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Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
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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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In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

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AGENCY ABBREVIATIONS USED IN HIGHLIGHTS AND REMINDERS

(This List Will Be Published Monthly In First Issue Of Month.)

USDA—AGRICULTURE DEPARTMENT

AMS—Agricultural Marketing Service
ARS—Agricultural Research Service
ASCS—Agricultural Stabilization and Conservation Service
APHIS—Animal and Plant Health Inspection Service
CCC—Commodity Credit Corporation
CEA—Commodity Exchange Authority
CSRS—Cooperative State Research Service
EMS—Export Marketing Service
ESCS—Economics, Statistics, and Cooperatives Service
FmHA—Farmers Home Administration
FCIC—Federal Crop Insurance Corporation
FAS—Foreign Agricultural Service
FNS—Food and Nutrition Service
FSQS—Food Safety and Quality Service
FS—Forest Service
RDS—Rural Development Service
REA—Rural Electrification Administration
RTB—Rural Telephone Bank
SEA—Science and Education Administration
SCS—Soil Conservation Service

COMMERCE—COMMERCE DEPARTMENT

Census—Census Bureau
EAB—Bureau of Economic Analysis
EDA—Economic Development Administration
FTZB—Foreign-Trade Zones Board
ITA—Industry and Trade Administration
MA—Maritime Administration
MBEO—Minority Business Enterprise Office
NBS—National Bureau of Standards
NFPCA—National Fire Prevention and Control Administration
NOAA—National Oceanic and Atmospheric Administration
NSA—National Shipping Authority
NTIA—National Telecommunications and Information Administration
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

DOD—DEFENSE DEPARTMENT

AF—Air Force Department
Army—Army Department
DCPA—Defense Civil Preparedness Agency
DCAA—Defense Contract Audit Agency
DIA—Defense Intelligence Agency
DIS—Defense Investigative Service
DLA—Defense Logistics Agency
DMA—Defense Mapping Agency
DNA—Defense Nuclear Agency
EC—Engineers Corps
Navy—Navy Department

DOE—ENERGY DEPARTMENT

BPA—Bonneville Power Administration
ERA—Economic Regulatory Administration
EIA—Energy Information Administration
ERO—Energy Research Office
ETO—Energy Technology Office
FERC—Federal Energy Regulatory Commission

OHADOE—Hearings and Appeals Office, Energy Department
SEPA—Southeastern Power Administration
SWPA—Southwestern Power Administration
WAPA—Western Area Power Administration

HEW—HEALTH, EDUCATION, AND WELFARE DEPARTMENT

AC—Aging Federal Council
ADAMHA—Alcohol, Drug Abuse, and Mental Health Administration
CDC—Center for Disease Control
ESNC—Educational Statistics National Center
FDA—Food and Drug Administration
HCFA—Health Care Financing Administration
HDSO—Human Development Services Office
HRA—Health Resources Administration
HSA—Health Services Administration
MSI—Museum Services Institute
NIH—National Institutes of Health
OE—Office of Education
PHS—Public Health Service
RSA—Rehabilitation Services Administration
SSA—Social Security Administration

HUD—HOUSING AND URBAN DEVELOPMENT DEPARTMENT

CARF—Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD—Community Planning and Development, Office of Assistant Secretary
FDAA—Federal Disaster Assistance Administration
FHEO—Fair Housing and Equal Opportunity, Office of Assistant Secretary
FHC—Federal Housing Commissioner, Office of Assistant Secretary for Housing
FIA—Federal Insurance Administration
GNMA—Government National Mortgage Association
ILSRO—Interstate Land Sales Registration Office
NCA—New Communities Administration
NCDC—New Community Development Corporation
NVACP—Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR—INTERIOR DEPARTMENT

BIA—Bureau of Indian Affairs
BLM—Bureau of Land Management
FWS—Fish and Wildlife Service
GS—Geological Survey
HCRS—Heritage Conservation and Recreation Service
Mines—Mines Bureau
NPS—National Park Service
OHA—Office of Hearings and Appeals, Interior Department
RB—Reclamation Bureau
SMRE—Surface Mining Reclamation and Enforcement Office

JUSTICE—JUSTICE DEPARTMENT

DEA—Drug Enforcement Administration
INS—Immigration and Naturalization Service
LEAA—Law Enforcement Assistance Administration
NIC—National Institute of Corrections

LABOR—LABOR DEPARTMENT

BLS—Bureau of Labor Statistics
BRB—Benefits Review Board
ESA—Employment Standards Administration
ETA—Employment and Training Administration
FCCPO—Federal Contract Compliance Programs Office
LMSEO—Labor Management Standards Enforcement Office
MSHA—Mine Safety and Health Administration
OSHA—Occupational Safety and Health Administration
P&WBP—Pension and Welfare Benefit Programs
W&H—Wage and Hour Division

STATE—STATE DEPARTMENT

AID—Agency for International Development
FSGB—Foreign Service Grievance Board

DOT—TRANSPORTATION DEPARTMENT

CG—Coast Guard
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
MTB—Materials Transportation Bureau
NHTSA—National Highway Traffic Safety Administration
OHMR—Office of Hazardous Materials Regulations
OPSR—Office of Pipeline Safety Regulations
SLS—Saint Lawrence Seaway Development Corporation
UMTA—Urban Mass Transportation Administration

TREASURY—TREASURY DEPARTMENT

ATF—Alcohol, Tobacco and Firearms Bureau
Customs—Customs Service
Comptroller—Comptroller of the Currency
ESO—Economic Stabilization Office (temporary)
FS—Fiscal Service
IRS—Internal Revenue Service
Mint—Mint Bureau
PDB—Public Debt Bureau
RSO—Revenue Sharing Office
SS—Secret Service

INDEPENDENT AGENCIES

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CAB—Civil Aeronautics Board
CASB—Cost Accounting Standards Board
CEQ—Council on Environmental Quality
CFTC—Commodity Futures Trading Commission
CITA—Textile Agreements Implementation Committee
CPSC—Consumer Product Safety Commission
CRC—Civil Rights Commission
CSA—Community Services Administration
CSC—Civil Service Commission
CSC/FPRAC—Federal Prevailing Rate Advisory Committee
EEOC—Equal Employment Opportunity Commission
EXIMBANK—Export-Import Bank of the U.S.
EPA—Environmental Protection Agency
ESSA—Endangered Species Scientific Authority
FCA—Farm Credit Administration
FCC—Federal Communications Commission
FCSC—Foreign Claims Settlement Commission
FDIC—Federal Deposit Insurance Corporation
FEA—Federal Energy Administration
FEC—Federal Election Commission
FHLBB—Federal Home Loan Bank Board
FHLMC—Federal Home Loan Mortgage Corporation
FMC—Federal Maritime Commission
FPC—Federal Power Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
GSA—General Services Administration
GSA/ADTS—Automated Data and Telecommunications Service
GSA/FPA—Federal Preparedness Agency
GSA/FPRS—Federal Property Resources Service
GSA/FSS—Federal Supply Service
GSA/NARS—National Archives and Records Service
GSA/OFR—Office of the Federal Register
GSA/PBS—Public Buildings Service
ICA—International Communications Agency
ICC—Interstate Commerce Commission
ICP—Interim Compliance Panel (Coal Mine Health and Safety)
ITC—International Trade Commission
LSC—Legal Services Corporation
MB—Metric Board
MWSC—Minimum Wage Study Commission

