the subject firm.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with brassieres produced at New York Imperial Foundations, Incorporated, Brooklyn, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act. I make the following certification.

All workers of New York Imperial Foundations, Incorporated, Brooklyn, New York engaged in employment related to the production of brassieres who became totally or partially separated from employment on or after December 31, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-3141 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4386]

PHILIP LINGERIE, INC.

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-4386: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 14, 1978 in response to a worker petition received on November 13, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' lingerie at Philip Lingerie, Incorporated, Paterson, New Jersey. The investigation revealed that the plant primarily produces women's sportswear, robes and swimwear.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55013). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Philip Lingerie, Incorporated, its manufacturers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Manufacturers accounting for all of the production of Philip Lingerie, Incorporated did not import any finished garments and did not use foreign contractors to produce the garments in 1977 and 1978.

CONCLUSION

After careful review, I determine that all workers of Philip Lingerie, Incorporated, Paterson, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-3142 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4460]

REVERE TEXTILE PRINTS, INC.

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-4460: investigation regarding

certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 30, 1978 in response to a worker petition received on November 6, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union of America on behalf of workers and former workers producing printed fabric at Revere Textile Prints, Incorporated, Sterling, Connecticut.

The Notice of Investigation was published in the FEDERAL REGISTER on December 8, 1978 (43 FR 57692-3). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Revere Textile Prints, Incorporated, the U.S. Department of Commerce, the U.S. Iternational Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Since Revere Textile Prints, Incorporated operated as a commission printer and finisher of fabric, sales are equal to production. Sales, as recorded in quantity of square yards of finished fabric, increased during the period January through November 1978 as compared to the same period in 1977. In addition, sales increased quarterly as compared to each previous quarter during the period October 1, 1977 through September 30, 1978.

Concurrent with these increases of sales, employment at Revere increased during the period January through November 1978 as compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of Revere Textile Prints, Incorporated, Sterling, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-3143 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4432]

SADDLEMAKERS MANUFACTURERS, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4432: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 27, 1978 in response to a worker petition received on November 20, 1978 which was filed on behalf of workers and former workers producing leather belts and leather and fabric combination handbags at Saddlemakers Manufacturers, Inc., Worcester, Massachusetts. The investigation revealed that the plant primarily produces handbags.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56952-56953). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Saddlemakers Manufacturers, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of handbags increased in quantity from 1976 to 1977 and continued to increase during the first three quarters of 1978 compared to the same period of 1977. The ratio of imports to domestic handbag production increased from 111.1 percent in 1976 to 116.6 percent in 1977.

Customers of Saddlemakers who were surveyed reduced purchases of handbags from Saddlemakers while increasing purchases of handbags from foreign sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with handbags produced at Saddlemakers Manufacturers, Incorporated, Worcester, Massachusetts contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Saddlemakers Manufacturers, Incorporated, Worcester, Massachusetts who became totally or partially separated from employment on or after March 17, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-3144 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4226]

STANDARD PATTERN CO., INC.

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-4226: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 29, 1978 in response to a worker petition received on September 29, 1978 which was filed on behalf of workers and former workers producing papers, junks, soles-cuts, woods, die tins, marker papers and fiber markers, (shoe patterns) at Standard Patent Company, Inc., Manchester, New Hampshire. The investigation revealed that the corporate name is Standard Pattern Company, Inc. The investigation further revealed that the firm produces an insignificant amount of bottomstock.

The Notice of Investigation was published in the FEDERAL REGISTER on October 17, 1978 (43 FR 44795-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Standard Pattern Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Standard Pattern Company, Inc., Manchester, New Hampshire primarily produces papers, junks, woods, die tins, marker papers, and fiber markers.

The petitioners allege that increased imports of non-rubber footwear contributed importantly to the decline in sales or production and to the separations of workers producing shoe patterns at Standard Pattern Company, Inc. Manchester, New Hampshire.

Imports of non-rubber footwear cannot be considered to be like or directly competitive with shoe patterns. Imports of shoe patterns must be considered in determining import injury to workers producing shoe patterns.

U.S. imports of shoe patterns were negligible in 1976, 1977, and during the first three quarters of 1978.

Customers of Standard Pattern Company, Inc. who were surveyed indicated that they did not import shoe patterns in 1976, 1977 or during the first three quarters of 1978.

CONCLUSION

After careful review, I detemine that all workers of Standard Pattern Company, Inc., Manchester, New Hampshire are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-3145 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4263]

TENNESSEE HANDBAGS, INC.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4263: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 16, 1978 in response to a worker petition received on October 11, 1978 which was filed on behalf of workers and former workers producing ladies' handbags at Tennessee Handbags, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50269). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Tennessee Handbags, Incorporated, The National Handbag Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

Imports of ladies' handbags increased from 90.2 million units in 1976 to 92.8 million units in 1977. Imports increased from 67.2 million units in January through September of 1977 to 104.9 million units for the same period of 1978. The ratio of imports of domestic production increased from 111.1 percent in 1976 to 116.6 percent in 1977.

Tennessee Handbags, Incorporated began importing ladies' handbags in April 1977. Tennessee Handbags, Inc. increased imports in the second and third quarters of 1978 compared to the same quarters of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' handbags produced at Tennessee Handbags, Incorporated, Dandridge, Tennessee contributed importantly to the decline in production and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Tennessee Handbags, Incorporated, Dandridge, Tennessee engaged related to the production of ladies' handbags who became totally or partially separated from employment on or after October 6, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management, Adminstration, and Planning.

[FR Doc. 79-3146 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4471]

W. F. HOFFORD, INC.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 6, 1978 in response to a worker petition received on November 20, 1978 which was filed on behalf of workers and former workers producing insulated underwear and full fashioned sweaters at W. F. Hofford, Inc., Weissport, Pennsylvania. The investigation revealed that workers and former workers also produced leotards and bodysuits.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59165-59166). No public hearing was requested and none was held.

W. F. Hofford, Incorporated, Weissport, Pennsylvania is a successor firm to Lafemme Knitting Mills, Incorporated, Weissport, Pennsylvania (TA-W-3157). All workers of Lafemme Knitting Mills, Incorporated were certified eligible to apply for adjustment assistance on August 11, 1978. Since the intent of the certification under TA-W-3157 is to cover workers separated from Lafemme Knitting Mills, Incorporated and its successor firm W. F. Hofford, Incorporated, this investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 23rd day of January, 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-3139 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4216]

WALDON MANUFACTURING CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4216: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 26, 1978 in response to a worker petition received on September 22, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's trousers at Waldon Manufacturing Company in Walnut, Mississippi. The investigation revealed that the plant also produces men's walk shorts. Waldon Manufacturing Company is a subdivision of McGregor-Doniger, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591-46592). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officals of McGregor-Doniger, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' dress and sport trousers and shorts increased from 55,508 thousand units in 1975 to 73,209 thousand units in 1976 and to 76,419 thousand units in 1977. Imports increased to 48,690 thousand units in the first six months of 1978 compared to 33,860 thousand units in the same period of 1977. The ratio of imports to domestic production was 38.0 percent in 1977.

Customers of McGregor-Doniger, Incorporated have shown an increasing reliance on foreign sources to fulfill their demand for men's dress slacks and walking shorts during the first three quarters of 1978 compared to the same period of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress slacks and walking shorts produced at Waldon Manufacturing Company, in Walnut, Mississippi contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Waldon Manufacturing Company in Walnut, Mississippi who became totally or partially separated from employment on or after September 21, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-3147 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4358]

WILLOFORM MANUFACTURING CO., INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4358: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 7, 1978 in response to a worker petition received on November 6, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers at Willoform Manufacturing Company, Incorporated, New York, New York. The investigation revealed that the plant primarily produces brassieres and girdles.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53852). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Willoform Manufacturing 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 for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of brassieres, bralettes, and bandeaux increased from 8,751 thousand dozen in 1976 to 9,507 thousand dozen in 1977 and increased from 7,067 thousand dozen in the first three quarters of 1977 to 7,918 thousand dozen in the first three quarters of 1978.

U.S. imports of corsets and girdles increased from 231 thousand dozen in 1976 to 269 thousand dozen in 1977 and increased from 188 thousand dozen in the first three quarters of 1977 to 294 thousand dozen in the first three quarters of 1978.

The Department conducted a survey of some of Willoform Manufacturing Company's customers and it was found that some of these customers had decreased purchases from Willoform and increased purchases of imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with brassieres and girdles produced at Willoform Manufacturing Company, Incorporated, New Yord, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Willoform Manufacturing Company, Incorporated, New York, New York engaged in employment related to the production of brassieres and girdles who became totally or partially separated from employment on or after November 2, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-3148 Filed 1-29-79; 8:45 am]

[4510-28-M]

[TA-W-4217]

WINDON MANUFACTURING CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4217: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 26, 1978 in response to a worker petition received on September 22, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's sport shirts at Windon Manufacturing Company in Winona, Mississippi. Windon Manufacturing Company is a subdivision of McGregor-Doniger, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591-46592). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of McGregor-Doninger, Incorporated, its customers, the U.D. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' woven dress, business, sport and uniform shirts increased from 65,004 thousand units in the first six months of 1977 to 76,216 thousand units in the first six months of 1978. The ratio of U.S. imports to domestic production increased from 36.8 percent in 1975 to 53.9 percent in 1976 and to 54.7 percent in 1977.

Windon Manufacturing Company was a wholly owned subsidiary of McGregor-Doniger, Incorporated producing men's sport shirts for sale by the parent firm. McGregor-Doniger, Incorporated increased its purchases of imported men's sport shirts 100 percent in 1977 as compared to 1976 and by 176.8 percent in the first eight

months of 1978 over the same period of 1977. Company imports were an increasing proportion of total sales in the first six months of 1978 compared to the first six months of 1977.

A Departmental survey of the customers of McGregor-Doniger, Incorporated revealed that several customers increased their purchases of imported men's sport shirts and decreased purchases from McGregor-Doniger, Incorporated from 1976 to 1977 and during the first nine months of 1978 compared to the like period of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sport shirts produced at Windon Manufacturing Company in Winona, Mississippi contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Windon Manufacturing Company in Winona, Mississippi who became totally or partially separated from employment on or after September 21, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22d day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-3149 Filed 1-29-79; 8:45 am]

[4510-29-M]

Pension and Welfare Benefit Programs

CLASS EXEMPTION FOR CERTAIN TRANSACTIONS INVOLVING EMPLOYEE BENEFIT PLANS AND BROKER-DEALERS (PROHIBITED TRANSACTION EXEMPTION 79-1)

AGENCY: Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This exemption allows persons who serve as fiduciaries for employee benefit plans to effect securities transactions for those plans under certain circumstances. In the absence of this exemption, the effecting of such transactions might be prohibited by the Employee Retirement Income Security Act of 1974 (hereinafter the Act or ERISA) and the Internal Revenue Code of 1954 (hereinafter the Code). The exemption will replace a temporary exemption which was granted in October, 1975 and which will expire on April 30, 1979 pursuant to an extension being granted herein. The permanent exemption contains a number of conditions not present in the temporary exemption now in effect.

EFFECTIVE DATES: January 30, 1979, as to the temporary exemption; May 1, 1979, as to the permanent exemption.

FOR FURTHER INFORMATION CONTACT:

Federic G. Burke, Office of Fiduciary Standards, Division of Exemptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-8195. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On November 24, 1978 notice was published in the FEDERAL REGISTER (43 FR 55005) that the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as the Agencies) had under consideration a proposed class exemption from the restrictions of section 406 of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) of the Code.[1] The proposed class exemption, requested in applications filed by the Securities Industry Association (SIA)[2] and by seven broker-dealer firms,[3] applies to certain securities transactions effected on behalf of employee benefit plans by persons who are fiduciaries for those plans. As further discussed below, a temporary class exemption which is now in effect and which permits such transactions is due to expire on February 1, 1979.[4]

Upon consideration of the comments and testimony received, the Department of Labor (the Department) is adopting the proposed exemption with certain modifications, including an extension of the existing temporary exemption. Discussed below are the exemption's provisions and the major public comments.

I. DESCRIPTION OF THE EXEMPTION

Until April 30, 1979, the effecting of securities transactions on behalf of employee benefit plans by persons who are fiduciaries with respect to those plans will be covered by paragraph I(a) of Prohibited Transaction Exemption 75-1. That exemption, as original adopted, was to expire on May 1, 1978[5], was extended by Prohibited Transaction Exemption 78-10 until February 1, 1979,[6] and is being further extended in the accompanying exemption. The existing temporary exemption authorizes persons who ordinarily effected brokerage and incidental clearance, stettlement or custodial services on May 1, 1975 to continue to furnish those services until April 30, 1979.

Unlike the temporary exemption contained in paragraph I(a) of Prohibited Transaction Exemption 75-1, the permanent class exemption being adopted herein generally conditions the effecting or executing[7] of securities transactions on behalf of a plan upon a person's complying with a number of specific requirements designed to protect the interests of plan participants and beneficiaries.[8] The exemption is available to fiduciaries except, generally, when a person is a fiduciary with respect to a plan by reason of being a plan trustee or plan administrator, or is an employer of any employees covered by the plan. To engage in brokerage transactions on

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[1] The exemption was proposed, public comments were received and a public hearing was scheduled in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) as implemented by Executive Order 12108 (44 FR 1065, January 3, 1979) transferred the authority of the Secretary of the Treasurey to issue exemptions of the type requested to the Department of Labor. Thus, the Department of labor alone conducted the public hearing and is issuing this exemption.

[2] The SIA filed Exemption Application Nos. D-1026 and D-1114.

[3] Exemption Application No. D-1176.

[4] The Agencies in their notice published on November 24, 1978 allowed 30 days for written comments to be filed. The 30-day period, which is shorter than those the Agencies have provided in the past for some proposed exemptions, was deemed appropriate in view of the desirability of deciding whether any further relief should be granted in this area before the existing exemption expired.

[5] 40 FR 50845, October 31, 1975.

[6] 43 FR 32196, July 25, 1978. Although Prohibited Transaction Exemption 78-10 was adopted after May 1, 1978, it was made retroactive to that date.

[7] In most cases, a broker-dealer availing itself of the permanent class exemption will be required to comply with Rule 11a2-2(T) of the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934. That rule permits a broker-dealer to effect, but not to execute, securities transactions for accounts which it manages. Although the Department has not distinguished between the broker-dealer services of effecting and executing securities transactions in its exemption, a broker-dealer acting pursuant to the exemption in many cases will be able only to effect, and not to execute, for a plan because of the limitation set out in Rule 11a2-2(T).

[8] As discussed below, the limitations in the exemption are not applicable with respect to certain individual retirement accounts ("IRAs") or plans in which the only participants are partners or sole proprietors, or the spouses of such persons (certain "Keogh" or "H.R. 10" plans). Furthermore, as also discussed below, certain of the limitations are not applicable when a fiduciary is acting to "recapture" brokerage commissions for the plan.

behalf of a plan, a broker must receive written authorization, expressly permitting such activities, from a plan fiduciary who is independent of the broker. In most cases, the written authorization cannot be effective for more than one year unless the independent fiduciary approves its continuance in writting at least annually. Where the authorization takes the form of a contract that is binding upon the plan, the plan is required to have the right to terminate the contract, without penalty, upon not more than 60 days' notice to the broker.

The exemption places on the broker a duty to provide any information which it reasonably believes to be necessary, and which is reasonably available, to enable the independent plan fiduciary to determine whether to grant or renew an authorization to provide both advisory and brokerage services. Moreover, the independent fiduciary has the right to request, and the broker has the obligation to supply, any additional information reasonably necessary and available to make this determination.

The exemption also requires a person effecting or executing securities transactions on behalf of a plan to disclose periodically certain additional information to the authorizing plan fiduciary. Specifically, the broker must supply the fiduciary with a report not less frequently than every three months disclosing the total of all transaction-related charges incurred by the plan in connection with transactions in which the broker performed any of the functions permitted by the exemption. That report must also indicate the portion of the total transaction related charges the broker has retained and the portion it has paid to other persons for execution or other services. The report must also contain a statement that makes clear that brokerage commissions in the United States are not fixed by any stock exchange or by any other authority and are subject to negotiation. In addition, the independent plan fiduciary must be furnished with information concerning transaction-related commission rates which the broker anticipates assessing in the coming three months for transactions of the type normally entered into by the plan.

II. Discussion of Comments Received

A. *Unconditional Exemption for Certain Individual Retirement Accounts and Certain Keogh Plans.* The Department's regulation 29 CFR § 2510.3-2(d)(1) provides that Title I of ERISA is inapplicable to individual retirement accounts ("IRAs") as defined in section 408(a) of the Code, so long as certain conditions are met.[9] Furthermore, under the Department's regulation 29 CFR § 2510.3-3(b), "Keogh" or "H.R. 10" plans which cover only partners or sole proprietors, or their spouses, are not considered employee benefit plans within the meaning of section 3(3) of Title I of ERISA. Therefore, the providing of brokerage services to such IRAs and Keogh plans is not subject to the prohibited transaction provisions of Title I of ERISA, even in the absence of an exemption. Such IRAs and Keogh plans, however, remain subject to the prohibited transaction provisions of Title II of ERISA. Thus, persons who are fiduciaries and who provide brokerage services to the above-described IRAs or Keogh plans would have to comply with the conditions of the exemption, notwithstanding the inapplicability of Title I, unless additional relief is granted.

Certain commentators suggested that, where a fiduciary is performing brokerage services for an IRA or Keogh plan which is not subject to Title I of ERISA, the conditions of the exemption are not necessary to protect plan participants, because the participants are directly exercising control over their accounts. It was also argued that to require that those conditions be met would result in unnecessary costs being incurred by these IRAs and Keogh plans for brokerage services.[10] The Department believes that these arguments have merit and is amending the exemption to provide that certain conditions need not be met when persons provide brokerage services to an IRA of the type described in 29 CFR § 2510.3-2(d)(1) or to a Keogh plan of the type described in 29 CFR § 2510.3-3(b). It should be noted, however, that the conditions of the exemption must be met where a fiduciary performs brokerage services for any other type of IRA or Keogh plan.

(B) *Recapture Exception.* As noted above, the relief provided in the exemption being adopted is generally not available where the person providing brokerage services is a fiduciary by reason of being a plan trustee or administrator or an employer of employees covered under the plan.[11]

In the preamble to the proposed exemption, the Agencies noted that restricting the exemption in this manner would have the effect of preventing a plan administrator, plan trustee or employer from using a related broker-dealer organization to "recapture" brokerage commissions for the plan; that is, to perform brokerage services for the plan and to return or credit to the plan all profit earned in connection with such services. In response to the Agencies' request for comment concerning the practice of recapture in situations covered by the proposed exemption, certain commentators indicated that some investment managers, who are plan administrators, plan trustees, or employers of employees covered by a plan currently attempt to recapture brokerage commissions for employee benefit plans by offsetting against management fees charged those plans any allocable profit earned by the investment manager (or its broker-dealer subsidiary) in connection with effecting or executing brokerage transactions for those plans. The Department has decided to modify the condition making the exemption inapplicable to such persons by providing that a person who is a fiduciary by reason of being a trustee or administrator of a plan or an employer of employees covered by the plan may effect and execute securities transactions for the plan so long as it is doing so for the purpose of recapturing brokerage commissions for the plan.[12] The Department is also modifying the exemption to provide that, to the extent a fiduciary is acting to recapture brokerage commissions it need receive only an initial, and not an annual, written authorization from an independent plan fiduciary to engage in

[9] Under the regulation, Title I is inapplicable only if: (1) no contributions to the plan are made by the employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is to permit the sponsor to publicize the program, and to collect contributions on behalf of the sponsor through payroll deductions or dues checkoffs; and, (4) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

[10] In this regard, it might be noted that an IRA established by an individual is generally viewed as an account established by a "natural person" under section 11(a)(1)(E) of the Securities Exchange Act of 1934. *See* Securities Exchange Act Release No: 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978). To the extent that an IRA is viewed as a natural person, a broker-dealer managing the IRA can provide brokerage services for the account without complying with the requirements of the SEC's Rule 11a2-2(T).

[11] This condition is included because a broker having such a relationship to the plan might have so great an influence over the general operation of the plan that an independent plan fiduciary would not be able to examine critically and objectively multiple services arrangements, and thus approval of these arrangements by such a fiduciary might not be sufficient to protect plan participants and beneficiaries.

[12] Under section 408(b)(2) of ERISA and the Department's regulation 29 CFR § 2550.408b-2(e)(3) thereunder (as well as section 4975(d)(2) of the Code and regulation 26 CFR 54.4975-6 thereunder) a fiduciary may, without special exemption, perform services for a plan and be reimbursed for certain direct expenses incurred in connection with those services. The exemption granted herein is necessary to permit recapture to the extent that recapture might involve the allocation of *indirect* expenses, such as overhead costs, to the plan.

such activity.[13] A person providing brokerage services pursuant to a recapture arrangement, however, must comply with the other conditions contained in this exemption.

C. *Broker-Dealer Sponsored Plans.* One commentator argued that a broker-dealer should not be prevented from effecting and executing securities transactions on behalf of a plan covering its employees. The commentator contended that an employer's inability under the exemption to provide services to a plan which it sponsors would lead to increased costs for such a plan since it would be forced to arrange for brokerage services with outside organizations. The Department is not persuaded that this argument has merit. Broker-dealers may perform brokerage services for plans which they sponsor when such services are undertaken to recapture commissions, when such services are provided in accordance with the provisions of section 408(b)(2) or when such services are performed at no charge to the plan. On the other hand, the Department has determined that permitting the plan sponsor to supply brokerage services to the plan at a profit is unjustifiable, since an employer of employees covered by a plan, like a plan trustee or plan administrator might have a relationship to, and influence over, a plan that would not be limited sufficiently by the presence of an independent plan fiduciary.

D. *Form Used For Written Authorization.* After noting some similarity between the written authorization required by the Department in this exemption and an authorization required by the Securities and Exchange Commission (SEC) under Rule 11a2-2(T), one commentator asked if one document may be employed to satisfy the requirements of both agencies. Such procedure would satisfy the applicable condition of the class exemption, so long as the document used contains all information required by the exemption.

E. *Annual Renewal Requirement.* A number of commentators questioned the need for the independent plan fiduciary's written authorization to be renewed annually. Certain of those commentators suggested that annual renewal requirements in general are unnecessarily burdensome. Other commentators argued that such requirements would present practical problems for brokerage firms, since some plans might not respond to repeated requests for renewed authorization.

The Department has not adopted the suggestion that the annual renewal requirement be deleted from the exemption. The Department believes that such a requirement provides a continuing safeguard against the conflict of interest which exists when a plan fiduciary can select itself to provide brokrage services at a profit for a plan. As noted above, however, the Department has removed the annual renewal requirement for those persons providing services in connection with the recapture of commissions.

F. *Supplying Fiduciaries With Necessary Information.*

(1) *Information Reasonably Necessary.* As a condition to effecting or executing securities transactions on behalf of a plan, a broker must provide information it reasonably believes is necessary to enable the independent plan fiduciary to determine whether to grant or renew an authorization to provide multiple services. One commentator sugggested that this information should generally consist of schedules of commission rates and descriptions of alternative service packages. Such information about commission rates and available packages would seem to be helpful to a plan fiduicary; however, this information may not be all that is needed to allow a fiduciary to assess properly his plan's relationship with a broker-dealer. The question whether other information would be necessary would, of course, depend upon the circumstances.

(2) *Information Resonably Available.* It was argued by one commentator that requiring the broker to supply information that it "reasonbly believes to be necessary" is unfair because the broker could be forced to provide information about its competitors or business practices that it might not possess and could not easily obtain. The Department is amending the exemption to make clear that the person effecting or executing securities transactions must provide only information that is reasonably available to that person.[14]

G. *Reports of Transaction-Related Charges.* The proposed exemption contained a requirement that a broker-dealer provide an authorizing fiduciary with a report, not later than 30 days after the end of each calendar quarter, diclosing certain data about brokerage charges incurred by the plan during the preceding quarter. A number of issues concerning this requirement were raised in the testimony and comments received by the Department.

(1) *Time for Supply Reports.* The Department is modifying the exemption to permit these reports to be furnished not less frequently than every three months, without requiring that the reports necessarily be furnished at the end of each calendar quarter. This change is designed to assist broker-dealers who otherwise might be forced to re-program their data processing systems to provide statements at the end of calendar quarters.

In addition, certain commentators suggested that the length of time allowed for preparation of the periodic reports should be extended, since the reports must include data which may not be available to a broker-dealer until some time after the end of the three-month period. The Department has adopted this suggestion and is increasing the time for delivery of the periodic report to not later than 45 days after the end of the period to which the report relates.

(2) *Meaning of "Incurred by the Plan".* One commentator asked whether a broker-dealer engaging in services covered by the exemption on behalf of a pooled account in which employee benefit plans participate must diclose the total of transaction-related charges incurred by the pooled account or must disclose the allocable percentage of charges incurred by each plan participating in the account. A report showing each plan's allocable share of a pooled account's transaction-related charges, the commentator argued, would be of little value in informing plan fiduciaries of the nature and magnitude of the broker-dealer's services for the pooled account and

[13] At the hearing on the proposed exemption, the American Council of Life Insurance (ACLI) also argued that making the exemption unavailable to a broker who is a plan administrator, plan trustee or employer of employees covered by the plan and requiring annual approval by an independent plan fiduciary often would effectively preclude sponsors of pooled accounts in which plans participate from providing those accounts with brokerage services for profit pursuant to the exemption. In light of this argument, the ACLI requested special treatment for pooled accounts. The Department believes that the primary purpose of the exemption—i.e., permitting plans to secure brokerage services at lower costs and allowing plans, particularly smaller ones, to obtain individual investment management services where such services might not otherwise be available—does not require pooled accounts to be treated specially. In addition, the dangers presented by the potential conflict of interest which exists under the circumstances described above outweigh the benefit to be derived from permitting the sponsor to perform brokerage transactions for the account. For the reasons suggested in footnote 11, *supra*, it is doubtful that approval by an independent plan fiduciary would be a sufficient safeguard in such an arrangement. Thus, no special relief is being provided under the exemption to enable a sponsor of a pooled account to effect or execute for profit securities transaction on behalf of the account.

[14] It was also suggested that some information, which is available to the broker, might be proprietary. The Department is not prepared to permit plan fiduciaries to enter into arrangements under the class exemption without possessing all available and relevant information. If the broker determines that such necessary information must be withheld for business reasons, that plan may not enter into an arrangement with the broker under the class exemption.

would be an unnecessary expense. The Department is altering the exemption to clarify that broker-dealers engaging in securities transactions for pooled accounts pursuant to the exemption need disclose only the total of transaction-related charges incurred by the pooled account.

(3). *Computing Transaction-Related Charges.* Under the exemption, a person effecting or executing securities transactions on behalf of a plan is required to disclose to the authorizing fiduciary the amount of transaction-related charges retained by the broker, and the amount paid to other broker-dealers for execution or other services in connection with the transactions. Certain commentators maintained that broker-dealers have established compensation relationships with other broker-dealers that would make complying with this requirement difficult. The Department is not altering the condition requiring a breakdown of fees paid to other broker-dealers, because it would deem this condition to be satisfied by a reasonable approximation where precise figures are not available.[15]

H. *Fixed Brokerage Commissions.* One commentator pointed out that the required statement that brokerage commissions are not fixed by any stock exchange or other authority is inaccurate, since some foreign exchanges continue to establish commission rates. In view of this comment, the Department has amended the exemption to require a fiduciary effecting or executing securities transactions to state, in substance, in its report to the independent authorizing fiduciary that brokerage commissions in the United States are not fixed by any stock exchange or other authority and are subject to negotiation.

I. *Schedules of Anticipated Rates.* A number of commentators maintained that the availability of the exemption should not be conditioned on the authorizing plan fiduciary's receiving a schedule of anticipated commission rates. It was argued that such schedules might be of limited usefulness because a plan fiduciary is free to negotiate commissions with a broker-dealer before allowing the broker to execute any securities transaction. The Department believes, however, that the independent fiduciary will likely find anticipated commission rates helpful in determining whether to authorize a fiduciary to provide the plan with brokerage services. Therefore, the condition requiring disclosure of such rates is not being deleted from the exemption.

J. *Contract Terminations.* The proposed exemption provided in part that a contract between a broker-dealer and a plan covering services permitted by the exemption must be terminable by the plan on not more than 60 days' notice. The exemption has been modified to make clear that, where a contract relates both the services permitted by the exemption and to other matters, only the portion of the contract covering services permitted by the exemption, and not the entire contract, must be terminable by the plan on 60 days' notice.

K. *Replacing the Term "Broker-Dealer".* In their proposal, the Agencies used the term "broker-dealer" when referring to those individuals whose services might be covered by the exemption. The Department has replaced the term "broker-dealer" in the final exemption with the term "person" to make clear that the exemption applies with respect to any person who may be deemed to be effecting or executing securities transactions for a plan. As modified, the wording of the exemption also conforms to that used in Prohibited Transaction Exemption 75-1.

L. *Defining "Independent Plan Fiduciary".* A number of commentators suggested that the final exemption define "independent fiduciary". The Department does not believe it would be useful to attempt to anticipate and describe all situations in which a fiduciary might not be deemed to be independent for purposes of the exemption.

M. *Extending Prohibited Transaction Exemption 78-10.* In publishing the proposed exemption, the Agencies stated that they would consider extending Prohibited Transaction Exemption 78-10 to allow broker-dealers to complete certain adjustments made necessary by the proposed exemption. Based upon comments and testimony received, the Department has concluded that a 90-day extension of Prohibited Transaction Exemption 78-10 is appropriate to afford broker-dealers sufficient time to adapt their data processing systems to the proposed exemption and to disseminate to plan fiduciaries information and receive the written approval required by the exemption. Accordingly, the Department is extending Prohibited Transaction Exemption 78-10 until April 30, 1979, and is making the conditions of this exemption effective on May 1, 1979.

GENERAL INFORMATION: The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of participants and beneficiaries.

(2) This exemption is supplemental to, and not in derogation of, any other provision of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The class exemption is applicable to particular transaction only if the transaction satisfies the conditions specified in the class exemption.

EXEMPTION

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record including the written comments submitted in response to the notice of November 24, 1978, and the testimony given at the public hearing of January 3, 1979, the Department makes the following determinations:

(a) The class exemption set forth herein is administratively feasible;

(b) It is in the interests of plans and of their participants and beneficiaries; and

(c) It is protective of the rights of participants and beneficiaries of plans.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

I. Until April 30, 1979, the restrictions of section 406 of the Employee

[15] The Department notes that the SEC's Rule 11a2-2(T) requires a broker to disclose the amount of compensation it retains in connection with effecting transactions. To the extent that the broker makes precise computations to comply with the SEC rule, it would be able, and thus would be required, to supply the necessary information under the class exemption without relying upon approximations. The SEC staff has taken the position that where a precise computation of this amount is impossible or impracticable, an estimate stated within a range of not more than 10% (e.g., 75-85%) is acceptable for purposes of Rule 11a2-2(T), provided that certain conditions are met. *See* letter from SEC Division of Market Regulation to Bernard H. Garil, January 17, 1979. An estimate which conforms to the conditions of that letter would be acceptable for purposes of the exemption, where more precise computations are impossible or impracticable.

Retirement Income Security Act of 1974 (the Act), and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) of the Code, shall not apply to the effecting or executing of any securities transaction on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan, acting in such transaction as agent for the plan, and to the performance by such person of clearance, settlement, or custodial functions incidental to such transactions, if such person ordinarily and customarily effected such securities transactions and performed such functions on May 1, 1975.

II. Effective May 1, 1979, the restrictions of section 406 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the effecting or executing of any securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting is such transactions as agent for the plan and to the performance by such person of clearance, settlement, custodial or other functions incidental to such transactions provided that, except as provided in paragraphs (h) and (i) of this exemption, the following conditions are met:

(a) Such person is not a trustee or administrator of the plan or an employer of any employee covered by the plan;

(b) Such transactions are effected or executed and such other functions are performed pursuant to a written authorization executed by a fiduciary of the plan who is independent of such person;

(c) Such written authorization continues in effect for more than one year only if such continuance is authorized in writing, at least annually, by a plan fiduciary who is independent of such person;

(d) No such authorization is made or renewed unless the person receiving the authorization furnishes the authorizing plan fiduciary with any reasonably available information that the person receiving the authorization reasonably believes to be necessary to determine whether such authorization should be made or renewed and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request.

(e) The person effecting or executing such transactions or performing such other functions furnishes the authorizing fiduciary with a report containing the information described in this paragraph (e), not less frequently than every three months and not later than 45 days following the period to which the report relates. Such report shall disclose:

(i) the total of all transaction-related charges incurred by the plan during the preceding three months in connection with transactions in which such person performed any of the functions permitted by this exemption;

(ii) the amount of the transaction-related charges retained by such person and the amount of such charges paid to other persons for execution or other services; and

(iii) rates for transaction-related charges anticipated to be charged in the coming three months for transactions of the type normally entered into by the plan.

For purposes of paragraph (e) the words "incurred by the plan" shall be construed to mean " incurred by the pooled account" when such person effects or executes securities transactions or performs such other functions on behalf of a pooled account in which a plan participates;

(f) The report described in paragraph (e) of this exemption contains a statement to the effect that brokerage commissions in the United States are not fixed by any stock exchange or other authority and are subject to negotiation; and

(g) In any case where such transactions are effected or executed or such functions are performed pursuant to a contract to which the plan is a party, the portion of such contract which authorizes the effecting or executing of such transactions or the performing of such functions is terminable by the plan, without penalty, on not more than sixty days' notice.

(h) In any case where the person effecting or executing such transactions returns or credits to the plan all profits earned by such person in connection with such transactions, conditions (a) and (c) of this exemption shall not apply.

(i) In any case where the person effects or executes such transactions or performs such other functions on behalf of an individual retirement account which meets the conditions of 29 CFR § 2510.3-2(d), or on behalf of a plan, other than a training program, which has no employees within the meaning of 29 CFR § 2510.3-3, conditions (a) through (g) of this exemption shall not apply.

For purposes of this exemption:

(1) The term "person" shall include such person and any affiliate of such person.

(2) The term "affiliate" of a person shall include:

(a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(b) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such person; and

(c) Any corporation or partnership of which such person is an officer, director or partner.

Signed at Washington, D.C, this 23rd day of January 1979.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 79-2857 Filed 1-24-79; 12:09 pm]

[4510-29-M]

[Prohibited Transaction Exemption 79-2]

EMPLOYEE BENEFIT PLANS

Exemption From Prohibitions Respecting a Transaction Involving Daniel Industries, Inc. Employees' Profit Sharing and Retirement Plan (D-495)

AGENCIES: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Daniel Industries, Inc. Employees' Profit Sharing and Retirement Plan (the Plan) to sell a parcel of real property to Daniel Industries, Inc. (Daniel).

FOR FURTHER INFORMATION CONTACT:

Robert N. Sandler, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, telephone (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 7, 1978, notice was published in the FEDERAL REGISTER (43 FR 51880) of the pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of an exemption from the provisions of sections 406(a)(1), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed on behalf of Daniel.

The notice set forth a summary of the facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Agencies in Washington, D.C. The notice also in-

vited interested persons to submit comments on the requested exemption to the Department of Labor (the Department). In addition, the notice stated that any interested person might submit a written request that a hearing be held relating to the requested exemption.

No public comments or requests for a hearing were received by the Department.

The application was filed with both the Department and the Internal Revenue Service, and the notice of pendency of the exemption was issued by both Agencies. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this exemption is issued solely by the Department.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require among other things, a fiduciary to discharge his duties respecting the plan solely in the interests of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

EXEMPTION

In accordance with section 408(a) of the Act and Section 4975(c)(2) of the Code, the procedures set forth in ERISA Proc. 75-1 (40 FR 18471, April 28, 1975) and based upon the entire record, the Department makes the following determinations:

(i) The exemption is administratively feasible;

(ii) The exemption is in the interests of the Plan and of its participants and beneficiaries; and

(iii) The exemption is protective of the rights of participants and beneficiaries of the Plan.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Proc. 75-1.

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase of 13.881 acres of real property located in Houston, Harris Country, Texas by Daniel from the Plan for $1,130,000 cash, provided that such amount is not less than the fair market value of such property.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transactions consummated pursuant to the exemption.

Signed at Washington, D.C. this 19th day of January 1979.

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

[FR Doc. 79-3160 Filed 1-29-79; 8:45 am]

[4510-27-M]

Wage and Hour Division

CERTIFICATE AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended). The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Elder Mfg. Co., Webb City, MO; 10-31-78 to 10-30-79. (Men's and boys' shirts)

R. Fox, Ltd., Belleville, IL; 12-11-78 to 12-10-79; 10 learners for normal labor turnover purposes. (Men's pants)

Franklin Ferguson Co., Inc., Florala, AL; 12-19-78 to 12-18-79. (Men's and boys' shirts)

McCreary Mfg. Co., Stearns, KY; 12-8-78 to 12-7-79. (Men's shirts)

Monticello Mfg. Co., Monticello, KY; 12-8-78 to 12-7-79. (Men's and boys' shirts)

Rector Sportswear Corp., Rector, AR; 11-15-78 to 11-14-79. (Men's pants)

J. H. Rutter Rex Mfg., Co., New Orleans, LA; 10-12-78 to 10-11-79. (Men's shirts and pants)

Stapleton Garment Co., Inc., Stapleton, GA; 9-23-78 to 9-22-79. (Boy's and men's pants)

Sullcraft Mfg. Co., Inc., Dushore, PA; 10-25-78 to 10-24-79; 10 learners for normal labor turnover purposes. (Boys' and men's pajamas)

Wyoming Valley Garment Co., Wilkes-Bare, PA; 11-28-78 to 11-27-79; 10 learners for normal labor turnover purposes. (Men's slacks)

The following plant expansion certificate was issued authorizing the number of learners indicated.

Flushing Shirt Mfg. Co., Inc., Waynesburg, PA; 11-6-78 to 5-5-79; 20 learners for plant expansion purposes. (Men's shirts)

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35 as amended).

Junior Form Lingerie, Corp., Boswell, PA; 10-11-78 to 10-10-79; 5 percent of the total number of factory production workers for normal labor turnover purposes.

The following certificate was issued under the glove industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.60 to 522.65 as amended).

Burnham-Edina Mfg. Co., Edina, MO; 11-8-78 to 11-7-79; 5 learners for normal labor turnover purposes. (Work gloves)

Each learner certificate has been issued upon the representations of the employer which, among other things

were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR, Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before February 14, 1979.

Signed at Washington, D.C. this 22d day of January 1979.

ARTHUR H. KORN,
Authorized Representative of the Administrator.

[FR Doc. 79-3121 Filed 1-29-79; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

JANUARY 16, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in Room 807, from 9:00 a.m. to 5:30 p.m. on 14 February 1979.

The purpose of the meeting is to review applications in the Social Sciences that have been submitted to the General Research Program of the National Endowment for the Humanities, for projects beginning 1 March 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 79-3062 Filed 1-29-79; 8:45 am]

[7536-01-M]

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

JANUARY 15, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506, in room 1134, from 9 a.m. to 5:30 p.m. on February 15, 1979 and February 16, 1979.

The purpose of the meeting is to review the applications submitted to the Research Tools Program of the National Endowment for the Humanities, for projects in the fields of the History and Law beginning June 15, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chariman's Delegation of Authority to close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15 Street, N.W., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 79-3063 Filed 1-29-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-321 and 50-366]

GEORGIA POWER CO., ET AL.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Facility Operating License No. DPR-57 and Amendment No. 3 to Facility Operating License No. NPF-5 issued to Georgia Power Company, Oglethorpe Electric Membership Corporation, Municipal Electric Association of Georgia and City of Dalton, Georgia, which revised Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, located in Appling County, Georgia. The amendments are effective as of their date of issuance.

The amendments revise the surveillance requirements for the Reactor Protection System Power Supplies while the licensee replaces an inadequate undervoltage protection trip.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated January 18 and 19, 1979, (2) Amendment No. 62 to License No. DPR-57, (3) Amendment No. 3 to License No. NPF-5, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Appling County Public Library, Parker Street, Baxley, Georgia 31513. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 22nd day of January 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-3089 Filed 1-29-79; 8:45 am]

[7590-01-M]

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operat-

ing License No. DPR-36, issued to Maine Yankee Atomic Power Company, which revised Technical Specifications for operation of the Maine Yankee Atomic Power Station (the facility), located in Lincoln County, Maine. The amendment is effective as of its date of issuance.

The amendment deletes the monitoring requirements used to determine the effects of the condenser cooling water system on plankton and larval organisms and the effects of plant operation on the marine ecosystem of Back River and Montsweag Bay. The environmental report frequency has also been changed from semiannual to annual.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmentl impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to this action, see (1) the application for amendment June 27, 1978, (2) Amendment No. 43 to License No. DPR-36, and (3) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine. A copy of items (2) and (3) may be otained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 22nd day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-3090 Filed 1-29-79; 8:45 am]

[7590-01-M]

[Docket No. 50-289]

METROPOLITAN EDISON CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 48 to Facility Operating License No. DPR-50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (the licensees), which revised Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility) located in Dauphin County, Pennsylvania. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications for TMI-1 to permit removal to storage prior to the Cycle 5 refueling outage of the steel gate presently separating spent fuel pools A and B.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration. The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 26, 1978, as supplemented and revised January 11, 1979, (2) Amendment No. 48 to License No. DPR-50, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 18th day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-3091 Filed 1-29-79; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.144, "Auditing of Quality Assurance Programs for Nuclear Power Plants," describes a method acceptable to the NRC staff for complying with the Commission's regulations with regard to auditing of quality assurance programs for nuclear power plants. This guide endorses ANSI/ASME N45.2.12-1977, "Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 1.144 will, however, be particularly useful in evaluating the need for an early revision if received by March 30, 1979.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 22nd day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 79-3088 Filed 1-29-79; 8:45 am]

[7590-01-M]

[Docket No. 50—305]

WISCONSIN PUBLIC SERVICE CORP., ET AL. (KEWAUNEE NUCLEAR POWER PLANT)

Reconstitution of Board

Mr. Glenn O. Bright was a member of the Atomic Safety and Licensing Board for the above proceeding. Because of a schedule conflict Mr. Bright is unable to continue his service on this board.

Accordingly, Dr. Emmeth A. Luebke, whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed a member of this board. Reconstitution of the Board in this manner is in accordance with § 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland this 24th day of January 1979.

ROBERT M. LAZO,
Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79-3087 Filed 1-29-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 01/23/79 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes—

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

TENNESSEE VALLEY AUTHORITY

TVA/KUB Time-of-Day Posttest Questionnaire
TVA 6233C
Single-Time
110 Elec. Res. Customers Participating in T-O-D Test 110 Responses; 55 hours
Ellett, C.A., 395-5080

REVISONS

DEPARTMENT OF ENERGY

Housing Unit Energy Assessment
EIA-84
Single-Time
50 Households From the EIA-84 Sample 50 Responses; 75 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF LABOR

Bureau of Labor Statistics
Job Openings Pilot Survey and Monthly Report on Labor Turnover
DL-1219 & BLS 3115
Monthly
Non Agricultural Establishments 592,400 Responses; 80,980 hours
Off. of Federal Statistical Policy & Standard, 673-7974

EXTENSIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administration (Office of Ass't Sec'y)
Notice of Property Transfer and Application for Insurance Benefits
HUD 1025
On Occasion
FHA Approved Mortgagees 25,000 Responses; 6,250 hours
Strasser, A., 395-5080

Administration (Office of Ass't Sec'y)
Title I Claim For Loss
HUD 637
On Occasion
Banks, Savings & Loans, Etc. 18,000 Responses; 9,000 hours
Strasser, A., 395-5080

Housing Production and Mortgage Credit
Application for Project Mortgage Insurance
FHA-2013 NH-ICF 2013
On Occasion
All Multifamily Sponsors 4,100 Responses; 12,500 hours
Strasser, A., 395-5080

Housing Production and Mortgage Credit
Request for Extension of Title I Claim Period
FHA-299
On Occasion
Banks, Savings & Loans, Credit Unions, Etc. 10,000 Responses; 1,000 hours
Strasser, A., 395-5080

Housing Production and Mortgage Credit
Application for Homeownership Assistance Under Section 235(i)
FHA 3100
On Occasion
Seller Mortgagors and/or Mortgagees 100,000 Responses; 50,000 hours
Strasser, A., 395-5080

Housing Production and Mortgage Credit
Application for Tenant Eligibility for Rent Supplement
FHA 2501
On Occasion
Tenants Assisted by Housing Owner or Manager 50,000 Responses; 25,000 hours
Strasser, A., 395-5080

Housing Production and Mortgage Credit
Nonprofit Hospital—Section 242—Application for Project Mortgage Insurance
FHA-2013 (Hosp)
On Occasion
Project Sponsors 100 Responses; 50 hours
Strasser, A., 395-5080.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 79-3100 Filed 1-29-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

DEXTRINES AND SOLUBLE OR CHEMICALLY TREATED STARCHES DERIVED FROM POTATO STARCH FROM THE EUROPEAN ECONOMIC COMMUNITY

Receipt of Countervailing Duty Petition and Initiation of Investigation

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

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and an investigation is being initiated to determine whether or not benefits which constitute a bounty or grant within the meaning of the countervailing duty law are granted by the European Economic Community to manufacturers or exporters of potato starch derivatives. A preliminary determination will be made no later than June 8, 1979, and a final de-

termination no later than December 8, 1979.

EFFECTIVE DATE: January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: A petition was received in satisfactory form on December 8, 1978, from the Corn Refiners Association, Inc., Washington, D.C., alleging that payments conferred by the European Economic Community (EEC) upon the manufacture or exportation of dextrines and soluble or chemically treated starches derived from potato starch constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303). Member States of the European Community include Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxemburg, the Netherlands and the United Kingdom. Imports covered by this investigation are classified under item 493.30, Tariff Schedules of the United States (TSUS).