NACEO—National Advisory Council on Economic Opportunity
NASA—National Aeronautics and Space Administration
NCUA—National Credit Union Administration
NFAH—National Foundation for the Arts and the Humanities
NLRB—National Labor Relations Board
NRC—Nuclear Regulatory Commission
NSF—National Science Foundation
NTSB—National Transportation Safety Board
OMB—Office of Management and Budget
OMB/FPPO—Federal Procurement Policy Office
OPIC—Overseas Private Investment Corporation
OSTP—Office of Science and Technology Policy
PADC—Pennsylvania Avenue Development Corporation
PRC—Postal Rate Commission
PS—Postal Service
RB—Renegotiation Board
RRB—Railroad Retirement Board
ROAP—Reorganization, Office of Assistant to President
SBA—Small Business Administration
SEC—Securities and Exchange Commission
TVA—Tennessee Valley Authority
USIA—United States Information Agency
VA—Veterans Administration
WRC—Water Resources Council

presidential documents

[3195-01-M]

Title 3—The President

Proclamation 4631 • **December 28, 1978**

Import Fees on Sugars and Sirups

By the President of the United States of America

A Proclamation

By Proclamation No. 4547 of January 20, 1978, I imposed, on an emergency basis, import fees on certain sugars and sirups. These fees were to be effective pending my further action after receipt of the report of findings and recommendations of the United States International Trade Commission after its conduct of an investigation with respect to this matter pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624). The Commission has made its investigation and reported its findings and recommendations to me.

On the basis of the information submitted to me, I find and declare that:

(a) Sugars, described below by use and physical description, are being imported, or are practically certain to be imported, into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support operations being conducted by the Department of Agriculture for sugar cane and sugar beets, or reduce substantially the amount of any product processed in the United States from domestic sugar beets or sugar cane;

(b) The imposition of the import fees hereinafter proclaimed is necessary in order that the entry, or withdrawal from warehouse, for consumption of such sugars will not render or tend to render ineffective, or materially interfere with, the price support operations being conducted by the Department of Agriculture for sugar beets and sugar cane, or reduce substantially the amount of products processed in the United States from such domestic sugar beets or sugar cane.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by section 22 of the Agricultural Adjustment Act, as amended, do hereby proclaim that Part 3 of the Appendix to the Tariff Schedules of the United States is amended as follows:

1. Headnote 4 is continued in effect and amended by changing the heading to read "4. Sugars and sirups.—" and by adding paragraph (c) which reads as follows:

(c)(i) The quarterly adjusted fee provided for in items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus .52 cents per pound.

(ii) The quarterly adjusted fee provided for in item 956.15 shall be the amount by which the average of the daily spot (world) price quotations for raw sugar for the first 20 consecutive market days preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee and Sugar Exchange or, if such quotations are not being reported by the International Sugar Organization), expressed in United States cents per pound, Caribbean ports, in bulk, adjusted to a United States delivered basis by adding applicable duty and attributed costs of 0.90 cents per pound for freight, insurance, stevedoring,

financing, weighing and sampling, is less than 15.0 cents per pound: *Provided*, That whenever the average of such daily spot price quotations for 10 consecutive market days within any calendar quarter, adjusted to a United States delivered basis as provided herein, plus the fee then in effect (1) exceeds 16.0 cents, the fee then in effect shall be decreased by one cent, or (2) is less than 14.0 cents, the fee then in effect shall be increased by one cent: *Provided further*, That the fee may not be greater than 50 per centum of the average of such daily spot price quotations for raw sugar.

(iii) The Secretary of Agriculture shall determine the amount of the quarterly fees in accordance with (i) and (ii) hereof and announce such fees not later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary shall certify the amount of such fees to the Secretary of the Treasury and file notice thereof with the Federal Register prior to the beginning of the calendar quarter during which the fees shall be applicable. The Secretary of Agriculture shall determine and announce any adjustment in the fees made within a calendar quarter in accordance with the first proviso of (ii) hereof, shall certify such adjusted fees to the Secretary of the Treasury, and shall file notice thereof with the Federal Register within 3 market days of the fulfillment of that proviso.

(iv) No adjustment shall be made in any fee in accordance with the first proviso of (ii) during the last ten market days of a calendar quarter.

(v) Any adjustment made in a fee during a quarter in accordance with the first proviso of (ii) hereof shall be applicable only with respect to sugar entered or withdrawn from warehouse for consumption after 12:01 a.m. (local time at point of entry) on the day following the filing of notice thereof with the Federal Register: *Provided*, That such adjusted fee shall not apply to sugar exported (as defined in section 152.1 of the Customs Regulations) on a through bill of lading to the United States from the country of origin before such time.

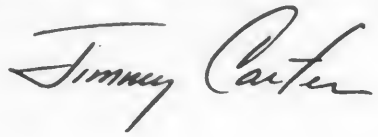
2. Items 956.05, 956.15 and 957.15 are continued in effect and amended to read as follows:

Item	*Articles*	*Rates of Duty (Section 22 Fees)*
	Sugars and sirups derived from sugar cane or sugar beets, except those entered pursuant to a license issued by the Secretary of Agriculture in accordance with headnote 4(a):	
	Principally of crystalline structure or in dry amorphous form, provided for in item 155.20, part 10A, schedule 1:	
956.05	Not to be further refined or improved in quality	3.22¢ per lb., adjusted quarterly beginning January 1, 1979, in accordance with headnote 4(c), but not in excess of 50% ad val.
956.15	To be further refined or improved in quality	2.70¢ per lb., adjusted quarterly beginning January 1, 1979, in accordance with headnote 4(c), but not in excess of 50% ad val.
957.15	Not principally of crystalline structure and not in dry amorphous form, containing soluble nonsugar solids (excluding any foreign substance that may have been added or developed in the product) equal to 6% or less by weight of the total soluble solids, provided for in item 155.30, part 10A, schedule 1	3.22¢ per lb., of total sugars, adjusted quarterly beginning January 1, 1979, in accordance with headnote 4(c), but not in excess of 50% ad val.

3. The provision of paragraph (c)(iii) of Headnote 4 of Part 3 of the Appendix to the TSUS, as added herein, requiring the determination and announcement by the Secretary of Agriculture not later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable, shall not apply to the fees to become effective January 1, 1979.

This proclamation shall be effective as of 12:01 a.m. (Eastern Standard Time) on the day following its signing.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of December, in the year of our Lord nineteen hundred and seventy-eight, and of the Independence of the United States of America the two hundred and third.



[FR Doc. 78-36476 Filed 12-29-78; 11:52 am]

rules and regulations

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

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

[1505-01-M]

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1977/1978 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1977 and 1978. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $400 domestic, $100 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1978):

Title	Price
1	$2.75
2 [Reserved]	
3	4.25
4	4.75
5	5.00
7 Parts:	
0-52	6.00
53-209	4.50
210-699	6.75
700-749	4.25
750-899	2.40
900-944	4.75
945-980	3.50
981-999	3.50
1000-1059	4.75
1060-1119	4.75
1120-1199	4.00
1200-1499	4.75
1500-2799	6.50
2800-2851	5.50
2852	6.00
2853-end	4.00
8	3.50
9	6.00
10 Parts:	
0-199	5.00
200-end	6.25
12 Parts:	
1-299	8.25
300-end	6.75
13	4.75
14 Parts:	
1-59	5.75
60-199	6.75
200-1199	5.75
1200-end	3.75
15	5.75
16 Parts:	
0-149	5.00
150-999	4.75
1000-end	5.25

CFR Unit (Rev. as of Apr. 1, 1978):

17	$8.25
18 Parts:	
0-149	5.00
150-end	5.00
19	6.00
20 Parts:	
1-399	3.50
400-499	5.00
500-end	4.50
21 Parts:	
1-99	4.00
100-199	6.00
200-299	2.75
300-499	5.75
500-599	5.00
600-1299	4.25
1300-end	4.50
22	5.50
23	5.00
24 Parts:	
0-499	8.25
500-end	9.00
25	5.50
26 Parts:	
1 (§§ 1.0-1.169)	5.75
1 (§§ 1.301-1.400)	4.00
1 (§§ 1.401-1.500)	4.75
1 (§§ 1.501-1.640)	4.75
1 (§§ 1.641-1.850)	4.75
1 (§§ 1.851-1.1200)	6.00
1 (§§ 1.1201-end)	6.50
2-29	4.75
30-39	5.50
40-299	5.50
300-499	4.75
600-end	3.00
27	8.75

CFR Unit (Rev. as of July 1, 1978):

28	$4.50
32 Parts:	
1000-1399	3.50
1400-1599	4.50
1600-end	3.00
41 Chapters:	
7	2.75

CFR Unit (Rev. as of Oct. 1, 1977):

42 Parts:	
1-399	$5.50
400-end	4.75
43 Parts:	
1-999	4.00
1000-end	6.00
44 [Reserved]	
45 Parts:	
1-99	4.25
100-149	5.50
150-199	4.75
200-499	3.50
500-end	6.00
46 Parts:	
1-29	3.00
30-40	3.25
41-69	4.50
70-89	3.25
90-109	3.00
110-139	3.00
140-165	4.75
166-199	3.75
200-end	6.00
47 Parts:	
0-19	5.75
20-69	5.25
70-79	5.00
80-end	6.00
48 [Reserved]	
49 Parts:	
1-99	3.00
100-199	8.25
200-999	8.75
1000-1199	4.50
1200-1299	8.00
1300-end	4.25
50	5.50

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER XIV—FEDERAL LABOR RELATIONS AUTHORITY AND FEDERAL SERVICE IMPASSES PANEL

SUBCHAPTER A—TRANSITION RULES AND REGULATIONS

PART 2400—PROCESSING OF CASES PENDING AS OF DECEMBER 31, 1978; CASES FILED DURING THE PERIOD OF JANUARY 1 THROUGH JANUARY 10, 1979; AND UNFAIR LABOR PRACTICE CASES FILED ON OR AFTER JANUARY 11, 1979, BASED ON OCCURRENCES PRIOR TO JANUARY 11, 1979

AGENCY: Federal Labor Relations Authority and Federal Service Impasses Panel.

ACTION: Final rule.

SUMMARY: This rule establishes transition rules and regulations to govern the processing of cases pending on December 31, 1978, before the Federal Labor Relations Council, the Assistant Secretary of Labor for Labor-Management Relations (and the Vice Chairman of the Civil Service Commission when performing the duties of the Assistant Secretary) and the Federal Service Impasses Panel; to govern the processing of all cases filed with the Federal Labor Relations Authority and the Federal Service Impasses Panel during the period of January 1 through 10, 1979; and to govern the processing of all unfair labor practice cases filed with the Federal Labor Re-

lations Authority on or after January 11, 1979, based on occurrences prior to January 11, 1979. These transition rules and regulations are required by Reorganization Plan No. 2 of 1978 and Title VII of the Civil Service Reform Act of 1978.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William F. Dailey, Chief, Office of Program, 632-4522, David L. Feder, Attorney-Advisor, 254-8323, 1900 E Street, NW., Washington, D.C. 20424.

SUPPLEMENTARY INFORMATION: On January 1, 1979, the provisions of the President's Reorganization Plan No. 2 of 1978 became effective. Part III of the Plan consolidates the central policymaking functions in Federal service labor-management relations previously divided between the Federal Labor Relations Council (Council) and the Assistant Secretary of Labor for Labor-Management Relations (Assistant Secretary) into a new Federal Labor Relations Authority (Authority). The Authority is composed of three full-time members appointed by the President with the advice and consent of the Senate. There is also a General Counsel of the Authority, appointed by the President and confirmed by the Senate. The Plan further provides for the continuation of the Federal Service Impasses Panel (Panel) as a distinct organizational entity within the Authority to resolve negotiation impasses between Federal employee unions and agencies.

Under Part III of the Plan, the following functions are transferred to the Authority: all functions of the Council pursuant to Executive Order 11491, as amended (Order); the functions of the Civil Service Commission under sections 4(a) and 6(e) of the Order, including the functions of the Vice Chairman of the Civil Service Commission (Vice Chairman) when performing the duties of the Assistant Secretary; and the functions of the Assistant Secretary under the Order, except those functions related to alleged violations of the standards of conduct for labor organizations pursuant to section 6(a)(4) of the Order. The functions and authorities of the Panel pursuant to the Order are similarly transferred to the Panel.

Section 307 of the Plan provides for the continuation of all matters which relate to the functions so transferred by the Plan, and which are pending on the effective date of the establishment of the Authority, under such rules and procedures as the Authority and the Panel, respectively, shall prescribe. Accordingly, it is necessary for the Authority and the Panel to issue transition rules and regulations to govern the processing of all cases pending on December 31, 1978, before the Council, the Assistant Secretary (and the Vice Chairman when performing the duties of the Assistant Secretary), and the Panel.

Additionally, on January 11, 1979, the Civil Service Reform Act of 1978 will become effective. Title VII of the Act, entitled "Federal Service Labor-Management Relations" establishes a new statutory labor-management relations program for employees in the executive branch, as well as employees of the Library of Congress and the Government Printing Office. Accordingly, it is necessary for the Authority and the Panel, respectively, also to issue transition rules and regulations to govern the processing of all cases filed with the Authority and the Panel under the Order during the period of January 1 through January 10, 1979; and to govern the processing of all unfair labor practice cases filed with the Authority on or after January 11, 1979, based on occurrences prior to January 11, 1979.

The Authority and the Panel find that the purposes of the transition rules and regulations here involved, along with the urgent need to avert a serious disruption of the Federal labor-management relations program and to avoid any prejudice to the rights of interested parties, render impractical a notice of proposed rulemaking and require that these transition rules and regulations become effective immediately upon publication in the FEDERAL REGISTER.

This is the first of two documents revising chapter XIV of Title 5 of the Code of Federal Regulations in its entirety. Chapter XIV is being renamed, as are subchapters A, B and C, and a new subchapter D is being added. Part 2400-2402, 2410-2413 and 2470-2471 as now contained in chapter XIV of the Code of Federal Regulations (Revised as of January 1, 1978) are all being revised and are in effect only to the extent that they are incorporated into the new Transition Rules and Regulations of the Federal Labor Relations Authority and the Federal Service Impasses Panel published today as new subchapter A.

Similarly, Parts 201-203 and 205-206 of chapter II of title 29 of the Code of Federal Regulations (Revised as of July 1, 1978) (Rules and Regulations of the Office of the Assistant Secretary for Labor-Management Relations) are also being revised and are in effect also only to the extent that they are incorporated into the new subchapter A. Publication in the FEDERAL REGISTER of new Parts 2411-2415, 2420-2428 and 2470-2471 of the Rules and Regulations of the Federal Labor Relations Authority and Federal Service Impasses Panel will be at a later date.