The petition alleges that the European Community has granted a production subsidy and premium payments to potato starch producers.

The petition further alleges that at least one potato starch producer in the Netherlands has received, and others may be eligible to receive, preferential financing and other financial assistance from the Government of the Netherlands for complying with environmental protection requirements.

The petitioner also has claimed that a high EEC import levy on corn indirectly benefits the potato starch manufacturers by placing EEC corn starch producers at a competitive disadvantage and therefore constitutes a bounty or grant. The Treasury Department, however, does not consider the imposition of a high import levy on corn to constitute a bounty or grant within the meaning of the countervailing duty law of the United States. Accordingly, there shall be no further investigation concerning this allegation.

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination within 6 months of the receipt of a petition in proper form and a final determination within 12 months of the receipt of such petition, as to whether or not any bounty or grant is being paid or bestowed within the meaning of the statute.

Therefore, a preliminary determination as to whether or not alleged payments or bestowals conferred by the EEC upon the manufacture, production or exportation of potato starch derivatives constitute a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended, will be made no later than June 8, 1979. A final determination will be made no later than December 8, 1979.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and § 159.47(c), Customs Regulations (19 CFR 159.47(c)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954 and § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 23, 1979.

[FR Doc. 79-3102 Filed 1-29-79; 8:45 am]

[4810-22-M]

TOMATO PRODUCTS FROM THE EUROPEAN COMMUNITY

Receipt of Countervailing Duty Petition and Initiation of Investigation

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

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: This notice is to advise the public that a petition has been received and an investigation is being initiated to determine whether or not benefits which constitute a bounty or grant within the meaning of the countervailing duty law are granted by the Commission of the European Community to manufacturers or producers of tomato products. A preliminary determination will be made no later than February 22, 1979, and a final determination no later than August 22, 1979.

EFFECTIVE DATE: January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W. Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: A petition in satisfactory form was received on August 22, 1978, alleging that payments made by the Commission of the European Community (EC) to manufacturers or producers of tomato products constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303). Imports covered by this investigation are tomato products provided for in items 141.65 and 141.66 of the Tariff Schedules of the United States, Annotated (TSUSA).

The bounties or grants are allegedly bestowed as a result of the authorization of payments to processors approved by the Commission of the EC. This action was announced in Regulation No. 1515/78 of June 30, 1978 (*Official Journal* No. L178/61).

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed as defined by the statute within six months of the receipt of a petition in proper form and a final decision within twelve months of the receipt of such petition. Therefore, a preliminary determination in this case will be made no later than February 22, 1979, and a final determination will be issued no later than August 22, 1979.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303 (a)(3)), and § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order 165, Revised November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 23, 1979.

[FR Doc. 79-3101 Filed 1-29-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 16]

ASSIGNMENT OF HEARINGS

JANUARY 25, 1979.

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 cancellations or postponements of hearings in which they are interested.

MC 89084 (Sub-6F), Interstate Heavy Hauling, Inc., now assigned for hearing on March 21, 1979, (3 days), at Portland, Oregon, in a hearing room to be later designated.

MC 129704 (Sub-2F), Clarence B. Blankenship DBA, Troy Cab Co., now assigned for continued hearing on February 13, 1979, at the Offices of Interstate Commerce Commission, Washington, DC.

MC-F 13727, Beaufort Transfer Company-Purchase-Langer Truck Line, Inc, now assigned March 15, 1979 (2 days), at St. Louis, Missouri in a hearing room to be later designated.

MC 133689 (Sub-230F), Overland Express, Inc., application dismissed.

MC 128257 (Sub-120), May Trucking Company, now assigned May 19, 1979 (3 days) at Portland, OR in a hearing room to be later designated.

MC 57591 (Sub-19F), Evans Delivery Company, Inc., now being assigned continued hearing February 26, 1979, at the offices Interstate Commerce Commission, Washington, D.C.

MC 143059 (Sub-24F), Mercer Transportation Co., now being assigned March 12, 1979 (1 week) at Portland, Oregon and will be held at in a location to be later designated.

AB 84 (Sub-2), Illinois Terminal Railroad Company Abandonment of Trackage Rights Over Illinois Central Gulf Railroad Company From Mont to Springfield in Madison, Macoupin, Montgomery, and Sangamon Counties and FD 28868 Illinois Terminal Railroad Company-Trackage Rights Over Illinois Central Gulf Railroad Company Between Springfield and Wood River, IL and FD 28870, Illinois Terminal Railroad Company Construction And Operation of A Line Of Railroad at Wood River, Madison County, IL now being assigned March 19, 1979 (1 week), at Springfield, Illinois in a hearing room to be later designated.

FD 21478, Great Northern Pacific and Burlington Lines, Inc., Merger, Etc., Great Northern Railway Company, et al. and FD 21478 (Sub-4), Great Northern Pacific and Burlington Lines Inc. Merger, Etc. Great Northern Railway Company, et al. now being assigned for prehearing February 6, 1979 at Washington, D.C. and will be held at the offices of the Interstate Commerce Commission.

36948, E & M Furniture & Appliance, Incorporated v. Burlington Northern, Inc., now being assigned for hearing March 13, 1979 (2 days) at St. Louis, Missouri and will be held in a hearing room to be later designated.

MC 58885 (Sub-33F), Atlanta, Motor Lines, Inc., now assigned for hearing on February 6, 1979, at Atlanta, Georgia is postponed indefinitely.

MC 124170 (Sub-90F), Frostways, Inc., now assigned for hearing on February 12, 1979, at New York, New York and will be held in Room E-2222, Federal Bldg.

MC 143059 (Sub-20F), Mercer Transportation Co., now assigned for hearing on February 12, 1979, at St. Louis, Missouri and will be held in U.S. Court and Customs House, Room 829.

MC 144420 (Sub-1F), Malibu Beach Boat Sales & Service, Co., Inc., now assigned for hearing on February 7, 1979, at St. Louis, Missouri and will be held in Room 829, U.S. Court and Custom House.

MC 144844 (Sub-1F), Ozark Transportation, Inc., now assigned for hearing on February 15, 1979, at St. Louis, Missouri and will be held in Court Room 3, 7th Floor, Bankruptcy Court.

MC 9812 (Sub-9F), C. F. Kolb Trucking Co. Inc., now assigned for hearing on February 13, 1979, at St. Louis, Missouri and will be held in Room 829, Federal Building, U.S. Court and Custom House.

MC 136602 (Sub-7F), Arizona Western Transport, Inc., now assigned for hearing on February 7, 1979, at Phoenix, Arizona and will be held in Federal Building and Post Office, Tax Court Room 235.

MC 107064 (Sub-129F), Steere Tank Lines, Inc., now assigned for hearing on February 12, 1979, at Albuquerque, New Mexico and will be held in The Institute of Law, Bratton Hall.

MC 126305 (Sub-88), Boyd Brothers Transportation Co. Inc., now assigned for hearing on February 8, 1979, at Birmingham, Alabama and will be held in the Wage and Hour Conference Room.

MC 143059 (Sub-21F), Mercer Transportation Co., now assigned for hearing on February 7, 1979, at Birmingham, Alabama and will be held in U.S. Court and Federal Building, Room 430.

MC 134922 (Sub-248), B. J. McAdams, Inc., now assigned for hearing on February 6, 1979, at Birmingham, Alabama and will be held in U.S. Court and Federal Building, Room 430.

AB 43 (Sub-50), Illinois Central Gulf Railroad Company Abandonment Between Wanilla and Byram, in Larence, Copiah and Hunds Counties, Mississippi, now assigned for hearing on February 12, 1979, at Jackson, Mississippi and will be held in Grand Jury Room, U.S. Courthouse.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-3115 Filed 1-29-79; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 25, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before February 14, 1979.

FSA NO. 43657, Korea Shipping Corporation, Ltd.'s No. 101, intermodal rates on general commodities in containers, from ports in Japan and Korea to rail carriers' terminals at U.S. Atlantic and Gulf Coast ports, by way of U.S. Pacific Coast ports, to be published in Trans-Pacific Freight Conference of Japan/Korea, Agent, Tariff No. 1, I.C.C. No. 1. Grounds for relief-water competition.

By the Commission.

H.G. HOMME, Jr.,
Secretary.

[FR Doc. 79-3114 Filed 1-29-79; 8:45 am]

[7035-01-M]

[Permanent Authority Decisions Volume No. 2]

PERMANENT AUTHORITY APPLICATIONS

Decision-Notice

Decided: January 5, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We Find:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code and the Commission's regulations. Except where specifically noted, this decision in neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that, applicant's operations shall conform to the provisions of 49 U.S.C. 10930 (1978) (formerly section 210 of the Interstate Commerce Act.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members, Boyle, Eaton, and Liberman. (Board Member Boyle not participating).

H. G. HOMME, Jr.,
Secretary.

MC 531 (Sub-365F), filed November 6, 1978. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Rd., P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals,* in bulk, in tank vehicles, from Lake Charles, LA, to points in TX. (Hearing site: Houston, TX.)

MC 531 (Sub-366F), filed November 6, 1978. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Rd., P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *vegetable oils,* in bulk, in tank vehicles, from points in NJ, to points in TX. (Hearing site: San Francisco, CA.)

MC 1334 (Sub-21F), filed September 13, 1978. Applicant: RITEWAY TRANSPORT, INC., 2131 W. Roosevelt, Phoenix, AZ 85005. Representative: Robert R. Digby, P.O. Box 6849, Phoenix, AZ 85005. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Windmill Ranch and Red Lake, AZ: from Windmill Ranch in Yavapia County, AZ over unnumbered county road to junction U.S. Hwy 89A, then over U.S. Hwy 89A, to junction U.S. Hwy 89, then over U.S. Hwy 89 to junction U.S. Hwy 160, then over U.S. Hwy 160 to Red Lake, and return over the same route, serving no intermediate points. (Hearing site: Phoenix, AZ.)

MC 3252 (Sub-106F), filed October 23, 1978. Applicant: MERRILL TRANSPORT CO., a corporation, 1037 Forest Avenue, Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *commodities,* in bulk, from Orrington, ME, (a) to points in NH, VT, MA, RI, CT, NY, NJ, and PA, and (b) to the ports of entry on the International Boundary line between the United States and Canada located in ME. (Hearing site: Portland, ME, or Boston, MA.)

MC 30844 (Sub-632F), filed October 26 1978. Applicant: KROBLIN REFRIGERATED EXPRESS, INC., P.O Box 5000, Waterloo, IA 50704. Representative: John P. Rhodes (Same as above). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *flour,* from Minneaplois, MN, to points in AR, IA, KS, MO, and OK; and (2) *foodstuffs and bird feed* (except commodities in bulk), from Minneapolis, New Ulm, and Wabasha, MN, to those points in the United States in and east of MN, WI, IL, KY, TN, MS, and LA. (Hearing site: St. Paul, MN.)

MC 31389 (Sub-263F), filed November 14, 1978. Applicant: MCLEAN TRUCKING COMPANY, a Corporation, P.O. Box 213, Winston-Salem, NC 27102. Representative: David F. Eshelman (same address as applicant). To operate as a *common carrier,* by motor vehicle, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Philadelphia and Allentown, PA, over PA Hwy 309, (2) between Allentown, PA and Somerville, NJ, over U.S. Hwy 22, (3) between Allentown and Scranton, PA, over PA Hwy 9, (4) between junction U.S. Hwy 22 and PA Hwy 33 and Scranton, PA, from junction U.S. Hwy 22 and PA Hwy 33 over PA Hwy 33 to junction PA Hwy 611 near Stroudsburg, PA, then over PA Hwy 611 to junction PA Hwy 423, then over PA Hwy 423 to junction Interstate Hwy 380, then over Interstate Hwy 380 to Scranton, and return over the same route, (5) between Bartonsville, PA and Netcong, NJ, over Interstate Hwy 80, (6) between junction Interstate Hwys 380 and 84 and Matamoras, PA, over Interstate Hwy 84, (7) between Matamoras, PA and Montgomery, NY, from Matamoras over Interstate Hwy 84 to junction NY Hwy 211, then over NY Hwy 211 to Montgomery, and return over the same route, (8) between Scranton and Shamokin Dam, PA, over U.S. Hwy 11, (9) between Scranton and Milford, PA, over U.S. Hwy 6, (10) between Scranton, PA and the PA-NY State line, (a) over U.S. Hwy 11, and (b) over Interstate Hwy 81, (11) between Scranton and Harrisburg, PA, over Interstate Hwy 81, (12) between junction Interstate Hwys 81

and 78 and Allentown, PA, over Interstate Hwy 78, (13) between Harrisburg, PA and the PA-NY State line, over U.S. Hwy 15, (14) between Scranton and Mansfield, PA, over U.S. Hwy 6, (15) between Williamsport and Towanda, PA, over U.S. Hwy 220, (16) between Towanda and Sayre, PA, over U.S. Hwy 220, (17) between junction Interstate Hwy 80 and PA Hwy 715 near Tannersville, PA and junction Interstate Hwy 80 and U.S. Hwy 15 at or near White Deer, PA, over Interstate Hwy 80, (18) between Harrisburg, and Lancaster, PA, from Harrisburg over PA Hwy 441 to junction PA Hwy 283, then over PA Hwy 283 to Lancaster, and return over the same route, (19) between Lancaster and Allentown, PA, over U.S. Hwy 222, (20) between Lancaster, PA and Conowingo, MD, over U.S. Hwy 222, (21) between Chambersburg and Philadelphia, PA, over U.S. Hwy 30, (22) between Harrisburg, PA and Baltimore, MD, over Interstate Hwy 83, (23) between Sunbury and Reading, PA, over PA Hwy 61, (24) between Philadelphia and Harrisburg, PA, over U.S. Hwy 422, (25) between Wilmington, DE and junction U.S. Hwy 30 and PA Hwy 100 near Exton, PA, from Wilmington over U.S. Hwy 202 to junction PA Hwy 100, then over PA Hwy 100 to junction U.S. Hwy 30, and return over the same route, (26) between Harrisburg and Pittsburgh, PA, from Harrisburg over Interstate Hwy 76 to junction U.S. Hwy 30 near Irwin, then over U.S. Hwy 30 to Pittsburgh, and return over the same route, (27) between Harrisburg, PA and junction Interstate Hwy 80 and U.S. Hwy 220, from Harrisburg over U.S Hwy 322 to junction U.S. Hwy 220 near Martha Furnace, PA, then over U.S. Hwy 220 to junction Interstate Hwy 80, and return over the same route, (28) between junction U.S. Hwy 322 and PA Hwy 144 and junction PA Hwy 144 and U.S. Hwy 220, over PA Hwy 144, (29) between junction Interstate Hwy 80 and U.S. Hwy 15 and West Middlesex, PA, over Interstate Hwy 80, serving junction Interstate Hwy 80 and U.S. Hwy 220 for the purposes of joinder only, (30) between the PA-MD State line and Harrisburg, PA, over U.S. Hwy 11, (31) between Harrisburg, PA and Nashville, TN, from Harrisburg, over Interstate Hwy 81 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Nashville, and return over the same route, (32), between Clarks Ferry and Sunbury, PA, over PA Hwy 147, (33) between Exton and Allentown, PA, from Exton over PA Hwy 100 to junction PA Hwy 9, then over PA Hwy 9 to Allentown, and return over the same route, (34) between Millersburg and Matamoras, PA, over U.S. Hwy 209, (35) between the PA-MD State line and Harrisburg, PA, over U.S. Hwy 15, (36) between junction Interstate Hwy 80 and PA Hwy 64 near Clintondale, PA and Lock Haven, PA, from junction Interstate Hwy 80 and PA Hwy 64 over PA Hwy 64 to junction U.S. Hwy 220, then over U.S. Hwy 220 to Lock Haven, and return over the same route, (37) between Lock Haven and Williamsport, PA, over U.S. Hwy 220, and (38) serving points in PA in and east of Tioga, Lycoming, Clinton, Union, Snyder, Juniata, and Franklin Counties as intermediate and off-route points in connection with the routes in (1) through (37) above. (Hearing site: Washington, DC.)

MC 42487 (Sub-884F), filed October 17, 1978. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a Delaware Corporation, 175 Linfield Drive, Menlo Park, CA 94025. Representative: H. P. Strong, P.O. Box 3062, Portland, OR 97208. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Marlin-Rockwell, Division of TRW, at or near Flowery Branch, GA, as off-route points in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Washington, DC, or Cleveland, OH.)

MC 48958 (Sub-167F), filed December 4, 1978. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., A Nebraska Corporation, 510 East 51st Avenue, P.O. Box 16404, Denver, CO 80216. Representative: Lee E. Lucero (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *vehicles* (except self-propelled), *freight carts, trucks, trailers, and wagons*, from the facilities of Hawkins Manufacturing Company, at or near Pierce, CO, to points in AZ, CA, NV, NM, OK, TX, and UT. (Hearing site: Denver, CO.)

MC 49567 (Sub-11F), filed October 12, 1978. Applicant: GOLDEN BROS., INC., 234 East McClure St., Kewanee, IL 61442. Representative: Donald S. Mullens, 4704 W. Irving Park Road, Chicago, IL 60641. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *heating systems and power boilers, and* (2) *parts* for the commodities in (1) above, from Kewanee, IL, to points in CA, GA, KY, NC, NJ, NV, OK, SC, TN, TX, VA, and WV, under continuing contracts with Kewanee Boiler Corporation, of Kewanee, IL. (Hearing site: Chicago, IL.)

MC 56244 (Sub-65F), filed October 27, 1978. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk and frozen foods), and *pet foods*, from Jessup, MD, to points in OH and those points in PA on north, and west of a line beginning at Lake Erie and extending along Interstate Hwy 79 to junction Interstate Hwy 76, then along Interstate Hwy 76 to the PA-OH State Line, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 59367 (Sub-129F), filed October 16, 1978. Applicant: DECKER TRUCK LINE, INC. P.O. Box 915, Fort Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *meats, meat products, meat byproducts, and articles distributed by meat-packing houses*, (except hides and commodities in bulk), and (b) *foodstuffs*, when transported in mixed loads with the commodities in (1)(a) above, from the facilities of Jones Dairy Farm, at Fort Atkinson and Jefferson, WI, to points in AZ, CA, and CO; (2) *meats, and meat products*, (except commodities in bulk), from the facilities of Stoppenback, Inc., at Jefferson, WI, to points in CA, CO, NM, OR, and WA; and (3) (a) *meats, meat products, meat byproducts, articles distributed by meat-packing houses, and foodstuffs*, (except hides and commodities in bulk), and (b) *materials and supplies* used in the manufacture and distribution of the commodities in (3)(a) above, (except commodities in bulk), between the facilities of Hillshire Farm Company, at or near New London, WI, on the one hand, and, on the other, those points in the United States in and west of LA, AR, MO, IL, and WI (except AK and HI), restricted in (1), (2), and (3) above to the transportation of traffic originating at the named origins or destined to the named destinations. (Hearing site: Milwaukee or Madison, WI.)

MC 59488 (Sub-45F), filed December 4, 1978. Applicant: SOUTHWESTERN TRANSPORTATION COMPANY, A Delaware Corporation, 1766 El Camino Real, P.O. Box 990, Burlingame, CA

94010. Representative: Lloyd M. Roach, 7600 South Central Expressway, P. O. Box 226187, Dallas, TX 75266. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Darling Store Fixtures, at or near Corning, AR, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Little Rock, AR, or Memphis, TN.)

NOTE.—Dual operations are involved in this proceeding.

NOTE.—The person or persons who appear to be engaged in common-control must either file an application under 49 U.S.C. § 11343(a) [formerly Section 5(2) of the Interstate Commerce Act], or submit an affidavit indicating why such approval is unnecessary.

MC 59957 (Sub-52F), filed October 12, 1978. Applicant: MOTOR FREIGHT EXPRESS, a Corporation, P. O. Box 1029, York, PA 17405. Representative: Walter M. F. Neugebauer (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities,* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Bard-Parker, Division of Becton Dickinson and Company, at or near Hancock, NY, to Chicago, IL, restricted to the transportation of traffic originating at the named origin and destined to the named destination. (Hearing site: Newark, NJ.)

MC 60612 (Sub-19F), filed November 8, 1978. Applicant: TISCHLER EXPRESS, INC., 8408 Elliston Drive, Wyndmoor, PA 19118. Representative: Ira G. Megdal, 499 Cooper Landing Road, Cherry Hill, NJ 08002. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities,* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Allentown, Williamsport, and Dupont, PA, on the one hand, and, on the other, Essington, PA, restricted to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Philadelphia, PA, or Camden, NJ.)

MC 69371 (Sub-10F), filed July 26, 1978, previously noticed in the FR of October 19, 1978. Applicant: NORMAN TRANSPORTATION LINES, INC., 6201 Lee Rd., Maple Heights, OH 44137. Representative: John H. Baker, 435 Delaware Ave., Buffalo, NY 14202. To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in by grocery and food business houses, and (2) *equipment, materials, and supplies* used in the conduct of grocery and food business houses, (except commodities in bulk, in tank vehicles), (a) between points in Lucas, Ottawa, Sandusky, Eire, Huron, Richland, Lorain, Ashland, Cuyhoga, Medina, Wayne, Lake, Geauga, Portage, Summit, Stark, Tuscarawas, Ashtabula, Trumbull, Mahoning, Columbiana, Jefferson, Carroll, and Harrison Counties, OH, Erie, Crawford, Warren, McKean, Mercer, Venango, Forest, Lawrence, Butler, Clarion, Armstrong, Allegheny, Westmoreland, Beaver, and Washington Counties, PA, Niagara, Erie, Chautauqua, Cattaraugus, Allegany, Steuben, Livingston, and Chemung Counties, NY, Brooke, Marshall, Ohio, Hancock, Harrison, Marion, Wood, Wetzel, Tyler, Doddridge, Upshur, Ritchie, and Pleasants Counties, WV, and (b) between Altoona, PA, on the one hand, and, on the other, those points named in (a) above, under continuing contract(s) in (1) and (2) above with The Great Atlantic & Pacific Tea Company, Inc., of Montvale, NJ, insofar as the following counties are concerned: Lucas, Ottawa, and Sandusky Counties, OH; Warren, Mckean, Armstrong, Allegheny, Westmoreland, and Washington Counties PA; Niagara, Erie, Chautauqua, Cattaraugus, Allegany, Steuben, Livingston, and Chemung Counties, NY; Brooke, Marshall, Ohio, Hancock, Harrison, Marion, Wood, Wetzel, Tyler, Doddridge, Upshur, Ritchie, and Pleasants Counties, WV. (Hearing site: Buffalo, NY.)

NOTE.—This republication modifies the commodity description and the contracting shipper statement.

MC 76074 (Sub-3F), filed September 7, 1978. Applicant: DEEHAN'S EXPRESS, INC., 32 O'Brien Avenue, Whitman, MA 02382. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (*1*) *general commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in MA; and (*2*) *steel and aluminum,* from Randloph, MA to points in RI. CONDITION FOR ISSUANCE OF A CERTIFICATE: Concidental cancellation at applicant's written request of its certificate of registration in MC 76074 (Sub-2). Hearing site: Boston, MA)

MC 82492 (Sub-207F), filed November 13, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: William C. Harris (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from the facilities of Cole's Bakeries, at or near Muskegon, MI, to those points in NY in and west of Broome, Cortland, Onodaga, and Oswego counties, those points in PA on and west of U.S. Hwy 219, and points in IN, KY, OH, and TN. (Hearing site: Chicago, IL, or Washington, DC.)

MC 96992 (Sub-12F), filed November 9, 1978. Applicant: HIGHWAY PIPELINE TRUCKING CO., a Corporation, P.O. Box 1517, Edinburg, TX 78539. Representative: Kenneth R. Hoffman, 1102 Perry-Brooks Building, Austin, TX 78701. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), (1) from the facilities used by Texsun Corporation, at or near Weslaco, Harlingen, and Corpus Christi, TX, to those points in the United States in and west of MI, OH, KY, TN, AL, and FL and (2) from the facilities used by Texsun Corporation, at or near Trafalgar and Plymouth, IN, to points in MN, IA, MO, WI, IL, MI, IN, KY, OH, PA, and WV. (Hearing Site: McAllen or Laredo, TX.)

MC 97394 (Sub-18F), filed September 8, 1978. Applicant: BOWLING GREEN EXPRESS, INC., Plum Springs Road, P.O. Box 1899, Bowling Green, KY 42101. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Louisville, KY, and Cincinnati, OH, over Interstate Hwy 71, serving no intermediate points. CONDITION: Prior or coincidental cancellation applicant's written request of applicant's duplicating alternate route authority in MC 97394 (Sub-16). (Hearing site: Cincinnati, OH.)

MC 105813 (Sub-250F), filed November 20, 1978. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th Street, P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago,

IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic film*, from Birmingham, AL, to points in IL, IN, KY, MI, MO, NY, OH, TN, and WI. (Hearing site: Birmingham, AL.)

MC 106074 (Sub-69F), filed October 23, 1978. Applicant: B & P MOTOR LINES, INC., P.O. Box 741, Forest City, NC 28043. Representative: Arlyn L. Westregren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Spencer Foods, Inc., at or near Schuyler, NE, to points in NC, SC, GA, and FL. (Hearing site: Omaha, NE.)

MC 106401 (Sub-58F), filed November 1, 1978. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Thomas G. Sloan (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of American Paper Tube Co., at or near Port Gibson, MS as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Jackson, MS, or Washington, DC.)

MC 107002 (Sub-537F), filed November 13, 1978. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: John J. Borth, P.O. Box 8573, Battlefield Station, Jackson, MS 39204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry chemicals*, in bulk, in tank vehicles, from Memphis, TN, to points in AR, AL, FL, KS, LA, MS, NC, OK, and SC. (Hearing site: Memphis, TN.)

MC 107012 (Sub-289F), filed November 9, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials and supplies* used in the manufacture of air conditioners (except commodities in bulk), from points in IL, IN, OH, MI, MD, KY, and TN, to the facilities of Fedders Corporation, at or near Edison, NH. (Hearing site: New York, NY, or Washington, DC.)

MC 107012 (Sub-290F), filed November 9, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass bowls*, from the facilities of Anchor-Hocking Inc., at or near Lancaster, OH, to the facilities of Sunbeam Appliance Company, at or near Dumas, AR and Chicago, IL. (Hearing site: Little Rock, AR, or Washington, DC.)

MC 107012 (Sub-291F), filed November 9, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture*, from the facilities of Fancher Furniture Co., at or near Salamanca, NY, to the facilities of Temple Stuart Co., at or near Baldwinville, MA. (Hearing site: Boston, MA, or Washington, DC.)

MC 107012 (Sub-292F), filed November 9, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *luggage*, from points in RI, to points in the United States (except AK and HI). (Hearing site: Providence, RI, or Boston, MA.)

MC 107012 (Sub-293F), filed November 9, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *glass containers and closures* for glass containers, (a) from the facilities of Ball Corporation, at or near Asheville, NC, to points in AL, AR, CA, CO, FL, GA, ID, IN, KY, LA, MS, NJ, NY, OH, OR, PA, TN, UT, VA, and WA, (b) from the facilities of Ball Corp., at or near El Monte, CA, to points in AR, CO, GA, ID, IL, IN, KS, MN, MO, NC, OK, OR, TX, UT, and WA, (c) from the facilities of Ball Corp., at or near Mundelein, IL, to points in AR, CA, CO, FL, GA, ID, IA, KS, KY, ME, MN, NJ, NY, NC, OK, OR, TX, UT, and WA; and (d) from the facilities of Ball Corp., at or near Okmulgee, OK, to points in AR, CA, CO, GA IA, IL, IN, ID, KS, LA, MO, NJ, NY, NC, OR, PA, TX UT, VA, and WA; (2) *metal containers* and *ends* for metal containers, (a) from the facilities of Ball Corp., at or near Fairfield, CA, to points in CO, FL, MO, NJ, OH, TX, and VA, (b) from the facilities of Ball Corp., at or near Golden, CO, to points in CA, FL, MI, OH, VA, and WY, (c) from the facilities of Ball Corp., at or near Williamsburg, VA, to points in CA, CO, FL, MD, MO, NJ, NC, OH, and TX, and (d) from the facilities of Ball Corp., at or near Findlay, OH, to points in the United States (except AK and HI); (3)(a) *glass containers, closures* for glass containers, and (b) *accessories and books* used in home canning, in mixed loads with glass containers and closures for glass containers, from facilities of Ball Corporation, at or near Muncie IN, to points in AL, AR, CA, CO, GA, IA, ID, KS, MN, NJ, NY, NC, OK, OR, PA, TN, TX, WA, and WY; and (4) *materials, supplies*, and *equipment* used in the manufacture of glass containers and metal containers and closures for glass containers and metal containers (except commodities in bulk), from points in the United States (except AK and HI), to the facilities of Ball Corporation, at or near (a) Asheville, NC, (b) El Monte and Fairfield, CA, (c) Findlay, OH, (d) Golden, CO, (e) Muncie, IN, (f) Mundelein, IL, (g) Okmulgee, OK, and (h) Williamsburg, VA. (Hearing Site: Indianapolis, IN, or Louisville, KY.)

MC 107012 (Sub-294F), filed November 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles*, from the facilities of The Vollrath Company, at or near Gallaway and Arlington, TN, to points in the United States (except AK and HI). (Hearing Site: Milwaukee, WI, or Chicago, IL.)

MC 107012 (Sub-295F), filed November 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gary M. Crist (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *kitchen applicances*, from the facilities of Munsey Products, Inc., at or near Little Rock, AR, to points in FL, GA, LA, NC, SC, TX,

and, VA. (Hearing Site: Little Rock, AR, or Washington, DC.)

MC 107012 (Sub-296F), filed November 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture*, from the facilities of the Rachlin Furniture of Carolina, Inc., at or near Winnsboro, SC, to points in IL, IN, MI, OH, TN, LA, KY, AL, FL, MS, MN, and IA. (Hearing Site: Columbia, SC, or Washington, DC.)

MC 107012 (Sub-297F), filed November 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture*, in cartons, from Lewisburg, PA, to points in TN. (Hearing Site: Philadelphia, PA, or Washington, DC.)

MC 107012 (Sub-300F), filed November 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *artificial Christmas trees*, from the facilities of Marathon Carey McFall Company, at or near Montgomery, Avis, Jersey Shores, and Harrisburg, PA, and Longview, TX, to points in the United States (except AK and HI). (Hearing Site: Harrisburg, PA, or Washington, DC.)

MC 107403 (Sub-1139F), filed November 17, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sugar*, in bulk, in tank and hopper-type vehicles, from points in LA, to points in AL, AR, FL, GA, IL, IN, KY, MI, MS, MO, NC, OH, OK, SC, TN, and TX. CONDITION: Pursuant to the Decision in MC-107403 (Sub-No. 1101F), served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC-107403 (Sub-No. 1101F), (Hearing site: Washington, DC.)

MC 107403 (Sub-1140F), filed November 17, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, from points in Madison Parish, LA, to points in AL, AR, CT, DE, FL, GA, IL, IN, KY, MS, MO, MD, MI, ME, NH, NJ, NC, OH, PA, RI, SC, TN, VA, VT, WI, WV, and DC. CONDITION: Pursuant to the Decision in MC-107403 (Sub-No. 1101F), served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC-107403 (Sub-No. 1101F), (Hearing site: Washington, DC.)

MC 107403 (Sub-1141F), filed November 20, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cement*, from the facilities of Atlantic Cement Company, Inc., at or near Ravena, NY, to points in OH, MI, and IN. CONDITION: Pursuant to the decision in MC-107403 (Sub-No. 1101F), served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC-107403 (Sub-No. 1101F), (Hearing site: Washington, DC.)

MC 107403 (Sub-1142F), filed, November 21, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *muriatic acid*, in bulk, in tank vehicles, from Birmingport, AL, to points in FL, GA, MS, NC, SC, and TN. CONDITION: Pursuant to the decision in MC-107403 Sub No. 1101F, served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC-107403 Sub 1101F. (Hearing site: Washington, DC.)

MC 107403 (Sub-1143F), filed November 21, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lubricating oils and hydraulic fluids*, in bulk, in tank vehicles, from Carrollton, GA, to points in AL, AR, LA, MS, TX, WV, and FL. CONDITION: Pursuant to the decision in MC-107403 Sub No. 1101F, served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC-107403 Sub 1101F. (Hearing site: Washington, DC.)

MC 10743 (Sub-1144F), filed November 21, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum lubricating oils and hydraulic systems fluids*, in bulk, in tank vehicles, from Carrollton, GA, to points in NC, SC, VA, and TN. CONDITION: Pursuant to the decision in MC-107403 Sub No. 1101F, served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC-107403 Sub 1101F. (Hearing site: Washington, DC.)

MC 10743 (Sub-1145F), filed November 21, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wax*, in bulk, in tank vehicles, from Lima, OH, to points in IN. CONDITION: Pursuant to the decision in MC-107403 Sub 1101F, served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC-107403 Sub 1101F. (Hearing site: Washington, DC.)

MC 108053 (Sub-152F), filed November 17, 1978. Applicant: LITTLE AUDREY'S TRANSPORTATION COMPANY, INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except in bulk), from points in IL, IN, MI, OH, and WI, to points in AZ, CA, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Chicago, IL.)

MC 108053 (Sub-154F), filed November 20, 1978. Applicant: LITTLE AUDREY'S TRANSPORTATION COMPANY, INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by food business

houses, from points in AZ and CA, to Bismarck and Fargo, ND, Mitchell, SD, Hopkins, MN, Des Moines, IA, Omaha, NE, Green Bay and Milwaukee, WI, Champaign, IL, and Fort Wayne, IN. (Hearing site: Omaha, NE.)

MC 108341 (Sub-120F), filed November 2, 1978. Applicant: MOSS TRUCKING COMPANY, INC., 3027 N. Tryon St., P.O. Box 8409, Charlotte, NC 28208. Representative: Jacks F. Counts, P.O. Box 26125, Charlotte, NC 28213. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *tractors* (except truck tractors, and tractors which weigh 15,000 pounds or more), from Portsmouth, VA, to points in VA, TN, NC, SC, and GA, restricted to the transportation of traffic having a prior movement by water. (Hearing site: Chicago, IL, or Washington, DC.)

MC 109443 (Sub-29F), filed November 20, 1978. Applicant: SEABOARD TANK LINES, INC., Monahan Avenue, Sunmore, PA 18512. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry litharge*, in bulk, from Dunmore, PA, to points in NC and SC. (Hearing site: Washington, DC.)

MC 110563 (Sub-253F), filed November 21, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery and confectionery products*, from Philadelphia, PA, to points in CO, IA, NE, KS, and Kansas City, MO. (Hearing site: Philadelphia, PA, or Washington, D.C.)

MC 112822 (Sub-467F), filed November 13, 1978. Applicant: BRAY LINES INCORPORATED, P.O. Box 1191, 1401 N. Little Street, Cushing, OK 74023. Representative: Dudley G. Sherrill (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats meat products and meat byproducts*, and *articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in CA, ID, MN, OR, UT, WA, and WI, restricted to the transportation of traffic originating at the named origin. (Hearing site: Wichita or Kansas City, KS.)

MC 113651 (Sub-296F), filed November 6, 1978. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Glen L. Gissing (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned and prepared foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Company, at or near Pittsburgh, PA, to points in KS, MN, MO, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the named destinations. (Hearing site: Pittsburgh, PA.)

MC 114273 (Sub-487F), filed November 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals and cleaning compounds*, (except commodities in bulk, in tank vehicles), from Macedonia, OH, to Albert Lea, MN, Cedar Rapids and Storm Lake, IA, Kansas City, MO, Omaha, NE, and Chicago, IL. CONDITION: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, D.C.)

MC 114273 (Sub-488F), filed November 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *railway car truck adapters*, from Canton, OH, to points in IA, IL, KS, MN, MO, and NE. CONDITION: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-489F), filed November 21, 1978. Applicant: CRST, INC., P.O Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *agricultural chemicals and pesticides*, (except commodities in bulk, in tank vehicles), from Clinton, IA, to Columbus, OH. CONDITION: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-490F), filed November 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and feed business houses, between Clinton and Davenport, IA, on the one hand, and, on the other, points in IN, MI, and OH, restricted to the transportation of traffic originating at or destined to the facilities of Ralston Purina Company. CONDITION: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-491F), filed November 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals and plastic materials*, (except commodities in bulk, in tank vehicles), from the facilities of BASF Wyandotte, at Finderne, South Brunswick, and Washington, NJ, to Chicago, IL, and Cedar Rapids and Sumner, IA, restricted to the transportation of traffic originating at the named origin facilities. CONDITION: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-492F), filed November 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses* as described in sections A and C of Appendix I to the report in *Descriptions in*

Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in CO, DE, IL, IN, IA, KY, MD, MI, MN, MO, NE, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VA, WV, WI, and DC, restricted to the transportation of traffic originating at the named origin facilities. CONDITION: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114457 (Sub-444F), filed October 24, 1978. Applicant: DART TRANSIT COMPANY, a Corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rubber articles, plastic articles, rubber materials, and plastic materials,* from the facilities of Entek Corporation of America, at Irving, TX, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), from the destination points in (1) above, to the origin facilities in (1) above. (Hearing site: Austin, TX, or St. Paul, MN.)

MC 114552 (Sub-183F), filed November 13, 1978. Applicant: SENN TRUCKING COMPANY, a Corporation, Post Office Drawer 220, Newberry, SC 29108. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., Post Office Box 1240, Arlington, VA 22210. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *composition board,* and *materials* and *supplies* used in the installation and distribution of composition board (except commodities in bulk), (1) from Trenton, NJ, to points in VA, NC, SC, GA, FL, AL, TN, KY, AR, MS, LA, OK, and TX, and (2) from Jamesburg, NJ, to points in VA, NC, SC, GA, FL, AL, TN, KY, and MS. (Hearing site: Washington, DC.)

MC 114632 (Sub-186F), filed November 9, 1978. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David Peterson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts,* and *articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in the United States (except AK, HI, and KS), restricted to the transportation of traffic originating at the named origin facilities. (Hearing Site: Wichita or Kansas City, KS.)

NOTE.—Dual operations are involved in this proceeding.

MC 114632 (Sub-187F), filed November 13, 1978. Applicant: APPLE LINES, INC., P. O. Box 287, Madison, SD 57042. Representative: David Peterson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *gypsum, gypsum products,* and *materials* and *supplies* used in the manufacture, installation, and distribution of gypsum products, between the facilities of Georgia-Pacific Corporation, Gypsum Division, at Cuba, MO, on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: Philadelphia, PA, or Kansas City, MO.)

NOTE.—Dual operations are involved in this proceeding.

MC 114632 (Sub-188F), filed November 13, 1978. Applicant: APPLE LINES, INC., P. O. Box 287, Madison, SD 57042. Representative: David Peterson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foodstuffs* (except commodities in bulk), from the facilities of Continental Freezers of Illinois, at or near Chicago, IL, to points in CO, IA, IN, KS, KY, MI, MO, NE, ND, OH, SD, and WI. (Hearing site: Chicago, IL.)

NOTE.—Dual operations are involved in this proceeding.

MC 114632 (Sub-189F), filed November 13, 1978. Applicant: APPLE LINES, INC., P. O. Box 287, Madison, SD 57042. Representative: David Peterson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from the facilities of United States Cold Storage, at or near Chicago, IL, to points in IN, IA, KS, KY, MN, MO, NE, ND, OH, PA, SD, and WI. (Hearing site: Chicago, IL.)

NOTE.—Dual operations are involved in this proceeding.

MC 115162 (Sub-441F), filed November 6, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *furfural residue,* from Memphis, TN, to points in AL, FL, MS, GA, NC, SC, TX, LA, MO, MD, OK, and AR. (Hearing site: Memphis, TN, or Birmingham, AL.)

MC 115601 (Sub-26F), filed November 1, 1978. Applicant: BROOKS ARMORED CAR SERVICE, INC., 13 East 35th St., Wilmington, DE 19802. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW., Washington, DC 20036. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *coin, currency, negotiable and non-negotiable instruments and securities,* (1) between Philadelphia, PA, and Wilmington, DE, on the one hand, and, on the other, points in Mercer, Ocean Burlington, Gloucester, Salem, Camden, Cumberland, Cape May, and Atlantic Counties, NJ, and (2) between Wilmington, DE, on the one hand, and, on the other, those points in PA in and east of McKean, Elk, Clearfield, Cambria, and Bedford Counties, PA, under continuing contract(s) with the Federal Reserve Bank of Philadelphia. (Hearing site: Philadelphia, PA.)

NOTE.—Dual operations are involved in this proceeding.

MC 115841 (Sub-653F), filed November 2, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666—11th Street, NW, Washington, DC 20001. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products, meat by-products, and articles* distributed by meat packinghouses, and (2) *foodstuffs* (except the commodities in (1) above), from MN, IL, and WI, to points in NC, SC, TN, GA, FL, AL, MS, AR, LA, OK, TX, NM, AZ, CA, WA, and OR. (Hearing site: Chicago, IL, or Minneapolis, MN.)

MC 116077 (Sub-401F), filed October 24, 1978. Applicant: DSI TRANSPORTS, INC., 4550 Post Oak Place Drive, P.O. BOX 1505, Houston, TX 77001. Representative: Pat H. Robertson, 500 West Sixteenth St., P.O. BOX 1505, Houston, TX 78767. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *titanium dioxide,* in bulk, in tank vehicles,

from Hamilton, MS, to points in KY and MI. (Hearing site: Dallas, TX, or New Orleans, LA.)

MC 116371 (Sub-11F), filed October 31, 1978. Applicant: LIQUID CARGO LINES LIMITED, P.O. Box 269, Clarkson, Ontario, Canada. Representative: John W. Ester, 100 West Long Lake Rd., Suite 102, Bloomfield Hills, MI 48013. To operate as a *common carrier*, by motor vehicle, in foreign commerce, over irregular routes, transporting *liquid sugar*, in bulk, in tank vehicles, from ports of entry on the International Boundary line between the United States and Canada on the Niagara River, to points in NY, OH, and PA. (Hearing site: Buffalo, NY, or Detroit, MI.)

MC 116725 (Sub-27F), filed December 6, 1978. Applicant: INDIAN VALLEY ENTERPRISES, INC., 855 Maple Avenue, Harleysville, PA 19438. Representative: John W. Frane, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. To operate as *a common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic lamp holders, metal stampings, plastic diffusers, and fluorescent lighting fixture parts*, (2) *parts for the commodities* in (1) above, and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, from Perkasie and Philadelphia, PA, and Livingston, Paterson, and Newark, NJ, to the facilities of American Fluroescent Corporation, at Chicago, IL, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Harrisburg, PA.)

MC 116763 (Sub-457F), filed November 20, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same as above). To operate as a *common carrier*, motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *furniture, such commodities* as are dealt in by discount and variety stores, (except foodstuffs, furniture, and commodities in bulk), and (2) *foodstuffs*, (except commodities in bulk, *and furniture*, in mixed loads with the commodities in (1) above, from the facilities of K-Mart Corporation, at or near Charlotte, NC, to points in IA, IL, IN, MI, MN, OH, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the named destinations. (Hearing site: Detroit, MI.)

MC 117786 (Sub-35F), filed October 16, 1978. Applicant: RILEY WHITTLE, INC., a Kentucky Corporation, P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Road, Phoenix, AZ 85014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *fats and oils*, (except commodities in bulk), *restaurant supplies, foodstuffs, and restaurant furniture and fixtures*, and (2) *shellfish, poultry, fresh agricultural commodities and fish*, the transportation of which is otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) [formerly Section 203(b)(6) of the Interstate Commerce Act], in mixed loads with the commodities in (1) above, between Carpinteria, CA, and Florence, KY, restricted to the transportation of traffic originating at or destined to the facilities used by Sambo's Restaurants, Inc. (Hearing site: Phoenix, AZ.)

MC 117883 (Sub-233F), filed November 21, 1978. Applicant: SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan, P.O. Box 62, Versailles, OH 45380. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and converters of paper and paper products, (except commodities in bulk, in tank vehicles), from the facilities of Diamond International Corporation, at Cincinnati, Hamilton, and Middletown, OH, to points in CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NJ, NH, NY, PA, RI, VT, VA, WV, WI, and DC, restricted to the transporation of traffic originating at the named origin facilities and destined to the named destination points. (Hearing site: Columbus, OH or Washington, DC.)

MC 119441 (Sub-46F), filed November 2, 1978. Applicant: BAKER HIWAY EXPRESS, INC., P.O. Box 506, 555 Commercial Parkway, Dover, OH 44622. Representative: E. H. van Deusen, P.O. Box 97, 220 West Bridge St. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *clay* (except in bulk), from points in GA and SC, to points in OH. (Hearing site: Columbus, OH.)

MC 123255 (Sub-187F), filed December 4, 1978. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, OH 43055. Representative: C.F. Schnee, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverage*, from Newark, NJ, to points in MI. (Hearing site: Columbus, OH.)

MC 123255 (Sub-188F), filed December 4, 1978. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, OH 43055. Representative: C.F. Schnee, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *bakery goods*, from the facilities of Interbake Foods, Inc., at or near Richmond, VA, to points in IL, IN, KY, MI, NJ, OH, PA, and WI. (Hearing site: Columbus, OH.)

MC 123407 (Sub-508F), filed October 23, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: H. E. MILLER, JR. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *roofing tile*, from Belvidere, IL, to points in IL, IN, IA, OH, and WI. (Hearing site: Chicago, IL.)

MC 123872 (Sub-93F), filed November 8, 1978. Applicant: W & L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Allen E. Bowman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, and meat byproducts*, and *articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk, in tank vehicles), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in GA, NC, SC, VA, and TN, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Washington, DC, or Dodge City, KS.)