Accordingly, chapter XIV of Title 5 of the Code of Federal Regulations is renamed, subchapters A, B and C thereof are renamed, and chapter XIV is revised to read as follows:

CHAPTER XIV—FEDERAL LABOR RELATIONS AUTHORITY AND FEDERAL SERVICE IMPASSES PANEL

SUBCHAPTER A—TRANSITION RULES AND REGULATIONS

Part
2400 Processing of Cases Pending as of December 31, 1978; Cases Filed During the Period of January 1 Through January 10, 1979; and Unfair Labor Practice Cases Filed on or after January 11, 1979, Based on Occurrences Prior to January 11, 1979

SUBCHAPTER B—GENERAL PROVISIONS

Part
2410 [Reserved]
2411 Availability of Official Information [Reserved]
2412 Privacy [Reserved]
2413 Open Meetings [Reserved]
2414 Ex Parte Communications [Reserved]
2415 Employee Responsibility and Conduct [Reserved]

SUBCHAPTER C—FEDERAL LABOR RELATIONS AUTHORITY

Part
2420 Purpose and Scope [Reserved]
2421 Meaning of Terms As Used in this Subchapter [Reserved]
2422 Representation Proceedings [Reserved]
2423 Unfair Labor Practice Proceedings [Reserved]
2424 Review of Negotiability Issues [Reserved]
2425 Review of Arbitration Awards [Reserved]
2426 National Consultation Rights and Consultation Rights on Government-wide Rules or Regulations [Reserved]
2427 General Statements of Policy or Guidance [Reserved]
2428 Miscellaneous and General Requirements [Reserved]

SUBCHAPTER D—FEDERAL SERVICE IMPASSES PANEL

Part
2470 General [Reserved]
2471 Procedures of the Panel [Reserved]
Appendix A Temporary Addresses and Geographic Jurisdictions
Appendix B Continuation of Forms

SUBCHAPTER A—TRANSITION RULES AND REGULATIONS

PART 2400—PROCESSING OF CASES PENDING AS OF DECEMBER 31, 1978; CASES FILED DURING THE PERIOD OF JANUARY 1 THROUGH JANUARY 10, 1979; AND UNFAIR LABOR PRACTICE CASES FILED ON OR AFTER JANUARY 11, 1979, BASED ON OCCURRENCES PRIOR TO JANUARY 11, 1979

Sec.

2400.1 Scope and purpose.
2400.2 Processing of unfair labor practice, representation, grievability/arbitrability and national consultation rights cases.
2400.3 Processing of standards of conduct cases.
2400.4 Processing of negotiability cases.
2400.5 Processing of arbitration cases.
2400.6 Processing of Panel cases.

AUTHORITY: Reorganization Plan No. 2 of 1978, 43 FR 36037; 5 U.S.C. 3301, 7301; E.O. 11491, 34 FR 17605, 3 CFR, 1966-1970 Comp., p. 861; as amended by E.O. 11616, 36 FR 17319, 3 CFR, 1971-1975 Comp., p. 605; E.O. 11636, 36 FR 24901, 3 CFR, 1971-1975 Comp., p. 634; E.O. 11838, 40 FR 5743 and 7391, 3 CFR, 1971-1975 Comp., p. 957; E.O. 11901, 41 FR 4807, 3 CFR, 1976 Comp., p. 87; and E.O. 12027, 42 FR 61851, 3 CFR, 1977 Comp., p. 159.

§ 2400.1 Scope and purpose.

This subchapter contains transition rules and regulations issued pursuant to Section 307 of Reorganization Plan No. 2 of 1978, and sections 4(b) and 5(c) of Executive Order 11491, as amended, to govern the processing of all cases which are pending on December 31, 1978, before the Federal Labor Relations Council (Council), the Assistant Secretary of Labor for Labor-Management Relations (Assistant Secretary), the Vice Chairman of the Civil Service Commission (Vice Chairman) when performing the duties of the Assistant Secretary, and the Federal Service Impasses Panel (Panel); to govern the processing of all cases filed with the Authority and the Panel during the period January 1 through January 10, 1979; and to govern the processing of all unfair labor practice cases filed with the Authority on or after January 11, 1979, based on occurrences prior to January 11, 1979.

§ 2400.2 Processing of unfair labor practice, representation, grievability/arbitrability and national consultation rights cases.

All unfair labor practice, representation, grievability/arbitrability and national consultation rights cases pending before the Assistant Secretary and the Vice Chairman on December 31, 1978 (including cases the time limit for which an appeal to the Council has not expired under the Council's rules and regulations), all such cases pending before the Council on December 31, 1978, all such cases filed with the Authority during the period January 1 through January 10, 1979, and all unfair labor practice cases filed with the Authority on or after January 11, 1979, based on occurrences prior to January 11, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Office of the Assistant Secretary for Labor-Management Relations, Title 29, Code of Federal Regulations, Part 201 *et seq.* (Revised as of July 1, 1978) and the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978); *except* that, as appropriate:

(a) The word "Authority" shall be substituted wherever the word "Council" appears in such rules and regulations;

(b) The word "Authority" shall be substituted wherever the words "Assistant Secretary" or "Vice Chairman" appear in the rules and regulations of the Office of the Assistant Secretary, except in Part 204 of such rules;

(c) Wherever the rules and regulations of the Office of the Assistant Secretary require action to be taken by subordinate personnel of the Assistant Secretary, such action shall be taken by equivalent subordinate personnel of the Authority;

(d) Wherever the rules and regulations of the Council provide for the service of copies of documents on the Assistant Secretary, or provide a right of the Assistant Secretary to intervene in Council proceedings, such provisions shall be deemed inoperative; and

(e) The decision of the Authority when rendered in any case shall be final and not subject to further appeal within the Authority.

§ 2400.3 Processing of standards of conduct cases.

All standards of conduct cases pending before the Assistant Secretary on December 31, 1978 (including cases the time limit for which an appeal to the Council has not expired under the Council's rules and regulations), and all such cases filed with the Assistant Secretary during the period January 1 through January 10, 1979, may be appealed to the Authority under the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules. All standards of conduct cases pending before the Council on December 31, 1978, shall be processed by the Authority in the same manner as Assistant Secretary cases pending before the Council on that date under § 2400.2.

§ 2400.4 Processing of negotiability cases.

All negotiability cases pending before the Council on December 31, 1978, and all negotiability cases filed with the Authority during the period January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

§ 2400.5 Processing of arbitration cases.

All arbitration cases pending before the Council on December 31, 1978, and all arbitration cases filed with the Authority during the period January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

§ 2400.6 Processing of Panel cases.

All cases pending before the Panel on December 31, 1978, and all cases filed with the Panel during the period January 1 through January 10, 1979, shall be processed by the Panel in accordance with the Rules and Regulations of the Federal Service Impasses Panel, Title, 5, Code of Federal Regulations, Part 2470 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

APPENDIX A—TEMPORARY ADDRESSES AND GEOGRAPHIC JURISDICTIONS

AUTHORITY, GENERAL COUNSEL, CHIEF ADMINISTRATIVE LAW JUDGE, REGIONAL DIRECTORS AND PANEL

(a) The Office address of the Authority is as follows: 1900 E Street, NW., Room 7469, Washington, D.C. 20424 Telephone: Office of Executive Director, FTS—(202) 632-6878, Commerical—(202) 632-6878. Office of Operations, FTS—(202) 254-7362, Commerical (202) 254-7362.

(b) The Office address of the General Counsel is as follows: 1900 E Street, NW., Room 7469, Washington, D.C. 20424.

(c) The Office address of the Chief Administrative Law Judge is as follows: 1900 E Street, NW., Room 7469, Washington, D.C. 20424.

(d) The Office address of Regional Directors of the Authority, are as follows:

(1) *Boston Regional Office*, Room 211, New Studio Building, 110 Tremont Street, Boston, MA 02108, Telephone: FTS—(617) 223-0920, Commerical—(617) 223-0920.

(2) *New York Regional Office,* Room 1751, 26 Federal Plaza, New York, NY 10007, Telephone: FTS—(212) 264-1980, Commercial—(212) 264-1980.

(3) *Washington Regional Office,* Room 509, Vanguard Building, P.O. Box 19257, 1111—20th Street, NW., Washington, DC 20036, Telephone: FTS—(202) 254-6510, (Commercial—(202) 254-6510.

(4) *Atlanta Regional Office,* Suite 540, 1365 Peachtree Street, NE, Atlanta, GA 30309, Telephone: FTS—(404) 257-4090, Commercial—(404) 881-4090.

(5) *Chicago Regional Office,* Suite 1201A, Insurance Exchange Building, 175 W. Jackson Boulevard, Chicago, IL 60604, Telephone: FTS—(312) 353-7264, Commercial—(312) 353-7264.

(6) *Dallas Regional Office,* Room 707, 555 Griffin Square Building, Griffin & Young Streets, Dallas, TX 75202, Telephone: FTS—(214) 729-6831, Commercial—(214) 767-6831.

(7) *Kansas City Regional Office,* Room 2200, Federal Building, 911 Walnut Street, Kansas City, MO 64106, Telephone: FTS—(816) 758-5131, Commercial—(816) 374-5131.

(8) *Los Angeles Regional Office,* Room 4045, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA 90012, Telephone: FTS—(213) 798-3805, Commercial—(213) 688-3805.

(9) *San Francisco Regional Office,* Room 317, 211 Main Street, San Francisco, CA 94106, Telephone: FTS—(415) 556-2030, Commercial (415) 556-2030.

(e) The Office address of the Panel is as follows: 1900 E Street, NW., Room 7459, Washington, D.C. 20424, Telephone: FTS—(202) 632-6280, Commercial—(202) 632-6280.

(f) The geographic jurisdictions of the Regional Directors of the Authority, are as follows:

State or other locality	Regional Office
Alabama	Atlanta
Alaska	San Francisco
Arizona	Los Angeles
Arkansas	Dallas
California	Los Angeles/San Francisco [1]
Colorado	Kansas City
Connecticut	Boston
Delaware	Washington, D.C.
District of Columbia	Washington, D.C.
Florida	Atlanta
Georgia	Atlanta
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90°E.	Los Angeles
Idaho	San Francisco
Illinois	Chicago
Indiana	Chicago
Iowa	Kansas City
Kansas	Kansas City
Kentucky	Atlanta
Louisiana	Dallas
Maine	Boston
Maryland	Washington, D.C.
Massachusetts	Boston
Michigan	Chicago
Minnesota	Chicago
Mississippi	Atlanta
Missouri	Kansas City
Montana	Kansas City
Nebraska	Kansas City
Nevada	San Francisco
New Hampshire	Boston
New Jersey	New York
New Mexico	Dallas
New York	Boston/New York [2]
North Carolina	Atlanta
North Dakota	Kansas City
Ohio	Chicago
Oklahoma	Dallas
Oregon	San Francisco
Pennsylvania	Washington, D.C.
Puerto Rico	New York
Rhode Island	Boston
South Carolina	Atlanta
South Dakota	Kansas City
Tennessee	Atlanta
Texas	Dallas
Utah	Kansas City
Vermont	Boston
Virginia	Washington, D.C.
Washington	San Francisco
West Virginia	Washington, D.C.
Wisconsin	Chicago
Wyoming	Kansas City
Virgin Islands	New York
Canal Zone	New York
All installations located outside the United States, including all land and water areas east of the continents of North and South America to long. 90°E, except the Virgin Islands, the Canal Zone, Puerto Rico and coastal islands.	Washington, D.C.

[1] San Francisco includes the following California counties: Monterey, Kings, Tulare, Inyo, and all counties north thereof. All counties in California south thereof are within the Los Angeles jurisdiction.

[2] New York includes the following counties: Ulster, Sullivan, Greene, Columbia and all counties south thereof. All counties in New York state north thereof are in the jurisdiction of Boston.

APPENDIX B—CONTINUATION OF FORMS

Preexisting forms of the Assistant Secretary in other than Standards of Conduct matters and of the Panel shall be used by the Authority and the Panel respectively, in the processing of all matters under Subchapter A of the Transition Rules and Regulations of the Authority and the Panel. The word "Authority" shall be substituted wherever the words "Assistant Secretary" appear in such forms; and wherever the forms refer to subordinate personnel of the Assistant Secretary, such reference shall be to equivalent subordinate personnel of the Authority.

NOTE.—The Federal Labor Relations Authority and the Federal Service Impasses Panel have determined that this document does not require preparation of a Regulatory Analysis Statement as required under section 3 of Executive Order 12044.

Dated: December 26, 1978.

HENRY B. FRAZIER III,
Executive Director,
Federal Labor Relations Council.

LOUIS S. WALLERSTEIN,
Director, Office of Federal
Labor-Management Relations.

HOWARD W. SOLOMON,
Executive Secretary,
Federal Service Impasses Panel.

[FR Doc. 78-36272 Filed 12-29-78; 8:45 am]

[3410-30-M]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 225—SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Final Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is issuing final regulations for the Summer Food Service Program for Children in order to provide for the administration and implementation of the Program for the upcoming summer period. These regulations are based on the proposed regulations issued on October 31, 1978, and reflect the Department's consideration of public comments on those regulations.

DATE: Effective December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8211.

SUPPLEMENTARY INFORMATION: On October 31, the Department published in the FEDERAL REGISTER proposed regulations (43 FR 50820) for the Summer Food Service Program for children, authorized by Section 13 of the National School Lunch Act, as amended by Pub. L. 95-166, approved November 10, 1977, and Pub. L. 95-627, approved November 11, 1978. A total of 116 communications were received and evaluated in response to the public comment period which ended November 20. The following summarizes those comments, and, where applicable, changes have been made in final regulations.

GENERAL

Public Law 95-627. Pub. L. 95-627, also known as the "Child Nutrition Amendments of 1978" was enacted on November 10, 1978, which was after the proposed rule was published. Therefore, the following areas of the final rule have been revised to reflect statutory changes: (1) The definition of children has been amended. Previously, persons over 18 years of age who participated in a public school program established for the mentally or physically handicapped were eligible to participate in the Program. That condition has been relaxed so

that in addition, mentally or physically handicapped persons over 18 years of age who participate in nonprofit private school programs are eligible to participate in the Program. (2) FNSRO's which administer the Program in lieu of the State will receive administrative funds which the State would have earned. (3) The State administrative expense formula was amended so that States will earn more funds. (4) Up to 10 percent of any funds available to States for the administration of each Child Nutrition Program may be transferred among such programs. The final rule reflects the first 3 changes mentioned, and the Department will issue separate State administrative funds regulations to address the last area.

American Indians. A few comments were received which recommended categorically certifying American Indian children as needy for the purpose of the Program. Such a method of determining eligibility is not viewed as a viable concept in the Summer Food Service Program. However, it is the Department's intention to seek increased Program participation of Indians, and the final rule has been revised to require State agencies to identify Indian tribal territories which qualify for the Program, and actively seek eligible applicant sponsors to serve such areas.

Definitions

Areas in which poor economic conditions exist/migrants. A number of comments indicated that there are misunderstandings as to how sites which serve migrant children may utilize migrant organizations to document eligibility. A sponsor which serves the children of migrant workers may obtain information from a migrant organization which supports the eligibility of at least 33⅓ percent of those children for free or reduced price school meals. In these cases such documentation could be used in lieu of documentation on an area basis. Therefore, documentation from a migrant organization may be used by a sponsor to indicate the eligibility of the applicable children for the service of 3 meals, one of which is a supplement, each day. (If a sponsor which serves the children of migrant workers wishes to serve 4 meals each day, or to serve breakfasts, lunches, and suppers each day the site will be considered a (nonresidential) camp, and the sponsor may only receive reimbursement for those meals for which it has individual documentation for each child, as is true for any program which elects to serve 4 meals each day or to serve breakfasts, lunches, and suppers each day.)