MC 124692 (Sub-249F), filed November 14, 1978. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT 59801. Representative: James B. Hovland, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Cascade Steel Rolling Mills, at or near McMinnville, OR, to points in CA. (Hearing Site: Portland, OR, or San Francisco, CA.)

MC 125433 (Sub-173F), filed November 16, 1978. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: David J. Lister (same as above). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *insulated building and roofing panels, and equipment, materials, and supplies* used in the installation of insulated building and roofing panels, (except

commodities in bulk), from the facilities of Panel Era Corporation, at or near (a) Chicago, IL, (b) Atlanta, GA, (c) Dallas, TX, (d) Salt Lake City, UT, and (e) Washington, DC, to points in the United States (except HI), restricted to the transportation of traffic originating at the named facilities, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), from points in the United States (except HI) to the origin facilities named in (1) above, restricted in to the transportation of traffic destined to the indicated facilities. (Hearing site: Salt Lake City, UT, or Dallas, TX.)

MC 125691 (Sub-3F), filed October 19, 1978. Applicant: MICHAEL J. FITZGIBBON, d.b.a. FITZ FREIGHT TRANSFER, P.O. Box 1144, Miami, OK 74354. Representative: David A. Cherry, P.O. Box 1540, Edmond, OK 73034. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of George A. Hormel & Co., at (a) Miami, OK, and (b) Rockville and Springfield, MO, to points in AR, KS, MO, and OK. (Hearing site; Tulsa, OK, or Springfield, MO.)

MC 126057 (Sub-5F), filed September 19, 1978. Applicant: MARQUAND EXPRESS, INC., P.O. Box 149, Marquand, MO 63665. Representative: William H. Shawn, 1730 M St., NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Marquand, MO, and points between 15 miles of Marquand, on the one hand, and, on the other, points in MO. (Hearing site: St. Louis or Jefferson City, MO.)

MC 127042 (Sub-230F), filed November 8, 1978. Applicant: HAGEN, INC., P.O. Box 98—Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in AZ, CA, CO, ID, IL, IN, IA, MI, MO, MN, MT, NE, NV, ND, OR, SD, UT, WA, WI, and WY, restricted to the transportation of traffic originating at the named origin facilities (Hearing Site: Wichita, KS.)

MC 127042 (Sub-231F), filed November 8, 1978. Applicant: HAGEN, INC., P.O. Box 98—Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), (1) from the facilities of Wilson Foods Corporation, at (a) Albert Lea, MN and (b) Cherokee, IA, to points in CA, OR, UT, and WA, and (2) from the facilities of Wilson Foods Corporation at Des Moines, IA, to points in CA, restricted in (1) and (2) to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing Site: Dallas, TX, or Kansas City, MO.)

MC 128273 (Sub-324F), filed November 17, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers, converters, and printers of paper and paper products, (except commodities in bulk, in tank vehicles), between the facilities of Kimberly-Clark Corporation, in Calhoun County, MI, on the one hand, and, on the other, points in the United States (except AK, HI, and MI). (Hearing site: Detroit, MI, or Washington, DC.)

MC 128353 (Sub-5F), filed November 16, 1978. Applicant: LEE J. PRENTICE, Box 325, West Bend, IA 50597. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *crushed rock*, in bulk, from points in Webster, Humbolt, and Pocahontas Counties, IA, to the facilities of Southern Minnesota Beet Sugar Coop, at or near Renville, MN. (Hearing site: Minneapolis, MN.)

MC 128951 (Sub-21F), filed November 2, 1978. Applicant: ROBERT H. DITTRICH, d/b/a BOB DITTRICH TRUCKING, P.O. Box 816, New Ulm, MN 56073. Representative: Charles E. Nieman, 1110 Northwestern Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fertilizer and fertilizer ingredients*, from Minneapolis, MN, to points in IA, WI, ND, SD, and NE. (Hearing site: Minneapolis or St. Paul, MN.)

NOTE.—DUAL OPERATIONS ARE INVOLVED.

MC 129788 (Sub-15F), filed July 6, 1978. Applicant: NASS TRUCK LINES, INC., a Delaware Corporation, P.O. Box 'H', Wenona, IL 61377. Representative: E. Stephen Heisley, 805 McLachen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, in interstate and foreign commerce, transporting *glass containers*, from Streator, IL, to points in the Lower Peninsula of MI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 133095 (Sub-226F); filed December 4, 1978. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a *common carrier*, by motor vehicle, in interstate of foreign commerce, over irregular routes, transporting *alcoholic beverages* (except in bulk), from New Orleans, LA, to points in LA, TX, AR, TN, OH, FL, GA, CO, OK, SC, IL, MO, and CA. (Hearing site: Dallas, TX.)

MC 133523 (Sub-6F), filed November 20, 1978. Applicant: EUGENE STONE TRUCKING, INC., 11449 Valley View Road, Northfield, OH 44067. Representative: Richard H. Brandon, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017. To operate as a *contract carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commmission, commodities in bulk, and those requiring special equipment), between those points in the United States in and east of WI, IA, MO, AR, and LA, under continuing contract(s) with The Standard Oil Company of Ohio. (Hearing site: Columbus, OH.)

MC 133591 (Sub-53F), filed November 2, 1978. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, 58 South Main St., Winchester, KY 40391. To operate as a *common carrier*, by motor vehicle

in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of M & M/Mars, Division of Mars, Inc., at or near Cleveland, TN, to points in IL, IA, MO, AR, LA, NE, KS, OK, TX, NM, AZ, CO, UT, NV, CA, OR, and WA, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: St. Louis, MO, or Washington, DC.)

NOTE.—Dual operations are involved.

MC 133655 (Sub-137F), filed December 6, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of wood products, between Klamath Falls and Bend, OR, and El Paso and Amarillo, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 134405 (Sub-56F), filed December 4, 1978. Applicant: BACON TRANSPORT COMPANY, a corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *petroleum, petroleum products, and chemicals*, in bulk, in tank vehicles, between points in AR, KS, MO, OK, and TX. (Hearing site: Oklahoma City, OK, or Dallas, TX.)

MC 134645 (Sub-29F), filed December 7, 1978. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Avenue South, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials, equipment, and supplies* used in the manufacture and distribution of refrigerators, freezers, and cooling units, (except commodities in bulk), from points in the United States (except AK and HI), to the facilities of Franklin Manufacturing Company, at St. Cloud, MN. (Hearing site: St. Paul, MN.)

NOTE.—Dual operations are involved.

MC 134872 (Sub-12F), filed October 23, 1978. Applicant: GOSSELIN EXPRESS, LTD., a corporation, 141 Smith Boulevard, Thetford Mines, Quebec, Canada. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12207. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *agricultural implements, and* (2) *parts and accessories* for agricultural implements, from the ports of entry on the international boundary line between the United States and Canada located at Champlain, NY, Derby Line, VT, and Detroit, Port Huron, and Sault Ste Marie, MT, to points in NY, TN, IL, IN, MT, and ND. (Hearing site: Albany, NY.)

MC 135197 (Sub-15F), filed October 4, 1978. Applicant: LEESER TRANSPORTATION, INC., Route 3, Palmyra, MO 63461. Representative: Leonard A. Jaskiewicz, 1730 M St., NW, Suite 501, Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *animal and poultry feed and feed ingredients*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of American Cyanamid Company, in Marion County, MO, on the one hand, and, on the other, points in AL, AZ, CA, CT, DE, FL, GA, ID, ME, MD, MA, NV, NJ, NH, NM, NC, OR, PA, RI, SC, UT, VT, VA, WA, and WV. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 135283 (Sub-46F), filed November 20, 1978. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., 432 So. Stuhr Road, P.O. Box 2122, Grand Island, NE 68801. Representative: Lavern R. Holdeman, 521 South 14th Street, Suite 500, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *electric motors*, from Fort Smith, AR, to the facilities of Caldwell Manufacturing Co., a Division of Chief Industries, Inc., at or near Kearney, NE, restricted to the transportation of traffic originating at the named origin point and destined to the named facilities. (Hearing site: Kearney or Grand Island, NE.)

MC 136916 (Sub-20F), filed October 17, 1978. Applicant: LENAPE TRANSPORTATION CO., INC., P.O. Box 227, Lafayette, NJ 07848. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt and salt products*, in bulk, from Port Newark, NJ, to points in CT, DE, ME, MD, MA, NH, NY, PA, RI, VA, VT, and DC. (Hearing site: New York, NY.)

MC 138157 (Sub-97F), filed October 20, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, a California Corporation, 2931 South Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned foods and canned pet foods*, from San Diego, CA, to points in AL, AR, FL, GA, IL, IN, KY, LA, MI, MS, NC, NJ, OH, OK, PA, SC, TN, TX, VA, and WV. (Hearing site: San Diego or Los Angeles, CA.)

NOTE.—Dual operations are involved.

MC 138432 (Sub-10F), filed November 6, 1978. Applicant: GARLAND GEHRKE, Rural Route 1, Lincoln, IL 62656. Representative: James R. Madler, 120 W. Madison St., Rm. 718, Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *non-alcoholic beverages*, from St. Louis, MO, to Bloomington and Lincoln, IL. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 138635 (Sub-69F), filed December 6, 1978. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3961, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Munford Refrigerated Warehouse, Division of Munford Incorporated, at or near Atlanta, GA, to points in AL, DE, LA, MS, NC, SC, TN, WV, and VA. (Hearing site: Atlanta, GA.)

NOTE.—Dual operations are involved.

MC 138882 (Sub-174F), filed November 13, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned and bottled foodstuffs*, (1) from the facilities of Bruce Foods Corp., at Cade and Lozes, LA, to points in AL, FL, GA, NC, SC, TN, and MS, and (2) from the facilities of Bruce Foods Corp., at Wilson, NC, to points in AL, FL, GA, NC, SC, TN, MS, and LA. (Hearing Site: Lafayete or New Orleans, LA.)

MC 138882 (Sub-176F), filed November 13, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O.

Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel articles*, from the facilities of Litho-Strip Corp., at Chicago and Bridgeview, IL, to Kansas City, MO. (Hearing Site: Chicago, IL, or Birmingham, AL.)

MC 139973 (Sub-56F), filed November 9, 1978. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MS 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rug cleaning machines and parts for rug cleaning machines*, and (2) *cleaning and scouring compounds* (except commodities in bulk), from Fresno, CA, to Fenton, MO. (Hearing site: St. Louis or Kansas City, MO.)

NOTE.—Dual operations are involved.

MC 139979 (Sub-4F), filed October 26, 1978. Applicant: AMERICAN COLLOID CARRIER CORPORATION, P.O. Box 951, Scottsbluff, NE 69361. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *bentonite clay, processed clay, foundry moulding sand treating compounds, lignite, water impedence boards, salt, and farm supplies*, between points in AZ, CA, ID, NV, OR, and WA, on the one hand, and, on the other, points in AR, CO, IL, IA, KS, LA, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX, UT, WI, and WY, (2) *bentonite clay, processed clay, foundry moulding sand treating compounds, lignite, water impedence boards, salt, farm supplies, and construction materials*, (except commodities in bulk, in tank vehicles), between points in AZ, CA, ID, NV, OR, and WA, (3) *construction materials*, between points in AZ, CA, ID, NV, OR, and WA, on the one hand, and, on the other, points in CO, IA, MI, MN, MT, NE, NM, ND, OH, SD, UT, WI, and WY, and (4) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (3) above, between points in AZ, CA, ID, NV, OR, and WA, on the one hand, and, on the other, points in AR, CO, IL, IA, KS, LA, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX, UT, WI, and WY, under continuing contract(s) in (1), (2), (3), and (4) above, with American Colloid Company, of Skokie, IL. (Hearing site: Denver, CO, or Chicago, IL.)

MC 140033 (Sub-76F), filed November 6, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Suite 1125 Exchange Park, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *barbeque grills*, from Mabank, TX, to points in CA, MO, AR, IL, LA, MS, IN, FL, GA, and AL. (Hearing site: Dallas, TX.)

NOTE.—Dual operations are involved.

MC 140675 (Sub-2F), filed November 20, 1978. Applicant: CHARLES C. KVARE, INC., R. R. 3, Pelican Rapids, MN 56572. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. To operate as a *common carrier*, by motor vehicles, in foreign commerce only, over irregular routes, transporting *feed ingredients*, from Weeping Water, NE, to the ports of entry on the international boundary line between the United States and Canada, located in ND, MT, and MN. (Hearing site: Fargo, ND, or Minneapolis, MN.)

MC 140829 (Sub-152F), filed November 17, 1978. Applicant: CARGO CONTRACT CARRIER CORP., A New Jersey Corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Ave., Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in vehicles equipped with mechanical refrigeration, from the facilities of Nalco Chemical Company, at Chicago, IL, to points in AL, AR, CT, DE, FL, GA, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, NE, NH, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC. (Hearing site: Washington, DC.)

NOTE.—Dual operations are involved in this proceeding.

MC 141376 (Sub-5F), filed October 11, 1978. Applicant: CERTARO TRUCKING COMPANY, A Corporation, 14 Muller Road, Oakland, NJ 07436. Representative: Joseph R. Siegelbaum, 17 Academy Street, Newark, NJ 07102. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *chemicals*, and *cleaning, washing, scouring, and defoaming compounds*, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, and (2) *materials, equipment, and supplies* used in the manufacture and sale of the commodities in (1) above, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between Harrison and Kearny, NJ, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, OK, and TX under continuing contract(s) with Drew Chemical Corporation, of Boonton, NJ. (Hearing site: New York, NY, or Newark, NJ.)

MC 142062 (Sub-16F), filed November 6, 1978. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Drawer P, Sellersburg, IN 47172. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *building board, wall boards, and insulation board, and* (2) *materials, equipment and supplies*, used in the installation of the commodities in (1) above, (except commodities in bulk), from the facilities of Armstrong Cork Co., at or near Beaver Falls, PA, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY, under continuing contract(s) with Armstrong Cork Co., of Lancaster, PA. (Hearing site: Pittsburgh, PA.)

MC 142851 (Sub-3F), filed November 3, 1978. Applicant: ERVIN D. JANDREAU, P.O. BOX 1, St. Francis, ME 04774. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101. To operate as a *contract carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *wood residues*, from the facilities of Woodlands Improvement Corp., in Aroostook County, ME, to ports of entry on the international boundary line between the United States and Canada, located at or near Houlton, Fort Kent, and Madawaska, ME, under continuing contract(s) with Woodlands Improvement Corp., of Fort Kent, ME. (Hearing site: Portland, ME, or Boston, MA.)

MC 143127 (Sub-16F), filed October 23, 1978. Applicant: K. J. TRANSPORTATION, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: John M. Nader, 1600 Citizens Plaz, Louisville, KY 40202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass bottles*, from the facilities of the National Bottle Company, at or near Vienna, WV, to points in KY, NJ, NY, and PA. (Hearing site: Philadelphia, PA, or Rochester, NY.)

Note.—Dual operations are involved.

MC 143267 (Sub-37F), filed October 23, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Representative: Neil Jackson, 1155 15th St., NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *building materials, asbestos cement pipe, plastic pipe, and materials*, used in the installation of plastic pipe, from the

facilities of Johns-Manville Sales Corporation, at (a) Waukegan, IL, and (b) Wilton, IA, and the facilities of Johns-Manville Perlite Corp., at Rockdale, IL, to points in NY, OH, PA, WV, and the Lower Peninsula of MI. (Hearing site: Washington, DC, or Cleveland, OH.)

MC 143531 (Sub-4F), filed November 2, 1978. Applicant: POWDER RIVER MOTOR TRANSPORT CORPORATION, 388 East 900 South, Provo, UT 84601. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. To operate as a *contract carrier*, by motor vehicles, in interstate or foreign commerce, over irregular routes, transporting (1) *wooden buildings*, knocked down, and (2) *materials and supplies* used in the erection of the commodities named in (1) above, from Tacoma, WA, to points in the United States (except AK, HI, WA, MN, IL, OR, CA, MT, ID, UT, NV, AZ, WY, CO, NM, and MO), under continuing contract(s) with Lindal Cedar Homes, Inc., of Seattle, WA. (Hearing site: Washington, DC.)

MC 143607 (Sub-1F), filed October 24, 1978. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Drive, Waco, TX 76710. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *textiles, textile products, and chemicals*, (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Waco, TX, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Bayly Corp., of Waco, TX. (Hearing site: Houston, TX, or Washington, DC.)

MC 143775 (Sub-41F), filed December 6, 1978. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85302. Representative: Michael R. Burke (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fruit juices and apple products*, (except liquid commodities in bulk), from Cashmere, Selah, and Wenatchee, WA, to points in AZ, CA, CO, ID, NV, OR, NM, TX, and UT. (Hearing site: Seattle, WA, or Washington, DC.)

NOTE.—Dual operations are involved.

MC 143775 (Sub-43F), filed December 11, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85302. Representative: Michael R. Burke (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from points in Franklin and Adams Counties, PA, to points in AR, LA, MS, OK, TN, and TX. (Hearing site: Philadelphia, PA, or Washington, DC.)

NOTE.—Dual operations are involved.

MC 144293 (Sub-5F), filed September 20, 1978. Applicant: GEORGE McFARLAND, SR., Box 21, Oakland, MN 56076. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *foodstuffs* (except candy, cherries, and commodities in bulk), from the facilities of Geo. A. Hormel & Co., at or near Beloit, WI, to points in IL, IN, MI, MN, and OH, (2) *foodstuffs, meat byproducts, and such commodities* as are used by canning plants, (except hides, candy, cherries, and commodities in bulk), from points in IL, IN, MI, MN, and OH, to the facilities of Geo. A. Hormel & Co., at or near Beloit, WI, restricted in (1) and (2) to the transportation of traffic originating at and destined to the named points, and (3) *malt beverages*, from Milwaukee, WI, to Rochester and Owatonna, MN. (Hearing site: St. Paul, MN.)

MC 144561 (Sub-2F), filed November 1, 1978. Applicant: EDWARD B. GIBSON, 4116 Oakhill Lane, Jonesboro, AR 72401. Representative: John R. Henry, 404 Market, Harrisburg, AR 72432. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *building materials, from Jonesboro, AR, to* Thayer, Alton, West Plains, Willow Springs, Mountain View, Doniphan, Poplar Bluff, Sikeston, Parma, Malden, Kennett, Charleston, East Prairie, Caruthersville, Portageville, Dexter, Steele, and New Madrid, MO, under continuing contract(s) with Builders Material Company, of Jonesboro, AR. (Hearing site: Jonesboro, AR.)

MC 144762 (Sub-2F), filed November 8, 1978. Applicant: TANK LINES LIMITED, P.O. Box 3500, Calgary, Alberta, Canada T2P 2P9. Representative: Richard H. Streeter, 1729 H Street, NW, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *fish oil, in bulk*, from the port of entry on the international boundary line between the United States and Canada, located at or near Calais, ME, to Philadelphia, PA. (Hearing Site: Washington, DC.)

MC 144902 (Sub-1F), filed November 6, 1978. Applicant: ACE BEVERAGE COMPANY, a corporation, 906 Aronson Avenue, P.O. Box 1933, Billings, MT 59103. Representative: Charles A. Murray, Jr., 207A Behner Building, 2822 Third Avenue North, Billings, MT 59101. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages*, (1) from Milwaukee, WI, Los Angeles, CA, and Portland, OR, to Billings, MT, under continuing contract(s) with Dunham Distributing, Inc., of Billings, MT, (2) from St. Paul, MN, and Milwaukee, WI, to Billings, MT, under continuing contract(s) with Fred Briggs Distributing Co., of Billings, MT, and (3) from St. Louis, MO, LaCrosse and Milwaukee, WI, and Minneapolis, MN, to Miles City, MT, under continuing contract(s) with M & C Beverage, Inc., of Miles City, MT. (Hearing site: Billings, MT.)

MC 145157 (Sub-2F), filed October 18, 1978. Applicant: GORDON D. AND VELMA J. JOHNSON, d.b.a. PRODUCTIVE PRODUCTS CARRIER, 1213 Georgene, N.E., Albuquerque, NM 87112. Representative: Gordon D. Johnson, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic pipe and plastic pipe fittings*, (1) from the facilities of Spartan Products Company, at Anaheim, CA, to points in NM and points in El Paso, Hale, Lubbock, Potter, and Randall Counties, TX, and (2) from the facilities of Lone Star Plastic Pipe Company, at Ennis, TX, to points in NM. (Hearing site: Albuquerque or Santa Fe, NM.)

MC 145247 (Sub-1F), filed October 20 1978. Applicant: HERSCHEL T. LAMB, d.b.a. CAROLINA SOUTHERN, 2816 Stratford Road, Winston Salem, NC 27103. Representative: Francis J. Ortman, 7101 Wisconsin Ave., Suite 605, Washington, DC 20014. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting (1) *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766, (except commodities in bulk), and (2) *foodstuffs*, when moving in mixed loads with the commodities, and in (1) above, from Washington, DC to points in GA and FL, under continuing contract(s) with District Hotel Supply Co., Inc., of Washington, DC. (Hearing site: Washington, DC.)

MC 145485F, filed September 26, 1978. Applicant: DAVIS CARTAGE COMPANY, a corporation, Corunna, MI 48817. Representative: William B.

Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. To operate as a *common carrier,* by motor vehicle, in foreign commerce only, over irregular routes, transporting *sugar beet products,* from points in Bay, Huron, Saginaw, Sanilac, and Tuscola Counties, MI, to (a) ports of entry on the International Boundary line between the United States and Canada, located in MI, and (b) to points in MI, restricted to the transportation of traffic having an immediately subsequent movement by water. (Hearing site: Detroit, MI.)

NOTE.—Dual operations are involved.

MC 145526F, filed October 13, 1978. Applicant: CTC TRANSPORTATION, INC., 431 Gravier Street, New Orleans, LA 70130. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household goods,* in containers, between Long Beach, Oakland, and Los Angeles, CA, Houston, TX, New Orleans, LA, Jacksonville, FL, Savannah, GA, Charleston, SC, Norfolk, VA, and Baltimore, MD, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New Orleans, LA.)

MC 145557F, filed October 11, 1978. Applicant: LIBERTY TRANSPORT, INC., 4614 South 40th St., St. Joseph, MO 64503. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages,* in containers, and *supplies* used in the distribution of malt beverages, from the facilities of the Adolf Coors Company, at or near Golden, CO, to points in Atchison, Holt, Nodaway, Worth, Gentry, Andrew, DeKalb, Buchanan, Clinton, Caldwell, Daviess, and Harrison Counties, MO. (Hearing site: Kansas City, MO.)

MC 145634F, filed October 27, 1978. Applicant: PHILLIP W. GOETTLING d.b.a. GOETTLING TRANSPORTATION, 2006 Benfield Road, Severna Park, MD 21146. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, NW, Washington, DC 20005. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *laboratory equipment and supplies, and photographic equipment and supplies,* from Baltimore, MD, to Washington, DC, under continuing contract(s) with VWR Scientific Inc., of Baltimore, MD. (Hearing site: Washington, DC.)

MC 145637F, filed October 24, 1978. Applicant: B & B EXPRESS, INC., P.O. Box 5552, Station B, Greenville, NC 29606. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *synthetic staple fiber, synthetic fiber yarn, and synthetic plastics,* from Irmo and Columbia, SC, Bermuda Hundred, VA, and Milledgeville, GA, to points in CA and NV; and (2) *warp beams, bobbins, pallets, forms, interior packaging, and packing trays,* from points in CA, to points in SC. (Hearing site: New York, NY.)

MC 145773F, filed November 17, 1978. Applicant: KIRK BROS. TRANSPORTATION, INC., 800 Vandemark Road, Sidney, OH 45365. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *refrigeration compressors and condensing units, and parts, accessories, and attachmens* for refrigeration compressors and condensing units, between the facilities of Copeland Corporation, at (a) Hartselle, AL, and (b) Fostoria, Sidney, Wapakoneta, and West Union, OH, on the one hand, and, on the other, points in the United States (except AK and HI), (2) *scrap materials,* from the facilities named in (1) above, to points in the United States (except AK and HI), and (3) *equipment, materials, and supplies* used in the manufacture of the commodities named in (1) above, from points in the United States (except AK and HI) to the facilities named in (1) above, under continuing contract(s) in (1), (2), and (3) with Copeland Corporation, of Sidney, OH. (Hearing site: Columbus, OH.)

MC 145848F, filed December 6, 1978. Applicant: CROSLAND TRUCKING, INC., 3170 Broadway, Ville Brossard, Quebec J4Z 2P5. Representative: Richard H. Streeter, 1729 H Street, NW., Washington, DC 20006. To operate as a *contract carrier,* by motor vehicle, in foreign commerce only, over irregular routes, transporting *lumber, lumber products, and building materials,* (except commodities in bulk), between ports of entry on the international boundary line between the United States and Canada located in ME, NH, NY, and VT, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, ME, MD, MI, NH, NJ, NY, NC, OH, PA, RI, VA, VT, WV, WI, and DC, under continuing contract(s) with (1) Barvi Ltée, of Lavalle, Quebec, Canada, and (2) Les Matériaux Blanchet, Inc., of St. Thanthile, Quebec, Canada. (Hearing site: Boston, MA.)

MC 107583 (Sub-60F), filed October 10, 1978. Applicant: SALEM TRANSPORTATION CO., INC., 133-03 35th Avenue, Flushing, NY 11354. Representative: George H. Rosen, 265 Broadway, P.O. Box 348, Monticello, NY 12701. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *passengers and their baggage,* in the same vehicle with passengers, in special operations, beginning and ending at points in the New York, NY, Philadelphia, PA, Baltimore, MD, Wilmington, DE, and Washington, DC, commercial zones, and extending to Atlantic City, NJ. (Hearing site: New York, NY, or Newark, NJ.)

MC 144673 (Sub-1F), filed November 17, 1978. Applicant: WISE WAY TRANSPORTATION, LTD., 583 Margaret Street, Victoria, B.C., Canada V8Z 6C9. Representative: Michael D. Duppenthaler, 211 So. Washington Street, Seattle, WA 98104. To operate as a *common carrier,* by motor vehicle, in foreign commerce only, over irregular routes, transporting *passengers and their baggage,* in the same vehicle with passengers, in round-trip charter and special operations, beginning and ending at the ports of entry on the international boundary line between the United States and Canada at or near Blaine, Lynden, Sumas, and Port Angeles, WA, and extending to points in WA, OR, CA, NV, UT, and ID. (Hearing site: Seattle or Bellingham, WA.)

MC 145236F, filed August 14, 1978, previously noticed in the FEDERAL REGISTER issue of November 28, 1978. Applicant: MT. HOOD LIMOUSINE, INC., 8705 S.W. Barnes Road, Portland, OR 97225. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce over irregular routes, transporting *passengers and their baggage,* in the same vehicle with passengers, in special operations, between Portland, OR, on the one hand, and, on the other, Timberline Lodge near Government Camp, OR, and Bowman's Resort near Weeme, OR, limited to the transportation of not more than fifteen (15) passengers in any one vehicle, not including the driver thereof, and restricted to the transportation of passengers having an immediately prior or subsequent movement by rail or air. (Hearing site: Portland, OR.)

NOTE.—This republication shows that special operations are requested in lieu of charter operations, and shows a restriction previously omitted.

W-1308 (Sub-2F), filed December 18, 1978. Applicant: BLAINE F. CLAYPOOL, d.b.a. RED WING EXCURSIONS, 318 North Franklin Street, Lake City, MN 55041. Representative: Stephen A. Lawrence, 3154 North Service Drive, Red Wing, MN 55066.

To operate as a *common carrier*, by water, by self-propelled vehicles, in interstate or foreign commerce, transporting *passengers and their baggage*, in regular daily scheduled sightseeing trips and special charter sightseeing trips, between points and ports along the Mississippi River from 8 miles north of Red Wing, MN, to and including Alma, WI. NOTES: (1) This application is made for seasonal operations from the opening of the river for navigation (approximately April 15) to the close of navigation (approximately November 15) of each year. (2) This is a major regulatory action as defined in 49 CFR § 1106.5(a)(8). CONDITION: Carrier must submit additional information on energy conservation and energy efficiency as provided in 49 CFR § 1106.5(C)(1-3) and (5-6). See *The Energy Policy and Conservation Act of 1975*, 357 I.C.C. 599, 604 (1978). This additional information must (1) be direct, (2) include a general statement of conclusions, (3) provide a brief description of the basis for any conclusions reached, including the methodology employed, (4) include pertinent statistics where appropriate, and (5) where conclusions cannot be reached explain the reasons for failing to reach conclusions. (Hearing site: Rochester or St. Paul, MN.)

[FR Doc. 79-2972 Filed 1-26-79; 8:45 am]

[7035-01-M]

[Permanent Authority Decisions Volume No. 3]

PERMANENT AUTHORITY APPLICATIONS

Decision-Notice

Decided: January 8, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The orginal and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247 (e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the precedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its porposed contract carrier service will be consistent with the public interest and the national transporation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, of the Unites States Code and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a mojor regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930 (1978) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a noncomplying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

H. G. HOMME, Jr.
Secretary.

MC 531 (Sub-364F), filed November 6, 1978. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Rd., P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wine, grape concentrate*, and *distilled spirits*, in bulk, in tank vehicles, from Edison, CA, to points in MS. (Hearing site: Los Angeles, CA.)

MC 10343 (Sub-33F), filed November 14, 1978. Applicant: CHURCHILL TRUCK LINES, INC., U.S. Hwy 36 West, P.O. Box 250, Chillicothe, MO 64601. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Wichita, KS, and Dallas, TX; from Wichita over Interstate Hwy 35 to junction Interstate Hwy 35 East, then over Interstate Hwy 35 East to Dallas, and return over the same route, (2) between Wichita, KS, and Fort Worth, TX; from Wichita over Interstate Hwy 35 to junction Interstate Hwy 35 West, then over In-

terstate Hwy 35 West to Fort Worth, and return over the same route, (3) between Topeka, KS, and McAlester, OK; from Topeka over U.S. Hwy 75 to its junction with the Indian Nation Turnpike, then over the Indian Nation Turnpike to junction U.S. Hwy 270, then over U.S. Hwy 270 to McAlester, and return over the same route, (4) between Topeka, KS, and Muskogee, OK; from Topeka over U.S. Hwy 75 to Tulsa, OK, then over the Muskogee Turnpike to Muskogee, and return over the same route, (5) between Wichita, KS, and Muskogee, OK; from Wichita over Interstate Hwy 35 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Muskogee, and return over the same route, (6) between Wichita, KS, and Muskogee, OK; from Wichita over Interstate Hwy 35 to junction with the Cimarron Turnpike, then over the Cimarron Turnpike to Tulsa, OK, then over the Muskogee Turnpike to Muskogee, and return over the same route, and (7) between Wichita, KS, and McAlester, OK; from Wichita over Interstate Hwy 35 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction with the Indian Nation Turnpike, then over the Indian Nation Turnpike to junction U.S. Hwy 270, then over U.S. Hwy 270 to McAlester, and return over the same route; serving no intermediate points, as alternate routes for operating convenience only in connection with routes (1) through (7) above. (Hearing site: Wichita, KS.)

MC 19553 (Sub-42F), filed November 21, 1978. Applicant: KNOX MOTOR SERVICE, INC., P.O. Box 5206, Rockford, IL 61125. Representative: Roland Rice, Suite 501, Perpetual Building, 1111 E Street, N.W., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Peoria, IL, and Havana, IL; from Peoria over U.S. Hwy 24 to junction IL Hwy 78, then over IL Hwy 78 to Havana, and return over the same route, serving no intermediate points, (2) between Peoria, IL, and junction IL Hwy 121 and U.S. Hwy 136 over Interstate Hwy 74 to IL Hwy 121 to junction U.S. Hwy 136, and return over the same route, serving no intermediate points, (3) between El Paso, IL, and Heyworth, IL, over U.S. Hwy 51, serving no intermediate points, (4) between Peoria, IL, and Bloomington, IL, over Interstate Hwy 74, serving Bloomington as a point of joinder only, (5) between Bloomington, IL, and McLean, IL, over Interstate Hwy 55, serving no intermediate points, (6) between Havana, IL, and junction IL Hwy 16; from Havana over IL Hwy 78 to junction U.S. Hwy 67 at Jacksonville, then over U.S. Hwy 67 to junction IL Hwy 16, and return over the same route, (7) between junction IL Hwy 121 and U.S. Hwy 136, and Sullivan, IL, over IL Hwy 121, (8) between Heyworth, IL, and Vandalia, IL, over U.S. Hwy 51, (9) between McLean, IL, and Litchfield, IL, over Interstate Hwy 55, (10) between Havana, IL, and Pana, IL; from Havana over IL Hwy 97 to junction IL Hwy 29, then over IL Hwy 29 to Pana, and return over the same route, (11) between Clinton, IL, and Springfield, IL, over IL Hwy 54, (12) between Sullivan, IL, and junction IL Hwy 32 and IL Hwy 16 over IL Hwy 32, (13) between junction IL Hwy 16 and U.S. Hwy 67, and junction IL Hwy 16 and IL Hwy 32 over IL Hwy 16, (14) between Jacksonville, IL, and Decatur, IL, over U.S. Hwy 36, (15) between Decatur, IL, and junction IL Hwy 48 and Interstate Hwy 55, over IL Hwy 48, (16) between Havana, IL, and Heyworth, IL, over U.S. Hwy 136, (17) serving Peoria, IL, and El Paso, IL, and points in IL on and bounded by a line beginning at Havana, IL, and extending south along IL Hwy 78 to junction U.S. Hwy 67, then south along U.S. Hwy 67 to junction north boundary line of Madison County, IL, then east along the north boundary line of Madison and Bond Counties, IL, to junction north boundary line of Bond County, IL, with the west boundary line of Fayette County, IL, then north along the west boundary line of Fayette County, IL, to junction IL Hwy 185, then southeast along IL Hwy 185 to Vandalia, IL, then north along U.S. Hwy 51 to junction north boundary line of Fayette County, IL, then east along the north boundary lines of Fayette and Effingham Counties, IL, to junction north boundary line of Effingham County, IL, with IL Hwy 32, then north along IL Hwy 32 to junction U.S. Hwy 36, then west along U.S. Hwy 36 to Decatur, IL, then north along U.S. Hwy 51 to junction U.S. Hwy 136, and then west along U.S. Hwy 136 to point of beginning as off-route points in connection with applicant's present regular-route operations, in (6) through (16) serving all intermediate points. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—The purpose of this application is to convert the irregular-route authority in MC-19553 Sub 32 to regular-route authority.

MC 28088 (Sub-44F), filed December 12, 1978. Applicant: NORTH & SOUTH LINES, INC., 2710 S. Main Street, Harrisonburg, VA 22801. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street, NW, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk and frozen foods), from points in Frederick, Shenandoah, and Rockingham Counties, VA, and Berkeley County, WV, to points in AL, AR, GA, LA, MS, SC, TN, and TX. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 29643 (Sub-12F), filed November 22, 1978. Applicant: WALSH TRUCKING SERVICE, INC., 50 Burney Avenue, Massena, NY 13662. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, and (2) *commodities* used in the manufacture, distribution, and sale of paper and paper products, (except commodities in bulk), between Pulaski, NY, on the one hand, and, on the other, points in VT, NH, MA, RI, CT, NY, NJ, PA, DE, and MD. (Hearing site: Syracuse, NY.)

MC 32083 (Sub-4F), filed November 22, 1978. Applicant: DONNIE A. DIXON, INC., Route 9, Box 378, Greenville, NC 27834. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Bertie, Martin, and Pitt Counties, NC, restricted to the transportation of traffic having a prior or subsequent movement by rail. (Hearing site: Raleigh, NC.)

MC 32882 (Sub-104F), filed November 13, 1978. Applicant: MITCHELL BROS. TRUCK LINES, 3841 N. Columbia Boulevard, Portland, OR 97217. Representative: Edward G. Rawle, 1229 N. Blue Gum Avenue, Anaheim, CA 92806. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *buildings* and *metal prefabricated structural components and panels*, from points in Utah County, UT, to points in the United States (except AK and HI). (Hearing site: Salt Lake City, UT, or Los Angeles, CA.)

MC 32882 (Sub-105F), filed November 13, 1978. Applicant: MITCHELL BROS. TRUCK LINES, 3841 N. Columbia Blvd., Portland, OR 97217. Representative: Edward G. Rawle, 1229 N. Blue Gum Avenue, Anaheim, CA 92806. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *insulated*

building and roofing panels, and *equipment, materials, and supplies* used in the installation of insulated building and roofing panels, (except commodities in bulk), from the facilities of Panel Era Corporation, at or near Chicago, IL, Washington, DC, Atlanta, GA, Dallas, TX, and Salt Lake City, UT, to points in the United States (including AK, excluding HI); and (2) *materials, equipment,* and *supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), from points in the United States (including AK, excluding HI), to the facilities of Panel Era Corporation, at or near Chicago, IL, Washington, DC, Atlanta, GA, Dallas, TX, and Salt Lake City, UT, restricted in (1) and (2) to the transportation of traffic originating at or destined to the facilities of Panel Era Corporation, at or near Chicago, IL, Washington, DC, Atlanta, GA, Dallas, TX, and Salt Lake City, UT. (Hearing Site: Salt Lake City, UT, or Los Angeles, CA.)

MC 41406 (Sub-95F), filed October 24, 1978. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Ave., Hammond, IN 46323. Representative: Wade H. Bourdon (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *building materials and construction materials,* (except commodities in bulk), from the facilities of Celotex Corporation, (a) at or near Dubuque, IA, and Chicago and Wilmington, IL, to points in IA, IL, IN, KS, KY, MI, MN, MO, ND, NE, NY, OH, PA, SD, WI, and WV, (b) at or near Sunbury, PA, to points in IL, IN, KY, MI, OH, and WV, (c) at or near Chester, WV, to points in KY, MO, NY, OH, and WV, and (d) at or near Lockland, OH, to points in IL, IN, KY, MD, MI, MO, NY, PA, WI, and WV, (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk, in the reverse direction). (Hearing site: Chicago, IL, or Washington, DC.)

MC 48441 (Sub-28F), filed November 8, 1978. Applicant: R.M.E. INC., An Indiana Corporation, P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. To operate as a *common carrier,* by motor vehicle in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are used or dealt in by manufacturers and converters of paper, paper products, and plastic articles (except in bulk), from the facilities of Brown Co., at Kalamazoo and Parchment, MI, to points in IL, IN, MO, and those points in WI on, south, and east of a line beginning at Lake Michigan near Sheboygan, WI, and extending along WI Hwy 23 to intersection WI Hwy 11, then along WI Hwy to intersection U.S. Hwy 61, then south along U.S. Hwy 61 to the WE-IL State line; and (2) *paper,* and *paper articles,* from the facilities of Georgia-Pacific Corp., at Kalamazoo, MI, to points in MO, IL, and IN. (Hearing site: Detroit, MI.)

MC 51146 (Sub-653F), filed October 19, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil A. DuJardin (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting 1(a) *wood products, millwork, and parts and accessories* for wood products and millwork, and (b) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named above, (except commodities in bulk), from Pella, IA, to points in the United States, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in 1(a) above, (except commodities in bulk), in the reverse direction; and (3) *plumbing fixtures, fittings, and plumbing equipment,* from Evansville and Rockport, IN, to points in MN, NE, and WI. (Hearing site: Chicago, IL.)

MC 51146 (Sub-655F), filed October 31, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil A. DuJardin (same address as applicant). To operate as a *common carrier,* by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *paper and paper products,* (except commodities in bulk), from the facilities of The Mead Corporation, at Lynchburg, VA, to points in MI and OH. (Hearing site: Chicago, IL.)

MC 61396 (Sub-362F), filed October 23, 1978. Applicant: HERMAN BROS., INC., 2565 St. Mary's Avenue, P.O. Box 189, Omaha, NE 68101. Representative: Duane L. Stromer (same as above). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *compressed gases, liquid oxygen, liquid nitrogen, liquid argon, gaseous helium, and liquid carbon dioxide,* in bulk, (1) from Cleveland, OH to points in PA, (2) from Niagara Falls, NY, to points in MI, OH, and PA, (3) from Parkersburg, WV, to points in IL, IN, KY, MI, OH, and PA, (4) from Portage, MI, to points in IA, IL, IN, NY, OH, and WI, (5) from Dayton, OH, to points in IL, IN, KY, MI, NY, and PA, and (6) from Chicago, IL, to points in IN, KY, MI, OH, WI. CONDITION: The certificate authorizing the above operation shall be limited in point of time to a period expiring 5 years from the date of issuance. (Hearing site: Cleveland, OH, or Omaha, NE.)

NOTE.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under Section 11343(a) (formerly Section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 73165 (Sub-458F), filed December 12, 1978. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 11086, Birmingham, AL 35202. Representative: R. Cameron Rollins (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *material handling equipment, winches, compaction and road making equipment, rollers, mobile cranes, and highway freight trailers,* and (2) *parts, attachments, and accessories* for the commodities in (1) above, (except commodities in bulk), between the facilities of Hyster Co., at or near (a) Danville and Kewanee, IL, (b) Crawfordsville, IN, and (c) Berea, KY, on the one hand, and, on the other, points in AL, AR, FL, LA, GA, MS, TX, and TN, restricted to the transportation of traffic orginating at or destined to the named above facilities. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 76993 (Sub-28F), filed November 17, 1978. Applicant: EXPRESS FREIGHT LINES, INC., 4924 South 13th Street, Milwaukee, WI 53221. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Milwaukee, WI, and Muskegon, MI; from Milwaukee over Interstate Hwy 94 to its junction with U.S. Hwy 31 at or near Benton Harbor, MI, then over U.S. Hwy 31 to its junction with Interstate Hwy 94, then over Interstate Hwy 94 to its junction with Interstate Hwy 196 at or near Millburg, MI, then over Interstate Hwy 196 to its junction with U.S. Hwy 31 at or near Holland, MI, then over U.S. Hwy 31 to Muskegon, and return over the same route, serving all intermediate points, (2) between Muskegon, MI, and Detroit, MI, over Interstate Hwy 96, serving the intermediate point of Grand Rapids, MI, (3) between St. Joseph, MI, and Detroit, MI, over Interstate Hwy 94, serv-

ing the intermediate points of Kalamazoo and Battle Creek, MI, (4) between White Pigeon, MI, and Grand Rapids, MI; from White Pigeon over U.S. Hwy 12 to its junction with U.S. Hwy 131 at or near White Pigeon, then over U.S. Hwy 131 to Grand Rapids, MI, and return over the same route, serving all intermediate points, (5) between Holland, MI, and Grand Rapids, MI, over Interstate Hwy 196 to Grand Rapids, serving all intermediate points, (6) between St. Joseph, MI, and South Bend, IN; from St. Joseph over U.S. Hwy 31 and U.S. Hwy 33 to South Bend, and return over the same route, serving all intermediate points, (7) between Coldwater, MI, and Battle Creek, MI; from Coldwater over U.S. Hwy 12 to junction Interstate Hwy 69 and U.S. Hwy 27 at or near Coldwater, then over Interstate Hwy 69 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Battle Creek, and return over the same route, serving all intermediate points, (8) between Jackson, MI, and Lansing, MI, over U.S. Hwy 127, and return over the same route, (9) between junction Interstate Hwy 96 and U.S. Hwy 23 near Brighton, MI, and Ann Arbor, MI, over U.S. Hwy 23, (10) between Holland, MI, and Kalamazoo, MI; from Holland over U.S. Hwy 31 to its to junction with MI State Hwy 40 at or near Holland, then over MI State Hwy 40 to its junction with MI State Hwy 89 at or near Allegan, MI, then over MI State 89 to its junction with U.S. Hwy 131 at or near Plainwell, MI, then over U.S. Hwy 131 to Kalamazoo, MI, and return over the same route, (11) between Holland, MI, and Battle Creek, MI; from Holland over U.S. Hwy 31 to its junction with MI State 40, then over MI State Hwy 40 to MI State Hwy 89 at or near Allegan, MI, then over MI State Hwy 89 to Battle Creek, and return over the same route, (12) between junction MI State Hwy 89 and MI State Hwy 66 at or near Battle Creek, MI, and junction MI State Hwy 66 and Interstate Hwy 94; from junction MI State Hwy 89 and MI State Hwy 66 at or near Battle Creek, MI, then over MI State Hwy 66 to its junction with Interstate Hwy 94, and return over the same route, serving no intermediate points and serving the termini for joinder purposes only, (13) between South Bend, IN, and St. Joseph, MI; from South Bend over Temporary Bypass Route U.S. Hwy 31 and 33, or Bypass U.S. Hwy 31 and 33 when completed, to their junction with U.S. Hwy 31 and 33, at or near Niles and Berrien Springs, MI, then over U.S. Hwy 31 and 33 to St. Joseph, MI, service in connection with routes (1) through (7), is authorized at all points in Muskegon, Kent, Ionia, Ottawa, Allegan, Barry, Eaton, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, St. Joseph, and Branch Counties, MI, in connection with carrier's regular-route operations, service (8) through (13) are alternate routes for operating convenience only. (Hearing site: Milwaukee, WI.)

MC 78228 (Sub-100F), filed December 8, 1978. Applicant: J MILLER EXPRESS, INC., an Ohio Corporation, 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foregin commerce, over irregular routes, transporting *salt*, in bulk, in dump vehicles, from the facilities of Morton Salt, Division of Morton-Norwich Products, Inc., at Fairport Harbor, OH, to points in PA. (Hearing site: Washington, DC or Pittsburgh, PA.)

MC 82841 (Sub-239F), filed November 6, 1978. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" St., Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Bldg., Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electrical switchgear, electrical panels, and electrical control and relay switchboards*, and (2) *components, parts, and accessories* for the commodities named in (1) and (2) above, from the facilities of E. A. Pedersen Company, at Omaha, NE, to points in OR and WA. (Hearing site: Omaha, NE.)