It should be clear that categorical certification has not been extended to the children of migrant workers. In recognition of the problems which some sponsors have encountered in attempting to document the area from which migrant sites draw their attendance, the Department has simply afforded sponsors which serve such children the opportunity to obtain their eligibility documentation from a migrant organization rather than the more commonly used sources of documentation.

Food service management company. A significant number of commenters suggested that all nonprofit organizations and school food authorities be excluded from the definition of food service management company, and from the requirements which apply to them. The Department agrees that it has a positive responsibility to encourage the use of school facilities in the Program. However, the exclusion of school food authorities from the definition of food service management company could be interpreted to mean that sponsors may not contract with school food authorities for the preparation of meals. Therefore, the Department has not revised the definition of food service management company to exclude school food authorities, but it has excluded school food authorities from all food service management company registration requirements.

Other public and nonprofit private organizations have not been exempted from the registration and competitive bid requirements because the Department believes that there is value in retaining these requirements for such groups.

Rural. Many commenters objected to the proposed definition or rural, on the basis that it excluded "pockets" of rurality within Standard Metropolitan Statistical Areas. The Department considered alternative definitions which would address this problem but believed them to be either too administratively complex or too broad.

The proposed rule intended that the definition be used for outreach purposes. Because final regulations provide additional reimbursement to sponsors' rural sites and self-preparation sites, appropriate definitions are critical in the final rule. In consideration of fiscal implications, the Department has decided not to expand the definition of rural to encompass a larger group than that which the proposed rule defined. Based on experience gained during the 1979 Program, the Department will consider revisions of this definition at a later date, and any suggestions in this regard would be welcome.

Responsibilities of State Agencies

Facility inspections. Numerous respondents objected to the requirement to inspect all food preparation facilities in the first 4 weeks of Program operations. It was generally felt that while this should be a Program goal, other review requirements would prevent the State from meeting this requirement. Therefore, the final rule encourages rather than requires that these inspections be performed in the first 4 weeks of Program operations. However, States will be required to establish a priority order for conducting such inspections, and will be expected to respond promptly to complaints regarding any facility. States may use the additional 1 percent funds provided for health inspections and meal quality tests for this purpose.

Sponsor monitor form. The section of the proposed rule which dealt with sponsor requirements for participation included a reference to a sponsor monitor form, which would be developed by the State agency. The Department inadvertently neglected to state the parallel requirement for State agencies to develop such a form. Therefore, a paragraph has been added to the program assistance section of State agency responsibilities in the final rule which requires State agencies to develop such a form.

Sponsor/food service management company contract. Several comments as well as general inquiries received by the Department indicate that there is also some misunderstanding regarding payment to vendors. The proposed rule highlighted a contractual responsiblity of sponsors which stated that sponsors shall agree to pay vendors for all meals delivered in accordance with the contract. However, neither USDA nor State agencies are parties to the sponsor/vendor contract. Wording in the final rule clarifies that neither the State agency nor the Department guarantees such payment or assumes liability for it. Sponsors will continue to be reimbursed only for those meals served in accordance with Program regulations.

Special accounts. A significant number of commenters requested that the Department reconsider the need for requiring special accounts on a nationwide basis. Based on these comments the Department's final rule allows State agencies the option to require any sponsor to establish a special account. However, States utilizing special accounts will be required to establish criteria for determining which sponsors will be required to establish special accounts. Criteria may include, but not be limited to, past performance of the sponsor and the size of the sponsor's program. Other comments regarding special accounts indicated that several States are prohibited by law from depositing operating costs payments to a special account, as was required by the proposed rule. There-

fore, the final rule has been revised, and requires States to make such payments to sponsors, and applicable sponsors shall agree to deposit such payments to a special account. The Department recognizes that special accounts have not been widely used in the Program in the past, and the Department intends to provide guidance on this subject in Program materials.

Audit requirements. The Department received a number of comments regarding the Office of Management and Budget requirement to audit every sponsor at least once every 2 years. Several commenters indicated support of the requirement in the proposed rule for States rather than sponsors to pay for the cost of the audits of sponsors which expect to receive less than $50,000. However, States indicated serious reservations about this provision, since there are no specific funds earmarked for this purpose. In response to the concern raised during the comment period, the Department requested, and has been granted, a waiver to the bi-annual audit required by Federal Management Circular A-102, Attachment G, for certain sponsors under $50,000. Sponsors under $50,000 which are exempted from the bi-annual requirement include: (1) Sponsors earning less than $10,000 in Program payments, (2) Sponsors receiving other Federal Funds, and subject to an organization-wide audit in accordance with OMB Circular A-102, and (3) Sponsors for which the State Agency determines an audit is unnecessary based on program performance. States are required to document and justify all exemptions granted in the above three categories. States who believe the bi-annual audit requirement will impose a serious financial hardship may initiate an appeal through FNSRO to FNS. Audits should be conducted when an administrative review of a sponsor indicates serious program deficiencies requiring corrective action. The final rule maintains the provision that the cost of the audits for sponsors under $50,000 is an allowable Stat administrative expense and may not be passed through to sponsors. The Department recognize that this may pose a problem for some States and will explore supplementary sources of funding for such audits.

The administrative review is viewed by the Department as one of the most important management tools for effective State administration of the Program. States are encouraged to conduct comprehensive administrative reviews for exempted sponsors. Administrative reviews should include a thorough assessment of the sponsor's financial records relating to the program, as well as a review of program administration and implementation. Sponsors which export to receive more than $50,000 in Program funds will still be required to meet the annual CPA audit requirement. The cost of the audit is an allowable sponsor administrative cost.

Statistical Sampling. Proposed regulations required that State agencies conduct statistical sampling in a select number of the Nation's largest cities. The primary purpose of this requirement was to assist States in their management of the program, although it was also envisioned that the system would be utilized in determining reimbursement to sponsors. A substantial number of comments were received regarding the use of statistical sampling in the Summer Program. These comments were unanimous in their opposition to requiring that States use statistical sampling in determining reimbursement to sponsors. The Department believes that much of the opposition to statistical sampling may stem from the lack of clear guidance from FNS governing its application in the past, and from lack of training. The Department shares the concern that requiring States that have never had experience with statistical sampling, and that are unwilling to use it, to apply it this summer could have disruptive impacts on the program. However, the Department still believes that statistical sampling, when properly done, can have beneficial effects on strengthening program integrity. Therefore, the Department has decided to take the following actions. The Department will not require that States use statistical sampling this summer. However, the Department will actively encourage States to use statistical sampling in large cities. In addition, the Office of the Inspector General will, as in the past, continue to use statistical sampling. The Department will provide clear guidance for use in statistical sampling, and will require, as part of this guidance, that sponsors and vendors in areas subject to statistical sampling be fully informed of how the procedures will work before their application. The Department will also evaluate the use of statistical sampling this summer, and analyze its impacts on the program and whether modifications need to be made in guidance or other areas connected with statistical sampling. It is the Department's belief that this summer's experience will demonstrate that statistical sampling can both strengthen program integrity and be fair and equitable. If so, this summer's experience should pave the way for expanded use of statistical sampling in 1980, either through voluntary use by States in the largest cities, or if necessary to assure adequate coverage, through a regulatory requirement that would take effect for the 1980 program. This summer's experience may, therefore, constitute a "training year" for States in use of statistical sampling. The results of this summer's evaluation will be utilized in reaching decisions for the 1980 program.

Food Service Requirements

Supplemental meal. A few comments were received regarding the portion size of the fruit and/or vegetable component of the supplemental meal pattern. In addition a few comments received at a national meeting strongly favored a change in the supplemental meal pattern. These comments unanimously favored a decrease in the size of this component maintaining that such a decrease would result in less plate waste, and an increased use of fresh fruit. In response to these comments and other indications, the fruit and/or vegetable component has been decreased to 6 ounces of full strength fruit or vegetable juice or ¾ cup of fruit or vegetable. The Department will continue to study the need for further changes in the supplemental meal pattern and welcomes comments.