MC 83835 (Sub-154F), filed December 12, 1978. Applicant: WALES TRANSPORTATION, INC., P.O. Box 6186, Dallas, TX 75222. Representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *material handling equipment, winches, compaction and road making equipment, rollers, mobile cranes, and highway freight trailers*, and (2) *parts, attachments, and accessories* for the commodities in (1) above, (except commodities in bulk, between the facilities of Hyster Company, at or near (a) Danville and Kewanee, IL, (b) Crawfordsville, IN, and (c) Berea, KY, on the one hand, and, on the other, points in CO, KS, LA, MO, NE, NM, OK, and TX, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 102616 (Sub-966F), filed October 16, 1978. Applicant: COASTAL TANK LINES, INC., a Delaware corporation, 250 North Cleveland-Massillon Road, Akron, OH 44313. Representative: David F. McAllister (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rolling processing fluids, wire drawing compounds, and lubricating oils*, in bulk, in tank vehicles, from the facilities of The Ironsides Co., at or near Columbus, OH, to points in AZ (except Phoenix), CA, CO, DE, ID, KS, LA, MA, ME, MN, MS, MT, ND, NH, NM, NV, OH, OK, OR, RI, SD, UT, VT, WY, and DC, and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, in bulk, in tank vehicles, from points in the United States (except AK, HI, Smackover, AR, Savannah, GA, Jeffersonville, IN, Ashland, KY, Elkridge, MD, Austin, MN, St. Louis, MO, Weehawken, NJ, Buffalo, NY, Bradford, Marcus Hook, Petrolia, Franklin, Philadelphia, and Bainbridge, PA, Houston, TX, Norfolk, VA, Madison, WI, and Lake Charles, LA), to the facilities of the Ironsides Co., at or near Columbus, OH. (Hearing site: Columbus, OH, or Chicago, IL.)

MC 103926 (Sub-84F), filed October 24, 1978. Applicant: W. T. MAYFIELD SONS TRUCKING CO., a Corporation, P.O. Box 947, Mableton, GA 30059. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *self-propelled articles*, weighing 15,000 pounds or more, and (2) *attachments, parts, and accessories* for the commodities named in (1) above, from Baltimore, MD, Norfolk, VA, Charleston, SC, Savannah, GA, Jacksonville, FL, Mobile, AL, and New Orleans, LA, to Wausau, WI, and points in AL, AR, FL, GA, KY, LA, MD, MS, NC, SC, TN, and VA, restricted to the transportaion of shipments having a prior or subsequent movement by water. (Hearing site: Atlanta, GA, or Chicago, IL.)

MC 105656 (Sub-10F), filed October 25, 1978. Applicant: TOM PASQUALE, d.b.a. PASQUALE TRUCKING, P.O. Box 295, Logansport, IN 46947. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as defined in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Logansport, IN, to points in WI, restricted to the transportation of traffic originating at the named origin and destined

to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 107012 (Sub-299F), filed November 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *adhesives, solvents, materials and supplies* used in the installation of carpet, carpet cushion, and carpet underlay (except commodities in bulk), from the facilities of General Felt Industries, at or near Camden, NJ, to points in OH, IN, MI, WI, IL, MO, IA, MN, ND, SD, NE, KS, OK, TX, NM, CO, WY, MT, ID, UT, AZ, NV, CA, OR, and WA. (Hearing Site: New York, NY, or Washington, DC.)

MC 107012 (Sub-301F), filed November 13, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *bicycles, tricycles, motorized bicycles, wagons, riding toys, and dome climbers*, and *parts, accessories, attachments, and tools* used in connection with bicycles, tricycles, motorized bicycles, wagons, riding toys, and dome climbers, from the facilities of AMF, Inc., at or near Olney, IL, and Little Rock, AR, to points in the United States (except AK and HI). (Hearing Site: Chicago, IL, or Washington, DC.)

MC 107012 (Sub-302F), filed November 15, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *barbeque grills*, from the facilities of Temtex Products, Inc., at or near Nashville, TN, to points in KY, FL, GA, AL, LA, MS, TX, OK, NC, SC, AR, KS, CO, and VA, and (2) *fireplaces*, from the facilities of Temtex Products, Inc., at or near Nashville, TN, to points in MT, WY, CO, NM, ND, SD, NE, KS, OK, TX, MN, IA, AR, LA, MS, AL, GA, FL, NC, SC, VA, and KY. (Hearing Site: Nashville, TN, or Washington, DC.)

MC 107012 (Sub-303F), filed November 15, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *solar panels* and *accessories* for solar panels, and *equipment, materials, and supplies* used in the installation of solar panels and accessories for solar panels, from Aurora, CO, to points in the United States (except AK and HI). (Hearing Site: Denver, CO, or Washington, DC.)

MC 107012 (Sub-304F), filed November 15, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as above). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *uncrated packaging equipment*, and (2) *parts and accessories* for uncrated packaging equipment in uncrated packaging equipment, from points in MN and WI, to points in the United States (except AK and HI). (Hearing site: Minneapolis, MN, or Washington, DC.)

MC 107012 (Sub-305F), filed November 15, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *tool and utility boxes*, from the facilities of Able, Inc., at or near Jonesboro, AR, to points in the United States (except AK, HI, and AR). (Hearing Site: Memphis, TN, or Washington, DC.)

MC 107012 (Sub-307F), filed November 15, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *carpet cushion and automotive felt*, from the facilities of Dixie Manufacturing Company, Inc., at or near Norfolk, VA, to points in PA, NJ, NY, MA, CT, RI, ME, NH, VT, and GA. (Hearing Site: Washington, DC, or Norfolk, VA.)

MC 107012 (Sub-308F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *floor coverings, and materials and supplies* used in the manufacture, installation, and distribution of floor coverings, from the facilities of Bigelow Sanford, Inc., at or near Lyerly, GA and Landrum and Greenville, SC, to Houston, TX. (Hearing Site: Greenville, SC, or Washington, DC.)

MC 107012 (Sub-309F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sporting goods equipment, recreational equipment, and physical fitness equipment*, from the facilities of Frabill Manufacturing Company, at or near Milwaukee, WI, to points in the United States (except AK, HI, and WI). (Hearing Site: Chicago, IL, or Washington, DC.)

MC 107012 (Sub-310F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lamps, lamp shades, lights, lighting fixtures, display racks and stands, and parts and accessories* for the foregoing commodities, from the facilities of V. L. Industries, Inc., at or near Hialeah, FL, to points in the United States (except AK, HI, and FL). (Hearing Site: Miami, FL, or Washington, DC.)

MC 107012 (Sub-311F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials, parts, and supplies* used in the manufacture or new furniture, from points in CT and MA to the facilities of Futorian Corporation, at or near New Albany, Tupelo, Guntown, and Okolona, MS, and Rocky Mount and Turkey, NC. (Hearing Site: Memphis, TN, or Washington, DC.)

MC 107012 (Sub-312F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *appliances and appliance parts*, from the facilities of Chambers Corp., at or near Oxford, MS, to points in the United States (except AK and HI). (Hearing Site: Memphis, TN, or Little Rock, AR.)

MC 107012 (Sub-313F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *automobile and truck service equipment, supplies, and accessories, and liquid fuel containers*, from the facilities of Huffy Corporation, Automobile Products Division, at or near Delphos, OH, to points in the United States (except AK, HI, and OH). (Hearing Site: Columbus, OH, or Washington, DC.)

MC 107012 (Sub-314F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *carpet, carpet padding, and carpet underlay*, from Natalia, Marlin, and Fort Worth, TX, to points in the United States (except AK and HI); and (2) *household appliances and fixtures*, from Dallas, Cleburne, and Mineral Wells, TX, to points in the United States (except AK and HI). (Hearing Site: Dallas or Houston, TX.)

MC 107012 (Sub-315F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture*, from Nashua, NH, to points in PA. (Hearing Site: Dallas, TX, or Washington, DC.)

MC 107012 (Sub-318F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *decorations and ornaments*, (1) from Cleveland, OH, to the facilities of Rauch Industries, Inc., at or near Gastonia, NC, and (2) from the facilities of Rauch Industries, Inc., at or near Gastonia, NC, to points in the United States (except AK, HI, and NC). (Hearing Site: Charlotte, NC, or Washington, DC.)

MC 107012 (Sub-319F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *printed materials*, from Minneapolis, MN, to Kingsport, TN, and points in NC. (Hearing Site: Charleston, SC, or Washington, DC.)

MC 107012 (Sub-321F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household appliances*, from Hattiesburg and Waynesboro, MS, to points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, WY, and UT. (Hearing Site: Hattiesburg, MS, or Washington, DC.)

MC 107012 (Sub-322F), filed November 17, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same addess as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture*, from points in MS, to points in AL, AR, FL, GA, KY, LA, NC, SC, TN, TX, and VA. (Hearing site: Jackson, MS, or Washington, DC.)

MC 107403 (Sub-1146F), filed November 24, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, from Lake Charles, LA, to points in PA, MD, DE, LA, WV, SC, CT, VA, RI, and DC. CONDITION: Pursuant to the decision in MC 107403 (Sub-1101F), served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC 107403 (Sub-1101F). (Hearing site: Washington, DC.)

MC 107403 (Sub-1147F), filed November 22, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *molten sulphur*, in bulk, in tank vehicles, from Indianapolis, IN, to points in IL, KY, and OH. CONDITION: Pursuant to the decision in MC 107403 (Sub-1101F), served October 19, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC 107403 (Sub-1101F). (Hearing site: Washington, DC.)

MC 107678 (Sub-69F), filed December 21, 1978. Applicant: HILL & HILL TRUCK LINE, INC., P.O. Box 9698, Houston, TX 77015. Representative: David A. Sutherlund, 1150 Connecticut Avenue, NW, Suite 400, Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof; and (2) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites; and (d) the injection or removal of commodities into or from holes or wells, between those points in the United States in and west of MN, IA, MO, AR, and LA (including AK, but excluding HI). The person who is a director of both applicant and a holding company of several carriers should file an affidavit showing he is not in control of both companies through management or file an application for common control under 49 U.S.C. § 11343. (Hearing site: Denver, CO.)

MC 108473 (Sub-43F), filed October 19, 1978. Applicant: ST. JOHNSBURY TRUCKING COMPANY, INC., 87 Jeffrey Avenue, Holliston, MA 01746. Representative: Francis P. Barrett, 60 Adams Street, P.O. Box 238, Milton, MA 02187. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Easton, PA, and Columbia, PA, from Easton over U.S. Hwy 22 to junction PA Hwy 309, then over PA Hwy 309 to

junction U.S. Hwy 222, then over U.S. Hwy 222 to junction U.S. Hwy 30, then over U.S. Hwy 30 to Columbia, and return over the same route, (2) between Easton, PA, and Harrisburg, PA; (a) from Easton over U.S. Hwy 22 to PA Hwy 309, then over PA Hwy 309 to junction U.S. Hwy 222, then over U.S. Hwy 222 to junction U.S. Hwy 422, then over U.S. Hwy 422 to U.S. Hwy 322 to Harrisburg, and return over the same route, (b) over U.S. Hwy 22, (3) between Easton, PA, and Northumberland, PA; from Easton over PA Hwy 248 to U.S. Hwy 209, then over U.S. Hwy 209 to PA Hwy 93, then over PA Hwy 93 to U.S. Hwy 11, then over U.S. Hwy 11 to Northumberland, and return over the same route, (4) between Easton, PA, and Berwick, PA; from Easton over PA Hwy 248 to U.S. Hwy 209, then over U.S. Hwy 209 to PA Hwy 93, then over PA Hwy 93 to Interstate Hwy 81, then over Interstate Hwy 81 to U.S. Hwy 11, then over U.S. Hwy 11 to Berwick, and return over the same route, (5) between Easton, PA, and Pittston, PA; from Easton over PA Hwy 248 to U.S. Hwy 209, then over U.S. Hwy 209 to PA Hwy 9, then over PA Hwy 9 to Pittston, and return over the same route, (6) between Pottsville, PA, and Millersburg, PA, over U.S. Hwy 209, and (7) between Pottsville, PA, and Muncy, PA; from Pottsville, over PA Hwy 61 to PA Hwy 147, then over PA Hwy 147 to Muncy, and return over the same route, in (1) thru (6) serving all intermediate points and off-route points in PA within 50 miles of Pottsville, PA, in connection with carrier's authorized regular-route operations. (Hearing site: Boston, MA.)

MC 108523 (Sub-10F), filed November 22, 1978. Applicant: POLMAN TRANSFER, INC., Route 3 Box 470, Wadena, MN 56482. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *pet foods* (except commodities in bulk), from Perham, MN, to the ports of entry on the international boundary line at Portal, ND, and Sweetgrass, MT. (Hearing site: St. Paul, MN.)

NOTE.—Dual operations may be involved.

MC 109818 (Sub 37F), filed December 11, 1978. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs and inedible food products*, (except commodities in bulk), from the facilities of Termicold Corporation, at or near Bettendorf, IA, to points in IN, KY, MI, and OH. (Hearing site: Chicago, IL.)

MC 110325 (Sub 87F), filed December 11, 1978. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Building, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Honda of America Mfg., Inc., at or near the Intersection of U.S. Hwy 33 and Benton Road (OH County Road 157), Allen Township, Union County, OH, as an off-route point in connection with applicant's otherwise authorized regular-route operations. The persons who may be in common control of applicant and any other regulated carrier must file an affidavit to show why an application for common control is unnecessary or file an application under 49 U.S.C. § 11343. (Hearing site: Columbus, OH.)

MC 110525 (Sub-1272F), filed December 11, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., a Delaware corporation, 520 East Lancaster Avenue, Downington, PA 19335. Representative: Thomas J. O'Brien (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sodium bifluoride*, in bulk, in tank vehicles, from Paulsboro, NJ, to Tahawus, NY. (Hearing site: New York, NY.)

MC 110525 (Sub 1273F), filed December 8, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., a Delaware corporation, 520 East Lancaster Avenue, Downington, PA 19335. Representative: Thomas J. O'Brien (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *arsenic acid*, in bulk, in tank vehicles, from Bryan, TX, to points in FL, GA, IN, IA, KY, NC, SC, and VA. (Hearing site: Dallas, TX.)

MC 111401 (Sub-535F), filed November 6, 1978. Applicant: GROENDYKE TRANSPORT, INC., P.O. Box 632, 2510 Rock Island Blvd., Enid, OK 73701. Representative: Victor R. Comstock (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in AZ, AR, CA, CO, ID, IL, IA, KS, LA, MS, MO, MT, NE, NM, NV, ND, OK, OR, SD, TN, TX, UT, WA, and WY, restricted to the transportation of traffic originating at the above-named origin facilities. (Hearing site: Wichita, KS, or Kansas City, MO.)

MC 111545 (Sub-266F), filed December 12, 1978. Applicant: HOME TRANSPORTATION COMPANY, INC., P.O. Box 6426, Station A, Marietta, GA 30065. Representative: Robert E. Born (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *materials handling equipment, winches, compaction and road making equipment, rollers, mobile cranes, and highway freight trailers*, and (2) *parts, attachments, and accessories* for the commodities named in (1) above, (except commodities in bulk), between the facilities of Hyster Co., at or near (a) Danville and Kewanee, IL, (b) Crawfordsville, IN, and (c) Berea, KY, on the one hand, and, on the other, points in AL, FL, GA, IA, KS, MN, MO, NE, NC, SC, TN, VA, and WI. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 111611 (Sub-41F), filed November 7, 1978. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Ave., Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine St., Suite 2550, San Francisco, CA 94111. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fibrous glass reinforced plastic pipe*, and *pipe fittings*, from the facilities of Owens-Corning Fiberglas Corporation, at or near Valparaiso, IN, to points in the United States (except AK and HI). (Hearing site: San Francisco, CA, or Harrisburg, PA.)

MC 111812 (Sub-601F), filed November 13, 1978. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Ralph H. Jinks (same as above). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *diatomaceous earth and diatomaceous products*, from the facilities of Johns-Mansville Corporation, at or near Lompoc, CA, to points in IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, AD, and WI. The person acting as a director of the owner of the holding company of applicant and Chairman of the Board of another motor carrier should file an

affidavit why approval of the possible common control is not necessary or file an application for approval of such possible common control under 49 U.S.C. § 11343.

MC 113855 (Sub-458F), filed December 12, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota corporation, 2450 Marion Road, SE, Rochester, MN 55901. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *material handling equipment, winches, compaction and road making equipment, rollers, mobile cranes, and highway freight trailers,* and (2) *parts, attachments, and accessories* for the commodities in (1) above, (except commodities in bulk), between the facilities of Hyster Co., at or near Danville and Kewanee, IL, Crawfordsville, IN, and Berea, KY, on the one hand, and, on the other, points in AZ, CA, CO, ID, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, and WY, restricted to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Washington, DC.)

MC 113974 (Sub-56F), filed October 30, 1978. Applicant: PITTSBURGH & NEW ENGLAND TRUCKING CO., a corporation, 211 Washington Avenue, Dravosburg, PA 15034. Representative: James D. Porterfield (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* (1) from Philadelphia, PA, and points in NJ, to points in GA, and (2) from Atlanta, GA, to points in AL, AR, FL, KY, MS, NC, SC, and TN. (Hearing site: Pittsburgh, PA, or Washington, DC.)

NOTE:—The person or persons who it appears may be engaged in common control must either file an application under 49 U.S.C. Section § 11343(a) (formerly Section 5(2)) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 114045 (Sub-522F), filed December 5, 1978. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products,* (except commodities in bulk), from Bristol, PA, to points in CA and TX. (Hearing site: Chicago, IL, or Dallas, TX.)

MC 114211 (Sub-384F), filed November 8, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* from the facilities of Maverick Tube Corp., at or near Union, MO, to points in AL, AR, GA, IA, KS, LA, MN, MS, NE, ND, OK, SD, TN, TX, and WI. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 114273 (Sub-485F), filed November 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commisison, commodities in bulk, in tank vehicles, and those requiring special equipment), from the facilities of Texas Shippers Association, Inc., at Chicago, IL, to Amarillo, Dallas, Ft. Worth, and Lubbock, TX, restricted to the transportation of traffic moving on freight forwarder bills of lading and further restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. Condition: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-486F), filed November 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* from Detroit, MI, to Peoria, Pekin, and Clinton, IL. Condition: The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 115162 (Sub-442F), filed November 17, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Box 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic pipe and plastic pipe fittings,* from Henderson, KY, to points in IN. (Hearing Site: Evansville, IN, or Louisville, KY.)

MC 115826 (Sub-359F), filed October 26, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by a manufacturer of toilet preparations (except commodities in bulk), between Cockeysville, MD, and Holyoke, MA, on the other hand, and, on the other, points in the United States (except AK and HI). Dual operations may be in issue. (Hearing site: Denver, CO.)

MC 117815 (Sub-302F), filed December 6, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth, Des Moines, IA 50317. Representative: Michael L. Carter (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of M&M/Mars, at or near Cleveland, TN, to points in IN, IL, IA, OH, MN, MO, and WI. (Hearing site: Des Moinites, IA, or Chicago, IL.)

MC 117883 (Sub-234F), filed November 21, 1978. Applicant: SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan, P.O. Box 62, Versailles, OH 45380. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and converters of paper and paper products, (except commodities in bulk, in tank vehicles), from the facilities of the Sorg Paper Company, at Middletown, OH, to points in CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NJ, NH, NY, PA, RI, VT, VA, WV, WI, and DC, restricted to the transportation of traffic originating at the named origin facilities and destined to the named destinations. (Hearing site: Columbus, OH, or Washington, DC.)

MC 117975 (Sub-9F), filed November 22, 1978. Applicant: MOTOR EXPRESS, INC., P.O. Box 604, Edinburg, TX 78539. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *malt beverages,* from Galveston, TX, to points in LA, and (2) *malt beverage containers and cooperage,* in the reverse direction. (Hearing site: Houston or Dallas, TX.)

MC 118318 (Sub-39F), filed December 12, 1978. Applicant: IDA-CAL

FREIGHT LINES, INC., P.O. Drawer M, Nampa, ID 83651. Representative: Timothy R. Stevens, P.O. Box 162, Boise, ID 83701. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, and meat by-products, and articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, from points in Spokane County, WA, to points in AZ, CA, ID, NV, and UT. The person or persons in common control with applicant and any other motor carrier must file an affidavit explaining why approval of such common control is unnecessary or file an application for approval of such common control under 49 U.S.C. § 11343. (Hearing site: Boise, ID, or Salt Lake City, UT.)

MC 119741 (Sub-117F), filed November 6, 1978. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., NW, P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodites in bulk, in tank, vehicles), from the facilities of Dubuque Packing Company, at Le Mars, IA, to points in IN, IA, KS, MI, MN, MO, NE, OH, and WI, restricted to the transportation of traffic originating at the above-named origin facilities and destined to the above-indicated destinations. (Hearing site: Sioux City, IA.)

MC 119741 (Sub-119F), filed November 9, 1978. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., NW, P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk, in tank vehicles), between the facilities of Dold Foods, Inc., at Wichita, KS, on the one hand, and, on the other, points in IL, IA, MN, MO, NE, ND, SD, and WI, restricted to the transportation of traffic originating at the above-named origin and destined to the above-named destinations. (Hearing site: Wichita, KS.)

MC 119765 (Sub-67F), filed December 7, 1978. Applicant: EIGHT WAY XPRESS, INC., an Iowa corporation, 5402 South 27th Street, Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and food business houses, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Chicago, IL, to points in NE, IA, and SD. (Hearing site: Chicago, IL, or Omaha, NE.)

MC 119968 (Sub-12F), filed December 11, 1978. Applicant: A. J. WEIGAND, INC., 1046 Tuscarawas Avenue, North, Dover, OH 44622. Representative: Paul F. Beery, 275 E. State Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sodium bicarbonate*, and *materials and supplies* used in the manufacture of sodium bicarbonate, in bulk, between Old Fort, OH, on the one hand, and, on the other, points in the United States (except AK, HI, and OH). (Hearing site: Columbus, OH, or Washington, DC.)

MC 119988 (Sub-177F), filed December 11, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., Highway 103 East, P.O. Box 1384, Lufkin, TX 75901. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper articles*, (a) from the facilities of International Paper Company, at or near Mobile, AL, and Moss Point, MS, to points in AZ, AR, CA, CO, LA, OR, and TX, and (b) from the facilities of International Paper Company, at or near Bastrop, LA, to points in CA; and (2) *materials and supplies* used in the manufacture of paper and paper products (except commodities in bulk, in tank vehicles), from points in AZ, AR, CA, CO, LA, OR, and TX, to the facilities of International Paper Company, at or near Mobile, AL, and Moss Point, MS. (Hearing site: Dallas, TX, or Washington, DC.)

NOTE—Dual operations may be involved in this proceeding.

MC 119991 (Sub-25F) filed November 7, 1978. Applicant: YOUNG TRANSPORT, INC., P.O. Box 3, Logansport, IN 46947. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *building materials*, and (2) *materials and supplies* used in the installation of the commodities named in (1) above (except commodities in bulk), from the facilities of Bird & Son, Inc., at or near Chicago, IL, to points in KY, KS, IN, IA, MN, MO, NE, ND, OK, SD, TN, and WI. (Hearing site: Boston, MA, or Washington, DC.)

MC 120761 (Sub-47F), filed October 25, 1978. Applicant: NEWMAN BROS. TRUCKING COMPANY, A Corporation, 6559 Midway Rd., P.O. Box 18728, Forth Worth TX 76118. Representative: Clint Oldham, 1108 Continental Life Bldg., Forth Worth, TX 76102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, (2) *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, and (3) earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, (a) between points in AR, KS, LA, MS, NM, OK, and TX, (b) between AR, KS, LA, MS, NM, OK, and TX, on the one hand, and, on the other, points in AZ, CA, CO, MT, NE, NV, ND, SD, UT, and WY. (Hearing site: Dallas, TX.)

MC 123294 (Sub-51F), filed October 12, 1978. Applicant: WARSAW TRUCKING CO., INC., 1102 West Winona, Warsaw, IN 46580. Representative: H. E. Miller, Jr., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from Cincinnati, Dayton, Hamilton, and Middletown, OH, to points in IL, IN, IA, MI, MN, MO and WI. (Hearing site: Cincinnati or Columbus, OH.)

MC 124211 (Sub-345F), filed November 8, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of sporting goods and recreational equipment (except commodities in bulk), between the facilities of Frabill Manufacturing Co., at Milwaukee, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Milwaukee, WI.)

NOTE.—Dual operations may be involved.

MC 125368 (Sub-39F), filed December 11, 1978. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland Lowell, Sixth Floor, United American Bank Bldg., Nashville, TN 37219. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass and glass products,* from the facilities of Libbey-Owens-Ford Glass, Inc., at or near Laurinburg, NC, to points in FL and TX. (Hearing site: Washington, DC, or Chicago, IL.)

MC 125951 (Sub-38F), filed November 6, 1978. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 700 West Center Rd., Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts,* and *articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from the facilities of Wilson Foods Corporation, at or near Cherokee, IA, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC, restricted to the transporation of traffic originating at the above-named origin facilities and destined to the above-indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

Note.—Dual operations are involved.

MC 126111 (Sub-9F), filed November 6, 1978. Applicant: SCHAETZEL TRUCKING COMPANY, INC., 520 Sullivan Drive, Fond du Lac, WI 54935. Representative: William Patrick Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sweetened condensed milk,* from Neenah, WI, to points in GA, IL, PA, IN, and TX, under contract with Galloway Company, of Neenah, WI. (Hearing site: Milwaukee, WI.)

MC 126305 (Sub-98F), filed December 11, 1978. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Route 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paneling,* and *materials, equipment, and supplies,* used in the manufacture and sale of paneling, between the facilities of Pan American Gyro-Tex Company, at or near Jasper, FL, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, CO, NM, and TX. (Hearing site: Birmingham or Montgomery, AL.)

MC 126305 (Sub-99F), filed December 11, 1978. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Route 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* from the facilities of United States Steel Corporation, at or near (a) Gary, IN, and (b) Joliet and South Chicago, IL, to points in AL, FL, GA, KY, LA, MS, and TN, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Birmingham or Montgomery, AL.)

MC 127304 (Sub-16F), filed October 30, 1978. Applicant: CLEAR WATER TRUCK CO., INC., 9101 North West Street, Valley Center, KS 67147. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, transporting (1) *meats, meat products and meat byproducts, and articles* distributed by meat-packing houses, as described in sections A and C, of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in the United States (except AK, KS, and HI); and (2) *commodities* used by meat packers in the conduct of their business when destined to and for use by meat packers from points in the United States (except AK, KS, and HI), to the facilities of MBPXL Corporation, at or near Dodge City, KS, under contract with MBPXL Corporation, of Wichita, KS. (Hearing site: Wichita, KS.)

NOTE: Dual operations are involved in this proceeding.

MC 129032 (Sub-65F), filed November 13, 1978. Applicant: TOM INMAN TRUCKING, INC., 6015 So. 49th West Ave., Tulsa, OK 74107. Representative: David R. Worthington (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and feed business houses, between the facilities of Ralston-Purina, at or near Davenport and Clinton, IA, on the one hand, and, on the other, points in IN, MI, and OH. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 133095 (Sub-228F), filed December 7, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, IN., P.O. Box 434, Euless, TX 76039. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rubber gloves, administrations sets, inpatient treatment kits,* and (2) *drugs and intravenous solutions,* in containers, in vehicles equipped with mechanical refrigeration, from Rocky Mount, NC, to Jersey City, NJ, and Dedhan, MA. (Hearing site: Chicago, IL, or Atlanta, GA.)

MC 133095 (Sub-229F), filed December 11, 1978. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products,* from the facilities of International Paper Company, at Corinth and Ticonderoga, NY, to points in the United States (except AK and HI). (Hearing site: Buffalo, NY.)

MC 133405 (Sub-7F), filed November 30, 1978. Applicant: BOWIE HALL TRUCKING, INC., P.O. Box 353, Waldorf, MD 20601. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *malt beverages,* from Williamsburg, VA, to points in ME, NH, VT, MA, RI, and CT, and (2) *containers, dunnage, and pallets,* in the reverse direction. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be involved.

MC 134235 (Sub-13F), filed December 1, 1978. Applicant: KUHNLE BROTHERS, INC., 15625 Chillocothe Road, P.O. Box No. 128, Chagrin Falls, OH 44022. Representative: Kenneth T.

Johnson, Bankers Trust Building, Jamestown, NY 14701. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *unit construction drainage systems,* and (2) *parts and components* for the commodities in (1) above, from the facilities of Aco Drain, Incorporation, at or near Chardon, OH, to points in MI, WI, IL, MO, IN, PA, NY, WV, VA, KY, TN, MS, AL, GA, NC, SC, and FL. (Hearing site: Cleveland, OH.)

NOTE.—Dual operations may be involved.

MC 136605 (Sub-82F), filed November 30, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *poly coated iron and steel articles,* from the facilities of Simcote, Inc., at or near St. Paul, MN, to points in the United States in and west of ND, SD, NE, KS, OK, and TX (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 138875 (Sub-118F), filed December 7, 1978. Applicant: SHOEMAKER TRUCKING COMPANY, a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *copper wire, copper rod, and copper cable,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), from the facilities of Continental Copper and Steel Industries, Inc., at Linden, NJ, to the facilities of Continental Copper and Steel Industries, Inc., at West Jordan, UT, restricted to the transportation of traffic originating at the named origin and destined to the named destination. (Hearing site: New York, NY, or Washington, DC.)

MC 138882 (Sub-175F), filed November 13, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles,* from the facilities of Aim Packaging, Inc., at or near Port Clinton, OH, to those points in the United States in and east of WI, IL, KY, TN, and MS. (Hearing site: Cleveland or Toledo, OH.)

MC 138882 (Sub-177F), filed November 17, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James Segrest (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and feed business houses, in containers, from the facilities of Ralston Purina Company, at or near Dunkirk, NY, to points in OH, PA, and WV. (Hearing Site: St. Louis, MO, or Montgomery, AL.)

MC 139906 (Sub-20F), filed October 19, 1978. Applicant: INTERSTATE CONTRACT CARRIER CORP., 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *granular insulating material,* in bags, from Santa Ana, CA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Lincoln, NE, or Salt Lake City, UT.)

NOTE.—Dual operations are involved in this proceeding.

MC 140118 (Sub-13F), filed December 11, 1978. Applicant: S.T.L. TRANSPORT, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products,* from points in OH and PA, to points in NY, under contract with Container Corporation of America, of Philadelphia, PA. (Hearing site: Philadelphia, PA, or Syracuse, NY.)

NOTE.—Dual operations may be involved in this proceeding.

MC 140118 (Sub-14F), filed December 13, 1978. Applicant: S.T.L. TRANSPORT, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *beverages* (except malt beverages), in cans and bottles, (1) from Boston, MA, to points in CT, ME, NH, NJ, NY, PA, RI, and VT, under contract with White Rock Products Corp., of Boston, MA, and (2) from Springfield, MA, to points in NY, under contract with Country Club Soda Co., Inc., of Springfield, MA. (Hearing site: Boston, MA, or Syracuse, NY.)

NOTE.—Dual operations may be involved in this proceeding.

MC 140241 (Sub-33F), filed November 6, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Moundridge, KS 67107. Representative: William B. Barker, 641 Harrison St., Topeka, KS 66603. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *shredded rubber,* in bags, from Wichita, KS, to points in the United States (except AK and HI). (Hearing site: Kansas City, MO.)

MC 141273 (Sub-5F), filed November 21, 1978. Applicant: CARL NEESAM, 228 West Chestnut Street, Pardeeville, WI 53954. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *feed and feed ingredients, grain, soybean, and seed products and seed byproducts* (except commodities in bulk, in tank vehicles), from the facilities of Archer Daniels Midland Company, at or near Red Wing, MN, to points in CO, IL, IA, IN, KS, MO, NE, ND, SD, and WI. (Hearing site: Chicago, IL, or Minneapolis, MN.)

MC 141652 (Sub-29F), filed November 17, 1978. Applicant: ZIP TRUCKING, INC., Post Office Box 5717, Jackson, MS 39208. Representative: K. Edward Wolcott, 1200 Gas Light Tower, 235 Peachtree Street, N.E., Atlanta, GA 30303. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *covered copper wire, fluorescent lamp ballasts,* and *equipment, materials, and supplies* used in the manufacture and distribution of covered copper wire and fluorescent lamp ballasts, (1) between Mendenhall and Gallman, MS, and Blytheville, AR, and (2) between Blytheville, AR, on the one hand, and, on the other, points in AZ, CA, CO, CT, MD, MA, NJ, NM, NY, OR, PA, UT, VA, and WA. (Hearing Site: New York, NY, or New Orleans, LA.)

MC 141804 (Sub-163F), filed October 30, 1978. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *warp beams, bobbins, pallets, forms, interior packaging, and packing trays,* from points in CA to points in SC. (Hearing site: Los Angeles or San Francisco, CA.)

MC 142262 (Sub-4F), filed November 13, 1978. Applicant: BERNARD PAVELKA TRUCKING, INC., Route 1, Box 263B, Hastings, NE 68901. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier,* by motor

vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts,* and *articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except commodities in bulk), (1) from Gibbon, NE, to points in WI (except Milwauke, WI), IL (except Chicago, IL), points in MN and IA, under contract with Gibbon Packing, Inc., of Gibbon, NE, and (2) from the facilities of Dugdale Packing Company, at or near Darr, NE, to points in KS, MO, IA, MN, WI, IL, KY, IN, OH, and MI, under contract with Dugdale Packing Company, of St. Joseph, MO. (Hearing Site: Lincoln, ME.)

MC 142508 (Sub-42F), filed December 12, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *printed matter,* from the facilities of Quad-Graphics, Inc., at or near Pewaukee, WI, to points in the United States (except AK, HI, and WI), restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 142603 (Sub-7F), filed November 17, 1978. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles,* from South Deerfield, MA, and Danville, KY, to points in the United States (except AK and HI), under a continuing contract with Deerfield Plastics Co., Inc., of South Deerfield, NA. (Hearing site: Springfield or Boston, MA.)

MC 142703 (Sub-15F), filed November 6, 1978. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 West Third Street, Cincinnati, OH 45214. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *genral commdities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Louisville, KY, on the one hand, and, on the other, points in IN, restricted to the transportation of traffic having a prior or subsequent movement by rail or water. (Hearing site: Columbus, OH.)

MC 143002 (Sub-5F), filed October 19, 1978. Applicant: C.D.B., INCORPORATED, 5170 36th Street, S.E., Grand Rapids, MI 49508. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household and personal care products,* and *materials and supplies* used in the manufacture and distribution of household and personal care products, between Ada, MI, on the one hand, and, on the other, the port of entry on the International Boundary line between the United States and Canada, at Sweetgrass, MT, under contract with Amway Corporation, of Ada, MI. (Hearing site: Grand Rapids or Lansing, MI.)

MC 143436 (Sub-17F), filed October 25, 1978. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 9049 Stonegate Road, Indianapolis, IN 46227. Representative: Stephen M. Gentry, 1500 Main Street, Speedway, IN 46224. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery, dessert preparations, gumball machines and stands, and display and advertising materials,* in vehicles equipped with mechanical refrigeration, from the facilities of Leaf Confectionery, Inc., at or near Chicago, IL, to points in IN, KY,ME, OH, and WV. (Hearing site: Indianapolis, IN.)

MC 143553 (Sub-4F), filed November 20, 1978. Applicant: DIXON LEASING CO., INC., Old Egg Harbor Road, Lindenwold, NJ 08021. Representative: Calvin F. Major, 200 West Grace Street, Suite 415, Richmond, VA 23220. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *corrugated asphalt, roofing* and *roofing accessories, rudge rolls, skylight sheets,* and *filler strips,* from Fredericksburg, VA, Philadelphia, PA, and Lindenwold and Port Elizabeth, NJ, to points in AL, AR, CO, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI, under a continuing contract with Onduline U.S.A., Inc., of Fredericksburg, VA. (Hearing site: Richmond or Fredericksburg, VA.)

MC 143775 (Sub-42F), filed December 12, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Charles E. Creager, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *toilet preparations, washing and scouring compounds, health and beauty care products, drugs, and display racks,* from the plantsite of Noxell Corporation, at Cockeysville, MD, to points in WA, OR, NV, CA, AZ, NM, and TX. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be involved.

MC 144622 (Sub-27F), filed November 13, 1978. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs, rubber articles, plastic articles, and drugs,* (1) from the facilities of Ross Laboratories, a division of Abbott Laboratories, at Columbus, OH, to points in AR, LA, TX, and OK, restricted to the transportation of traffic originating at the named origin, and (2) from the facilities of Ross and Abbott Laboratories, a division of Abbott Laboratories, at Altavista, VA, to points in AR, CA, CO, IL, LA, OK, KS, MO. TN, TX, UT, OR, and WA, restricted to the transportation of traffic originating at the named origin. (Hearing site: Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144674 (Sub-3F), filed October 30, 1978. Applicant: MJL Leasing, Inc., 623 East Main Street, Santa Paula, CA 93060. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *commodities* dealt in by distributors of food service supplies (except foodstuffs), between Long Island City, NY, and points in Los Angeles County, CA, under contract with Seneca-Delco Corporation, of Long Island City, NY. (Hearing site: Los Angeles, CA.)

MC 145126 (Sub-2F), filed October 26, 1978. Applicant: JERRY D. MARTIN, d.b.a. MARTIN TRUCKING CO., West Williams Street, Route 2, Cardington, OH 43315. Representative: James Duvall, P.O. Box 97, 220 West Bridge Street, Dublin, OH 43017. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *scales,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, assembly, and servicing of scales, between points in the United States, under contract with Toledo Scales, a Division of Reliance Electric Corporation, of Worth-

ington, OH. (Hearing site: Columbus, OH.)

MC 145152 (Sub-24F), filed November 15, 1978. Applicant: BIG THREE TRANSPORTATION, INC., Post Office Box 706, Springdale, AR 72764. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *toilet preparations and toilet articles* (in vehicles equipped with mechanical refrigeration), from the faciliities of Roux Laboratories, Inc., at or near Jacksonville, FL, to those points in VA on U.S. Hwy 1, points in AL, AR, CT, DE, GA, MA, MD, ME, MS, NH, NJ, NY, OK, PA, RI, VT, and DC. (Hearing site: Jacksonville, FL, or Fayetteville, AR.)

MC 145226 (Sub-2F), filed October 23, 1978. Applicant: HALES TRANSPORT COMPANY, INC., P.O. Box 692, Bridgeport, TX 76026. Representative: Billy R. Reid, P.O. Box 9093, Fort Worth, TX 76107. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *crushed stone*, from the facilities of Dolese, at or near Davis, OK, to Frisco and Farmers Branch, TX, under contract with Freeway Ready Mix, of Farmers Branch, TX. (Hearing site: Dallas, TX.)

MC 145281 (Sub-2F), filed October 30, 1978. Applicant: JAMES P. KEEGAN CO., INC., P.O. Box 426, Kinderhook, NY 12106. Representative: Frank T. Meehan, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between New York, NY, on the one hand, and, on the other, points in Albany, Columbia, Dutchess, Greene, Montgomery, Oneida, Orange, Rennselaer, Saratoga, Schenectady, Schoharie, Ulster, and Westchester Counties, NY, and (b) between points in Albany, Columbia, Dutchess, Greene, Montgomery, Oneida, Orange, Putnam, Rennsselaer, Saratoga, Schenectady, Schoharie, Ulster, Washington, and Westchester Counties, NY; and (2) *lumber, lumber products*, and *roofing materials*, from Albany, NY, to points in CT, VT, and those in MA on and west of Interstate Hwy 91. (Hearing site: Albany or New York, NY.)

MC 145385 (Sub-1F), filed December 11, 1978. Applicant: SHADE TRANSPORTATION SYSTEMS, INC., 800 Heritage Road, DePere, WI 54115. Representative: David V. Purcell, 1330 Marine Plaza, 111 East Wisconsin Avenue, Milwauke, WI 53202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of paper forms and printing paper, (except newsprint and commodities in bulk), (a) between DePere, WI, on the one hand, and, on the other, points in the United States (except AK and HI), and (b) between points in CO, GA, IL, IN, IA, KS, KY, MD, MI, MN, MO, NJ, NY, NC, OH, PA, and VA, under contract with Shade Information Systems, Inc., of DePere, WI. CONDITIONS: Said carrier shall conduct separately its contract carrier operation and its other business activities. Carrier shall maintain separate accounting systems for each such business. Carrier shall not transport property as both a private and for-hire carrier at the same time and in the same vehicle. (Hearing site: Green Bay, WI, or Milwaukee, WI.)

MC 145596F, filed October 17, 1978. Applicant: A & M EXPRESS, INC., 618 United American Bank Bldg., Nashville, TN 37219. Representative: Robert L. Baker (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *mining equipment, motors, and conveyors, and parts* for mining equipment, motors, and conveyors, and (2) *commodities* used in the manufacture and distribution of mining equipment, motors, and conveyors, between Rutherford County, TN, on the one hand, and, on the other, those points in the United States in and east of ID, UT, and AZ. (Hearing site: Nashville, TN, or Washington, DC.)

MC 145668F, filed November 6, 1978, and previously published in the FEDERAL REGISTER on December 19, 1978. Applicant: DACA, INC., 19450 North Hwy 99, Acampo, CA 95220. Representative: Fred H. Mackensen, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts* and *such commodities as are used by meat packers in the conduct of their business when destined to an for use by meat packers*, as described in sections A and D of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), between Lodi, CA, on the one hand, and, on the other, those points in the United States west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the boundary line between MN and WI, then along the eastern boundary of MN to the International Boundary line between the United States and Canada (except AK and HI), under contract with Goehring Meat Inc., of Lodi, CA. (Hearing site: Los Angeles, CA.)

NOTE.—The purpose of this republication is to include the state of MN in the territorial description.

MC 145695 (Sub-1F), filed December 11, 1978. Applicant: DISTRIBUTION SHIPPING COMPANY, INC., 200 Route 17 South, Mahwah, NJ 07430. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from South Hackensack, NJ, to Jacksonville, Orlando, Miami, Pompano Beach, and Tampa, FL, Greenville, SC, Charlotte and Raleigh, NC, Atlanta, GA, Louisville, KY, Montgomery, AL, Fort Worth, TX, and New Orleans, LA, under contract with Monterey Canning Company, Winn-Dixie Stores, Inc., of Jacksonville, FL. (Hearing site: New York, NY.)

MC 145701F, filed November 6, 1978. Applicant: D. C. TRANSPORT, INC., 916 South Riverside Ave., St. Clair, MI 48079. Representative: John W. Bryant, 900 Guardian Bldg., Detroit, MI 48226. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *salt and salt products*, (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of salt and salt products, from the facilities of Diamond Crystal Salt Company, at St. Clair, MI, and Akron, OH, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and DC; and (3) *materials, equipment, and supplies* used in the manufacture and distribution of salt and salt products (except commodities in bulk), in the reverse direction. (Hearing site: Detroit, MI, or Washington, DC.)

MC 145743 (Sub-2F), filed November 20, 1978. Applicant: TFS, INC., Box 126, Rural Route 2, Grand Island, NE 68801. Representative: Gailyn L. Larsen, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *fiberglass buildings, fiber glass building sections and building panels, structural building components, and building equipment*, and (2) *materials, equipment, supplies, and accessories* used in the construction of

buildings, (except commodities in bulk), between the facilities of Concept Fiberglass Homes, Inc., at or near Grand Island, NE, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Grand Island or Lincoln, NE.)

NOTE.—Dual operations may be involved.

MC 145655 (Sub-3F), filed December 12, 1978. Applicant: TYSON FOODS, INC., 2210 Oaklawn, P.O. Drawer E, Springdale, AR 72764. Representative: Michael H. Mashburn, 111 Holcomb Street, P.O. Box 869, Springdale, AR 72764. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from points in FL, IN, LA, MI, MO, NC, OH, TN, TX, VT, WA, and WI, to Springdale, AR, under contract with Northwest Arkansas Paper Company, of Springdale, AR. (Hearing site: Fayetteville or Fort Smith, AR.)

[FR Doc. 79-2973 Filed 1-29-79; 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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	Items
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[6714-01-M]

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

CHANGE IN SUBJECT MATTER OF AGENCY MEETING

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 4:00 p.m. on January 24, 1979, the Corporation's Board of Directors voted, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac (Appointive), to withdraw the following item from consideration:

Memorandum and resolution proposing the adoption of a Joint Statement, revised, regarding the Classification of Assets, the Appraisal of Bonds and the Treatment of Securities Profits in Bank Examinations.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: January 25, 1979.

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

[S-193-79 Filed 1-26-79; 11:18 am]

[6714-01-M]

2

FEDERAL DEPOSIT INSURANCE CORPORATION

CHANGES IN SUBJECT MATTER OF AGENCY MEETING

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 4:30 p.m. on January 24, 1979, the Corporation's Board of Directors voted, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac (Appointive), to withdraw the following matter from the agenda for consideration at the meeting:

Application of American State Bank, McCook, Nebraska, for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition of the following matters to the agenda for the meeting, on less than seven days' notice to the public:

Recommendation regarding the liquidation of assets acquired by the Corporation from Northern Ohio Bank, Cleveland, Ohio (Case No. 43,798-L).

Memorandum regarding the liquidation of assets acquired by the Corporation from The Drovers' National Bank of Chicago, Chicago, Illinois (Legal Division memorandum dated January 23, 1979).

The Board then determined, by the same majority vote, that the public interest did not require consideration of these matters in a meeting open to public observation and that such matters could be considered in a meeting closed to public observation by authority of subsections (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

The Board also determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: January 25, 1979.

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

[S-194-79 Filed 1-26-79; 11:18 am]

federal register

TUESDAY, JANUARY 30, 1979
PART II

DEPARTMENT OF ENERGY

■

PROCUREMENT REGULATIONS HANDBOOK NO. 1

Internal Procedures and Policy for Source Evaluation and Selection Process

[6450-01-M]

DEPARTMENT OF ENERGY

[Procurement Regulations Handbook No. 1]

PROPOSED PROCUREMENT REGULATIONS HANDBOOK

Internal Policy and Procedures, Source Evaluation and Selection Process

AGENCY: Department of Energy

ACTION: Proposed Procurement Regulations Handbook No. 1.

SUMMARY: The proposed procurement regulations handbook would establish internal policy and procedures for the Department of Energy in the source evaluation and selection process. The Handbook provides guidance to source selection officials, source evaluation boards and others who will participate in the preparation of requests for proposals, evaluations of proposals, preparation of source evaluation reports, presentations to selection officials and selection of offerors. The source evaluation board process is a process utilized by DOE to evaluate proposals submitted in response to formal requests for proposals above a specified dollar amount. The objectives of the process are to:

(1) Assure the efficient and effective expenditure of Government funds

(2) Optimize the opportunity for attainment of DOE program objectives

(3) Obtain adequate and effective competition in the acquisition of goods and services

(4) Assure impartial, equitable and thorough evaluation of proposals and other information received

(5) Provide necessary data to the source selection official to permit the selection of the best offer.

The provisions of this Handbook will be used in appropriate major procurements as provided for in DOE—Directives and Procurement Regulations and for other situations as determined by the Secretary, Deputy Secretary, or Under Secretary.

DATE: Comments must be received on or before February 28, 1979 to be considered.

ADDRESS: Comments should be addressed to Ms. Margaret W. Sibly, Office of Public Hearing Management, Department of Energy, Room 2221C, 20 Massachusetts Avenue NW, Washington, DC 20545.

FOR FURTHER INFORMATION CONTACT:

Robert J. Walsh, Procurement Policy Branch, Policy and Procedures Division, Procurement and Contracts Management Directorate, Room 308RB, 400 1st Street, NW, Washington, DC 20545. Telephone: 202-376-9057.

SUPPLEMENTARY INFORMATION: Under Section 644 of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7254) the Secretary of The Department is authorized to prescribe such procedural rules and regulations as he may deem necessary or appropriate to effectuate the functions vested in him. To the extent that section 501 of The Department of Energy Organization Act (42 U.S.C. 7191) relating to the opportunity for oral presentation is applicable to the proposed handbook, our preliminary view is that no substantial issue of fact or law exists and that this proposed handbook is unlikely to have a substantial impact on the Nation's economy, or large numbers of individuals or businesses. This preliminary conclusion is based on the fact that the ERDA-SEB Handbook was used as the baseline for the DOE Handbook with revisions made to make it consistent with the DOE Organization and relatively minor substantive changes. A final determination of whether there should be an opportunity for the presentation of oral views will be made after an evaluation of the comments on the proposed handbook and consideration of the views of those requesting an opportunity for oral presentations.

Interested persons are invited to participate by submitting data or views with respect to the proposed handbook. Comments should be identified on the outside envelope and on documents submitted with the designation "Proposed Procurement Regulations Handbook No. 1". Ten copies should be submitted. All comments will be available for public inspection at the Department of Energy Freedom of Information Room, Room GA-152, 1000 Independence Avenue, Washington, DC 20585, between 8:00 AM and 4:30 PM, Monday through Friday, except for Federal holidays. All written comments received will be carefully assessed and fully considered prior to the publication of the handbook as a final regulation.

NOTE.—The Department of Energy has determined that the proposed Procurement Regulations Handbook does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107. The Department has also determined that the proposed handbook will not affect the quality of the environment and that the requirements of section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275 do not apply.

Dated: January 24, 1979.

For the Department of Energy.

HILARY J. RAUCH,
Deputy Director, Procurement and Contracts Management, Directorate.

The following Procurement Regulations Handbook No. 1 is proposed.

PROCUREMENT REGULATIONS HANDBOOK No. 1

SOURCE, EVALUATION BOARD HANDBOOK[1]

DEPARTMENT OF ENERGY

Washington, D.C. 20545

FOREWORD

This Handbook is published to provide a compilation of significant policies and procedures applicable to the source evaluation and selection process. It provides guidance to source selection officials, source evaluation boards and others who will participate in the preparation of requests for proposals, evaluation of proposals, preparation of source evaluation board reports, presentations to selection officials and selection of officers.

The source evaluation board process is a process utilized by the DOE to evaluate proposals submitted in response to formal requests for proposals above a specified dollar amount. The objectives of the process are to:

- Assure the efficient and effective expenditure of Government funds.
- Optimize the opportunity for attainment of program objectives.
- Obtain adequate and effective competition in the acquisition of goods and services.
- Assure impartial, equitable and thorough evaluation of proposals and other information received.
- Provide necessary data to the source selection official to permit the selection of the best offer.

The provisions of this Handbook shall be used in appropriate major procurements as provided for in DOE-Directives and Procurement Regulations and for other situations as determined by the Secretary, Deputy Secretary or Under Secretary.

The source evaluation and selection process is dynamic and will require the exercise of astute judgment throughout the process. Therefore, the chairperson of the source evaluation board and the source selection official are expected to exercise their judgment with the advice of the legal and procurement members, in making appropriate variations and adaptations that are necessary in individual situations: *Provided,* That these do not constitute a departure from the basic policies and intent of this Handbook. Advance approval of substantive variations from

[1]ERDA Source Evaluation Board Handbook dated June 30, 1977, is hereby superseded.

the Handbook must be obtained from the Director, Procurement and Contracts Management Directorate to assure compliance with pertinent regulations, statutes and sound procurement practice.

In the event of inconsistency between the provisions of this Handbook and other DOE directives, regulations, management issuances, etc., the provisions of this Handbook govern insofar as source evaluation board (SEB) operations are concerned.

The provisions of this Handbook are applicable to all elements of DOE and are effective on the effective date of this Handbook except for those SEB activities already begun where the process is too far along to permit their application. This Handbook may also be used as guidance for other types of competitive solicitations such as Program Opportunity Notices (PONs).

This publication will be available to other Government agencies, contractors, and the public in general through sale of this document by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The Director, Procurement and Contracts Management Directorate is responsible for keeping this Handbook in a current status and therefore it is not to be rewritten, in whole or in part, by any other office in DOE. Comments or suggested revisions should be transmitted to: DOE, Washington, D.C. 20545, Attention: Director, Procurement and Contracts Management Directorate, Director, Policies and Procedures Division.

M. J. TASHJIAN,
Director, Procurement and Contracts Management Directorate.

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CHAPTER I—ESTABLISHMENT OF SOURCE EVALUATION BOARDS

101. *Determination of Requirements*

Prior to the establishment of a Source Evaluation Board (SEB) it is extremely important that the requirements of the program office are clearly and concisely defined and agreed to by the program officials. It is the responsibility of the cognizant program office or field office to determine its requirements consistent with its mission, giving appropriate consideration to budgetary and program approval documents. Before an SEB is established the program office should prepare in draft a detailed statement of work. This statement of work should clearly define what is to be done and the key milestones and objectives. The draft statement of work will be used by the SEB in preparing the request for proposals (RFP).

102. *Designation and Duties of Source Evaluation Board Members, Ex-Officio Members and Advisors*

a. The Secretary, Deputy Secretary, Under Secretary or an Assistant Secretary ordinarily will be the source selection official and will designate the board members. In those instances where a field office manager is delegated authority as the source selection official, the field office manager will designate the board members, and any reference in this manual to duties to be performed by the Director, Procurement and Contracts Management Directorate or the SEB Secretariat will be performed by personnel appointed by the field office manager.

b. To establish a Headquarters SEB (an SEB where the source selection official is a Headquarters official) the program director should submit a complete procurement request together with the names and position titles of the suggested chairperson, executive secretary, voting members, legal (nonvoting) member, ex-officio members, and advisors of the proposed SEB to the Director, Procurement and Contracts Management Directorate. It should be noted that the SEB process involves a substantial amount of full-time effort on the part of board members; therefore, this should be considered in nominating individuals for board membership. The Procurement and Contracts Management Directorate—SEB Secretariat will prepare a memorandum and letter establishing the SEB, as presented in Appendix #1, naming board and exofficio members and advisors and send it to the source selection official, for review and approval.

c. Changes in the board membership will be made only with the approval of the source selection official. The letter designating the change will be prepared and issued in the same manner as the original letter establishing the board. The chairperson, however may replace the executive secretary without approval of the source selection official.

d. In suggesting the composition of the board, consideration should be given to the following:

(1) *Board Membership*—In keeping with the importance of the source evaluation and selection process, source evaluation boards should be composed of highly qualified DOE technical and business personnel. When appropriate, personnel from other Federal Government agencies may serve as board members. The board chairperson and secretary normally will be from the program orga-

nization having cognizance of the procurement. The executive secretary will not have a vote.

It is desirable that at least one person who will be given a key technical assignment on the project to which the procurement is directed be designated a board member. At least two members of every SEB shall be from organizations other than the cognizant program office. One of these two members shall be from the procurement organization. To provide continuity in negotiation of the resulting contract, the procurement member normally should be that individual who, it is anticipated, will negotiate the contract.

The Assistant General counsel for Procurement or counsel for the supporting field activity will designate for each SEB a legal (nonvoting) member who will serve as a representative of the Office of General Counsel. Since the legal member does not have a vote, the legal member's presence will not be required at all meetings of the board. However, the legal member will be available on an as needed basis and advice will be sought from that member in all important or potentially controversial actions of the Board and all actions of legal significance. The legal member will be timely informed of all SEB activities and meetings.

The board should be small in size, normally not exceeding five voting members. Each voting member will have one vote.

(2) *Board Chairperson*—The chairperson of the board is its principal operating executive. The chairperson is in charge of and responsible for procedural aspects of the board activities, including:

Assuring that all board members have reviewed the SEB Handbook in detail.

Scheduling and conducting all board meetings and deliberations.

Designating, after consultation with board members, necessary committees and advisors (in addition to those appointed by the Source Selection Official) and appointing chairpersons of such committees.

Assuring that the SEB executives secretary prepares board records summarizing its meetings and substantiating all board findings, conclusions and recommendations.

Resolving all board procedural matters not specifically covered in this Handbook. If a significant problem develops, it should be brought to the attention of the SEB Secretariat and the legal member.

(3) *Board Executive Secretary*—The board executive secretary will perform those duties assigned by the chairperson such as those identified in Appendix #2.

(4) *Ex-Officio Members*—Boards may have as nonvoting ex-officio members the cognizant assistant secretary-level official, program director, or field office manager. The SEB Secretariat shall provide an ex-officio member to every SEB even though not specifically designated in the letter establishing the SEB. Ex-officio members will be required to comply with DOE conflict of interest regulations and nondisclosure of information requirements. The role of the ex-officio member is to provide advice and assistance to the board and to the source selection official and to receive periodic progress reports as appropriate. Ex-officio members are not to direct the board to take a particular action or to be involved in the day-to-day operation of the board. The cognizant contracting office may also have a procurement representative as an ex-officio member on the board when the contracting office is not otherwise represented on the board by such an individual. This will aid in the continuity in negotiations.

(5) *Advisors and Committee Members*—Only personnel from DOE, other Federal Government agencies and DOE prime managment or operating contractors may be used as advisors or committee members when their services are necessary and available. These individuals will be required to comply with DOE conflict of interest regulations and non-disclosure of information requirements. Advisors and committee members will be utilized in discrete areas where they have a special expertise and will not be given access to overall board activities.

103. *Role of Source Selection Official*

a. The source selection official (SSO) will be a senior DOE official specifically designated for that purpose. His role starts with the determination of requirements and establishment of a source evaluation board to evaluate proposals. A copy of the Procurement Plan/Schedule of the SEB will be forwarded to the SSO through the SEB Secretariat. The SSO may request periodic written reports of progress against the schedule. It is the source selection official's task to make the selection decision by judging which of the proposals are most advantageous to the Government, all things considered. The selection official should, in the light of the Government's stated requirements and evaluation criteria in the RFP, consider, as appropriate, the relative quality and suitability of what is being offered by each proposer, the likelihood of its being performed and how much each offer would probably cost the Government. In making his selection, he must consider all factors pertinent to the choice and make the necessary tradeoff judgments as may be required between quality, schedule, and price. The board will not recommend the selection of a contractor, but will report its findings and conclusions and answer all questions raised by the source selection official and assist him with any special analyses or other requirements for clarifying matters related to the final selection.

b. (1) The selection of offerors will be made by the Source Selection Official in light of the SEB's presentation after consultation with senior staff. It is generally desirable to select a single offeror for negotiation. However, there may be cases where the Source Selection Official may determine that it is in the best interests of the Government to select from offers in the form of fully definitized contractual instruments. This may occur when the Source Selection Official has serious questions about the outcome of negotiations, or when the evaluation is so close as to not provide meaningful discrimination. In this event, the Source Selection Official, may if appropriate, establish, or direct the SEB to establish, a new or revised competitive range and direct that discussions be reopened with all offerors then in the competitive range.

(2) If the Source Selection Official directs discussions be reopened, it will be the responsibility of the SEB to obtain and present to the Source Selection Official for consideration and final selection, fully definitized best and final offers in the form of signed contractual instruments from each offeror.

c. The Source Selection Official shall, unless otherwise provided by rule or regulation, have the authority and responsbility to make the affirmative determinations required by 42 U.S.C. 5918(b) as to whether (1) there is little or no likelihood an organizational conflict of interest would exist as a result of an award or (2) that such conflict will be avoided after appropriate conditions have been included in the award instrument. In the event the Source Selection Official determines that a conflict of interest exists and that such conflict cannot be avoided by including appropriate conditions in the award instrument, the Source Selection Official, provided that person is the Secretary, the Deputy Secretary, the Under Secretary, or an Assistant Secretary, may nevertheless authorize award if the Source Selection Official determines that it is in the best interests of the United States to made such award and the award instrument includes appropriate conditions in such contract agreement, or aggrangement to mitigate such conflict.

d. After selection had been made, the Office of General Counsel will prepare a concise selection statement

which will provide the rationale for the selection decision. The selection statement will be formally coordinated with the SEB Chairperson and SEB Secretariat prior to submission to the source selection official. The selection statement will be dated, signed by the source selection official, and retained in the official contract files. Appropriate notifications and announcements will be made after the selection decision, in accordance with Chapter VII.

104. *Safeguards to Preserve Integrity of SEB Process*

a. Everyone who participates in the evaluation process (board members, committee members, advisors) is required to sign a Confidentiality Certificate (Appendix #3). The chairperson should brief all board committee members and advisors on the sensitivity of the SEB process, the prohibition against unauthorized disclosure of information and the requirements pertaining to conflict of interest. Each individual involved in the evaluation should inform the chairperson in writing whenever the individuals participation in board activities might embarrass the Government because of a real, apparent or possible conflict of interest. Whenever conflicts between SEB activities and a participants personal interests are disclosed, that conflict must be jointly resolved by the SEB chairperson and legal member and the SEB file so documented. In the event of disagreement, or for conflicts involving either the chairperson or legal member, the matter should be promptly presented to the General Counsel or designee for resolution.

b. During SEB activities, including written or oral discussions, participants will not reveal any information concerning the evaluation to anyone who is not also participating in the same proceedings and then only to the extent that such information is required in connection with such proceedings. 18 U.S.C. 1905 prohibits the unauthorized disclosure of business, confidential, or trade secret information unless authorized by law.

c. The right to information relating to SEB activities on a need-to-know basis normally does not extend to the chain of supervision of board members. However, nothing in the Handbook precludes reasonable, general progress reports of board activities by the board chairperson to ex-officio members and the source selection official nor the consultation between the legal and procurement members and their superiors as to proper procurement procedures.

CHAPTER II—PREPARATION OF REQUEST FOR PROPOSALS

201. *Role of Program Office and Procurement*

a. The cognizant procurement representative and program office will work together in the development of the draft request for proposals. The effectiveness of any evaluation is dependent, in large measure, on the quality of the RFP and whether it will lead to the submission of comparable proposals. Therefore special care and attention should be devoted to the development of the RFP. Ordinarily the preparation of the draft RFP will be initiated prior to the establishment of the SEB and be available for the first or second meeting of the board. The complete statement of work, specifications, project objectives and schedule are the primary responsibility of the program office while the business aspects are primarily the responsibility of the procurement representative. In the development of the RFP, special consideration will be given to the qualification criteria, evaluation criteria and the requirements for price and cost information.

b. Pending any subsequent revision of the RFP format, the following format should be used. The RFP should contain a covering letter transmitting the RFP to prospective offerors. The RFP will contain general instructions and have the following enclosures as appropriate:

I Description of Work or Services
II Qualification Criteria
III Evaluation Criteria
IV Price/Cost Considerations
V Representatives and Certifications
VI Proposal Format
VII Draft Contract
VIII Other Information

c. When the draft RFP has been completed and reviewed by the cognizant procurement office, it will be submitted to the SEB for review and modification. At an appropriate stage in the process either before or after the SEB is established, the draft RFP or portion thereof may be published for comment by the Director, Procurement and Contract Management Directorate.

02. *Transmittal Letter*

a. The transmittal letter of the RFP should include the following areas:

1. Briefly describe the work to be done of the services to be furnished.

2. Identify the point of contact for all questions or inquires.

3. Describe the type of contract that is contemplated, i.e., cost-reimbursement or fixed price, and any special incentive or cost participation features.

4. Provide an overview of the RFP briefly describing each of the enclosures.

5. Indicate that it is DOE's policy to discourage "brochuremanship" and unnecessarily costly proposal preparation. Proposals should be prepared with maximum economy, consistent with the particular procurement, to ensure that the resources of both proposers and evaluators are efficiently utilized.

6. Provide a brief schedule of major activities of the SEB such as:

—Preproposal Conference Date
—Proposal Due Date
—Tentative Board Visit Dates
—Tentative Source Selection Decision Date

7. State the exact time and place where proposals are due and the number of copies required.

8. Request an acknowledgement of receipt of the RFP, indicating whether or not the organization intends to submit a proposal and attend the preproposal conference.

b. In addition, an attachment to the transmittal letter should cover the following areas:

1. Describe the technical, business and management evaluation criteria and clearly indicate their relative importance. It is not sufficient to merely rank the criteria in terms of "primary," "secondary," and next in importance. For example, if the first of five criteria represents 72% of the total score and six times the weight of the second most important criterion, the predominant value of that criterion should be indicated in the RFP in some narrative manner.

The criteria should also be listed in descending order of importance. The major evaluation criteria may be divided into subcriteria which should be described in terms of their relative importance and also be listed in order of relative importance. The actual numerical weights assigned to the evalution criteria will not be included in the RFP.

2. Indicate the relative importance of cost in relation to the technical, business and management evaluation criteria.

3. State if a preproposal conference will be held; give details as to when, where and necessary limitations on the number of attendees. If security clearance or other special administrative arrangements are necessary to secure admittance to a conference, so state. Details of conference procedures should be determined and stated. If written questions are to be submitted by attendees for answers at the conference, offerors should be informed as to how and when they will be submitted and to whom. Other administrative details should also be stated, if known at the time, e.g., restrictions on recording of proceedings. Sufficient time must be permitted for potential offerors to review the RFP prior to any preproposal conference.

4. Inform all prospective offerors that DOE may solicit, from available sources, relevant information concerning the offeror's record of past per-

formance and use such information in the evaluation and selection process.

5. State that each offeror should represent that the proposal will remain in effect for a specified period of time, e.g., 120 days from the date designated for receipt of proposals.

6. Indicate that the person signing the proposal must have the authority to commit the proposer to all of the provisions of the proposal.

7. State that, in order to receive proper handling and in consideration of the Freedom of Information Act, any information in the offeror's proposal which is considered to be trade secrets, commercial or financial information, priviledged or confidential or of a personal nature should be specifically identified.

8. State that the RFP does not commit the Government to pay any costs incurred in the preparation or submission of any proposal or to procure or contract for any services.

9. State that proposals should contain the most favorable terms to DOE which the offeror can submit and that DOE reserves the right, without qualification, to select any proposal as a basis for negotiation or to reject any and all proposals.

10. State that late proposals will be treated in accordance with FPR 1-3.802-1 Consideration of Late Proposals.

11. State that the Contracting Officer is the only individual who can legally commit the Government to the expenditure of funds in connection with this proposed procurement. Any other commitment, either explicit or implied, is invalid.

12. State that the source evaluation process will be conducted in accordance with the DOE-SEB Handbook and that a copy may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

13. When appropriate, state that the number of awards anticipated or that multiple awards may be made.

203. *Description of Work or Services*

This enclosure to the RFP, which should become part of the draft contract, should describe in appropriate detail the work or services to be procured including deliverables. Wherever possible, it should also identify specific objectives, goals and intermediate milestones that will be used to measure the contractor's performance in regard to technical, schedule and cost aspects. Requirements for work to be performed under the resulting contract must be adequately described in the draft contract (including its statement of work). Any such requirements set forth in other portions of the RFP, e.g., the transmittal letter, instructions, criteria, may not effectively bind the offeror or may be omitted from the resulting contract.

204. *Qualification Criteria*

Qualification criteria, if any, should be sparingly employed where there are elements of special experience, capability, facilities, or other factors which are essential to the program performance aspects of the procurement. Qualification criteria must be clearly stated, and restricted to elements which are essential to the successful completion of the contract work. Stated another way, they are go/no go criteria which depict the minimum qualifications for a particular procurement. In addition, the area of organizational conflict of interest may be a qualification criteria (see Chapter IV, Section 403). The purpose of qualification criteria is to discourage unqualified organizations from incurring the time and expense associated with the submission of proposals when they clearly have no opportunity for selection.

205. *Evaluation Criteria*

a. The evaluation criteria will consist of those elements which the board must examine in each proposal to determine an offeror's:

Understanding of the work to be performed, including environmental and safety issues;
Technical, business and management approach;
Potential for completing the job as specified in the RFP;
Probable cost based upon offerors approach;
Relative qualifications and experience of both the proposer and key individuals proposed;
Comparative competitive status;
Offerors commitment and assumption of risk.

b. Too many evaluation criteria are as detrimental to an effective evaluation of a proposal as are too few. The evaluation process should be aimed at ascertaining and assessing distinctions among significant aspects of the work to be performed rather than identifying the relatively unimportant differences to be expected when multiple proposals are received. Evaluation criteria will be limited to the minimum number which will:

Allow for the above determinations to be made and
Indicate significant differences or distinguishing features among proposals.

There are no restrictions on the kinds of evaluation criteria which may be used, as long as they are disclosed in the RFP and relate to the purposes of the procurement. The specific criteria used will depend on the particular circumstances, however, they will generally fall into the following major categories: (a) Technical; (b) business and management; and (c) cost.

D. Each evaluation criterion should be stated clearly and concisely. The discipline of delineating criteria will highlight overlap or redundancy among the several criteria so that the descriptions can be reworked to eliminate overlapping or redundant concepts and double scoring. The criteria set out in the RFP must be used in evaluation and will not be changed without the approval of the SSO and amendment of the RFP.

206. *Evaluation Criteria—Price and Cost Considerations*

a. This enclosure to the RFP should indicate the relative importance of cost in the evaluation and describe the type of cost information and the format to be used by the offerors. Cost, especially in the case of a cost-reimbursement type contract, should be measured in terms of cost realism in addition to the lowest estimated cost. An unrealistic cost proposal may reflect adversely on an offeror's understanding of the project.

b. In cost-reimbursement type contracts, particularly if there is a lengthy performance period, it may be necessary to forecast general economic factors and the anticipated demand for essential materials. Because these forecasts could materially affect the estimated contract costs and offerors may have little or no control over them, the RFP should specify the estimating assumptions which are to be used.

c. For example, in estimating the cost of a program to be performed over a five-year period, offerors would find it necessary to project the rate of inflation and the national demand for a given fuel. Because neither of these factors is within the control of an offeror and because cost estimates would be materially affected by the projections, the RFP should include the assumptions to be used in proposal preparation. Otherwise, there could be no assurance that the cost projections submitted would provide a valid basis for comparison.

d. When detailed cost estimates are requested, the cost information should be presented in accordance with Optional Form 60, including all footnotes and instructions. Similar information should be furnished in regard to major subcontracts. The offerors' proposed costs are to be related to the proposed contract period of performance, escalated, as necessary, to cover geographical differences, union agreements, personnel practices, and normal economic conditions peculiar to the offeror. For long term periods of performance (usually beyond 3 years) or for unusual economic conditions, the RFP should state the additional economic escalation rates that are to be used by the offerors in projecting their costs.

207. *Representations and Certifications*

Include the most current representations and certifications form covering small business, contingent fee, equal employment opportunity, cost accounting standards, clean air and water certifications, etc.

208. *Proposal Format*

a. This enclosure to the RFP should prescribe the format that each offeror should follow in preparing its proposal in response to the RFP. The proposal format should conform to the RFP format and should be separated into sections. Generally the following format is suitable:

Part I General information covering such areas as: cognizant Government agencies, representations and certifications, information required for the Fact Sheet, etc.
Part II Information related to qualification criteria.
Part III Information related to technical evaluation criteria.
Part IV Information related to business and management evaluation criteria.
Part V Price and Cost information.
Part VI Comments on draft contract.
Part VII Other information.

b. Supporting information should be keyed to the appropriate part and paragraph in the RFP. For ease of evaluation, it may be desirable to prescribe the use of separate volumes addressing the technical evaluation criteria, business and management evaluation criteria; and price and cost information. To the extent practicable, specify the use of graphs, charts and tables which will facilitate the comparison of proposals. In addition, consideration should also be given to specifying a limited number of pages for each part of the proposal.

209. *Draft Contract*

This enclosure should contain the draft contract or, as a minimum, all required and special clauses likely to affect an offeror's willingness to submit a proposal.

210. *Other Information.*

It is the policy of DOE to provide small business/minority business firms an equitable opportunity to participate in DOE procurements with the objective of assuring that such firms receive their fair share of DOE contracts. Since the provisions of this Handbook apply to procurements which are of a high dollar value and may be beyond the capabilities of small business/minority business it is important that appropriate consideration is given, under Business and Management Evaluation Criteria to offeror's small and minority business subcontracting programs. Therefore each RFP should contain a provision requiring the offeror to describe its proposed small and minority buiness programs to be followed during the period of performance of the proposed contract.

CHAPTER III—FUNCTIONS AND RESPONSIBILITIES OF THE SEB—PRIOR TO RECEIPT OF PROPOSALS

301. *Administrative Matters*

a. *Conduct of Board Activities*

1. The SEB will be convened as directed by the chairperson. A simple majority of the voting members of the board constitutes a quorum for conducting board business. Board duties will take priority over normal duty assignments.

2. Attendance at board meetings is necessary to the evaluation process and members will attend except for compelling reasons. When the chairperson determines that a member's failure to attend meetings is prejudicial to the evaluation, the chairperson may request the source selection official to require the member's attendance or to replace such individual. It is the responsibility or the board chairperson to arrange for adequate and secure working space and facilities for the board. It is desirable to have a conference room fully dedicated to the SEB for its use during this process.

3. Full discussion of all matters considered by the board is encouraged. Differences of opinion should be explored with the objective of reaching a consensus or a common understanding on statements of issues which reflect fairly the differing views of board members.

4. Contacts with offerors and the private sector should be handled by one member of the board, normally the procurement member or SEB executive secretary as authorized by the chairman. Board members, advisors, and committee members will advise the chairperson of any inquiries received concerning the board's proceedings or the composition of the board directed to them from any source outside the board. An appropriate record of such inquiries shall be included in the file.

b. *Protection of Board Information*

Procedures shall be established for the secure handling of proposals, worksheets, records of meetings, reports and other documentation relating to the SEB process. All proposals, SEB reports and briefing charts will be numbered and controlled by the board secretary. Information given to and transfers between committees should be kept to a minimum and only provided on a need-to-know basis as approved by the SEB chairperson. Committee members and advisors should not be given the weights assigned to the evaluation criteria.

Requests for information should be carefully considered by the board and its legal member and, if it is decided to release certain information, it should be made available to all potential or actual offerors. After receipt of proposals, no information regarding the number or identity of the offerors or any information contained in their proposals will be made available to the public or to anyone whose official duties do not require such knowledge.

c. *Protests*—Everyone involved in the process and especially the chairperson of the SEB should do everything possible in regard to the RFP and the evaluation process to assure impartial, equitable and thorough treatment is accorded all potential and actual offerors in order to avoid any organization being given an unfair competitive advantage over any other organization. Offerors may file a protest with the Agency or with the General Accounting Office if the offeror believes that the board has not followed established procedures or has conducted the competition in such a way as to give one or more offerors an unfair competitive advantage. The ultimate effect of such a protest, if filed before award, could be to hold up the award, and, if filed after award, could be to invalidate such award. If the chairperson becomes aware of any protest that may be or has been filed, the chairperson should immediately notify the procurement member on the board who will in turn notify the appropriate individual in the Procurement and Contracts Management Directorate. The SEB chairperson should also notify the SEB secretariat and the legal member.

d. *Freedom of Information Act*—Any requests for information under the Freedom of Information Act should be directed to the cognizant Freedom of Information Act officer. The SEB chairperson should also notify the SEB secretariat. No information which could provide an advantage to one or more offerors should be released prior to award of all contracts contemplated by the solicitation.

302. *Preparation of Procurement Plan/Schedule*

An initial task of the board will be to review the procurement plan and schedule indicating how the board expects to accomplish its assignment. This procurement plan/schedule will be prepared in draft form by the procurement office and program office and will be submitted to the chairperson at the first or second meeting of the board. It will provide comments in relation to the following areas as appropriate:

Brief description of work or services to be procured;
Period of performance and proposed type of contract;
Responsible technical office;
Responsible contracting office;

Total estimated amount of the procurement;
Status of congressional appropriations and authorizations, if applicable;
Tentative qualification criteria, if any;
Tentative evaluation criteria—technical, business and management;
Tentative price/cost considerations;
Procurement schedule starting with establishment of board through expected award of contract;
Special considerations such as determinations to be made by the SSO.

b. After the procurement plan/schedule has been reviewed by the board it will be forwarded by the chairperson to the source selection official and Procurement and Contracts Management Directorate—SEB Secretariat. This document should be marked "Official Use Only" and transmitted in a sealed envelope to be opened only by addressee.

303. *Organization of the SEB*

a. The source evaluation board will be composed of the chairperson, members, executive secretary, legal member (nonvoting), ex-officio members and advisors as designated by the source selection official. Based upon the circumstances surrounding the particular procurement, the chairperson, with the advice of the board, will decide whether to establish committees and appoint additional advisors. It is anticipated that on most major procurements there will be a need for technical, business/management and cost committees. Committees may be established and convened prior to receipt of proposals.

b. To ensure board control, coordination and exchange of ideas, the chairperson of each committee should, if practicable, be a voting member of the board. Each committee chairperson will exercise the same responsibility with respect to procedural matters for the committee as does the board chairperson for the SEB. The findings and conclusions of committees shall be purely advisory.

304. *Review and Approval of RFP*

a. The procurement office and the cognizant program office will develop a draft RFP which will be submitted to the SEB for review and approval. It is important that the board carefully reviews the RFP to be sure that it clearly states the requirements and is fully understood by the board members. The board should make such modifications as it deems necessary to assure itself that the RFP will be able to accomplish its objectives.

b. When ready to start board work on the RFP, the chairperson will formally convene the board. Members will familiarize themselves with the objectives of the procurement and any unique considerations involved. Proposed qualification criteria will be reviewed, changed, as appropriate, and approved. Evaluation criteria will be reviewed for validity and susceptibility of being rated in order to distinguish among competing proposals. As part of this review, particular attention will be paid to the narrative definitions, developed for evaluation criteria in order to eliminate any overlap, conflict or redundancy. The board will change, as appropriate, and approve the evaluation criteria to be used.

c. Once evaluation criteria are established, the board will determine the weights to be assigned to each, depending on its relative importance to the accomplishment of the procurement objectives. Complementary to this, a rating plan will be agreed upon. The establishment of appropriate evaluation criteria and weights prior to release of the RFP is required to assure impartial evaluation. Evaluation criteria and weights assigned will not be altered after proposals are opened.

d. In its review of the RFP, the board should be mindful that it is DOE policy to obtain maximum competition consistent with the nature of the procurement. However, in view of the distinctive characteristics of many DOE programs and in the interest of the public, those companies which do not possess minimum qualifications and resources necessary to perform the proposed work should not be encouraged to incur proposal and other expenses involved in competitive submission. To accomplish this objective without limiting meaningful competition requires early and intense effort on the part of the board, working in conjunction with the program and procurement staff elements most familiar with the requirements. Timely attention to program requirements of the proposed procurement by the board will permit prompt identification of qualification criteria against which source list may be screened so that only qualified concerns are asked to submit proposals.

e. *Qualification criteria* should be employed only where it is possible for the board to establish qualification criteria which are:

Demonstrably justified from the nature of the particular procurement objective; and,
Susceptible to objective application to all potential sources.

Qualification criteria are not intended to restrict competition but to discourage proposal preparation by sources which have no real possibility of receiving the award.

f. *Evaluation criteria.* Weights and the rating plan selected should be established on a case-by-case basis in order to fit them to the significant factors of the particular procurement. Technical excellence, business/management capability and cost aspects all may be equally important factors in one selection while, in another, because of the conditions under which the selected contractor will perform, one or two may have limited significance.

The relative importance of the technical, business/management and cost criteria depends on the nature of the products or services to be procured, with technical considerations having paramount importance in research and development. Nevertheless, any factor may tip the balance when competition is very close.

g. Ordinarily the RFP will require the submission of complete proposals at one point in time. However, under special conditions it may be desirable to solicit technical proposals first and call for submission of cost proposals at a later date. Prospective contractors frequently work and rework technical proposals until immediately prior to submission in order to present the best proposal possible in the time allowed. In such circumstances, if DOE has required the simultaneous submission of a cost proposal covering the proposed work, the figures submitted by the potential contractor may be of questionable value, even for estimating purposes. Some delay in the date when cost proposals are required may be more than compensated for by a greater reliability of cost estimates and the resultant time saving made possible in later negotiations with the successful offeror. When delay in submission of cost proposals is appropriate, the RFP will include the closing date for both technical and cost proposals. In no event, however, may a competitive range be established until after receipt and consideration of technical and required cost information.

305. *Development of Source List*

The procurement office and the cognizant program office will develop a draft list of sources based upon the nature of the procurement and the draft RFP. This draft source list will be reviewed and amended as appropriate by the board based upon careful consideration of factors affecting the procurement. Prior to the issuance of the RFP, appropriate notice will be placed in the Commerce Business Daily, in accordance with FPR 1-1.1003. Such notice and any other public announcements should include any qualification criteria that will appear in the RFP.

306. *Development of Rating Plan*

a. The best rating plan for a particular procurement is dependent on the objectives of that procurement. The rating plan should be developed prior to the issuance of the RFP. Before receipt of proposals, the board should reexamine its determination of weights to be assigned and the rating

plan to be used. Where some adjustment appears necessary to accomplish the procurement objectives, such adjustment may be made without formally amending the RFP prior to receipt of proposals, only if consistent with the terms of the RFP and the relative importance of the criteria expressed therein. After receipt of proposals, no changes may be made in the evaluation criteria or in the weight assigned to each.

b. Two principal methods of rating selected evaluation criteria have been used: Numerical and adjective. The numerical method involves assigning numerical values or weights corresponding to the relative importance of the factor being evaluated in order to provide a means of comparison. The adjective method uses adjective ratings (e.g., "outstanding", "good", etc.) to provide a means of comparison. Numerical weights will be assigned to the technical evaluation criteria and they will be point scored. However business/management evaluation criteria will not ordinarily be assigned numerical weights. When not assigned numerical weights, adjective ratings will be used to rate these criteria. In situations where management capabilities and business expertise is the primary service being procured such as in operating and some support service requirements, numerical weights and scoring may be appropriate for business/management evaluation criteria. Cost will not be assigned a numerical weight or point scored or adjective rated.

c. While infinite variations are possible, there are advantages in using a standard method when the nature of the evaluaton permits. However, certain cautions must be observed with respect to all numerical and adjective rating plans:

They are only as good as the judgments made in selecting criteria and weights. They do not ensure the mathematical certitude that the numbers might lead one to believe.

When the number of subdivisions to be rated is not kept to a necessary minimum, they tend to introduce an "averaging out" effect among all proposals, thus making it difficult to differentiate in important areas of evaluation.

d. Depending on the rating plan employed, the manner in which a board reaches its final composite position may be through averages, curves, board consensus or any other means which are reasonable and followed consistently. The method of reaching composite ratings will be part of the rating plan established prior to the opening of proposals. In developing the rating plan the board should arrive at a common understanding or definition of the numerical scale and adjectives in terms of strengths and weaknesses.

e. For illustration and guidance only, it is noted that a frequently used method is to assign numerical weights to each technical evaluation criterion and subcriterion stated in the RFP which effectively reflects its proportionate importance to all the technical evaluation criteria. Determination of importance and assigning weights to each criteria obviously requires a considered judgment in the light of the procurement objectives. Assume that a total of 100 points is used as the maximum weight for the technical evaluation criteria and using a scale of 0-10 points to reflect the boards evaluation of each criteria and subcriterion the board would then arrive at a total maximum possible rating of 1000 points.

f. In regard to the business/management evaluation criteria a frequently used method is to assign adjectives such as: outstanding, good, satisfactory, poor, unsatisfactory; to each criterion to reflect the evaluation by the board.

g. Once the rating plan has been established, the board should develop worksheets to be used by each board member for rating each proposal against the technical and business/management evaluation criteria.

h. As an example, a rating sheet that may be used for rating the evaluation criteria for proposals received is presented as Appendix #4. This sample rating sheet provides for assignment of a particular weight to each evaluation criterion and, in turn, to each subcriterion on the basis of a sum total thereof of 100. It also indicates that each criterion or subcriterion would be rated on the basis of a scale of 0 to 10. Under this rating plan each board member would evaluate each offeror's proposal and then, using the assigned ratings as coefficients, arrive at the number of points assigned to each offeror by multiplying the numerical ratings by the assigned weights and totaling the scores for each evaluation criterion.

307. *Issuance of RFP*

After the RFP has been reviewed and formally approved by the board, it will be submitted to the Procurement and Contracts Management Directorate, Director, Program Support, who will appoint a solicitation review panel and distribute copies of the RFP and allied documents to each member. The panel will be convened not sooner than three working days after receipt of the RFPs by its members. This review will be conducted by appropriate staff, including the program office. While this review is taking place, the board should be finalizing the source list, rating plan and the announcement for the Commerce Business Daily as drafted by the procurement office and program office. The RFP will be modified as appropriate by the SEB and approved for release after receipt of comments from the solicitation review panel and the SSO who may require a briefing on the RFP prior to its release. The RFP will be signed by the procurement member on the board. Each organization requesting an RFP should be given a copy or an opportunity to review the RFP and reference material in a public document room or other appropriate location.

The SEB will also forward a copy of the RFP and subsequent modifications to the SEB Secretariat.

308. *Preproposal Conference*

a. A preproposal conference should be held for all procurements significant enough to justify a formal SEB. The preproposal conference permits prospective offerors the opportunity to gain a better understanding of the objectives of the procurement. It also offers the board an opportunity to stress the importance of significant elements of the RFP in order that interested organizations may judge whether to incur the cost of proposal preparation.

b. Ordinarily, the chairperson will make the necessary arrangements and conduct the preproposal conference. Interested organizations normally expect a general presentation followed by the opportunity to ask specific questions. Questions should be submitted in writing prior to the conference and qualified DOE personnel should be available at the conference to answer them. Questions received at the conference may be answered orally but it should be emphasized that the official answers will be distributed in writing.

c. It is ordinarily not desirable to tape or permit taping of the proceeding of the pre-proposal conference or distribute verbatim minutes. However, a summary of the preproposal conference should be issued. The board chairperson will assure that the official DOE position in response to all pertinent questions discussed at the preproposal conference is furnished in writing to recipients of the RFP. It is essential that provisions of the RFP are not changed in the course of a preproposal conference. The terms of an RFP may be changed only by formal written amendment signed by the procurement representative who signed the RFP.

CHAPTER IV—EVALUATION PROCESS

401. *Methodology Used to Evaluate Proposals*

a. Once proposals are received and opened the chairperson and members

are expected to spend virtually full time in the evaluation until completion of the SEB report. Upon receipt of proposals, the board chairperson will again require each board member, advisor and committee member to inform the chairperson in writing if participation in board activities might cause embarrassment because of a real, apparent or possible conflict of interest situation.

b. All proposals will be numbered and logged in (date and time of receipt) and held by the executive secretary, unopened, in a secure place, until after the due date and time specified for receipt in the RFP. If any proposal is received after the due date and time it will be treated in accordance with FPR 1-3.802-1. Normally the board will be convened as soon as possible after the due date for receipt of proposals at which time proposals should be distributed and assigned by number to each board member. The board should then review the methodology to be followed in evaluating proposals.

c. The initial phase of the evaluation will be a review by the board to determine whether or not each proposal satisfies the formal requirements of the RFP and meets the qualification criteria specified. Any proposal not meeting the qualification criteria should be eliminated from further consideration and the offeror should be notified in writing by the SEB Chairperson. Such notification should be given promptly and briefly state the rationale for elimination of the proposal from further consideration.

d. After review has been made for compliance with the qualification criteria, the board should start its evaluation of proposals in accordance with the technical and business/management evaluation criteria and cost aspects. The board chairperson will give each committee an appropriate number of proposals or portions thereof, evaluating criteria or areas to be evaluated, instructions regarding the committee functions and all data considered necessary. The committee chairperson will ordinarily be a board member and will be responsible for instructing the members as to committee functions, responsibilities and procedures. Committee members will not be told the weights assigned to the areas they are evaluating.

e. A committee is a factfinding arm of the board. As a general rule, it will function under the same contraints as the board and will be expected to:

Examine, in detail, each proposal or portion thereof for the purpose of rating the assigned evaluation criterion in accordance with the rating plan approved by the board for the committee's use.

Submit written reports covering committee evaluation as set forth below.

f. While oral reports may be given to the board, the committee function requires the submission of a written report. This report shall include:

Copies of individual and composite worksheets showing scores or ratings and supporting comments.

Any strengths of a proposal which significantly affected the rating.

Any weaknesses of a proposal which significantly affected the rating.

Any specific information bearing on the assigned ratings which the committee, or any member thereof, desires to bring to the attention of the board.

g. All reports submitted by committees will be retained as part of the board records but normally will not be included as part of the board report to the source selection official. However, when it appears that a committee report is so significant that its inclusion is necessary to the source selection official's understanding of the board's action, that report may be included.

h. Committee reports and findings will be reviewed by the board. In establishing the initial rating of each proposal, the board will not merely accumulate committee scores and rank proposals accordingly. Each board member will consider the committee ratings and rankings, taking cognizance of any reservations or qualifications stated by the committee and their own review of proposals and other information known to the board.

402. *Basis for Elimination of Proposals Before Initial Board Ratings*

a. Proposals may be eliminated from further consideration before the intial ratings if the proposal is so grossly and obviously deficient as to be totally unacceptable on its face. For example:

It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP, or clearly demonstrates that the offeror does not understand the requirement of the RFP; or

In research, development or demonstration procurements, numerous and/or substantial design deficiences are inherent in the proposal and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal.

b. Simple technical non-responsiveness, in the sense in which the term is used in formal advertising, is never sufficient to constitute unacceptability if the proposal is otherwise competitive.

c. The complete rationale for the elimination of any proposal shall be recorded in the board files. Prompt written notification by the SEB Chairperson which will include a brief statement of the rationale shall be given to each offeror who has been eliminated from further consideration. (Ref. Chapter VII, Paragraph 704.)

403. *Organizational Conflicts of Interest*

a. The SEB is responsible for assuring that organizational conflicts of interest are considered and, where appropriate and consistent with Department policy, that suitable provisions are included in the solicitation.

b. When acceptance of an organizational conflicts of interest clause or submission of an organizational conflicts of interest disclosure, or both, are set forth in the solicitation as qualification criteria, noncomplying offerors will be notified:

(1) Of the noncompliance;

(2) That failure to fully correct within a specified time may be treated as a refusal to comply in which case no further consideration shall be given the proposal; and

(3) Any attempt to modify their proposal in a manner which affects price, quantity, quality, schedule, or the offeror's competitive position may constitute a late modification under the provisions of the solicitation.

c. When an organizational conflicts of interest disclosure is required, the Board shall to the extent feasible, verify the completeness, adequacy, and accuracy of such statements through written and oral discussions, inquiries to sources of relevant information, and appliction of the knowledge of the Board members.

d. The Board shall provide to the Selection Official as part of its report: (1) Any information uncovered bearing on (a) the ability of any offeror within the competitive range to perform in an impartial, technically sound, and objective manner, or (b) obtaining an unfair competitive advantage, and (2) any proposal to mitigate or avoid organizational conflicts of interest. The board should also ascertain and report whether the offeror is precluded from proposing or receiving award by restrictions placed in other Federal Government contracts.

404. *Price and Cost Considerations*

a. Proposed cost, for either cost-reimbursement or fixed-price type contracts, is not to be point scored. Proposed cost is a function of the technical approach, the manpower, the facilities, the organization, and the uncertainties of the work and the economy. The board is to determine, by analysis, its own estimate of what it probably will cost each offeror, given each offeror's approach, experience, organization, personnel and similar factors including the board's estimate of what it will cost after correcting correctable deficiencies. Cost and price analysis of proposals should be performed by cost and pricing personnel and their assistance should be requested.

b. Price and cost information should be evaluated by the appropriate committee and the board in terms of the proposed cost in order to assist in the determination of the competitive range. A more detailed cost and price analysis may be performed in appropriate cases.

c. One of the principal aims of the board, in its detailed analysis of costs of those offerors in the competitive range, is to determine the validity of the proposed cost, the probable cost to the Government of each proposal, the probable cost differences among the offerors and their causes, and the level of the board's confidence in its analysis and projection of costs. If the board concludes that an offeror's approach or plan for accomplishing the work will require modification, the board should report the probable costs after such modification.

d. All cost information including prime and subcontract amounts which are or should be present in an offeror's cost proposal are to be analyzed by the board and the board's estimate of probable cost to the Government for each proposal should be included in its report. In the analysis of cost proposals appropriate engineering or technical assessments should be made of the quantitative and qualitative factors and these should be used in preparing the cost analysis report. In the event that board members have different opinions as to the cost analysis, these differing opinions shall be reported.

e. Cost may be used in the ultimate decision by the source selection official to judge the value of the work to be done and the quality of product or service to be furnished, and not as an addition to the cumulative score of the other analyses. To illustrate, assume three offerors in the competitive range with scores and cost estimates as follows:

Offeror	Technical Score	Bus/mgt rating	Offeror's proposed cost	Probable cost
A	925	Good	$3.8 Mil.	$4.7 Mil.
B	870	Outstanding	2.3 Mil.	2.8 Mil.
C	830	Poor	2.9 Mil.	3.1 Mil.