Program Payments

Sponsor Administrative Costs. The proposed regulations outlined four possible alternatives regarding administrative payments to sponsors. It was anticipated that a final approach would be selected based on the comments received and on results from the cost study mandated in Pub. L. 95-166. The cost study was not completed at the time the proposed regulations were prepared, but findings on sponsor administrative costs have become available since then.

In the comments, two positions were very frequently stated: (1) Some categories of sponsors require more money to administer the Program than others, and (2) the evaluation of sponsors' budgets and the assignment of varying rates is viewed as a very substantial administrative burden for the State agencies. The Department acknowledges the potential conflict between these two positions reflected in the comments.

The cost study examined the administrative and operating costs of sponsors participating in the Summer Food Service Program for Children. A 10 and 5 percent stratified random sample of vended and on-site sponsors, respectively, was selected from a complete listing of all sponsors approved as of June 30, 1978, as reported by State agencies and Food and Nutrition Service (FNS) regional offices. A 21-page questionnaire was developed which included detailed questions on personnel and nonpersonnel (overhead) costs during start-up and program operation at both the central office level and the site level. Ques-

tionnaires were administered by FNS Field and Regional Office staff using face-to-face interviews. Department staff analyzed the data using cross tabulation, t-tests, and multiple regression.

The study found that sponsors using on-site preparation had higher administrative costs than those using vendors. Also, sponsors in rural locations, as defined in the study, had higher administrative costs than those in urban areas. Levels of statistical significance were found to be 90 percent and 85 percent, respectively. The definitions used for vended vs. on-site and rural vs. urban were dictated by the nature of the data and do not conform entirely to the definitions which the Department determined would be more appropriate for practical use in program administration (and hence have been set forth above as the basis for this rulemaking). In the study, sponsors which prepared their own meals were defined as "onsite" sponsors. It has been brought to the attention of the Department that the reference to onsite meal preparation is misleading, and would appear to exclude those sponsors which prepare meals at a central facility and deliver meals to their sites. It was not the intention of the Department to exclude such sponsors from the definition of onsite meal preparation. Hence, sponsors which operate sites which prepare their own meals as well as sponsors which prepare meals in a central facility and deliver meals to their sites are referred to as "self-preparation" sponsors in these regulations. The Department is of the opinion, given the statistical tests and limitations in the study's purposes and design, that the findings cannot be interpreted as conclusive evidence on the exact magnitudes of sponsor administrative costs. However, the Department also believes that together with the public comments, the study's results provide a general indication of the direction and approximate degree of possible inconsistencies between past reimbursement rates and actual costs. The present rulemaking therefore does not adjust reimbursement rates fully into accord with the study's findings. Rather, rates are modified (as described below) by a relatively minor amount. Certain rates are, as a result, still much lower in the present rulemaking than the actual costs reported in the study. Among the reasons for not making a larger modification in rates are (1) the study did not attempt to assess the efficiency of sponsors' administration of the program (so that the study's results may overstate actual needs to the extent that some sponsors may operate inefficiently), (2) considerable variation was found in actual costs (suggesting that some sponsors are able to operate within the rates prescribed here), and (3) some sponsors may have other funding sources to defray a portion of the actual costs reported in the study.

Therefore, the final rule provides that all sponsors will earn the lesser of actual administrative costs or the basic administrative cost rates (adjusted by the Consumer Price Index) multiplied by the number of meals served. This was the method which was in effect last year. These rates are currently 7.25 cents for each lunch or supper served, 3.75 cents for each breakfast served and 2.00 cents for each supplement served. In addition to the basic rates, sponsors will receive additional reimbursement for their (1) rural, and (2) self-preparation sites.

Such sponsors will earn an additional 1.00 cent for each breakfast served, an additional 1.50 cents for each lunch and supper served, and an additional .50 cent for each supplement served, at such sites. Hence the levels of reimbursement will be the lesser of actual administrative costs or 4.75 cents for breakfast, 8.75 cents for lunch and supper and 2.50 cents for snacks, at such sites. Therefore, sponsors will earn administrative monies on a site-by-site basis, with one earning factor for all rural sites or self-preparation sites, and one earning factor for all other sites.* It is anticipated that these additional monies will support State efforts to meet the legislative priorities to reach children in rural areas and to use self-preparation in the Program. Several comments from the public indicated that the cost of transporting children to sites in rural areas should be an allowable program cost. While transportation of children has not been an allowable cost for any of the Child Nutrition Programs in the past, the Department believes the Summer Food Service Program is unique with respect to the meal service provided. In many cases sponsors bring children together during the summer months specifically for the purpose of providing an organized food service program. Schools and child care centers, on the other hand, provide additional services to children and the feeding program is a secondary service. Some summer sponsors may have no other funds available for transportation costs. Hence, final regulations permit sponsors with rural sites to claim such cost as an operating cost within the maximum reimbursement levels prescribed. The legislation provided the Department the flexibility to consider other methods of reimbursing sponsors rather than the traditional method which ties reimbursment to the number of meals served. While the Department believes that continued use of the traditional approach is necessary at this time, it also recognizes that further explanation and evaluation of other approaches are needed. Developmental projects designed for the purpose of evaluating the feasibility of alternatives to the present system are under consideration.

Final data from the study on operating costs was not available in time to be fully considered prior to this issuance of these regulations. If the data supports changes and/or revisions of reimbursement payments for operating costs, the Department will publish an amendment to this rule, however it is unlikely that such revisions would be in effect for the 1979 Program.

Accordingly, Part 225 is revised and reissued as follows:

Subpart A—General

Sec.
225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

Subpart B—State Agency Provisions

225.4 Procedures for approval of sponsors and sites.
225.5 Responsibilities of State agencies.
225.6 Program management and administration plan.
225.7 Payment and use of State administrative funds.
225.8 Payments to State agencies and use of Program funds.

Subpart C—Sponsor Provisions

225.9 Requirements for participation.
225.10 Food service requirements.
225.11 Food service management companies.
225.12 Program payments.
225.13 Program payments procedures.
225.14 Claims against sponsors.

Subpart D—Miscellaneous Provisions

225.15 Procurement provisions.
225.16 Prohibitions.
225.17 Free meal policy.
225.18 Other provisions.
225.19 Program information.

AUTHORITY: Sec. 2, 6, 10, Pub. L. 95-627, 95 Stat. 3603; sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1759a).

Subpart A—General

§ 225.1 General purpose and scope.

This part announces the policies and prescribes the regulations under which the Secretary will carry out a Summer Food Service Program for Children to assist States through grants-in-aid to initiate, maintain, and expand nonprofit food service programs for children during the summer months and

*The earning factors for both rural and self-preparation sites will be adjusted for the summer of 1979 based on changes in the Food Away From Home series of the Consumer Price Index for the period November, 1977, through November, 1978. The earning factors for the summer of 1979 will be announced shortly.

at other approved times. The food service to be provided under the Program is similar to that provided under the National School Lunch and School Breakfast Programs and is intended to serve as a substitute for those programs for children who are on school vacation, except that it is primarily directed toward children for needy areas.

§ 225.2 Definitions.

(a) "Act" means the National School Lunch Act, as amended.

(b) "Administrative costs" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

(c) "Advance payments" means financial assistance made available to a sponsor for its operating costs or administrative costs prior to the end of the month in which such costs will be incurred.