All three are technically acceptable, and identified weaknesses in each proposal are thought to be correctable in final negotiations. Offeror A's technical proposal is considered the best. Consistent with the language in the RFP regarding the relative importance of cost, the questions to be decided, in order to make the selection, are whether its proposal is worth the additional cost, and whether business/management factors enhance or detract from the proposal.

f. If a complete detailed cost estimate is not necessary to select a contractor for certain types of requirements, e.g., operating contracts, discrete limited portions of the work may be broken out, such as overhead, and a detailed estimate requested covering such areas. In these situations, limited cost estimates together with data relating to cost control systems and innovative ideas should be requested for use in assessing the offeror's understanding of the requirements and to indicate his cost consciousness. In those cases where limited cost information is requested and analyzed, it will normally play a major role in the selection. However, cost must always be a factor, even though relatively insignificant, in any seclection.

g. Assistance can be provided by the Office of the Controller in the evaluation of cost proposals. In special cases, and at the request of the board, the Office of the Controler will arrange for the development of an independent cost estimate.

405. *Initial Ranking and Determination of Competitive Range*

a. Following review of committee reports, etc., each board member will complete an evaluation of each proposal and develop tentative strengths and weaknesses in relation to each evaluation criteria. After this has been accomplished the board as a whole should meet and discuss in detail the individual strengths and weaknesses developed by each board member and if possible arrive at a common understanding of the major strengths and weaknesses and the potential correctability of each proposer's weaknesses (Ref. Appendix 5). Each board member will then tentatively rate and rank the proposals remaining in the competition. Generally, and depending on the rating plan employed, ranking will be accomplished by totaling the numerical scores assigned by each voting member to the evaluation criteria and developing an average rating for each offeror.

b. After the board has tentatively ranked the proposals remaining in competiton, proposals will be reviewed to determine which are within the competitive range, considering the technical and business/management evaluations and price and cost considerations. In making this determination, the board will evaluate the potential for improving the competitive position of the proposals by written and/or oral discussions. A proposal is in the competitive range unless it is so technically inferior or out of line with regard to price (cost) that meaningful negotiations are precluded. To put it another way, a proposal is in the competitive range unless there is no real possibility, taking into account the other more acceptable proposals, that it can be improved to the point where it becomes the most acceptable. The competitive range should not be reduced to a single offeror without coordinating with the SSO.

c. There is no purpose in considering a proposal to be in the competitive range simply because it could be improved to the point where it would be acceptable to the Government if better proposals were not submitted, when, in fact, such better proposals have been received. For this reason, it is not proper to establish eligibility on the basis of a predetermined passing grade. Instead, the rating actually achieved and the assessed strengths and weaknesses must be the basis for establishing the competitive range.

d. When proposals are determined not to be in the competitive range, they should be eliminated from further evaluation and the proposers promptly notified in writing by the SEB Chairperson. Such notification shall include a brief statement of the board's rationale. The report and presentation to the source selection official requires that each proposal received be commented on by the board; therefore, detailed documentation of the reasons for eliminating any proposal from consideraiton will be prepared by the board as its evaluation proceeds.

406. *Verification of Offeror's Experience.*

a. The source evaluation process not only contemplates a thorough appraisal of prospective contractors' proposals but also requires consideration of other information bearing on the probability of quality and timely performance, the logic of the proposed plan of execution, the realism of estimated costs and the responsibility and cost-consciousness of the offeror's management. Past performance may indicate what an organization may do if awarded a contract. The board will therefore verify for offers in the competitive range such matters as:

Management and technical capability of personnel,

Availability of existing facilities (both Government-owned and contractor-owned),

Adequacy of the offeror's accounting practices and cost controls,

Offeror's record in forecasting and meeting program schedules, and.

Offeror's record of performance on DOE or other projects.

b. Pre-award surveys, facility capability reports, procurement system reviews and audit reports which bear on an offeror's performance and capabilities may be available from other Government offices.

c. In checking an offeror's capabilities, experience and record of performance, the checks should be directed toward comparable and related projects, e.g., facilities used, type, scope and complexity of work to be performed, organizational entities involved and personnel requirements. Generally the chairperson of the business/management committee will be responsible for obtaining such historical and experience data as may be necessary to satisfy the board as to an offeror's capability and record of performance.

d. Board records will reflect the information considered and the source(s) from which obtained, together with any explanations or corrective actions indicated by offerors whose previous performance had been criticized. In addition, the board should also check on the offeror's equal employment opportunity program and small business and minority business programs. Comments shoud be obtained in regard to compliance with existing Government requirements in these areas and plans for the future if they are selected for the procurement.

e. Information relating to each offeror's financial capabilities covering financing arrangements, balance sheet, profit and loss experience, cash flow, etc., and performance should be obtained, evaluated and commented on. Information relating to the areas covered on the Fact Sheet (Appendix #6) should also be obtained and a separate Fact Sheet should be prepared on each offeror in the competitive range.

407. *Visits to Offerors' Facilities*

a. Inspections at the facilities of competing offerors may be a valuable part of the board's evaluation process and could be conducted at the same time as the written and/or oral discussions. For instance, in procurements where significant experimental research, development testing, fabrication or other work (the quality of which may be affected by an offeror's plant or facilities) is to be performed, a complete evaluation normally would require an on-site visit by the board. For other procurements, such certain service-type contracts, facility inspections may serve no useful purpose.

b. Actual visits to the facilities of competing offerors should be made prior to completion of the board's work unless it is determined by the chairperson, in consultation with the board members, that such visits would not help the board determine the relative capabilities of the competitors.

c. Preliminary planning is essential to effective facility visits. The board must decide what it wants to see and discuss, and with whom, keeping in mind that each offeror is to receive equal treatment and the opportunity to demonstrate its capability, capacity and interest. To make the visits more productive, selected questions and a tentative agenda should be provided in advance to each offeror being visited. In addition, arrangements conducive to the accomplishment of the visit's purposes must be made prior to the visit. While courtesy requires that an offeror be permitted appropriate welcoming and general remarks, steps should be taken to avoid elaborate presentations and briefings; these use up valuable time. Information and impressions gained during facility inspection should be reflected in the ultimate evaluation by the board. Asking similar questions of all offerors permits a ready basis of comparison. The size of the group should be kept small. A full day for visiting each offeror ordinarily will permit adequate and equal opportunity for discussions.

408. *Written and/or Oral Discussions*

a. The board will conduct written and/or oral discussions with all offerors whose proposals are in the competitive range. The extent of discussions will depend on the circumstances of the procurement and the proposals submitted. The board should be careful in its written and/or oral discussions to avoid technical transfusion or technical leveling between offerors. Discussions should be sufficiently probing and detailed to assure the board's understanding of the proposal. SEB members should employ oral discussions as a means of evaluating the abilities of personnel proposed by the offeror and their comprehensions of the offeror's proposal.

The aims of such discussions are to:

Assess the project team to be assigned to the project and other key personnel.

Review, with the offeror and with cognizant Government personnel, experience on related projects, particularly to permit the offeror to explain any adverse aspects of its performance record and any remedial action taken.

Clarify any aspects of the proposal.

Gauge the degree of capacity and interest to undertake the project in light of other work planned or in process.

b. *Research, Development, Demonstration, Operating and Management Contracts*

1. For research, development, demonstration, operating and management contracts the discussions are intended to assist the SEB: In understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each proposer; in assuring that the meanings and points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all are competing equally on the basis intended by the Government; in evaluating the personnel proposed by each firm; and in presenting a report to the selection official that makes the differences among proposals clear and visible.

2. In all research, development, demonstration, operating and management contracts, the board shall point out aspects of the proposal which are not clear, or which are not substantiated.

3. However, where the meaning of a proposal is clear and the proposal contains a weakness which is inherent in an offeror's management, engineering or scientific judgment, or is the result of its own lack of competence or inventiveness in preparing its proposal, the board shall not point out that weakness, unless this can be done without risk of technical transfusion or the divulgence of other offerors proprietary concepts. Discussions are useful in ascertaining the presence or absence of strengths and weakenesses. Understanding of the meaning and validity of the proposed approaches, solutions and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other proposers. In the course of discussions, Government participants should be careful not to transmit information which could give leads to one proposer as to how its proposal may be improved or which could reveal a competitor's ideas.

4. The foregoing guidelines are not all-inclusive; careful judgment must be exercised in the light of all the circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while at the same time maintaining the fairness of the competitive process.

c. *Contracts other than Research, Development, Demonstration, Operating and Management*—

1. For other than research, development, demonstration, operating and management, contracts the specifications ordinarily describe the Government's requirements with more particularity than is possible in research, development, demonstration, operating and management contracts and therefor less emphasis is placed on an offeror's introduction of scientific, engineering and management innovations. For these types of procurements the board will conduct discussions in accordance with the provisions of the above paragraphs except for the following difference.

2. The board, in written or oral discussions, shall point out instances in which aspects of a proposal contains a weakness in relation to the Government's requirements. But, as provided above, the board shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other proposers, nor transmit information which could give leads to one proposer as to how its proposal may be improved or which could reveal a competitor's ideas.

d. *Cost Information*—The board shall point out cost or price elements that do not appear justified and encourage offerors to submit their most favorable cost proposals. Care must be exercised not to disclose to any offeror its relative position with respect to others in competition.

e. *Documentation*—Written reports will be made of the areas covered during written and/or oral discussions.

f. *Common Cutoff Date*—Each offeror shall be given a reasonable opportunity, with a common cutoff date for all, to support and clarify its proposal. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cutoff date.

g. *Discussions vs. Negotiations*—Discussions normally refer to those communciations between the Government and the offerors which serve, up to the point of source selection, to point out ambiguities, uncertainties and, where appropriate, weaknesses in proposals. (When the source selection official has directed additional discussions leading to best and final offers in the form of fully definitized contractual instruments, discussions shall be as provided in Section 603.) The term "negotiations" normally refers to the process of definitizing a final agreement on price, terms and conditions with a selected firm, although no factor which could have had any effect on the selection process may be changed. Negotiations with a selected firm necessarily take place following the common cutoff date imposed for formal proposal revisions during the discussions phase. Negotiations, in this sense, are not subject to an imposed common cutoff date although the Government may impose deadlines during the negotiation process.

409. *Comparison of Proposals in Competitive Range*

Following the common cutoff date for receipt of any clarification, support or revised proposals, the board will continue its evaluation. Depending on the nature of information received, the chairperson may reconvene the committees to perform additional evaluation of their respective areas in the light of new information received.

a. In its evaluation, the board should give careful consideration to information received relating to offeror's experience, financial capabilities, equal emplayment opportunity programs, and small business and minority business programs.

b. The tentative strengths and weaknesses developed on those offers in the competitive range should be reviewed in detail and modified as appropriate based upon all information now available to the board. The rationale for any changes to the tentative strengths and weaknesses should be clearly documented. After full discussion and development of the final strengths and weaknesses, each voting board member should prepare a final rating sheet for each offeror in the competitive range.

410. *Final Ranking of Proposal*

The final evaluation is to arrive at findings and conclusions which will permit the source selection official to select the particular proposal which offers the best promise of achieving the procurement objectives. After determining the board ratings and or rankings based on the technical and business/management evaluation criteria, the board will reevaluate the price/cost information submitted and develop the probable cost to the Government for each offer in the competitive range.

CHAPTER V—SEB REPORT

501. *Preparation of SEB Report*

a. The board will prepare a report of its findings and conclusions. These findings and conclusions shall set forth the consensus of the board and composite ratings, depending on the rating system used. The report should discuss the proposals in the descending order of competitive ranking. All members will sign the report as confirmation that it represents their collective opinion. All reports will be serially numbered and controlled by the secretary of the board.

b. If any board member has serious reservations concerning any part of a proposal these will be discussed in detail and considered by the board for possible adjustment of the rating and ranking. If the differences cannot be resolved and the deficiency, if existing, could be considered critical to the effort, the member's position will be made an annex to the board report.

c. In extraordinary circumstances, should it become apparent to the SEB that adherence to the established criteria, weights or rating plan will result in substantial error in ranking the proposals, the board will report this to the SSO thru the SEB Secretariat for direction.

502. *SEB Report Outline*

This section provides guidance on the format and content of the SEB report to the source selection official. This guidance is appropriate for most procurements. If a specific procurement has peculiarities which cause the proposed format to be impractical, the chairperson may alter it. The depth of detail and the use of schedules or other information is governed by the nature and scope of the subject being presented.

The SEB report will contain a title page (Appendix No. 7), a foreword page (Appendix No. 8) and a table of contents, including page numbers, consistent with the SEB Report Outline that follows.

SEB REPORT OUTLINE

A. EXECUTIVE SUMMARY

1. *Description of Procurement and RFP*—Briefly describe the work or services being procured, the qualification criteria, evaluation criteria and price/cost considerations.

2. *Proposals Received*—Indicate number of organizations that were sent an RFP and list in alphabetical order each of the organizations that submitted a proposal.

3. *Determination of Competitive Range*—Indicate rationale followed by the board in determining the competitive range. List the offerors by technical and business/management ranking, indicating ratings and price/cost considerations in relation to each proposal.

4. *Final Ranking*—Indicate major reasons for final technical and business/management rankings. Include the final technical and business/management ratings and price/cost considerations in relation to each proposal.

5. *Special Considerations*—Include any areas that would be of special interest to the source selection official, i.e., significant objections or complaints received during SEB process, time constraints on contract award, potential organizational conflicts of interest, determinations to be made by the SSO, legislative authorizations, etc.

B. DESCRIPTION OF THE WORK OR SERVICES

1. *The Procurement*—Provide a narrative description of the work or services being procured together with the objectives. Explain any procurement history and follow-on effort which has been programmed or for which program approval is to be requested. Describe relationship with other efforts in process or planned. Explain any particular technical complexities which had an important effect on the solicitation of sources or the evaluation of proposals.

2. *Program Approval*—Identify the approval document which authorized

the procurement, showing title and numerical identification, date approved and title of approving official.

3. *Funding*—State the funding applicable to the effort as follows:

a. Total Government estimated amount of the contract.
b. Estimated amount to be initially obligated in the contract.
c. Estimated cost of follow-on effort to be procured under a separate contract.
d. Specific appropriations, if applicable.

Procurement Approach—Discuss any special procurement considerations which applied to the procurement. Give reasons for proposed contract type.

C. *BOARD MEMBERSHIP AND CHRONOLOGY*

1. *Board Membership*—Provide the name, functional title and organizational assignment of the chairperson, members, secretary, legal member (nonvoting), ex-officio members and any committee members and advisors used by the board.

2. *Chronology*—Provide a chronology of major events connected with the source evaluation, such as:

a. Date of establishment of board by selection official.
b. Date or dates the board approved the evaluation criteria, criteria definitions, weights, source list and RFP.
c. Date RFP was issued.
d. Date and place of preproposal conference.
e. Closing date for submission of original proposals.
f. Date of beginning of proposal evaluation by the board.
g. Date or dates and disposition of any late proposals or late modifications received.
h. Date of initial rating of proposals.
i. Date of determination of competitive range.
j. Date or dates of verification of offerors' experience and record of past performance.
k. Date or dates and place of discussions with offerors.
l. Common cutoff date for receipt of any clarification, support or revised proposals.
m. Date board completed its evaluation and arrived at final rating of proposals.
n. Date of completion of SEB report.

D. REQUEST FOR PROPOSALS

1. *Qualification Criteria*—State the specific qualification criteria included in the RFP and explain why each was necessary.

2. *Evaluation Criteria*—State the technical and business/management evaluation criteria, their definitions and the relative importance of each. Explain the rationale for the relative importance assigned to each evaluation criterion. Set forth excerpts from the RFP which describe the evaluation criteria and their relative importance.

3. *Price and Cost Considerations*—Include excerpts from the RFP dealing with price and cost factors and any cost sharing arrangements. Indicate relative imortance of cost in the evaluation.

4. *Amendments to RFP*—Describe each amendment to the RFP and the reasons therefore.

5. *Development of Source List*—Indicate the methodology and rationale used in the development of the source list. Include the date of the CBD announcement and the total number of firms that were sent an RFP.

6. *Preproposal Conference*—State the date and place held and number of organizations represented.

7. *Organizational Conflicts of Interest*—If the RFP included coverage of organizational conflicts of interest matters, so state.

E. EVALUATION PROCESS

1. *Proposals Received*—List in alphabetical order the offerors submitting proposals indicating the name and address of each offeror and major subcontractors.

2. *Methodology Used to Evaluate Proposals*—Describe the methodology used by the board to evaluate proposals indicating the role of the board members, committees, and advisors, and any other individuals or organizations that participated in the evaluation process. Describe the rating plan and techniques used by the board in relation to the evaluation criteria.

3. *Basis for Elimination of Proposals Before Initial Ratings*—Indicate the reasons for elimination of any proposals before the initial ratings such as late proposals, proposals not meeting the qualification criteria, totally unacceptable proposals, etc.

4. *Description of Technical Aspects of Proposals*—Briefly describe the technical aspects of each proposal still in the competition.

5. *Initial Ranking of Proposals*—Describe the approach used in arriving at the initial technical and business/management ratings and rankings indicating the rating and major strengths and weaknesses identified at this stage of the process for each offeror in descending order of competitive ranking. In addition, describe the evaluation of price and cost information.

6. *Determination of Competitive Range*—Describe the rationale used to determine the competitive range. Indicate the consideration given to strengths and weaknesses, potential for improving the competitive position of proposals by written and/or oral discussions, technical and business/management ratings and price/cost information. Also provide the basis for not including proposals in the competitive range especially at the break point (in the competitive range vis-a-vis outside the competitive range).

7. *Verification of Offeror's Experience*—For each offeror in the competitive range, describe method used to verify experience and record of performance and results of such verification. Provide comments in regard to technical, schedule and cost performance on major contracts performed for the Government.

8. *Changes to Initial Ranking of Proposals*—Indicate the rationale for any changes to the technical or business/management ratings and rankings or price/cost considerations as a result of written/oral discussions, clarification and support, revisions, etc. Provide a summary of the primary points covered during written and/or oral discussions.

9. *Final Ranking of Proposals*—Provide the final board technical and business/management ratings and or rankings in the descending order of competitive ranking and major price and cost considerations in regard to each proposal in the competitive range. Indicate the relative rankings by technical and business/management criteria. In addition, provide in summary form the significant differences among proposals.

10. *Description of Final Revised Proposals in Competitive Range*—Provide in narrative form in the descending order of competitive ranking:

a. An expanded description of the technical and business/management aspects of each final revised proposal in the competitive range in order to present an overview and understanding of each proposers approach.

b. The major strengths and weaknesses for each offeror in the competitive range relating each strength or weakness to the appropriate criterion. Estimate the potential for correction of the major weaknesses identified. State the board's estimate of any significant change in price/cost that would result from the correction of weaknesses during negotiations after selection.

c. Each offeror's estimated price/cost in the traditional breakdown (material, labor, overhead, general and administrative, fee, etc.) and provide the board's evaluation of each final revised proposal in the competitive range. Comment on the validity of the proposed price and cost, describe the differences among offerors, the probable price and cost to the Government of each proposal and the probable cost differences among offerors and their causes.

11. *Limited Cost Considerations*—In those procurements where only limited cost information is requested due to the nature of the procurement, e.g., operating contracts, the report should describe the cost information requested and obtained. This description should comment, as appropriate, on the validity of the proposed cost, the differences among offerors, the prob-

able cost to the Government of each proposal and the probable cost differences among offerors and their causes. Comments should also be provided in regard to the importance of this area in the evaluation process as stated in the RFP.

12. *Objections or Complaints Received*—Describe in detail any objections or complaints received during the SEB process, e.g., RFP, proposal due date, cutoff date for clarification, possible or actual protests, etc. Describe any procedural irregularities or special problems faced by the board.

13. *Organizational Conflicts of Interest*—If the RFP included coverage of organizational conflicts of interest matters, describe the manner in which the Board discharged its responsibilities and discuss any relevant information obtained.

F. ADDITIONAL CONSIDERATIONS FOR OFFERORS IN COMPETITIVE RANGE

1. *Offerors Financial Capabilities*—Provide information to reflect the offerors' financial capabilities as needed to perform under the proposed contract, e.g., describe financing arrangements, comment on offerors' balance sheet, profit and loss experience, cash flow, etc.

2. *Offerors' EEO, Small Business and Minority Business Programs*—Provide comments in regard to each of the above areas based upon information received in proposals and from other sources.

3. *Special Areas of Concern*—Provide any information that is of special concern or may be helpful to the source selection official, e.g., organizational conflict of interest.

G. ATTACHMENTS

1. Fact sheet on each offeror in the competitive range.

2. Briefing charts.

CHAPTER VI—PRESENTATION TO SOURCE SELECTION OFFICIAL

601. *Suggested Briefing Charts*

This section prescribes the requirements and procedures for the board's presentation to the source selection official. While the provisions of this section are directed specificially to the board presentation to members of the Office of The Secretary, when they act as the source selection official, the basic requirements and responsbilities apply to all source evaluation board presentations.

The chairperson of the board is responsible for conducting the presentation to the source selection official. It is the chairperson's function to convey the results of the boards deliberations in a manner calculated to permit an informed and objective selection of the best source for the particular procurement. The presentation should include vu-graph transparencies covering the following areas:

Overview of Presentation—Briefly state those areas to be covered during the presentation and the decision or decisions to be made.

Board Membership—Provide name, functional title, and organizational assignment of the chairperson, members, secretary, legal member (non voting), and ex-officio members.

Description of Procurement—Briefly describe the work or services to be procured, and its relationship to the total project. Indicate type of contract contemplated, period and estimated amount. Indicate funding status by fiscal year.

Chronology of Major Events—Provide a chronology of the major events of the source evaluation board's activities.

Qualification Criteria—State the specific qualification criteria included in RFP and explain why each was necessary.

Evaluation Criteria—State the technical and business/management criteria included in RFP, their definitions and their relative importance.

Price and Cost Considerations—State the importance of price and cost in the evaluation and coverage included in RFP.

Proposals Received—Indicate total number of RFPs issued and list in alphabetical order each of the firms submitting a proposal.

Proposals Eliminated before Initial Rating—Indicate rationale for elimination of each proposal before the initial board rating.

Initial Ranking—List the offerors remaining in the competition in descending order of competitive ranking indicating: name of offeror, technical rating, business/management rating, proposed cost and probable cost.

Proposals Eliminated from the Competitive Range—Indicate rationale for elimination of each proposal from the competitive range.

Determination of Competitive Range—List the offerors in the competitive range in descending order of competitive ranking indicating: name of offeror, technical rating, business/mangement rating and proposed and probable cost. Describe rationale followed by the board in determining the competitive range especially at the break point.

Changes Due to Written/Oral Discussions, Revisions etc.—List the offerors in the competitive range in descending order of competitive ranking indicating: Name of offeror, major reasons for changes to the initial rating and ranking.

Final Ranking—List the offerors in the competitive range in descending order of competitive ranking indicating: name of offeror, technical rating, business/management rating and proposed cost and probable cost.

Decription of Each Proposal in the Competitive Range—Describe the technical and business/management aspects of each proposal in the competitive range in order to present an overview and understanding of each proposers approach. Use graphics of the proposed design, management, or organization and other matters which are effectively conveyed in that manner.

Strengths and Weaknesses—In descending order of the offeror's overall technical ranking, indicate criterion by criterion, the major strengths and weaknesses of each offeror in the competitive range. Indicate the estimated cost of correcting weaknesses that could have a signficant cost impact.

Limited Cost Considerations—In those cases where only limited cost information is obtained, describe information obtained and its significance in the evaluation.

Organizational Conflicts of Interest—Whenever offerors are required to disclose information relating to organizational conflicts of interest provide the results of these disclosures and other pertinent information. Indicate any problems relating to conflicts of interest.

Summary—Highlight reasons for rankings of offerors. Describe roles of offerors—management team, associate contractors, major subcontractors, etc.

SUMMARY TABLE

Proposal	Initial Tech. Score	Final Tech. Score	Bus/Mgt Rating	Proposed Cost	Probable Cost	Ind. Cost Estimate
A						
B						
C						

Future Actions—Indicate any special areas that may be of interest to the source selection official, the negotiation team, expected award date, etc.

602. *Arrangements for Presentations*

a. Normally, the oral presentation to the selection official will be preceded by a preliminary presentation to the cognizant program official one level below the SSO and to the Director, Procurement and Contracts Management Directorate and the Assistant General Counsel for Procurement. The SEB Secretariat will make the necessary arrangements for these presentations and authorize admission to the presentation. The presentations will be composed of two basic parts, a written board report and oral briefing supported by pertinent graphic or illustrative material. The Director, Procurement and Contracts Management Directorate will assure that the presentation is arranged and conducted in a business like manner, is complete and informative and the supporting data to be presented is kept to the minimum necessary for a final decision. To assist in this responsibility the SEB Secretariat will work with the chairperson of the board in reviewing the draft final report and briefing prior to the preliminary presentation. As a result of the preliminary presentation, the board may be directed to reconvene to pursue procedural omissions or to revise the method of presentation; however, it may not be directed to change the criteria, weights or rating plan used or change the proposal ratings or rankings.

b. The SEB Secretariat shall determine when the board findings and conclusions are to be presented to the selection official, arrange the time and place of presentation, determine after recommendation by the chairperson, who will attend the final presentation, and assure that all appropriate DOE officials involved in a particular procurement are formally requested to attend the presentation. The board chairperson will organize and personally make the oral presentation first to the cognizant senior program official and then to the selection official.

c. The board chairperson will distribute a copy of the SEB report, five days in advance of the preliminary presentation to each individual invited to the preliminary presentation by the Director, Procurement and Contracts Management Directorate. Following the presentation to the selection official, a copy of the SEB report may be retained by the selection official, the cognizant senior program official, and the SEB Secretariat. All other copies except as otherwise directed by the Director, Procurement and Contracts Management Directorate will be collected by the board executive secretary and placed in the official SEB files.

603. *Selection Decision*

a. After the presentation by the SEB chairperson, the source selection official will normally hold an executive session that will be attended by key senior staff personnel representing the various disciplines e.g. program office, controller, counsel, procurement, and the chairperson of the SEB. During this session, the report and presentation will be discussed together with other information available to the senior staff and the source selection official. The outcome of the executive session might indicate a need for additional information or time to study the alternatives or the selection decision.

b. (1) The SEB procedures are intended to provide the Source Selection Official with sufficient information to select an offeror (or offerors) for negotiation on the basis of its proposals. However, it is within the discretion of the Source Selection Official to direct discussions be reopened and that best and final offers be obtained on the basis of fully definitized contractual instruments. If the Source Selection Official so directs, the SEB Secretariat shall prepare a letter, with the advice and assistance of the legal member, for the signature of the Source Selection Official setting forth any special instructions. The Source Selection Official may, at this time, establish or direct the SEB to establish a new or revised competitive range. Any offerors eliminated from further consideration shall be promptly notified in writing by the SEB Chairperson.

(2) Additional discussions should be conducted by *ad hoc* contract definitization teams headed by experience contract negotiators. Where appropriate, separate teams may be appointed for each offeror; however, care should be taken to assure that each of the team's actions are coordinated so as to provide a common and equitable basis for evaluation of the best and final offers. For this reason, the chief procurement officer of the activity supporting the SEB should designate a senior procurement official with general oversight responsibilities to ensure, in cooperation with the SEB, that team actions are so coordinated.

(3) Such additional discussions should have as their objective finalized offers in the form of complete contract documents which are the most advantageous to the Government obtainable from each offeror. The teams should seek correction of each offeror's correctable weaknesses using whatever technical and other information which the Government is entitled to use for this purpose. Care should be taken to avoid transferring the ideas of one offeror to another. Similarly, the most favorable prices, estimated costs, fees, contractual terms, and business arrangements should be sought without engaging in "auctioning" techniques. Each team is responsible for assuring to the extent possible that the advantages and disadvantages of the terms and arrangements are identified and that offerors are informed of terms and arrangements which may cause their proposal to be significantly downgraded.

(4) Upon completion of such discussions, the Board shall furnish each offeror with a contractual instrument reflecting the negotiating team's understanding of the position of the offeror as developed by these discussions and shall request each offeror to submit, by a time common to all offerors, its best and final offer on the basis of such instruments fully executed by the offerors.

(5) Upon receipt of complete contract documents signed by the offerors, the SEB shall conduct a final evaluation, focusing on a comparative analysis of the offers, their relative strengths and weaknesses, their negotiated cost business arrangements and any other factors which might influence the selection.

(6) After completing this evaluation, the SEB shall submit a written report of its findings and conclusions to the Source Selection Official.

(7) The written report shall include the following:

Brief discussion of significant weaknesses and strengths of the proposals with emphasis on key discriminators;

Changes to the strengths and weaknesses as a result of the additional discussions;

Comparative analysis of the results of the additional discussions, identifying the advantages and disadvantages of each offeror in terms of the most favorable arrangement for the Government;

How instructions given by the Source Selection Official were carried out;

Other information that should be considered by the Source Selection Official.

(8) The SEB Secretariat shall then make arrangements for a presentation to the Source Selection Official, which official shall then select the contract offering the most favorable terms to the Government, technical, cost, business terms and other factors considered.

CHAPTER VII—ACTIONS AFTER SELECTION DECISION

701. *Preparation of Selection Statement*

After the selection decision has been made, the Office of General Counsel will prepare the selection statement which will record the rationale for the decision. The selection statement will be formally cordinated prior to sub-

mission to the source selection official with the chairperson of the SEB and the SEB Secretariat. The selection statement will not contain specific weights, or scores. It should be concise and self contained and include the following:

Brief description of the procurement.
Number of organizations solicited and names of organizations submitting proposals.
Competitive range determination and rationale for other eliminations of proposals.
Description of proposals in competitive range together with discussions of significant strengths and weaknesses.
Selection decision and rationale.

The source selection official will sign and date the selection statement; the original will be sent to the SEB Secretariat.

702. *Notifications and Announcements*

Prior to the presentation to the source selection official the SEB Secretariat in coordination with the program office, SEB chairperson and appropriate staff will perpare a tentative plan that will provide for appropriate notifications and public announcements. Public announcements will be coordinated with the SEB Secretariat and may be released prior to completion of the source selection statement if approved by the SSO.

703. *Negotiation Instructions*

The Director, Procurement and Contracts Management Directorate (SEB Secretariat) will send negotiation instructions, contract review and approval requirements and the original of the selection statement to the cognizant procurement office.

704. *Debriefing of Unsuccessful Offerors*

Upon written request, unsuccessful offerors, those eliminated from the competition at earlier stages, as well as those in contention up to the final selection, will be accorded formal debriefings, ordinarily by the board chairperson, with the assistance of the procurement representative and others as appropriate. These debriefings will be confined, as much as possible, to the areas in which the offeror could have improved its proposal, and will not reveal confidential business information nor discuss the relative merits of other proposals to any greater extent than the selection statement. A copy of the selection statement should be made available at the debriefings as a means of conveying the Govenment's overall selection rationale. Debriefings will be provided at the earliest feasible time which normally shall be after announcement of the selection decision and prior to the award of the contract. However, where the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefing may be conducted after award.

b. The purpose of the debriefing is to enable the organization to understand why its proposal was not selected with the objetive of improvement of future proposals submitted to the Government. Therefore, no comparisons will be made to other offerors' proposals and the specific weights and scoring will not be revealed or discussed. The debriefings should ordinarily comment on the following areas:

Overview of SEB process
Review of RFP
Discussion of weakness in offeror's proposal using the RFP and selection statement to prepare for the debriefing
Questions by offeror
Request for comments from the offeror on the SEB process, e.g., RFP, preposal conference, field visits, etc.

c. A record of each debriefing will be prepared and signed by the chairperson and included in the SEB file.

705. *Transfer/disposal of files*

During the course of its activities the board will accumulate certain data or documentation. Such documentation, or back-up material, normally will include; summaries of board meetings, the RFP, proposals, working papers, such as rating or scoring sheets and check lists, and committee reports. These papers constitute the basis for the board report and will be preserved. After the board has completed its activities, the official SEB files will be purged of excess copies of material including SEB reports and transferred to the procurement office that will be responsible for negotiating the contract. A complete copy of each proposal received will be retained in the official files. In the case of the successful offeror, additional copies of the proposal and modifications should be retained for use during negotiation and administration of the resulting contract.

SAMPLE LETTER ESTABLISHING AN SEB

TO: (Board Chairperson)
FROM: (Source Selection Official)

SOURCE EVALUATION BOARD FOR (Title of SEB) _____

Pursuant to Chapter 1 of the DOE Source Evaluation Board Handbook, I hereby designate the following individuals to serve as members of the Source Evaluation Board for (Title of SEB) _____

Chairperson: (Name, Functional Title, Organizational Assignment) _____

_____

Other Members: (Name, Functional Title, Organizational Assignment) _____

_____

Executive Secretary: (Name, Functional Title, Organization Assignment) _____

_____

Legal Member (Nonvoting): (Name, Functional Title, Organizational Assignment) _____

_____

Ex-Officio Members: (Name, Functional Title, Organizational Assignment) _____

_____

The Source Evaluation Board will conduct its busines in accordance with the provisions of the DOE Source Evaluation Board Handbook and applicable policies and procedures in the FPR and DOE-PR. It will be the responsibility of the Chairperson to determine that the board members and other participants are fully conversant with the instructions contained in the cited publications especially those related to conflict of interest and non-disclosure of information. Board duties will take precedence over other normal duties of the board members. The SEB Secretariat will provide the Board with a briefing on the SEB process and any other assistance or guidance required in the performance of its duties.

The Chairperson of the SEB will convene the board as soon as possible to finalize the procurement plan/schedule and the RFP. After completing these tasks the Chairperson will submit the procurement plan/schedule to me through the SEB Secretariat. The RFP will be submitted to the Procurement and Contract Management Directorate, Director, Program Support for review and comment by a solicitation review panel. After such review and appropriate modification, please arrange with the SEB Secretariat for a briefing to me prior to release of the RFP.

If a schedule slippage is anticipated which would delay the release of the RFP or the final presentation to me, please notify me through the SEB Secretariat.

All information shall be kept privy to the members of the board and to properly designated persons on a need-to-know basis. The right to information on a need-to-know basis normally does not extend to the normal chain of supervision affecting any member of the board. However, general progress reports on board activities may be made by the board Chairperson to ex-officio members and the source selection official.

Date: _____

_____
Source Selection Official.

cc:
Director, Procurement and Contracts Management Directorate
SEB Secretariat

APPENDIX No. 1

DUTIES AND RESPONSIBILITIES OF THE SEB EXECUTIVE SECRETARY

The executive secretary as the principal assistant to the board chairperson will attend all board meetings and, as necessary and subject to the direction of the chairperson, will accomplish such tasks as the following:

1. Obtain secure work areas for conduct of board activity.
2. Develop and implement procedures to control access to SEB work areas to ensure safeguarding of board proceedings and data.
3. Obtain material, supplies and equipment needed by the board.
4. Obtain a signed confidentiality certificate from all board members, legal member, secretary, committee members and advisors.
5. Arrange for the preparation, reproduction, control and distribution of all material relating to the activity of the SEB and its committees. This includes source list, RFPs, informational reports, records of preproposal conference proceedings, proposals, oral discussions, rating sheets, press releases, etc.
6. Prepare and distribute agenda for board meetings.
7. Obtain and distribute applicable procedures, policies, instructions, etc., to board members and others involved.
8. Follow-up on action items assigned to board members to ensure the board's schedule is maintained.
9. Summarize board meetings, obtain the chairperson's approval and distribute copies to all board members and others as directed by the chairperson. Originals of the summaries wil be retained in the official SEB files.
10. Assist in preparing and assembling the board's report and presentation charts and arranging for reproduction and distribution.
11. Schedule debriefings and prepare the appropriate record.
12. Dispose of all excess material with concurrence of chairperson.
13. After the formal selection announcement, accumulate package and forward documentation pertinent to the board's work to the cognizant procurement office for permanent retention.
14. Survey the area where board activity occurred and arrange for the return of equipment and materials as appropriate.

APPENDIX No. 2

CONFIDENTIALITY CERTIFICATE

TO: _____
(Chairperson, SEB)

In anticipation of my participation in the (Name of Board, Committee), formed to evaluate the proposals submitted in response to the request for proposals for the (Description of Name of Project), I certify that I will not disclose except pursuant to the order of a court of competent jurisdiction any information either during the proceedings of the source evaluation or any subsequent time, concerning the evaluation, to anyone who is not also authorized access to the information by the SEB Handbook, law or regulation, and then only to the extent that such information is required in connection with such person's official responsibilities. Furthermore, I will report to the Chairperson any communication concerning the procurement or the board's composition and activities directed to me from any source outside the board.

Name: _____
Date: _____

[6450-01-C]

SAMPLE RATING SHEET

PROPOSER: _____ EVALUATOR: _____ DATE: _____

EVALUATION CRITERIA	ELEMENT* WEIGHT	X	EVALUATION	=	POINTS
I. TECHNICAL CRITERIA					
A. UNDERSTANDING OF AND COMPLIANCE WITH REQUIREMENTS	_____	X	_____	=	_____
B. SOUNDNESS OF TECHNICAL APPROACH	_____	X	_____	=	_____
C. KEY PERSONNEL/ALTERNATES	_____	X	_____	=	_____
D. PROGRAM/PROJECT TEAM'S EXPERIENCE	_____	X	_____	=	_____
E. FIRM'S EXPERIENCE ON SIMILAR PROJECTS	_____	X	_____	=	_____
TOTAL	100				1000 MAXIMUM RATING

	SATISFACTORY	UNSATISFACTORY
II. BUSINESS MANAGEMENT CRITERIA		
A. MANAGEMENT PLAN	_____	_____
B. MANAGEMENT CONTROL SYSTEM (QUALITY, SCHEDULE, COST)	_____	_____
C. MANAGEMENT'S COMMITMENT	_____	_____
D. COMPLIANCE WITH THE REQUEST FOR PROPOSAL- DRAFT CONTRACT	_____	_____
E. PAST PERFORMANCE AND PLANS FOR SMALL AND MINORITY BUSINESS PARTICIPATION	_____	_____
III. COST CRITERIA		
A. REALISM OF THE PROPOSED COST	_____	_____
B. PROBABLE COST TO THE GOVERNMENT	$	
C. TO THE EXTENT TOTAL OR COST ELEMENT CEILINGS WERE INCLUDED, THE MAXIMUM PROBABLE COST LIABILITY TO THE GOVERNMENT	$	

*Board members will evaluate such evaluation criteria and determine the rating to be inserted in the evaluation column using only the following numbers: 10, 8, 5, 2, 0

Appendix 4

SAMPLE WORK SHEET

LIST OF STRENGTHS AND WEAKNESSES

PROPOSER: _____ EVALUATOR: _____ DATE. _____

	MAJOR STRENGTHS	MAJOR WEAKNESSES	REQUIRED CORRECTION
I. TECHNICAL CRITERIA			
A. UNDERSTANDING OF AND COMPLIANCE WITH REQUIREMENTS			
B. ETC.			
II. BUSINESS MANAGEMENT CRITERIA			
A. MANAGEMENT PLAN			
B. ETC.			
III. COST CRITERIA			
A. THE REALISM OF THE PROPOSED COST			
B. PROBABLE COST TO THE GOVERNMENT			

Appendix 5

[6450-01-M]

FACT SHEET

Name of Offeror: _____

Address: _____

1. Name and address of the parent corporation and major affiliates or subsidiaries.
2. Place where offeror will perform work and identification of major personnel, facilities and financial resources that will be available.
3. Indicate offeror's sales volume for each of the past three years and projection for the period of performance for the proposed contract.
4. List major current contracts held by offeror indicating:
Customer, Description, Type of Contract, Amount, Completion Date.
5. Provide comments of technical, schedule and cost performance in regard to each contract listed in (4) above.
6. Other data as appropriate.

Official Use Only

SOURCE EVALUATION BOARD REPORT

FOR

(TITLE OF SEB)

TO

(SOURCE SELECTION OFFICIAL)

DEPARTMENT OF ENERGY

(HQ OR FIELD OFFICE)

Date: _____

Official Use Only

APPENDIX No. 7

Official Use Only

FOREWORD

THIS REPORT COVERS THE EVALUATION BY THE SOURCE EVALUATION BOARD FOR

(TITLE OF SEB)

Distribution is limited to those strictly on a need-to-know basis and this material must be treated as "OFFICIAL USE ONLY". If transmitted by mail, the report must be sealed in an envelope addressed to the appropriate individual with the notation on the envelope as follows:

"TO BE OPENED ONLY BY ADDRESSEE,

CONTAINS SEB REPORT"

This report will be collected after the presentation to the source selection official. This report is submitted by:
(Name, Chairperson) _____
(Name, Member) _____
(Name, Member) _____
(Name, Member) _____
(Name, Member) _____
(Name, Legal Member (Nonvoting)) _____

_____

(Name, Executive Secretary) _____

_____

Official Use Only

APPENDIX No. 8

[FR Doc. 79-3092 Filed 1-29-79; 8:45 am]

federal register

TUESDAY, JANUARY 30, 1979
PART III

MERIT SYSTEMS PROTECTION BOARD

■

OFFICE OF SPECIAL COUNSEL

Interim Procedures for Operations

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER II—MERIT SYSTEMS PROTECTION BOARD

SUBCHAPTER B—SPECIAL COUNSEL REGULATIONS

OFFICE OF SPECIAL COUNSEL

Interim Procedures for Operations

AGENCY: Merit Systems Protection Board.

ACTION: Publication of Interim Regulations.

SUMMARY: These regulations establish interim procedures for the operations of the Office of Special Counsel under Reorganization Plan No. 2 of 1978 (43 FR 36037) and the Civil Service Reform Act of 1978 (Pub. L. No. 94-454). Proposed final regulations for public comment will be published shortly, however, comments relating to the interim regulations are hereby solicited.

DATES: The interim regulations are effective January 11, 1979. There is no deadline for submission of comments.

ADDRESS: Send comments to: Office of Special Counsel, 1717 H Street NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT:

Shigeki J. Sugiyama or Lynn R. Collins, Office of Special Counsel. Phone: 202-653-7107.

SUPPLEMENTARY INFORMATION: These regulations are issued pursuant to the authority vested in the Special Counsel by 5 U.S.C. 1206(k) as enacted under the Civil Service Reform Act of 1978 (Pub. L. 94-454) which became effective January 11, 1979. That section of title 5, U.S. Code, provides that the Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. The matters under the jurisdiction of the Special Counsel are set forth in Section 204 of Reorganization Plan No. 2 of 1978 (43 FR 36037) and 5 U.S.C. 1205, *et seq.* and include, *inter alia*, the investigation and prosecution of persons responsible for committing prohibited personnel practices; arbitrary and capricious withholding of information; patterns and practices of prohibited practices; reprisals against employees and applicants for employment who disclose agency and employee misconduct; prohibited discrimination, and prohibited political activity by Federal employees and certain state and local employees.

The Special Counsel determines that the need to establish and promulgate procedures for carrying out his responsibilities under the applicable provisions and requirements of the Civil Service Reform Act of 1978 (Pub. L. 94-454), which became effective January 11, 1979, establishes good cause for publishing regulations immediately.

Accordingly, 5 CFR is amended by adding Subchapter B, entitled "Special Counsel Regulations", to Chapter II, consisting of Parts 1251, 1252, 1253, 1254, 1260, 1270, 1271, 1272, 1273, 1274, 1275 and 1276 as follows:

SUBCHAPTER B—SPECIAL COUNSEL REGULATIONS

PART 1251—INVESTIGATIVE JURISDICTION OF THE SPECIAL COUNSEL

Sec.
1251.101 Matters Subject to Investigation.
1251.102 Investigations.
1251.103 Action on Results of Investigations.

AUTHORITY: 5 U.S.C. 1205, 1206; Sec. 204 of Reorganization Plan No. 2 of 1978.

§ 1251.101 Matters subject to investigation.

The Special Counsel shall accept and investigate, subject to the conditions of and pursuant to the procedures set forth in § 1251.102 of this subchapter—

(a) Allegations of or information concerning political activities by certain State and local officers and employees prohibited by Chapter 15 of title 5, United States Code;

(b) Allegations of or information concerning political activity by Federal employees prohibited by subchapter III of Chapter 73 of title 5, United States Code;

(c) Allegations of or information concerning prohibited personnel practices as defined in section 2302(b) of title 5, United States Code;

(d) Allegations of or information concerning activities prohibited by any civil service law, rule, or regulation, including partisan political intrusion in personnel decisionmaking, not otherwise provided for by this section, except when the matter may be more appropriately resolved under an administrative appeals procedure;

(e) Allegations or information implicating any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action, except when the Special Counsel determines that such allegation may be more appropriately resolved under an administrative appeals procedure;

(f) Allegations or information that an employee who has authority to take, direct others to take, recommend, or approve any personnel action, with respect to such authority, has taken, failed to take, or has threatened to take any personnel action affecting an employee or applicant for employment as a reprisal for—

(1) Any disclosure of information, not specifically prohibited by law and not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety; or

(2) Any disclosure of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety made to the Special Counsel or the agency Inspector General or other employee designated by the head of the agency to receive such information;

(g) Allegations of or information concerning the arbitrary or capricious withholding of information prohibited under section 552 of title 5, United States Code, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order; and

(h) Allegations of or information concerning the giving of knowingly false testimony or knowingly making false allegations before the Merit Systems Protection Board or its designee, or any official or employee of the Office of Special Counsel by a Federal employee.

§ 1251.102 Investigations.

(a) The Special Counsel shall accept and investigate allegations under § 1251.101 received from employees, applicants for employment, or any other source, when the complainant provides information or the Special Counsel has information which—

(1) Is sufficient for determining or it is determined that the matter is under the investigative jurisdiction of the Special Counsel; and

(2) Sufficiently describes the activity so that it may be reasonable to believe that a violation of law, rule, or regulation may have occurred or is likely to occur.

(b) The Special Counsel will not initiate an investigation of an allegation or information or will terminate an investigation of such an allegation or information when it is determined that—

(1) There are insufficient grounds upon which to base further inquiry;

(2) The matter is not under the investigative jurisdiction of the Special Counsel; or

(3) The facts presented or before the Special Counsel in support of the allegation are effectively refuted by the information of record or by other reliable, probative and substantial evidence.

(c)(1) If the Special Counsel, after a preliminary inquiry, determines that a full investigation is not warranted, he or she shall terminate his or her inquiry and may close the case with an appropriate notation in the case control file. The complainant shall be notified of the determination and the reasons therefor.

(2) Upon completion of a full investigation the Special Counsel shall prepare a report of the investigation.

(3) If the Special Counsel closes the case after a full investigation, he or she shall furnish a written statement notifying the complainant of the termination of the investigation and the reasons therefor.

(d) The Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe a practice has occurred, exists, or is to be taken, over which he or she has investigative and/or prosecutorial jurisdiction.

§ 1251.103 Action on results of investigations.

(a) Upon conclusion of an investigation under § 1251.101 not otherwise terminated under the provisions of § 1251.102(b), the Special Counsel may—

(1) Close the case where the Special Counsel finds that the allegation or information upon which the investigation was initiated was not supported by the facts as determined by the investigation; or

(2) Initiate, on the basis of the investigative findings, corrective action pursuant to paragraph (b) of this section, disciplinary action pursuant to paragraph (c) of this section, or both.

(b) When it is determined that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report such determination with the supporting facts and, when appropriate, recommendations to the Merit Systems Protection Board, the agency involved, and to the Office of Personnel Management, and may report such determination with supporting facts and recommendations to the President. If the agency involved fails to take any action recommended within a reasonable period, the Special Counsel may request the Board to consider the matter pursuant to 5 U.S.C. 1206(c)(1)(B).

(c) When the investigation reveals that disciplinary action against any employee subject to investigation is required under law or is otherwise warranted, the Special Counsel shall prepare a complaint setting forth, with specificity, the offense charged and a recommendation concerning the disciplinary action, if any, he believes warranted by the facts of the case, including a statement of supporting facts, and shall file the complaint with the Merit Systems Protection Board. The complaint and statement of supporting facts shall contain the information required by § 1260.101 of this subchapter and shall be served on the employee at the same time it is filed with the Board. Additionally, in the case of violations of provisions of Chapter 15 of title 5, United States Code (political activity of certain State and local officers and employees), the complaint, including the statement of supporting facts, shall be served on the State or local agency as well as the officer or employee.

(d) When in the judgment of the Special Counsel the results of an investigation would warrant the taking of disciplinary action against an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the Special Counsel shall submit the complaint including a statement of supporting facts and the employee's response to the complaint to the President, in lieu of presenting the complaint before the Merit Systems Protection Board.

(e) When the Special Counsel believes that there is in an agency a pattern of prohibited personnel practices not otherwise appealable to the Board under any law, rule or regulation, the Special Counsel may file a complaint with the Merit Systems Protection Board against the agency involved to obtain an order for appropriate corrective action. If this determination includes or is in the form of disciplinary charges against an employee, such charges will be filed and served in accordance with the provisions of paragraph (c) of this section.

(f) If, in connection with any investigation under § 1251.101, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget. The referral of an alleged criminal violation to the Attorney General shall not prohibit the Special Counsel from conducting any investigation or proceeding concerning prohibited personnel practices instituted under § 1251.101.

(g) If, in connection with any investigation under § 1251.101, the Special Counsel determines that there is reasonable cause to believe that a violation of any law, rule, or regulation has occurred not involving matters within the jurisdiction of the Special Counsel to initiate disciplinary or corrective action, the Special Counsel shall report the violation to the head of the agency involved, and the head of the agency shall, within 30 days of the receipt of the report from the Special Counsel, certify to the Special Counsel that he has personally reviewed the report and specify the action that has been taken, or is to be taken and when the action will be completed.

PART 1252—[RESERVED]

PART 1253—DISCLOSURES OF INFORMATION

Sec.
1253.101 Applicability.
1253.102 Action on allegations or information.
1253.103 Disclosure of identity of disclosing employee or applicant for employment.
1253.104 Referral to Agency heads; reports from Agency heads.
1253.105 Referral to Agency heads under 5 U.S.C. 1206(b)(7).
1253.106 Failure of Agency head to file report.
1253.107 Review of Agency report.
1253.108 Foreign intelligence or counterintelligence information.

AUTHORITY: 5 U.S.C. 1205, 1206; sec. 204 of Reorganization Plan No. 2 of 1978.

§ 1253.101 Applicability.

This part applies to disclosures of information not specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, by an employee or applicant for employment which the employee or applicant reasonably believes evidences a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health or safety.

§ 1253.102 Action on allegations of information.

Allegations or information described in § 1253.101 shall be processed by the Special Counsel pursuant to §§ 1253.103-1253.107 when the employee or applicant for employment provides information which describes the matter sufficiently so that—

(a) It can be reasonably determined that the matter falls within the applicability of this part; and

(b) It can serve as a basis for a preliminary investigation by the Special Counsel to determine whether a further investigation or other action and response by the agency affected is appropriate.

§ 1253.103 Disclosure of identity of disclosing employee or applicant for employment.

The identity of any employee or applicant for employment who discloses information pursuant to this part, may not be disclosed without the consent of the employee or applicant during any investigation by the Special Counsel or by an agency pursuant to a referral from the Special Counsel, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to carry out the functions of the Special Counsel.

§ 1253.104 Referral to agency heads; reports from agency heads.

(a) If after review of the information received under this Part (but not later than 15 days after receipt of the information), the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of any law, rule or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety, he or she may, if the information was transmitted to the Special Counsel by an employee or former employee or applicant for employment in the agency which the information concerns, or by any employee who obtained the information in connection with the performance of the employee's duties and responsibilities, require the head of the agency to conduct an investigation of the information and any related matters and submit to the Special Counsel a written report setting forth the findings of the head of the agency. Any report required by the Special Counsel under this section shall be submitted within sixty (60) calendar days after the date on which the Special Counsel transmitted the information to the head of the agency, or within any reasonable longer period of time agreed to in writing by the Special Counsel or designee of the Special Counsel.

(b) Any report required under this section shall be reviewed and signed by the agency head and shall include: A summary of the information with respect to which the investigation was initiated; a description of the conduct of the investigation; a summary of any evidence obtained from the investigation; a listing of any violation or apparent violation of any law, rule, or regulation; a description of any corrective action taken or planned to be taken as a result of the investigation, including, but not limited to, changes in agency rules, regulations, or practices, restoration of any aggrieved employee, disciplinary action against any employee, and referral to the Attorney General of any evidence of a criminal violation.

(c) Any report required under this section shall be submitted, by the agency head, to the Congress and the President, as well as the Special Counsel.

(d) The Special Counsel will transmit a copy of the agency head's report to the party who made the disclosure to the Special Counsel except when the report includes evidence of criminal violations referred to the Attorney General.

§ 1253.105 Referral to agency heads under 5 U.S.C. 1206(b)(7).

If the Special Counsel does not require an investigation by the head of the agency, the head of the agency shall, within a reasonable time (but no later than 60 days) after the information was transmitted to him or her by the Special Counsel, inform the Special Counsel, in writing, of what action has been or is to be taken and when such action will be completed. The Special Counsel shall promptly inform the complainant of the report of the agency head and provide the complainant with a copy of the report of the agency head.

§ 1253.106 Failure of agency head to file report.

Whenever the Special Counsel does not receive a required report from an agency head within the time specified in § 1253.104 or § 1253.105, the Special Counsel may transmit a copy of the information which he or she transmitted to the agency head to the President and to the Congress together with a statement noting the failure of the agency head to file the required report.

§ 1253.107 Review of agency report.

Upon receipt of any report of the head of an agency under § 1253.104, the Special Counsel shall review the report and determine whether the findings of the head of the agency appear reasonable and the agency's report contains the information required.

§ 1253.108 Foreign intelligence or counterintelligence information.

Any disclosure under this part involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or Executive order, shall be transmitted by the Special Counsel to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

PART 1254—FILING OF COMPLAINTS AND ALLEGATIONS

Sec.
1254.101 Place of filing.

AUTHORITY: 5 U.S.C. 1206.

§ 1254.101 Place of filing.

All complaints, allegations, and information under this subchapter shall be transmitted to the Office of the Special Counsel, Merit Systems Protection Board, 1717 H Street, NW., Washington, D.C. 20419.

PART 1260—PROSECUTIONS

Sec.
1260.101 Complaint—contents.
1260.201 Stay of personnel actions.
1260.301 Enforcement of Board decisions.
1260.302 Petition for withholding order.
1260.401 Hearings on complaints filed by the Special Counsel.
1260.501 Dismissal by the Special Counsel.

AUTHORITY: 5 U.S.C. 1205, 1206, 1207; Sec. 204 of Reorganization Plan No. 2 of 1978.

§ 1260.101 Complaint—contents.

In addition to the charges which specify the law, rule, or regulation violated, including a statement of supporting facts, the complaint shall inform the employee of his or her right to reply to the Board personally, in writing, or both, pursuant to the rules and regulations of the Board providing for a reply within 15 days of receipt of the complaint. The complaint shall also inform the employee that: He or she must serve a copy of any such reply upon the Special Counsel; pursuant to the Board's rules, no decision on the proposed action will be effected sooner than 30 days after receipt of the complaint by the employee; and of his or her right to be represented by counsel.

§ 1260.201 Stay of personnel actions.

(a) The Special Counsel may request any member of the Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel

action was taken, or is to be taken, as a result of a prohibited personnel practice. Where administratively practicable, the petition for stay shall be served upon the agency official or office which has taken or is taking the personnel action. The stay shall be effective on order of the Board member or on the fourth calendar day (excluding Saturdays, Sundays, and legal holidays) following submission of the petition to the Board member provided the Board member does not deny the stay within three calendar days of submittal.

(b) The Special Counsel may request any member of the Board to extend the period of any stay for a period of not more than 30 calendar days.

(c) The Special Counsel may request the Board to order a further extension of the stay for such period as the Board considers appropriate.

§ 1260.301 Enforcement of Board decisions.

(a) The Special Counsel shall accept and investigate complaints pursuant to the procedures of Part 1251 of this subchapter, of knowing and willful refusal or failure of an employee to comply with an order of the Merit Systems Protection Board.

(b) If after review of the report of investigation, the Special Counsel determines that disciplinary action should be taken against an employee for failure to comply with an order of the Board, he or she shall prepare a complaint setting forth the substance of the violation charged with specificity, including a statement of supporting facts, and shall file the complaint with the Board.

(c) The complaint, including the statement of supporting facts, shall be served upon the employee at the same time it is filed with the Board, and shall contain the information required by § 1260.101 of this title.

§ 1260.302 Petition for withholding order.

When the Special Counsel determines that a State or local agency has failed to remove an employee after a decision by the Merit Systems Protection Board under section 1505 of title 5, United States Code, or that the employee was reemployed within 18 months in a State or local agency of the same State, the Special Counsel may initiate proceedings for a withholding order as provided under section 1506 of the same title, by filing a petition for a withholding order with an administrative law judge designated by the Board.

§ 1260.401 Hearings on complaints filed by the Special Counsel.

Any employee against whom the Special Counsel presents a complaint to the Merit Systems Protection Board shall, pursuant to the regulations of the Board, have the right to a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer, to be represented by an attorney or other representative, to a hearing before the Board or an administrative law judge designated by the board, to have a transcript kept of any hearing, to a written decision and reasons therefor, and a copy of any final order on the complaint.

§ 1260.501 Dismissal by the Special Counsel.

The Special Counsel, or his or her designee may, with leave of the Board or administrative law judge, file a dismissal of all or part of a complaint at any time prior to the close of the hearing before the Board or administrative law judge. Prosecution by the Special Counsel with respect to any of the charges so dismissed shall thereupon terminate.

PART 1270—ANCILLARY MATTERS

Subpart A—Discovery

Sec.
1270.101 Subpenas.
1270.102 Testimony and evidence.
1270.103 Depositions and interrogatories.
1270.104 Witness fees.

Subpart B—Prohibition on Disciplinary Action During Pendency of Investigation by Special Counsel

1270.201 Prohibition on disciplinary action during pendency of investigation by Special Counsel.

Subpart C—Advisory Opinions; Intervention; Requests to Merit Systems Protection Board to Review Office of Personnel Management Regulations

1270.301 Advisory opinions.
1270.302 Intervention.
1270.303 Requests to Merit Systems Protection Board to Review Office of Personnel Management Regulations.

Subpart D—Disclosure of Identity of Employee or Applicant by Special Counsel

1270.401 Disclosure of identity of employee or applicant by Special Counsel.

AUTHORITY: 5 U.S.C. 303, 1205, 1206; Sec. 204 of Reorganization Plan No. 2 of 1978; 5 CFR 5.3.

Subpart A—Discovery

§ 1270.101 Subpenas.

(a)(1) The Special Counsel may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. The subpena shall command each person to whom it is directed to attend and give testimony or to produce documents or other tangible evidence at a time and place specified therein. A subpena may be served by a representative of the Special Counsel or a U.S. Marshal. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person.

(2) The subpena must be signed by the Special Counsel; *Provided however,* That designees may be authorized by the Special Counsel to sign his or her name and issue a subpena upon a specific delegation by the Special Counsel. Subpenas may not be signed in blank.

(b)(1) In the case of contumacy or failure to obey a subpena issued by the Special Counsel, the Special Counsel may request the United States District Court for the judicial district in which the person to whom the subpena is addressed resides, or is served, to issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Upon any failure to obey an order of the court granted pursuant to the application of the Special Counsel, the Special Counsel may request the court to hold the person or persons to whom the order was directed in contempt of court.

(2) Application to a federal court for enforcement of a subpena issued under this section may be made by the Special Counsel or his or her designee.

§ 1270.102 Testimony and evidence.

(a) Pursuant to Civil Service Rule V, § 5.4 (5 CFR 5.4), as amended, all officers and employees in the executive branch, or applicants or eligibles for positions therein, shall give to the Special Counsel, or his or her authorized representatives, all information, testimony, and documentary evidence in regard to matters inquired of arising under the laws, rules, and regulations administered by the Special Counsel.

(b) Whenever required by the Special Counsel, or his or her authorized representatives, such persons shall subscribe such testimony and make oath or affirmation thereto before an officer authorized by law to administer oaths. Such oath may be administered by any officer or employee of the Office of Special Counsel authorized to administer such oaths.

§ 1270.103 Depositions and interrogatories.

The Special Counsel may order the taking of depositions and order responses to written interrogatories. Depositions shall be taken before an officer authorized to administer oaths. Reasonable notice shall be given to the person to be deposed concerning

the time, place and subject of the deposition. Answers to interrogatories shall be served upon the Special Counsel or his or her authorized representative within thirty (30) days of the date of receipt of the interrogatories unless an extension of time has been granted by the Special Counsel or his or her representative.

§ 1270.104 Witness fees.

(a) Witness fees and mileage allowances shall be paid by the party requesting the witness to appear, or asking for and receiving a subpena requiring the attendance of a witness or the production of documents or other materials, and shall be tendered to the witness or person who is directed to product documents or other materials along with the subpena, or, if the witness appears voluntarily, at the time of appearance. When the witness is subpenaed or appears at the request of the United States or an officer or agency thereof, fees and mileage need not be tendered with the subpena or prior to the appearance of the witness or production of evidence; payment shall be made by the agency on whose behalf the witness appeared or was subpenaed, upon the certificate of the Special Counsel or his or her designee that the witness appeared and/or produced documents or other evidence.

(b) Witness fees and mileage allowances payable under this section shall be the same as those paid subpenaed witnesses in the courts of the United States, as set forth in section 1821 of title 28, United States Code.

(c) Employees of the Federal Government who appear voluntarily or pursuant to subpena and who appear in official duty status shall not be entitled to any witness fees or mileage allowance (other than that to which they are entitled under the Federal Travel Regulations).

Subpart B—Prohibition on Disciplinary Action During Pendency of Investigation by Special Counsel

§ 1270.201 Prohibition on disciplinary action during pendency of investigation by Special Counsel.

During any investigation initiated by the Special Counsel, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

Subpart C—Advisory Opinions; Intervention; Review of Office of Personnel Management Regulations

§ 1270.301 Advisory opinions.

The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 of title 5, U.S. Code, dealing with political activity of State and local officers and employees, or subchapter III of chapter 73 of title 5, U.S. Code, dealing with political activity of Federal officers and employees).

§ 1270.302 Intervention.

The Special Counsel may, in his or her discretion, intervene or otherwise participate in any proceeding before the Merit Systems Protection Board and shall comply with the rules of the Board.

§ 1270.303 Requests to the Merit Systems Protection Board to review Office of Personnel Management regulations.

The Special Counsel may, in his or her discretion, file a written complaint with the Merit Systems Protection Board, requesting the Board to review the validity of any provision of any rule or regulation issued by the Director of the Office of Personnel Management. Such complaint shall specify the manner in which application of specific provisions of the rule or regulation has resulted or will result in causing any employee or agency to violate any prohibited personnel practice, and will be accompanied by supporting facts or evidence.

Subpart D—Disclosure or Identity of Employee or Applicant by Special Counsel

§ 1270.401 Disclosure of identity of employee or applicant by Special Counsel.

The identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation concerning allegations of prohibited personnel practices or disclosures of information under 5 U.S. Code 1206(a) and 1206(b)(1), unless the Special Counsel determines that the disclosure is necessary in order to carry out the functions of the Special Counsel.

PART 1271—PUBLIC INFORMATION

Sec.
1271.101 Public List of Matters Referred to Agencies.

AUTHORITY: 5 U.S.C. 1206.

§ 1271.101 Public list of matters referred to agencies.

The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under § 1251.103(g) and Part 1253 of this subchapter, together with reports by the heads of agencies received under Part 1253 and certifications by heads of agencies received under § 1251.103(g).

PART 1272—FREEDOM OF INFORMATION

Sec.
1272.101 Policy.
1272.102 Procedures for obtaining records.
1272.103 Service charge for information.
1272.104 Appeals.
1272.105 Disclosures by authorized official only.

AUTHORITY: 5 U.S.C. 552.

§ 1272.101 Policy.

Upon receipt by the Office of the Special Counsel of a request for agency records under the Freedom of Information Act (5 U.S.C. 552) that are reasonably described, the records shall be provided promptly unless it is determined that one or more of the exemptions under subsection (b) of that Act should be applied to withhold the records.

§ 1272.102 Procedures for obtaining records.

Requests for records may be made in person or in writing and, except in unusual circumstances, a determination shall be made on a request within 10 days (excluding Saturdays, Sundays, and legal holidays). Requests in writing should be addressed to the Office of the Special Counsel, 1717 H Street, NW., Washington, D.C. 20419. Requests in person may be made by appearing at that address during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Freedom of Information Act Request".

§ 1272.103 Service charge for information.

(a) Request for records of the Office of the Special Counsel are subject to the following fees for search and duplication:

Photocopies, per page, $0.10.
Manual records search, $5.00 per hour.

Where copies of records have already been made available to an individual in the course of agency proceedings or otherwise, the cost of photocopies to that individual or his or her representative shall be fifteen (15) cents per page. Fees for search and duplication of automated records shall be provided upon request.

(b) Requests that do not specify that whatever fees are involved shall be acceptable or acceptable up to a designated amount will be deemed not received for purposes of the time limits for a determination until the requester, after being promptly notified of the anticipated fees, agrees to payment.

(c) When the anticipated fees exceed fifty ($50.00) dollars, a deposit of twenty (20%) percent of that amount must be made within thirty (30) days after the requester is so advised. Records will not be released until the deposit is received.

§ 1272.104 Appeals.

Any denial, in whole or in part, of a request for records of the Office of the Special Counsel may be appealed to the Special Counsel or his/her designee. The appeal shall be in writing and addressed to the Special Counsel at 1717 H Street, NW., Washington, D.C. 20419. Except in unusual circumstances, the Special Counsel or his/her designee shall make a determination on the appeal within twenty (20) days (excluding Saturdays, Sundays, and legal holidays) after it is received. When a request is denied on appeal, the requester shall be advised of his or her right to seek judicial review.

§ 1272.105 Disclosures by authorized official only.

No employee or former employee of the Office of the Special Counsel shall, in response to a demand of a court or other authority, produce or disclose any information or records acquired as part of the performance of his or her official duties or because of his or her official status without the prior approval of the appropriate official of the Office of the Special Counsel.

PART 1273—PRIVACY

Sec.
1273.101 Records maintained on individuals.
1273.102 Access to records and identification.
1273.103 Medical records.
1273.104 Requests for amendment of records.
1273.105 Appeals.
1273.106 Exemptions.

AUTHORITY: 5 U.S.C. 552a.

§ 1273.101 Records maintained on individuals.

Information on individuals that are maintained in any group or system of records by the Office of the Special Counsel and which are retrieved by the name of the individual or some identifying particular assigned to the individual, shall be subject to the Privacy Act (5 U.S.C. 552a). The terms used in this part that are defined in that section shall have the meanings set forth therein.

§ 1273.102 Access to records and identification.

(a) Individuals may request access to records pertaining to them that are maintained as described in section 1273.101 by addressing an inquiry to the Office of the Special Counsel either by mail or by appearing in person at the offices of the Special Counsel at 1717 H Street, NW., Washington, D.C. 20419, during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Privacy Act Request". Requests for copies of records shall be subject to duplication fees set forth in § 1273.103 of this subchapter.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual's photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the Office of the Special Counsel to determine that the requester and the subject of the record are one and the same. To assist in this process, individuals should submit their name and address, date and place of birth, social security number, and any other known identifying information such as an agency file number or identification number and a description of the circumstances under which the records were compiled.

§ 1273.103 Medical records.

When a request for access involves medical records that are not otherwise exempt from disclosure, the requesting individual may be advised, if it is deemed necessary, that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the physician will be permitted to review the records or to receive copies by mail upon proper verification of identity.

§ 1273.104 Requests for amendment of records.

Individuals may request amendment of records pertaining to them that are subject to this part. Requests should be addressed, in writing, to the Special Counsel and be clearly and prominently marked "Privacy Act Request". Requests for amendment should include identification of the records together with a statement of the basis for the requested amendment and all available supporting documents and materials. Requests for amendment shall be acknowledged not later than ten (10) days (excluding Saturdays, Sundays, and legal holidays) after receipt and a determination on the request shall be made promptly.

§ 1273.105 Appeals.

When a request for access or amendment has been denied, a written appeal may be submitted to the Special Counsel or his/her designee. A final determination on the appeal shall be issued within thirty (30) days (excluding Saturdays, Sundays, and legal holidays) after receipt. Where unusual circumstances prevent a determination within that time period, the time for a determination may be extended an additional thirty (30) working days after the requesting individual has been advised in writing of the reasons for the extension and the estimated date a determination will be made. Where the final determination denies a request for amendment, the requesting individual shall be notified of his or her right to file a concise statement of reasons for disagreeing with the final determination. A copy of the statement shall be appended to the disputed record and provided to persons to whom the record is disclosed and to prior known recipients of the record. The Office of the Special Counsel may also attach to the statement a concise account of its reasons for not making the amendments requested. The final determination shall contain a notice of the right to judicial review.

§ 1273.106 Exemptions.

The Office of the Special Counsel may claim exemptions from the provisions of the Privacy Act at subsections (c)(3) and (d) as permitted by subsection (k) for records subject to the Act that fall within the category of investigatory material described in paragraphs (2) and (5) and testing or examination material described in paragraph (6) of that subsection. The exemptions for investigatory material are necessary to prevent frustration of inquiries into allegations of prohibited personnel practices or political activity and to protect identities of confidential sources of information. The exemptiom for testing or examination material is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures. The Office of the Special Counsel also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request and the office of the Special Counsel may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

PARTS 1274, 1275 and 1276—[RESERVED]

Issued on January 26, 1979, at Washington, D.C.

H. PATRICK SWYGERT,
Special Counsel of the Merit Systems Protection Board.

[FR Doc. 79-3171 Filed 1-29-79; 8:45 am]

federal register

TUESDAY, JANUARY 30, 1979
PART IV

ADVISORY COUNCIL ON HISTORIC PRESERVATION

PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Final Amendments

[4310-10-M]

Title 36—Parks, Forests, and Public Property

CHAPTER VIII—ADVISORY COUNCIL ON HISTORIC PRESERVATION

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Amendments to Existing Regulations

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final amendments to regulations.

SUMMARY: These regulations implement Section 106 of the National Historic Preservation Act 1966, as amended (16 U.S.C. 470), and two Presidential directives issued pursuant to Section 106—Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470), and the President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978. The regulations have been amended to reflect changes and additions to the Council's authorities, as well as experience gained in working with the process since the last publication of regulations in 1974. These amendments are intended to expedite and clarify the commenting process required by Section 106 of the National Historic Preservation Act.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

John M. Fowler, Acting General Counsel, Advisory Council on Historic Preservation, 1522 K Street, NW, Washington, D.C. 20005, 202-254-3967.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Advisory Council on Historic Preservation is publishing these final amendments to its existing regulations to implement Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470f). The purpose of Section 106 is to protect properties included in or eligible for inclusion in the National Register of Historic Places through review and comment by the Council on Federal undertakings that affect such properties. Properties are listed on the National Register or declared eligible for listing by the Secretary of the Interior. As implemented through these regulations, the Section 106 process is a public interest process in which the Federal agency proposing an undertaking, the State Historic Preservation Officer, the Council, and interested organizations and individuals participate. The process is designed to assure that alternatives to avoid or mitigate an adverse effect on a National Register or eligible property are adequately considered in the planning processes. The regulations are binding on all Federal agencies and specify the manner in which the Council will render its comments to Federal agencies when their undertakings affect properties included in or eligible for inclusion in the National Register of Historic Places. To facilitate processing of the large volume of cases submitted for Council comment each year, the regulations provide for agency consultation with the Council staff and State Historic Preservation Officers to reduce the number of undertakings that require consideration by the full Council.

The purpose of the present amendments is to reduce procedural delay, encourage agencies to develop internal regulations to comply with the requirements of the Act and these regulations, to clarify the process since the last publication of the Council's regulations in 1974, and to implement the directives in the President's Memorandum on Environmental Quality and Water Resources Management.

In late 1977, the Council staff began a reassessment of the existing regulations codified in 1974 in 36 CFR Part 800, in an effort to determine what changes, clarifications, or modifications were necessary. In July of 1978, the President issued the Memorandum on Environmental Quality and Water Resources Management which directed the Chairman of the Council to review and promulgate regulations implementing the Act and the Memorandum by March 1, 1979. Accordingly, the existing regulations were amended to reflect changes in statutory authority, experience gained in implementing the procedures since 1974, and to meet the demands of the President's Memorandum.

The Council published proposed amendments to the existing regulations in the FEDERAL REGISTER on October 30, 1978, and invited public comment for a 30 day period. A number of Federal agencies and others requested extension of the comment period. On November 28, 1978, the Council published notice in the FEDERAL REGISTER extending the comment period for an additional thirty days until December 29, 1978, providing for a 60 day comment period in total. A public briefing for interested agencies, organizations, and individuals on the proposed amendments was held on December 11, 1978. Council staff also actively cooperated with the Secretary of the Interior's Water Policy Implementation Task Force on Environmental Statutes. The Task Force was convened in response to the directives contained in the President's Memorandum. The Task Force was charged with reviewing the draft regulations and informally offering comments to the Council on whether the regulations comply with the directive.

Pursuant to the President's Memorandum, agencies with consultation responsibilities under the Act must develop regulations to be approved by the Chairman of the Council in response to these regulations. Such agencies must publish regulations no later than three months after the effective date of these regulations. Other agencies may choose to adopt counterpart regulations specifically tailored to their particular program needs as stipulated in these regulations.

These regulations issued pursuant to 16 U.S.C. 470s were adopted by unanimous vote of the full Council in open session on January 17, 1979. As directed by the President, the amended regulations will be effective March 1, 1979.

SUMMARY OF MAJOR CHANGES

The flow of the commenting process established by the 1974 regulations remains basically unchanged in the present amendments. However, the regulations have been renumbered and rearranged from the 1974 publication for greater clarity. The following major changes have been made in the regulations:

1. Section 800.4(a) has been substantially revised to provide further guidance to Federal agencies on the identification of National Register and eligible properties.

2. A new § 800.5 has been added to define the responsibilities of State Historic Preservation Officers in the commenting process.

3. Section 800.6(d) authorizes the Chairman to appoint a panel of five members of the Council to consider undertakings in lieu of consideration by the full Council.

4. A new § 800.7 has been added dealing with resources discovered during construction.

5. A new § 800.8 has been added dealing with Programmatic Memoranda of Agreement allowing an agency to obtain the Council's comments for a particular program or class of undertakings that would otherwise require numerous individual requests for comments.

6. Section 800.9 revises the original section dealing with the National Environmental Policy Act to reflect new Council on Environmental Quality regulations.

7. A new § 800.11 has been added to authorize counterpart regulations permitting agencies to develop regulations which, if approved by the Chair-

man, may be used to meet certain requirements of these regulations.

8. A new § 800.15 has been added dealing with public participation in the Section 106 review process.

9. A new § 800.14 has been added on Supplementary Guidance. The Supplementary Guidelines included in the proposed amendments have been deleted. Supplementary Guidelines II and IV have been included in § 800.13.

10. Throughout the amended regulations, time limits have been established to expedite the process while encouraging maximum public participation.

COMMENTS AND THE COUNCIL'S RESPONSE

The Council received 128 comments prior to the close of the comment period on December 29, 1978. An additional 16 comments were received between December 30, 1978, and the Council meeting on January 17 and 18, 1979. All comments were submitted to the Council members for review prior to the meeting. Comments were received from 32 Federal agencies. 27 State Historic Preservation Officers, 33 State or local governments, and 52 private organizations or individuals, and one U.S. Senator.

SECTION 800.1 PURPOSE AND AUTHORITIES

The section was slightly reworded in response to several suggestions to make the language closer to that of the Act and Executive Order. A section was added summarizing the President's Memorandum on Environmental Quality and Water Resources Management.

SECTION 800.2 DEFINITIONS

Section 800.2(c) was clarified in response to several agency comments that the scope of the term "undertaking" was too broad and unclear. Of particular concern was the inclusion of activities proposed by Federal agencies for Congressional authorization or appropriation. This definition is not to be construed as requiring general program authorization and program appropriation requests to be reviewed under these regulations. The purpose is to ensure proper and timely consideration of specific activities that will have significant impacts on National Register or eligible properties and that provide limited opportunity after Congressional action to consider alternatives to avoid or mitigate these impacts. Such activities are usually major Federal construction projects that are proposed for Congressional approval at a specific site or with specific design features, such as a dam. Section 106 review would be appropriate prior to authorization or, in the case of projects authorized without prior Section 106 compliance, during the agency's formulation of a budget request to be submitted to the Office of Management and Budget. In either event agencies should complete their Section 106 responsibilities prior to making submissions to the Office of Management and Budget. Agencies will comply with the requirements of OMB Circular A-10, which concerns budget confidentiality.

Authorizations for programs that will have uniform adverse effects on National Register or eligible properties and where the legislative terms of authorization may severely limit the opportunity to avoid or mitigate adverse effects on a case by case basis are also included. An example would be the recent Special Bridge Replacement Program, which, in its original form, prohibited the use of funds for anything but replacement of unsafe bridges. The result was that alternatives such as rehabilitation were foreclosed when a particular National Register or eligible bridge was proposed for replacement. When seeking Council comments on such a program agencies should follow the provisions of § 800.8, "Programmatic Memorandum of Agreement."

The definition of eligible property contained in § 800.2(f) has been rewritten to more closely reflect statutory language and was changed in response to a Federal member agency. Several commenters were of the opinion that the Council should review only those undertakings affecting properties actually listed on the National Register. Such a limitation is contrary to the mandate of the National Historic Preservation Act, and was not adopted.

A definition of the area of the undertaking's potential environmental impact is contained in § 800.2(o). Several comments expressed concern about the difficulty in defining this term. The definition no longer includes reference to secondary effects and is consistent with the definition adopted by the Council on Environmental Quality. This new section has been modified since the draft amendments by the addition of the requirement that the boundaries of such an area are to be determined by the Agency Official and the State Historic Preservation Officer.

Section 800.2(p), Consulting Parties, is a new section. Many commenters expressed confusion as to who the parties to the consultation process were.

SECTION 800.3 CRITERIA OF EFFECT AND ADVERSE EFFECT

Section 800.3 was the subject of many comments. The entire section has been reworked for greater clarity. A definition of direct and indirect effects has been added and the definition deliberately tracks that used by the Council on Environmental Quality for purposes of the National Environmental Policy Act. The new language of this section is now tied closely to the National Register Criteria. One commenter suggested that only significant effects be covered by these regulations. This comment was not adopted because it is contrary to statutory requirements.

SECTION 800.4 FEDERAL AGENCY RESPONSIBILITIES

This section describes the means by which a Federal agency should identify National Register or eligible properties and determine whether an undertaking affects such properties and provides for coordination with the State Historic Preservation Officers. A large number of comments were received on the entire section. Many Federal agencies felt that further clarification of the entire section was needed. In response to these comments, the section has been re-structured. The Council has adopted a reasonable effort standard for Federal agencies to meet in identifying National Register and eligible properties. Federal agency responsibilities for determination of effect are also set forth in this section. The ultimate responsibility for compliance with the regulations rests with the Federal agency and cannot be delegated by it.

Section 800.4(a) has been altered in response to numerous comments including several from Federal agencies. The section has been re-drafted to set forth a logical sequence needed to identify properties. Throughout the process of identification, there should be consultation between the Agency Official and the State Historic Preservation Officer. The section makes clear that an agency can request the Council's comments simultaneously with a request for eligibility from the Secretary of the Interior. The Council believes that the reorganized section is clearer and that it will allow agencies to know in more precise terms what is required to identify National Register or eligible properties.

Section 800.4(b), Determination of Effect, also received numerous comments from Federal agencies and others. The section on No Effect (800.4(b)(1)) has been clarified concerning how an objection can be made and the manner in which the Executive Director will respond.

Section 800.4(c) concerning Determination of No Adverse Effect has been clarified in response to several comments. No Adverse Effect Determinations must be made in consultation with the appropriate State Historic Preservation Officer and evidence of contact with a State Historic Preservation Officer must be included in the documentation forwarded to the

Council if the State Historic Preservation Officer does not respond to a request under the provisions of § 800.5.

Section 800.4(d) has been slightly altered in response to several comments. The transmittal of a Preliminary Case Report will be the request for the comments of the Council.

A new § 800.4(e) has been added providing that good faith consultation would prevent an agency from proceeding with an undertaking until the Council has provided its comments. The section, while appearing in substantially the same form in several sections in the draft amendments, is now one section. It is included as one section at the request of a Federal agency member of the Council.

SECTION 800.5 STATE HISTORIC PRESERVATION OFFICER RESPONSIBILITIES

Section 800.5, State Historic Preservation Officer Responsibilities, is a new section. The section establishes deadlines for response on the part of this official, after which the process may continue if no response has been received. Pursuant to a substantial number of comments, however, lack of response by the State Historic Preservation Officer will no longer be deemed concurrence, although the review may still proceed. Several commenters suggested that the "shoulds" used in this section be changed to "shalls." The suggestion was rejected because the Council lacks authority to impose mandatory requirements on these State officials.

SECTION 800.6 COUNCIL COMMENTS

This section concerns the manner in which the Council will render its comments. There were a substantial number of comments on this section. In response to these comments, numerous changes were made to clear up ambiguities and make the Council's commenting process more expeditious.

Section 800.6(a) concerns the manner in which the Executive Director will respond to an agency Determination of No Adverse Effect. In response to comments, a specific time limit has been placed on the Executive Director's acceptance of adequate documentation and the time period for review of such Determinations of No Adverse Effect has been reduced from the 45 days stipulated in the 1974 regulations to 30 days.

A new § 800.6(a)(2) provides that the Executive Director may specify conditions to remove an objection to a No Adverse Effect Determination. Several commenters suggested that the State Historic Preservation Officer should be included in this process. It is the intention of the Council to include the State Historic Preservation Officer through the addition of a provision in § 800.6(a)(2) which allows the Executive Director to consult the State Historic Preservation Officer and other interested parties.

Section 800.6(b) parallels the existing regulations. However, several changes have been made, including provisions for specific time limits throughout the consultation process. Although a number of commenters felt that parties in interest to an undertaking should have the status of a consulting party, these comments were not adopted because the Council does not believe that it can impose such a uniform requirement due to the wide variety of agency programs. At the request of several Federal agencies, a lead agency provision is also included in this section.

In response to comments, § 800.6(b)(3) has been changed to provide that the public information meeting should be held near the site of the undertaking.

A new § 800.6(b)(6) on acceptance of adverse effect has been included. Previously, the Council equated acceptance of Adverse Effect with mitigation measures such as recording of a structure that was being demolished. The Council realizes that there are circumstances in which adverse effects on National Register or eligible properties must be accepted in the public interest. In such instances, the adverse effect will be accepted, generally with a proviso that a recording effort be part of the agreement.

Section 800.6(b)(7) has been clarified in response to comments. Any one of the consulting parties may declare a failure in the consultation process upon written notice to the Executive Director who is required to notify the Chairman of the failure within 15 days.

Section 800.6(c) concerning the Memorandum of Agreement has been rewritten in response to comments. An important change from the existing regulations is an expedited method for preparing the Memorandum of Agreement. A Federal agency will prepare a proposal, which together with the written concurrence of the State Historic Preservation Officer can be transmitted to the Executive Director and incorporated into the Memorandum of Agreement.

Many commenters agreed with the Council that this would speed up the process, but only if there were time limits placed on the process for ratification of an agreement. The Council agreed and a limit of 10 days has been imposed for transmittal of such Memoranda to the Chairman.

A new § 800.6(c)(3) dealing with the effect of a Memorandum of Agreement has been added. This subsection provides that if an agency fails to carry out the terms of the agreement that the comments of the Council must again be requested. Several commenters suggested that in such instances agencies should be admonished that no further action on the undertaking should proceed until the Council has commented. The Council agrees and this section has been revised accordingly.

In response to comments, § 800.6(c)(4) has been changed to provide that any signatory to the agreement can request a change in the terms. At the request of several commenters a new section has also been added which requires the Agency Official to provide a report on actions taken to carry out the terms of the agreement.

Section 800.6(d) dealing with Council meetings has been revised in response to comments. When the Chairman decides against consideration by the Council of a proposed undertaking, it can be scheduled if three members of the Council object. The proposed amendments would have required that a majority of the members object. Numerous commenters felt that such a large number was unrealistic. A major change from the 1974 regulations is the provision for a panel of members to consider an undertaking on behalf of the full Council. Such a panel would be composed of 5 members, three non-Federal members and two Federal members, neither of whom represents the agency proposing the undertaking. The Council believes that this provision will serve to both increase the number of cases referred for Council consideration and to expedite those cases. Several Council members felt that consideration of an undertaking by a panel would not be representative of the full range of views provided by the entire Council membership. After discussion at the full Council meeting on January 17, 1979, it was agreed that panel consideration of an undertaking may be advantageous in some situations. However, the Council felt that this provision should be re-examined in one year to determine the effectiveness of panel review of undertakings.

A number of comments were received on the section dealing with the review of a panel decision. Many commenters pointed out that an appeal of a panel decision by any one of the parties involved as proposed in the draft amendments could actually delay the process rather than speeding it up. The Council agrees with this assessment and the appeal provision has been deleted. However, if an agency determines not to follow the comments of a panel after considering the comments, it must provide notice to the Chairman in order to provide opportunity to have the matter considered by the full Council. Because of the nature of panel consideration of

an undertaking, the comments were not adopted which suggested that no consideration of an undertaking beyond a panel was necessary.

In response to comments, time limits for notice of Council meetings and statements to the Council have been extended to provide ample opportunity for public participation. Section 800.6(d)(5) has been changed to provide that the comments of the Council will be issued within 15 days after a meeting and that such comments will be made available to interested parties, including the State Historic Preservation Officer.

SECTION 800.7 RESOURCES DISCOVERED DURING CONSTRUCTION

This section was proposed as a addition to the 1974 regulations. As originally proposed, the section was intended to establish a limited time period for the Council to provide its comments to an agency when a resource eligible for the National Register was discovered during the actual construction of a project after an agency had previously completed its Section 106 responsibilities. While there were several unqualified endorsements, the majority of the commenters felt that the section as proposed would cause undue project delays resulting in additional costs. The section was substantially rewritten in light of these comments. The mandatory halt of construction has been eliminated, although the Council believes that good faith consultation requires that an agency make reasonable efforts to avoid foreclosing options while the Council's comments are being sought. As drafted, § 800.7 applies only to those resources discovered during construction that meet the National Register Criteria. Agencies that discover National Register eligible properties during construction are required to comply with the provisions of the Archeological and Historic Preservation Act of 1974. The Council is adopting, as the standard for Section 106 compliance, mitigation acceptable to the Secretary of the Interior under the provisions of the Archeological and Historic Preservation Act. Therefore, an agency will be deemed to have met its responsibilities to afford the Council an opportunity to comment if it complies with the provisions of the Archeological and Historic Preservation Act, unless the Secretary determines that certain aspects of the undertaking warrant Council consideration. If Council consideration is determined to be necessary, a 30-day time limit has been placed on the transmittal of comments. The Council believes that this provision will serve to reduce time delays and effectively protect the resource.

SECTION 800.8 PROGRAMMATIC MEMORANDUM OF AGREEMENT

This section was developed as a means of allowing the Council to comment on a particular program or class of actions that would otherwise require multiple individual requests for comments under the regulations. This will expedite the review process and eliminate individual reviews of undertakings that are repetitive in nature. For example, the Council has executed a programmatic agreement with the National Park Service concerning the Park planning system. Under the terms of the agreement, individual actions taken to implement a master plan for a particular park that has previously been reviewed by the Council will normally not be subjected to further Council review.

A number of commenters suggested that the process include the State Historic Preservation Officers in States affected by such an agreement or the National Conference of State Historic Preservation Officers when the agreement is nationwide in scope. The regulations have been revised to specifically allow for such participation. Other changes have been made in the section to clarify ambiguities pointed out by a number of commenters.

SECTION 800.9 COORDINATION WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

This section sets forth the manner in which the review conducted under Section 106 should be coordinated with that required by the National Environmental Policy Act. This section elaborates on § 800.2 of the 1974 regulations and has been developed in consultation with the staff of the Council on Environmental Quality. It is the intention of the two agencies to issue joint supplementary guidance on this subject in the near future. The purpose of the section is to combine to the maximum extent possible the information on resources, evaluation of effects, and analysis of alternatives required by the separate statutes. For most projects, the Council's comments should be requested during the preparation of the draft environmental impact statement. Some commenters noted several classes of Federal projects which cannot be coordinated in this manner. The regulations have been revised to specifically provide for this situation. It is the Council's objective to provide its comments on an agency undertaking that requires an environmental impact statement in time to be included in the final statement. This should result in less paperwork and reduce delays in fulfilling agency environmental review responsibilities by allowing a single document to be used to meet the information requirements of both statutes.

SECTION 800.10 COORDINATION WITH THE PRESIDENT'S MEMORANDUM ON ENVIRONMENTAL QUALITY AND WATER RESOURCES MANAGEMENT

This section recapitulates the mandates contained in the Memorandum to agencies with water resources responsibilities to develop regulations to implement the Council's Section 106 regulations. A number of commenters requested the Council to add requirements for additional review of the required regulations and to develop stringent standards for the regulations. The Council will issue guidance to agencies to develop such regulations.

SECTION 800.11 COUNTERPART REGULATIONS

This section has been revised to allow Federal agencies greater flexibility in implementing the procedural requirements of these regulations. Section 800.11 as proposed in the draft amendments dealt briefly with the development of agency procedures under Section 1(3) of Executive Order 11593. The revised section was developed from suggestions received from several Federal agencies. Under this section, an agency may choose to develop counterpart regulations that can be tailored to meet the specific requirements of its planning and decision making processes. Section 800.11 would permit agencies to develop counterpart regulations for meeting their responsibilities under Section 800.4. This section requires that the regulations be jointly drafted with the Executive Director and approved by the Chairman and provides an opportunity for public participation.

SECTION 800.12 INVESTIGATION OF THREATS TO NATIONAL REGISTER AND ELIGIBLE PROPERTIES

This section deals with situations where the Council has reason to believe that a Federal undertaking affecting a National Register or eligible property has not been reviewed in accordance with these regulations. Several clarifications were made to this section in response to specific comments. Some Federal agencies expressed a desire that the Council use discretion in investigating such threats. The Council intends to do so. Previously, these provisions were included in § 800.13(b). In the draft of the proposed amendments § 800.13(a) included a provision for comment or report on non-Federal undertakings. This section has been deleted because it is based on the Council's general advisory authorities under Section 202 of the Act and not on Section 106. The Council will continue to exercise its general advisory authority under Sec-

tion 202 and will consider matters in the public interest.

SECTION 800.13 REPORTS TO THE COUNCIL

This section sets standards for information that should be provided to the Council to enable it to make informed comments on Federal undertakings. Sections 800.13(a) and (b) were previously included in the Supplementary Guidelines section. A large number of commenters requested that these standards for adequate documentation be codified. The Council agrees with these comments and believes that codifying these sections will make the requirements clear to all the consulting parties and the public. Section 800.13(c) dealing with Reports for Council Meetings includes a new section prescribing the Secretary of the Interior's Report. This section requests the Secretary to verify existing information on the historical or cultural significance of a National Register or eligible property and reflects the current practice of the Council. A number of commenters felt that the section was not entirely clear concerning how reports for Council meetings should be coordinated. The section has been re-drafted to respond to these comments.

SECTION 800.14 SUPPLEMENTARY GUIDANCE

This is a new section which provides that the Executive Director may issue further guidance to interpret certain portions of the regulations.

SECTION 800.15 PUBLIC PARTICIPATION

This is a new section which is designed to encourage public participation throughout the process established by the regulations. A number of comments urged that the regulations contain more explicit direction concerning the means of involving the public. Several suggested that such reference to public participation be included in various specific sections. The Council believes that a specific section dealing with public participation will best serve to fulfill the intended purpose of involving the public. The Council notes that its process is advisory and does not constitute formal administrative hearings. Therefore, this section is intended for guidance and is not to be construed as setting a strict legal standard. For example, the use of the word "notice" in subsection (b) is not intended to be a formal legal requirement, but rather a means of informing the public of an opportunity to participate in the process.

OTHER

The Supplementary Guidelines contained in the publication of the draft amendments have been deleted. Supplementary Guidelines II and IV have been codified as part of § 800.13. Supplementary Guideline I, the Criteria of the National Register of Historic Places, is contained in 36 CFR 60.6. Supplementary Guideline III, Determinations of No Effect and No Adverse Effect for Archeological Resources, will not be published at the present time. The Council's Task Force on Archeology will be considering this guideline and it will be revised based upon recommendations of the Task Force. This Guideline received numerous comments and they have been provided to the Task Force for its consideration.

CONCLUSION

The Council made a conscientious effort to incorporate all valid comments in these final amendments. As noted, revisions have been made to the regulations which we believe will serve to make the Section 106 commenting process an open and public process that can be tailored to the needs of individual agencies. The Council believes that the regulations set a clear standard for agencies to follow in meeting their Section 106 responsibilities, while being sufficiently flexible to respond to the wide variety of agency programs and needs.

The Council has determined that these amendments are not significant regulations within the meaning of Executive Order 12044 and consequently do not require a regulatory analysis. The purpose of these amendments is to simplify existing regulations and to clarify language in conformance with the goals enunciated by Executive Order 12044.

The Council has determined that an Environmental Impact Statement under the National Environmental Policy Act is not required.

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Part 800 is revised to read as set forth below:

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Sec.
800.1 Purpose and authorities.
800.2 Definitions.
800.3 Criteria of effect and advance effect.

REVIEW OF INDIVIDUAL UNDERTAKINGS

800.4 Federal Agency Responsibilities.
800.5 State Historic Preservation Officer Responsibilities.
800.6 Council comments.
800.7 Resources discovered during construction.

FEDERAL PROGRAM COORDINATION

800.8 Programmatic Memorandum of Agreement.
800.9 Coordination with the National Environmental Policy Act (42 U.S.C. 4321 et seq.)
800.10 Coordination with the Presidential Memorandum on environmental quality and water resources management.
800.11 Counterpart regulations.

OTHER PROVISIONS

800.12 Investigation of threats to historic properties.
800.13 Reports to the Council.
800.14 Supplementary guidance.
800.15 Public participation.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp, p. 154; President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

§ 800.1 Purpose and authorities.

(a) The National Historic Preservation Act of 1966, as amended, established the Advisory Council on Historic Preservation as an independent agency of the United States to advise the President and the Congress on historic preservation matters, recommend measures to coordinate Federal historic preservation activities, and comment on Federal actions affecting properties included in or eligible for inclusion in the National Register of Historic Places. Its members are the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of General Services, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of State, the Secretary of Defense, the Secretary of Health, Education, and Welfare, the Chairman of the Council on Environmental Quality, the Chairman of the Federal Council on the Arts and Humanities, the Architect of the Capitol, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and 12 citizen members from outside the Federal Government appointed for five-year terms by the President on the basis of their interest and experience in the matters to be considered by the Council.

(b) The Council protects properties of historical, architectural, archeological, and cultural significance at the na-

tional, State, and local level by reviewing and commenting on Federal actions affecting National Register and eligible properties in accordance with the following authorities:

(1) Section 106 of the National Historic Preservation Act. Section 106 requires that Federal agencies with direct or indirect jurisdiction over a Federal, federally assisted or federally licensed undertaking afford the Council a reasonable opportunity for comment on such undertakings that affect properties included in or eligible for inclusion in the National Register of Historic Places prior to the agency's approval of any such undertaking.

(2) Section 1(3) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Section 1(3) requires that Federal agencies, in consultation with the Council, institute procedures to assure that their plans and programs contribute to the preservation and enhancement of non-federally owned historic and cultural properties.

(3) Section 2(b) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Federal agencies are required by Section 2(a) of the Executive Order to locate, inventory, and nominate properties under their jurisdiction or control to the National Register. Until such processes are complete, Federal agencies must provide the Council an opportunity to comment on proposals for the transfer, sale, demolition, or substantial alteration of federally owned properties eligible for inclusion in the National Register.

(4) The President's Memorandum on Environmental Quality and Water Resources Management. The Memorandum directs the Council to issue final regulations under the National Historic Preservation Act by March 1, 1979, and further directs Federal agencies with water resource responsibilities and programs to publish procedures implementing the Act not later than three months after promulgation of final regulations by the Council. Federal agencies' procedures are to be reviewed and, if they are consistent with the Council's regulations, approved by the Council within 60 days and published in final form.

§ 800.2 Definitions.

As used in these regulations:

(a) "National Historic Preservation Act" means Pub. L. 89-665, approved October 15, 1966, an "Act to establish a program for the preservation of additional historic properties throughout the Nation and for other purposes" (80 Stat. 915, 16 U.S.C. 470, as amended; 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978)), hereinafter referred to as "the Act."

(b) "Executive Order" means Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470).

(c) "Undertaking" means any Federal, federally assisted or federally licensed action, activity, or program or the approval, sanction, assistance, or support of any non-Federal action, activity, or program. Undertakings include new and continuing projects and program activities (or elements of such activities not previously considered under Section 106 or Executive Order 11593) that are: (1) Directly undertaken by Federal agencies; (2) supported in whole or in part through Federal contracts, grants, subsidies, loans, loan guarantees, or other forms of direct and indirect funding assistance; (3) carried out pursuant to a Federal lease, permit, license, certificate, approval, or other form of entitlement or permission; or, (4) proposed by a Federal agency for Congressional authorization or appropriation. Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the Federal agency. Non-site-specific undertakings have effects that can be anticipated on National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of Federal approval. Non-site-specific undertakings include Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation and the establishment or modification of regulations and planning guidelines.

(d) "National Register" means the National Register of Historic Places. It is a register of districts, sites, buildings, structures, and objects of national, State, or local significance in American history, architecture, archeology, and culture that is expanded and maintained by the Secretary of the Interior under authority of section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and Section 101(a)(1) of the National Historic Preservation Act . implemented through 36 CFR Part 60. The National Register is published in its entirety in the FEDERAL REGISTER each year in February. Addenda are usually published on the first Tuesday of each month.

(e) "National Register property" means a district, site, building, structure, or object included in the National Register.

(f) "Eligible property" means any district, site, building, structure, or object that meets the National Register Criteria.

(g) "National Register Criteria" means the criteria established by the Secretary of the Interior to evaluate properties to determine whether they are eligible for inclusion in the National Register. (See 36 CFR 60.6.)

(h) "Decision" means the exercise of or the opportunity to exercise discretionary authority by a Federal agency at any stage of an undertaking where alterations might be made in the undertaking to modify its impact upon National Register and eligible properties.

(i) "Agency Official" means the head of the Federal agency having responsibility for the undertaking or a designee authorized to act for the Agency Official.

(j) "Council" means the Advisory Council on Historic Preservation as established by Title II of the Act.

(k) "Chairman" means the Chairman of the Advisory Council on Historic Preservation or a member designated to act for the Chairman.

(l) "Executive Director" means the Executive Director of the Advisory Council on Historic Preservation as established by Section 205 of the Act, or a designee authorized to act for the Executive Director.

(m) "State Historic Preservation Officer" means the official, who is responsible for administering the Act within the State or jurisdiction, or a designated representative authorized to act for the State Historic Preservation Officer. These officers are appointed pursuant to 36 CFR Part 61.2 by the Governors of the 50 States, Guam, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Mariana Islands, and the Mayor of the District of Columbia.

(n) "Secretary" means the Secretary of the Interior or a designee authorized to carry out the historic preservation responsibilities of the Secretary under the Act, Executive Order 11593, and related authorities.

(o) "Area of the undertaking's potential environmental impact" means that geographical area within which direct and indirect effects generated by the undertaking could reasonably be expected to occur and thus cause a change in the historical, architectural, archeological, or cultural qualities possessed by a National Register or eligible property. The boundaries of such area should be. determined by the Agency Official in consultation with the State Historic Preservation Officer as early as possible in the planning of the undertaking.

(p) "Consulting parties" means the Agency Official, the State Historic Preservation Officer, and the Executive Director.

§ 800.3 Criteria of effect and adverse effect.

The following criteria shall be used to determine whether an undertaking has an effect or an adverse effect in accordance with these regulations.

(a) *Criteria of Effect.* The effect of a Federal, federally assisted or federally licensed undertaking on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural signficance possessed by the property. An undertaking shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the criteria of the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its significance in accordance with the National Register criteria. *An* effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density or growth rate that may affect on properties of historical, architectural, archeological, or cultural significance.

(b) *Criteria of Adverse Effect.* Adverse effects on National Register or eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property;

(2) Isolation from or alteration of the property's surrounding environment;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction.

(5) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

REVIEW OF INDIVIDUAL UNDERTAKINGS

§ 800.4 Federal Agency responsibilities.

As early as possible before an agency makes a final decision concerning an undertaking and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the Agency Official shall take the following steps to comply with the requirements of Section 106 of the National Historic Preservation Act and Section 2(b) of Executive Order 11593. It is the primary responsibility of each Agency Official requesting Council comments to conduct the appropriate studies and to provide the information necessary for an adequate review of the effect a proposed undertaking may have on a National Register or eligible property, as well as the information necessary for adequate consideration of modifications or alterations to the proposed undertaking that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of each Agency Official requesting consultation with a State Historic Preservation Officer under this section to provide the information that is necessary to make an informed and reasonable evaluation of whether a property meets National Register criteria and to determine the effect of a proposed undertaking on a National Register or eligible property. Although a Federal agency may require non-Federal parties to undertake certain steps required by these regulations as a prerequisite to Federal action and may authorize non-Federal participation under this section and in the consultation process under Section 800.6 pursuant to approved counterpart regulations, the ultimate responsibility for compliance with these regulations remains with the Federal agency and cannot be delegated by it.

(a) *Identification of National Register and Eligible Properties.* It is the responsibility of each Federal agency to identify or cause to be identified any National Register or eligible property that is located within the area of the undertaking's potential environmental impact and that may be affected by the undertaking.

(1) The Agency Official shall consult the State Historic Preservation Officer, the published lists of National Register and eligible properties, public records, and other individuals or organizations with historical and cultural expertise, as appropriate, to determine what historic and cultural properties are known to be within the area of the undertaking's potential environmental impact. The State Historic Preservation Officer should provide the Agency Official with any information available on known historic and cultural properties identified in the area (whether on the National Register or not), information on any previous surveys performed and an evaluation of their quality, a recommendation as to the need for a survey of historic and cultural properties, and recommendations as to the type of survey and/or survey methods should a survey be recommended, and recommendations on boundaries of such surveys.

(2) The Agency Official shall, after due consideration of the information obtained pursuant to § 800.4(a)(1), determine what further actions are necessary to discharge the agency's affirmative responsibilities to locate and identify eligible properties that are within the area of the undertaking's potential environmental impact and that may be affected by the undertaking. Such actions may include a professional cultural resource survey of the environmental impact area, or parts of the area, if the area has not previously been adequately surveyed. The recommendations of the State Historic Preservation Officer should be followed in this matter.

(3) The Agency Official, in consultation with the State Historic Preservation Officer, shall apply the National Register criteria to all properties that may possess any historical, architectural, archeological, or cultural value located within the area of the undertaking's potential environmental impact. If either the Agency Official or the State Historic Preservation Officer finds that a property meets the National Register Criteria or a question exists as to whether a property meets the Criteria, the Agency Official shall request a determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Part 63. The opinion of the Secretary respecting the eligibility of a property shall be conclusive for the purposes of these regulations. If the Agency Official and the State Historic Preservation Officer agree that no identified property meets the Criteria, the Agency Official shall document this finding and, unless the Secretary has otherwise made a determination of eligibility under 36 CFR Part 63, may proceed with the undertaking.

(4) The Agency Official shall complete the preceding steps prior to requesting the Council's comments pursuant to Section 800.4(b)-(d). The Agency Official may, however, initiate a request for the Council's comments simultaneously with a request for a determination of eligibility from the Secretary when the Agency Official and the State Historic Preservation Officer agree that a property meets the National Register Criteria. Before the Council completes action pursuant to § 800.6, the Secretary must find the property eligible for inclusion in the National Register.

(b) *Determination of Effect.* For each National Register or eligible property that is located within the area of the undertaking's potential environmental impact, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Effect, (§ 800.3(a)), to determine whether the undertaking will have an effect upon the historical, architectural, archeological, or cultural characteristics of

the property that qualified it to meet National Register Criteria.

(1) *No Effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds that the undertaking will not affect these characteristics, the undertaking may proceed. The Agency Official shall document each Determination of No Effect, which shall be available for public inspection. If the State Historic Preservation Officer objects or other timely objection is made to the Executive Director to an Agency Official's Determination of No Effect, the Executive Director may review the Determination and advise the Agency Official, the State Historic Preservation Officer and any objecting party of the findings within 15 days.

(2) *Effect determined.* If the Agency Official or the Executive Director finds that the undertaking will have an effect upon these characteristics, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect, set forth in section 800.3(b), to determine whether the effect of the undertaking may be adverse.

(c) *Determinations of no adverse effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds the effect on the historical, architectural, archeological, or cultural characteristics of the property not to be adverse, the Agency Official shall forward adequate documentation (See § 800.13(a)) of the Determination, including written evidence of the views of the State Historic Preservation Officer, to the Executive Director for review in accordance with Section 800.6. If the State Historic Preservation Officer fails to respond to an Agency Official's request as provided in Section 800.5, the Agency Official shall include evidence of having contacted the State Historic Preservation Officer.

(d) *Adverse effect determination.* If the Agency Official finds the effect on the historical, architectural, archeological, or cultural characteristics of the property to be adverse, or if the Executive Director does not accept an Agency Official's Determination of No Adverse Effect pursuant to review under Section 800.6, the Agency Official shall:

(1) Prepare and submit a Preliminary Case Report requesting the comments of the Council (See § 800.13(b)),

(2) Notify the State Historic Preservation Officer of this request, and

(3) Proceed with the consultation process set forth in § 800.6.

(e) *Suspense of action.* Until the Council issues its comments under these regulations, good faith consultation shall preclude a Federal agency from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register or eligible property or that would foreclose the consideration of modifications or alternatives to the proposed undertaking that could avoid, mitigate, or minimize such adverse effects.

§ 800.5 State Historic Preservation Officer responsibilities.

(a) The State Historic Preservation Officer should participate in the review process established by these regulations whenever it concerns an undertaking located within the State Historic Preservation Officer's jurisdiction.

(b) Unless a longer time is agreed to by the Agency Official, the failure of a State Historic Preservation Officer to respond to an Ageny Official's request for consultation under Section 800.4 within 30 days after receipt shall not prohibit the Agency Official from proceeding with the review process under these regulations.

(c) The State Historic Preservation Officer, with the Agency Official and the Executive Director, should participate in any consultation under § 800.6(b) and sign any Memorandum of Agreement developed under § 800.6(c) of these regulations. Failure of a State Historic Preservation Officer to participate in a consultation under § 800.6(b) or to sign a Memorandum of Agreement as provided in § 800.6(c)(1) within 30 days of receipt without notifying the Executive Director and the Agency Official that the State Historic Preservation Officer disagrees with the terms of the Agreement shall not prohibit the Executive Director and the Agency Official from concluding the Agreement and having it ratified by the Chairman in accordance with § 800.6(c)(2).

§ 800.6 Council comments.

The following subsections specify how the Council will respond to Federal agency requests for the Council's comments required to satisfy an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) *Response to determinations of no adverse effect.* (1) Upon receipt of a Determination of No Adverse Effect from an Agency Official, the Executive Director will review the Determination and supporting documentation. Normally, the Executive Director will concur without delay. If the documentation is not adequate, the Executive Director will so inform the Agency Official within 15 days. Unless the Executive Director objects to the Determination within 30 days after receipt of an adequately documented Determination, the Agency Official will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the Executive Director shall specify the basis for the objection and may specify conditions which will eliminate the objection. As appropriate, the Executive Director may consult the Agency Official, the State Historic Preservation Officer, and other interested parties in specifying conditions. If the Agency Official accepts the conditions in writing, the conditions will be incorporated into the agency's Determination and the Executive Director's objection will be withdrawn. The Agency Official then will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(3) If the Agency Official does not accept the Executive Director's conditions or if the Executive Director objects to a Determination of No Adverse Effect without specifying conditions that would remove the objection, the Executive Director shall initiate the consultation process pursuant to § 800.6(b).

(b) *Consultation Process.* The Agency Official, the State Historic Preservation Officer, and the Executive Director shall be the consulting parties to consider feasible and prudent alternatives to the undertaking that could avoid, mitigate, or minimize adverse effects on a National Register or eligible property. When an undertaking involves more than one Federal agency, these agencies may, upon notification to the Executive Director, coordinate their consultation responsibilities through a single lead agency. Grantees, permittees, licensees, or other parties in interest, and representatives of national, State, or local units of government and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(1) *Preliminary Case Report.* The Agency Official shall provide copies of the report to the consulting parties at the initiation of the consultation and make it readily available for public inspection.

(2) *On-site inspection.* At the request of any of the consulting parties, the Agency Official shall conduct an on-site inspection.

(3) *Public Information Meeting.* At the request of any of the consulting parties, the Executive Director shall conduct a meeting open to the public, where representatives of national, State, or local units of government, representatives of public or private or-

ganizations, and interested citizens may receive information and express their views on the undertaking, its effects on the National Register or eligible property, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties. The Agency Official shall provide adequate facilities for the meeting near the site of the undertaking and shall afford appropriate notice to the public, generally at least 15 days in advance of the meeting.

(4) *Consideration of Alternatives.* Upon review of the proposed undertaking and after any on-site inspection or public information meeting, the consulting parties shall determine whether there are feasible and prudent alternatives to avoid the adverse effects on National Register or eligible property. If the consulting parties cannot agree on an alternative to avoid, they shall consult further to determine if there are alternatives that could satisfactorily mitigate the adverse effects.

(5) *Avoidance or Satisfactory Mitigation of Adverse Effect.* If the consulting parties agree upon a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effects of the undertaking on the National Register or eligible property, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of Adverse Effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed undertaking, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) acknowledging this determination and specifying any recording, salvage, or other measures to minimize the adverse effects that shall be taken before the undertaking proceeds.

(7) *Failure to Agree.* Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement, or upon notice of such failure by any of the consulting parties to the Executive Director, the Executive Director shall notify the Chairman within fifteen days and shall recommend whether or not the matter should be scheduled for consideration at a Council meeting. The Agency Official and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.

(c) *Memorandum of Agreement*—(1) *Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under these regulations. Unless otherwise requested by the Executive Director, the Agency Official shall prepare a proposal for inclusion in the Agreement that details the actions agreed upon by the consulting parties to be taken to avoid, satisfactorily mitigate, or accept the adverse effects on the property. The State Historic Preservation Officer's written concurrence shall be included in this proposal by the Agency Official. If the Executive Director determines that the proposal represents the agreement of the consulting parties, he shall within 10 days forward it as a Memorandum of Agreement to the Chairman for ratification pursuant to § 800.6(c)(2). If the Executive Director determines that the proposal does not adequately represent the agreement reached by the consulting parties, it may be returned to the Agency Official, or a Memorandum of Agreement revising the proposal may be submitted to the Agency Official and the State Historic Preservation Officer. As appropriate other parties in interest may be invited by the consulting parties to indicate their concurrence with the proposal or to be a signatory to the Agreement.

(2) *Review of Memorandum of Agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 30-day review period. Unless the Chairman notifies the Agency Official that the matter has been placed on the agenda for consideration at a Council meeting, the Agreement shall become final when ratified by the Chairman or upon the expiration of the 30-day review period with no action taken. Copies will be provided to signatories and notice of executed Memoranda of Agreement shall be published in the FEDERAL REGISTER. The Memorandum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(3) *Effect of Memorandum of Agreement.* Agreements duly executed in accordance with these regulations shall constitute the comments of the Council and shall evidence satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. Failure to carry out the terms of a Memorandum of Agreement requires that the Federal agency again request the Council's comments in accordance with these regulations. In such instances, until the Council issues its comments under these regulations the Agency Official shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect with respect to National Register or eligible properties covered by the Agreement or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertaking that could avoid or mitigate the adverse effect.

(4) *Amendment of a Memorandum of Agreement.* If a signatory determines that the terms of the Memorandum of Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider an amendment of the Agreement. Amendments will be executed in the same manner as the original Agreement.

(5) *Report on Memorandum of Agreement.* Within 90 days after carrying out the terms of the Agreement, the Agency Official shall report to all signatories on the actions taken.

(d) *Council Meetings.* The Council does not hold formal administrative hearings to develop its comments under these regulations. Reports and statements will be presented to the Council in open session in accordance with a prearranged agenda. Regular meetings of the Council generally occur quarterly.

(1) *Response to Recommendation for Consideration at Council Meeting.* Upon receipt of a notice and recommendation from the Executive Director concerning consideration of a proposed undertaking at a Council meeting, the Chairman shall determine within 15 days whether or not the undertaking will be considered and shall notify the Executive Director, the Agency Official, and the State Historic Preservation Officer of his decision. The Agency Official shall and the State Historic Preservation Officer should provide such reports and information as may be required to assist the Chairman in this determination.

If the Chairman decides against consideration of the undertaking at a Council meeting, a written summary of the undertaking, any recommendations for action by the Federal agency, and the decision shall be sent to each member of the Council. The Chairman shall also notify the Agency Official and the State Historic Preservation Officer and other parties in interest of the decision. If three members of the Council object within 10 days of the Chairman's decision, the undertaking shall be scheduled for consideration at a Council meeting. Unless three members of the Council object, the chairman shall notify the Agency Official, the State Historic Preservation Officer, and other parties in interest in writing that the undertaking may proceed. Such notice shall be evidence of satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations.

(2) *Decision to Consider the Undertaking.* When the Council will consider an undertaking at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council, or schedule the matter for consideration by the full Council.

(i) A panel shall consist of three non-Federal members, one as Chairman; and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking. The panel shall meet to consider the undertaking within 30 days of the Chairman's decision unless the Agency Official agrees to a longer time.

(ii) The full Council will consider an undertaking at the next regularly scheduled meeting and no less than 60 days from the date of the Chairman's decision. In exceptional cases the Chairman may schedule the matter for consideration at a special meeting of the full Council to be held less than 60 days from the date of the decision.

(iii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the Agency Official and the State Historic Preservation Officer, and other parties in interest of the date on which the undertaking will be considered. The Executive Director, the Agency Official, and the State Historic Preservation Officer shall prepare reports in accordance with § 800.13. Reports required from the Agency Official and the State Historic Preservation Officer must be received by the Executive Director at least 21 days before any meeting. Failure by the Federal agency to submit its report may result in postponement of consideration of the undertaking.

(3) *Meeting Notice.* Generally, 21 days notice of all meetings involving Council review of undertakings in accordance with these regulations shall be given by publication in the FEDERAL REGISTER. In exceptional cases, no less than 7 days notice shall be given by publication in the FEDERAL REGISTER.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the Agency Official; other parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives of national, State, or local units of government, and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 7 days in advance.

(5) *Comments of the Council.* The written comments of the Council will be issued within 15 days after a meeting. Comments shall be made to the head of the Federal agency requesting comment or having responsibility for the undertaking. Immediately after the comments are made to the Federal agency, the comments of the Council will be forwarded to the President and Congress as a special report under authority of Section 202(b) of the Act and a notice of availability will be published in the FEDERAL REGISTER. The comments of the Council shall be available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the head of the Federal Agency. The comments of the Council should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(6) *Review of Panel Decision.* Upon receipt of the panel's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a decision in regard to the proposed undertaking. If the agency determines not to follow the panel's comments, the Agency Official shall immediately provide written notice of this decision to the Council. The Chairman may convene a meeting of the full Council to consider the matter within 30 days of receipt of such notice. In the interim period the Agency Official shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect on the National Register or eligible property or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertaking that could avoid or mitigate the adverse effect. If the Chairman decides against consideration of the proposed undertaking, the consulting parties shall be immediately notified and the undertaking may proceed.

(7) *Agency Action in Response to Council Comments.* Upon receipt of the Council's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a final decision in regard to the proposed undertaking. When a final decision regarding the proposed undertaking is reached by the Federal agency, the Agency Official shall submit a written report to the Council describing the actions taken by the Federal Agency in response to the Council's comments; the actions taken by other parties pursuant to the actions of the Federal Agency; and the effect that such actions will have on the affected National Register or eligible property. Receipt of this Report by the Chairman shall be evidence that the agency has satisfied its responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order and these regulations. The Council may issue a final report to the President and Congress under authority of Section 202(b) of the Act describing the actions taken by the agency in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(8) *Continuing Review Jurisdiction.* When the Council has met and commented upon an undertaking that will require subsequent site-specific undertakings by a Federal agency, the Council's comment extends only to the undertaking as reviewed. The Agency Official shall ensure that subsequent actions related to the undertaking that have not been considered by the Council will be submitted to the Council for review in accordance with these regulations.

§ 800.7 Resources discovered during construction.

(a) *Federal Agency Responsibilities.* If a Federal agency has previously met its responsibilities for identified National Register and eligible properties under Section 106 of the Act, Section 2(b) of the Executive Order, these regulations, and the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and an Agency Official finds or is notified after contruction has started that an undertaking will have an effect on a previously unidentified National Register or eligible property, the Federal agency may fulfill its responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, by complying with the requirements of the Archeological and Historic Preservation Act (16 U.S.C. 469(a)) as implemented by the Secretary, unless the Secretary determines that the significance of the property, the effect, and any proposed mitigation actions warrant Council consideration. If the Secretary determines the Council's comments are warranted, the Agency Official shall request the comments of the Council.

(b) *Council Comments.* Within 30 days of receipt of a request for comments from an Agency Official under this section, the Executive Director, with the concurrence of the Chairman, shall transmit comments on behalf of the Council to the Agency Official or the Chairman shall convene a meeting of the Council pursuant to § 800.6.

FEDERAL PROGRAM COORDINATION

§ 800.8 Programmatic Memoranda of Agreement.

(a) *Application.* At the request of an Agency Official, the Council will consider execution of a Programmatic Memorandum of Agreement to fulfill

an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under these regulations. Within 30 days after the request, the Executive Director will notify the agency official whether a Programmatic Memoranda of Agreement may be used. Generally, Programmatic Memorandum of Agreement may be used in the following types of situations:

(1) Non-site-specific undertakings, including Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation, and the establishment or modification of regulations and planning guidelines.

(2) Undertakings that are repetitive in nature and have essentially the same effect on National Register or eligible properties.

(3) Programs that are designed to further the preservation and enhancement of National Register or eligible properties.

(4) Programs with statutory time limits for project application and approval that would not permit compliance with these regulations in the normal manner.

(b) *Consultation Process.* Upon determination by the Executive Director that a Programmatic Memorandum of Agreement is appropriate, the Agency Official and the Executive Director shall consult to develop a Programmatic Memorandum of Agreement. When the Agreement will affect a particular State or States, the appropriate State Historic Preservation Officer may be a party to the consultation. When the Agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative may be a party to the consultation. The Executive Director may invite other parties, including other Federal agencies with responsibilities which may be affected by the Agreement, to participate in the consultation and may hold a Public Information Meeting (see § 800.6(b)(3)) on the proposed Agreement.

(c) *Preparation of the Agreement.* It shall be the responsibility of the Executive Director to prepare each Agreement. At least 30 days before executing an Agreement, the Council shall publish notice of the proposed Agreement in the FEDERAL REGISTER inviting comments from Federal, State, and local agencies and the public. The Council will make copies available to interested parties and to appropriate A-95 clearinghouses.

(d) *Execution of the Agreement.* After consideration of comments received and completion of any necessary revisions, the Executive Director, the Agency Official, and other parties, if appropriate, shall sign the Agreement and it shall be sent to the Chairman for ratification.

(e) *Chairman's Review.* Upon receipt of a signed Agreement, the Chairman shall review the Agreement and within 30 days shall take one of the following actions:

(1) Ratify the Agreement, at which time it will take effect.

(2) Submit the Agreement to the full Council for approval.

(3) Disapprove the Agreement.

(f) *Effect of the Agreement.* An approved Programmatic Memorandum of Agreement shall constitute the comments of the Council on all individual undertakings carried out pursuant to the terms of the Agreement and, unless otherwise provided by the Agreement, shall satisfy the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations for all undertakings carried out in accordance with the Agreement.

(g) *Notice.* Notice of an approved Programmatic Agreement shall be published by the Council in the FEDERAL REGISTER. Copies shall be distributed through appropriate A-95 clearinghouses and the consulting parties shall make copies readily available to the public. The Programmatic Memorandum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(h) *Term.* Unless otherwise provided by the Agreement, duly executed Programmatic Memorandum of Agreement shall remain in effect until revoked by any one of the signatories. The Agency Official shall submit a report annually to the Executive Director and other signatories on all actions taken pursuant to the Agreement, including any recommendations for modification or termination of the Agreement. The Executive Director and other signatories shall review the report and determine whether modification or termination of the Agreement is appropriate.

§ 800.9 Coordination With Agency Requirements Under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Section 101(b)(4) of the National Environmental Policy Act (NEPA) declares that one objective of national environmental policy is to "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice." In order to meet this objective, Federal agencies should coordinate NEPA compliance with the separate responsibilities of the National Historic Preservation Act and Executive Order 11593 to ensure that historic and cultural properties are given proper consideration in the preparation of environmental assessments and environmental impact statements. Agency obligations pursuant to the National Historic Preservation Act and Executive Order 11593 are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required. Agencies should also be aware that the threshold for compliance with Section 106 and the Executive Order is less than that for preparation of an environmental impact statement. The former applies to any Federal, federally assisted or federally licensed undertaking having an effect on a National Register or eligible property, while the latter extends only to major Federal actions significantly affecting the human environment. Where both NEPA and the Act or Executive Order are applicable, the Council on Environmental Quality, in its National Environmental Policy Act—Regulations (40 CFR 1502.25), directs that draft environmental impact statements prepared under Section 102(2)(C) of NEPA shall, to the fullest extent possible, be prepared with and integrated with other environmental impact analyses and related surveys and studies required by other authorities—such as the National Historic Preservation Act and Executive Order 11593. Preparation of a draft environmental impact statement may fulfill the requirements for reports and documentation under these authorities.

Circulation of the statement for comment pursuant to Section 102(2)(C) of NEPA shall constitute a request for Council comments under Section 800.4 of these regulations if Federal agencies so request in cover letters circulated with draft environmental impact statements. To coordinate the independent responsibilities of the Act and NEPA, Federal agencies should undertake compliance with these regulations whenever National Register or eligible properties may be affected by an undertaking. The following subsections indicate the appropriate means of coordinating the substance and timing of agency compliance with NEPA, Section 106, and Section 2(b). The Council will review agency environmental impact statements in accordance with this section. Adherence to these provisions will provide Federal agencies with an adequate record of the consideration of National Register and eligible properties during the planning process and will facilitate the production of a single document to meet the require-

ments of NEPA, Section 106, Executive Order 11593, and these regulations.

(a) It is normally intended that the Section 106/Executive Order commenting period run concurrently with the NEPA review process. Initiation of the consideration of historic and cultural resources should coincide with the initiation of other environmental reviews. To the maximum extent possible, agencies should reflect the status of compliance with Section 106, the Executive Order, and these regulations in all documents prepared under NEPA (environmental assessments, draft environmental impact statements, and final environmental impact statements) to provide the public with the fullest and most complete information available on effects on historic and cultural resources and alternatives to reduce those effects. If the commenting process under Section 106 and the Executive Order is not completed before the final environmental impact statement is issued, as with undertakings where subsequent design stage reviews occur, agencies should include the council's comments in any supplemental statement that is prepared pursuant to NEPA.

(b) Federal agencies should initiate compliance with Section 106 of the Act and the Executive Order in accordance with these regulations during initial environmental assessments that are undertaken to meet the requirements of NEPA and agency environmental procedures. In any event, this should occur no later than during the preparation of the draft environmental impact statement. Identification of National Register and eligible properties should be carried out in accordance with § 800.4 of these regulations. Potential effects should then be evaluated in accordance with the Criteria of Effect and Adverse Effect in § 800.3 of these regulations. The environmental assessment and the draft environmental impact statement should fully describe any National Register or eligible properties within the area of the undertaking's potential environmental impact and the nature of the undertaking's effect on them.

(c) If evaluation of the effect resulted in a Determination of No Effect or No Adverse Effect under § 800.4, that finding, along with supporting documentation, should be included or referenced in the environmental assessment and the draft environmental impact statement.

(d) If evaluation of the effect resulted in a Determination of Adverse Effect, that finding and a copy of the agency's request for the Council's comments in accordance with § 800.4(d)(1) of these regulations should be included in or referenced in the environmental assessment and the draft environmental impact statement. Agencies should include all available relevant information on National Register and eligible properties, the effects of the undertaking and alternative courses of action so that the draft environmental impact statement can be submitted as the preliminary case report under § 800.13(b) of these regulations. In some instances, the Section 106/Executive Order commenting process will be completed prior to issuance of a draft environmental impact statement. In that event, the comments of the Council should be included in the draft.

(e) Completion of the Council commenting process in accordance with these regulations should precede issuance of the final environmental impact statement. Comments of the Council obtained pursuant to § 800.6 or § 800.8 of these regulations should be incorporated into the final statement.

(f) The Council, in its review of environmental impact statements for undertakings that affect National Register or eligible properties, will look for evidence of proper compliance with Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. The Council's views on the agency's compliance with those authorities will be included in its comments on environmental impact statements.

§ 800.10 Coordination with the Presidential Memorandum on Environmental Quality and Water Resources Management.

Federal Agencies with water resources responsibilities shall, not later than three months after publication of these regulations as finally adopted in the FEDERAL REGISTER, publish procedures to implement these regulations as required by the Presidential Memorandum on Environmental Quality and Water Resources Management. Each agency shall consult with the Council while developing its procedures and shall provide an opportunity for public review and comment on their proposed regulations. Agency procedures shall be effective when the Chairman approves them as conforming to the Presidential Memorandum and these regulations. Agency procedures must at a minimum include acceptable measures to prevent or mitigate losses of historic or cultural resources and provisions to insure that all projects not yet constructed will comply with these regulations. Additionally, such procedures shall prescribe a clear way to identify funding for environmental mitigation in an agency's appropriation requests. The procedures shall be approved by the Chairman within 60 days if they are consistent with these regulations. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are also encouraged to publish explanatory guidance for the procedures.

§ 800.11 Counterpart regulations.

Individual Federal agencies may, in accordance with Section 1(3) of the Executive Order, the President's Memorandum on Environmental Quality and Water Resources Management, and these regulations, choose to adopt counterpart regulations related to their specific programs and authorities to assist in meeting their responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) Responsibilities of individual Federal agencies pursuant to § 800.4 may be met by counterpart regulations jointly drafted by that agency and the Executive Director and approved by the Chairman. The Federal agency shall provide ample opportunity for public participation in the development of such counterpart regulations, including publication in the FEDERAL REGISTER as proposed and final rule making with provision for a minimum 60 day period for public comment. Once in effect such counterpart regulations may, as appropriate, supercede the requirements of § 800.4. The Federal agency shall file approved counterpart regulations with the Council and shall make them readily available to the public.

(b) Counterpart regulations may include:

(1) A definition of undertaking as it applies to that agency's particular activities and programs,

(2) Methods to identify National Register and eligible properties for each class of undertakings,

(3) Methods to evaluate effects on National Register or eligible properties,

(4) Authorization for non-Federal participation in the consultation process, and

Standards, guidelines and other measures to ensure avoidance or mitigation of adverse effects on National Register and eligible properties for each class of undertakings.

(c) To the maximum extent possible, counterpart regulations developed pursuant to this section should be intergrated with agency regulations for the National Environmental Policy Act.

OTHER PROVISIONS

§ 800.12 Investigation of threats to National Register and eligible properties.

(a) The Council is frequently advised by State Historic Preservation Officers and others of undertakings that threaten National Register or eligible properties and that appear to involve a Federal agency. In order to protect

these properties, the Executive Director investigates these matters, generally by writing to the Federal agency that appears to be involved in the undertaking. Federal agencies should respond to these inquiries within 30 days. If there is Federal involvement in the undertaking, the agency shall fulfill its responsibilities under these regulations.

(b) The Council will exercise its authority to comment to Federal agencies under these regulations in certain special situations even though written notice that an undertaking will have an adverse effect has not been received.

§ 800.13 Reports to the Council.

In order to meet responsibilities under these regulations, the Council prescribes that certain reports and documents be made available to it. The content of such reports is set forth below. The purpose is to provide sufficient information for the Council to evaluate the significance of affected National Register and eligible properties, understand the objectives and requirements of the undertaking, assess the effect in terms of the criteria specified in these regulations, and analyze the feasibility and prudence of alternatives. The Council further recognizes that the Act requires that National Register and eligible properties should be preserved "as a living part of our community life and development," and considers those elements in an undertaking that have relevance beyond historical and cultural concerns. To assist it in weighing the public interest, the Council seeks information not only bearing upon physical, esthetic, or environmental effects but also information concerning economic, social, and other benefits or detriments that will result from the undertaking. Agencies should consider these reports in the context of their compliance with the National Environmental Policy Act and incorporate their content in environmental assessments, draft environmental impact statements and final environmental impact statements as specified in § 800.9.

(a) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 800.4 should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(3) A list of National Register and eligible properties that will be affected by the undertaking, including a description of the property's physical appearance and significance;

(4) A brief statement explaining why each of the Criteria of Adverse Effect (See Section 800.3) was found inapplicable;

(5) Written views of the State Historic Preservation Officer concerning the Determination of No Adverse Effect, if available; and,

(6) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares.

(b) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to Section 800.4 and should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) The status of this project in the agency's approval process;

(3) The status of this project in the agency's National Environmental Policy Act compliance process and the target date for completion of all environmental responsibilities;

(4) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(5) A description of the National Register or eligible properties affected by the undertaking, including a description of the properties' physical appearance and significance;

(6) A brief statement explaining why any of the Criteria of Adverse Effect (See § 800.3) apply;

(7) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(8) The views of other Federal agencies, State and local governments, and the other groups or individuals, when known;

(9) A description and analysis of alternatives that would avoid the adverse effects;

(10) A description and analysis of alternatives that would mitigate the adverse effects; and,

(11) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares;

(c) *Reports for Council Meeting.* Consideration of an undertaking by either the full Council or a panel pursuant to § 800.6 is based on reports from the Executive Director, the Agency Official, the Secretary of the Interior, the State Historic Preservation Officer, and others. The reports consist of the following:

(1) *Secretary of the Interior's Report.* The report from the Secretary shall include a verification of the legal and historical status of the property and an assessment of the historical, architectural, archeological, or cultural significance of the property.

(2) *Agency Official's Report.* The report from the Agency Offical requesting comments shall include a general discussion and chronology of the proposed undertaking; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the agency has completed; an evaluation of the effect of the undertaking upon the property, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the agency to avoid or mitigate adverse effects of the undertaking; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on National Register or eligible properties. The Agency Official shall arrange for the submission and presentation of any report by a grantee, permittee, licensee, or other party receiving Federal assistance or approval to carry out the undertaking.

(3) *Other Federal Agency Reports.* A report from any other Federal agency involved in the undertaking or a related action that affects the property in question, including a general description and chronology of that agency's involvement and its relation to the undertaking being considered by the Council.

(4) *State Historic Preservation Officer's Report.* A report from the State Historic Preservation Officer should include an assessment of the significance of the property within the State preservation program; an evaluation of the effect of the undertaking upon the property and its specific components; an evaluation of known alternate courses of action; a discussion of present or proposed participation of State and local agencies or organizations in preserving or assisting in preserving the property; an indication of the support or opposition of units of government and public and private agencies and organizations within the State; and the recommendation of the State Historic Preservation Officer.

(5) *Executive Director's Report.* A report from the Executive Director shall include a description of the actions taken pursuant to these regulations, an evaluation of the effect of the undertaking on the property, a review of any known alternate courses of action, an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on Na-

tional Register or eligible properties and recommendations for Council action.

(6) *Other Reports.* The Council will consider other pertinent reports, statements, correspondence, transcripts, minutes, and documents received from any and all parties, public or private. Reports submitted pursuant to this section should be received by the Council at least 7 days prior to a Council meeting.

§ 800.14 Supplementary Guidance.

The Executive Director may issue further guidance to interpret these regulations to assist Federal agencies and State Historic Preservation Officers in meeting their responsibilities. The guidelines are for informational purposes only and will be published in the FEDERAL REGISTER and will be readily available to the public.

§ 800.15 Public Participation.

The Council encourages maximum public participation in the review process under these regulations. The Council, Federal agencies, and State Historic Preservation Officers should seek assistance from the public including other Federal agencies, units of local and State government, public and private organizations, individuals and federally recognized Indian tribes in evaluating National Register and eligible properties, determining effect, and developing alternatives to avoid or mitigate an adverse effect. The public has considerable information available that could assist Federal agencies, the State Historic Preservation Officer and the Council in meeting their responsibilities under these regulations. The Council especially urges that Federal agencies make every effort to involve grantees, permittees, licensees, and other parties in interest in the consultation process. To this end, the Council, the Agency Official, and the State Historic Preservation Officer should:

(a) Make readily available, to the extent possible, documents, materials, and other information and data concerning the undertaking and effects on National Register and eligible properties that may be of interest to the public. Such information should be made available within the limits of the Freedom of Information Act (5 U.S.C. 552) and need not necessarily include information on budget, financial, personnel, and other proprietary matters or the specific location of archeological sites. Material to be made available to the public by the agency and the State Historic Preservation Officer should be provided to the public at the minimum cost permissible.

(b) Make the public aware of Public Information Meetings (§ 800.6(b)(3)), full or panel Council meetings (§ 800.6(d)), and the availability of other information related to the review process under these regulations such as a Determination of No Effect, a Determination of No Adverse Effect, a Memorandum of Agreement (See § 800.6(c)) or a Programmatic Memorandum of Agreement (See § 800.8). The purpose of such notice is to inform persons, agencies, and organizations that may be interested or affected by the proposed undertaking of the opportunity to participate in the review process under these regulations. This may include:

(1) Mailing notice to those who have requested it on an individual undertaking or Programmatic Memorandum of Agreement.

(2) Use of notice in local newspaper, local media, and newsletters that may be expected to reach potentially interested persons.

(3) Posting of notice on- and off-site in the area where the undertaking is proposed to be located.

(c) Solicit relevant information from the public during the identification of National Register and eligible properties, the evaluation of effects, and the consideration of alternatives.

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[FR Doc. 79-3248 Filed 1-29-79; 8:45 am]

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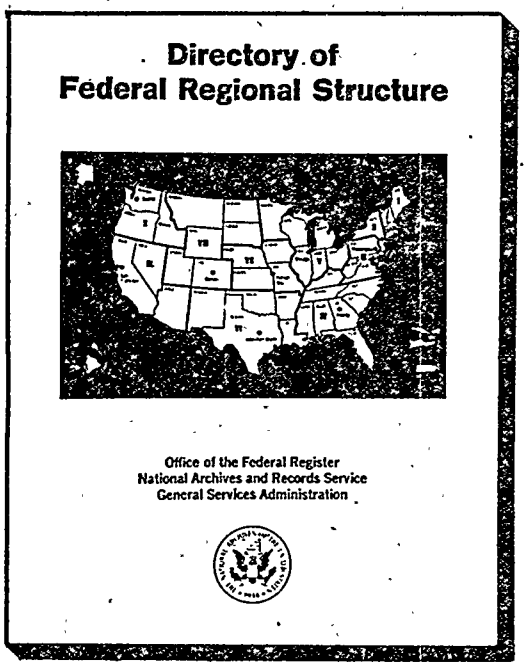

Directory of Federal Regional Structure

[Revised as of May 1, 1978]

The Directory serves as a guide to the regional administrative structure of the departments and agencies of the Federal Government.

Designed to provide the public with practical information about regional offices, the Directory is particularly useful to citizens residing outside the Nation's Capital.

Included in the Directory is a map showing the 10 standard Federal regions followed by tables listing the key personnel, addresses, and telephone numbers for agencies with offices in those regions. In addition, maps and tables are provided for those agencies with regional structures other than that of the standard regional system.

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