(d) "Areas in which poor economic conditions exist" means (1) the local areas from which a site draws its attendence in which at least 33⅓ percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined by information provided from departments of welfare, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or from other appropriate sources, or (2) an enrollment program in which at least 33⅓ percent of the children are eligible for free or reduced price school meals as determined by statements of eligibility based on the size and incomes of the families of the children enrolled.

(e) "Camps" means (1) residential summer camps which offer a regularly scheduled food service as part of an organized program for enrolled children and which serve up to four meals a day, and (2) nonresidential programs which offer a regularly scheduled organized cultural or recreational program for enrolled children and which serve such children four meals a day or three meals consisting of a breakfast, lunch and supper.

(f) "Children" means (1) persons 18 years of age and under, and (2) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

(g) "Costs of obtaining food" means costs related to obtaining agricultural commodities and other food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

(h) "Continuous school calendar" means a situation in which all or part of the student body of a school are (1) on a vacation for periods of 15 continuous school days or more during the period October through April and (2) in attendance at regularly scheduled classes during most of the period May through September.

(i) "Department" means the U.S. Department of Agriculture.

(j) "Fiscal year" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(k) "FNS" means the Food and Nutrition Service of the Department.

(l) "FNSRO" means the appropriate FNS Regional Office.

(m) "Food service management company" means a commerical enterprise or a nonprofit organization which contracts with a sponsor to manage any aspect of the food service. References to food service management companies in the Act and in this part shall include vendors which means commerical enterprises or nonprofit organizations which contract with a sponsor to prepare meals, with or without milk.

(n) "Income accruing to the Program" means all moneys (other than Program payments) received by a sponsor for use in the Program from Federal, State and local governments; from food sales to adults, and from any other source, including cash donations or grants.

(o) "Meals" means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

(p) "Milk" means fluid types of pasteurized flavored or unflavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstitued or recombined milk may be used. All milk should contain vitamins A and D at the levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(q) "Needy children" means children from families whose income is at or below the Secretary's Guideline for Determining Eligibility for Reduced Price Meals.

(r) "OIG" means the Office of the Inspector General of the Department.

(s) "Operating costs" means the cost of operating a food service under the Program, including (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances of equipment and space, and (5) transportation costs for rural sponsors, but excluding (i) the cost of the purchase of land, acquisition or construction of buildings, (ii) alteration of existing buildings, (iii) interest costs, (iv) the value of inkind donations, and (v) administrative costs; less income accruing to the Program.

(t) "Private nonprofit" means tax exempt under the Internal Revenue Code of 1954, as amended.

(u) "Program" means the Summer Food Service Program for Children authorized by Section 13 of the Act.

(v) "Program funds" means financial assistance made available to State agencies for the purpose of making Program payments.

(w) "Program payments" means financial assistance in the form of start-up payments, advance payments or reimbursement to sponsors for operating and administrative costs.

(x) "Rural" means any county which is not a part of a Standard Metropolitan Statistical Area as defined by the Office of Management and Budget.

(y) "Secretary" means the Secretary of Agriculture.

(z) "Self-preparation" means the sponsor prepares the meals which will be served at the site(s), and does not contract with a food service management company for the preparation of meals or a portion of the meals.

(aa) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program therein.

(bb) "Session" means a specified period of time during which an enrolled group of children attend camp.

(cc) "Site" means a physical location at which a sponsor provides or will provide a food service for children and at which children consume meals in a supervised setting.

(dd) "Special account" means an account between applicable sponsors and food service management companies with a State or Federally insured bank in which checks from the State agency for operating costs are deposited by the sponsor and released only in accordance with the terms of the special account agreement.

(ee) "Sponsors" means public or private nonprofit (1) camps and (2) nonresidential institutions which provide a year round service to the community, or provide a food service for the children of migrant workers, or provide a food service for a significant number of needy children which would not otherwise have reasonable access to the Program. Such camps and institutions shall develop special summer or school vacation programs providing food service similar to that available to children during the school year under the National School Lunch and School Breakfast Programs. (Sponsors are referred to in the Act as "service institutions.")

(ff) "Start-up payments" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. Such payments shall be deducted from subsequent administrative costs payments.

(gg) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(hh) "State agency" means the State educational agency or an alternate State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program within the State.

§ 225.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that FNSRO shall administer the Program in any State where the State agency is not permitted by law or is otherwise unable to disburse Federal funds paid to it under the Program to any sponsor in the State. Each State agency shall notify the Department by each November 1 as to whether or not it intends to administer the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. Such agreement shall cover the operation of the Program during the period specified therein and may be extended by consent of both parties.

(d) When the Secretary determines that the State is not operating the Program in accordance with the provisions of this part, he shall, through FNSRO, assume the administration of the Program in the State as provided for in § 225.18(b).

(e) FNSRO shall, in the States in which it administers the Program, assume all responsibilities and earn State agency funds as set forth in this part.

Subpart B—State Agency Provisions

§ 225.4 Procedures for approval of sponsors and sites.

(a) The State agency shall determine the eligibility of applicant sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in § 225.9(a).

(b) The State agency shall not approve the application of any applicant sponsor, identifiable through its organization or principals as a sponsor which participated previously and was seriously deficient in its Program operations. In the event that an applicant sponsor's application is denied, the State agency shall inform such applicant sponsor of the procedure to request a review of the denial. The official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Serious deficiencies, which are grounds for nonapproval include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of Program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving eligible meals, or failure to submit all Claims for Reimbursement in any prior year: *Provided, however,* That failure to return any advance payments of Claims for Reimbursement which are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

(4) Program violations at a significant proportion of the sites which include, but are not limited to, the following:

(i) Noncompliance with the between meal time requirements;

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to each child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(c) Pending the outcome of a review of a denial of an application for Program participation, the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (h) of this section, without regard to the application under review.

(d) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or knowingly withholds information which may lead to the disapproval of its application. Complete information regarding the disapproval of an applicant sponsor on the basis of fraudulent submission or knowingly withholding of information shall be submitted by the State agency through FNSRO to OIG.

(e) The State agency shall develop, in accordance with the requirements of this part and such other guidance as furnished by the Department, a site information sheet, on which applicant sponsors shall provide, for each site, information to demonstrate or describe:

(1) An organized and supervised system for serving meals to attending children;

(2) The estimated number and types of meals to be served and the times of service;

(3) Arrangements, within acceptable standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and if there are excess meals, arrangements for storing and refrigerating them until the next day;

(4) Arrangements for food service during periods of inclement weather;

(5) Access to a means of communication for making adjustments as needed in the number of meals delivered in accordance with the number of children attending daily at each site;

(6) The geographic area to be served by the site;

(7) The percentage of children served by the site who meet the eligibility requirements for free or reduced price school meals; and

(8) Whether the site is rural, as defined by § 225.2(x), or non-rural, and self-preparation or vended.

(f) The State agency shall, when evaluating proposed sites, insure that:

(1) If not a camp, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2(d).

(2) The number of meals, by type, proposed to be served to children at the site does not exceed the number of children residing in the area to be served, or, if applicable, the number enrolled; and

(3) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal and that the total number of meals, by type, served to children at all sites does not exceed the number of children residing in the area.

(g) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless it can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(h) The State agency shall use the following order of priority in approving sponsors to operate sites which propose to serve the same area or the same enrolled children:

(1) Applicant sponsors which are public or nonprofit private schools and other applicant sponsors which have demonstrated successful Program performance in a prior year;

(2) Applicant sponsors which propose to prepare meals at their own facilities or which operate only one site;

(3) Applicant sponsors which propose to utilize local school food facilities for the preparation of meals;

(4) Other sponsors which have demonstrated ability for successful Program operations; and

(5) Applicant sponsors which plan to integrate the Program with Federal, State, or local employment or training programs.

(i) State agencies may approve the application of an otherwise eligible applicant sponsor which does not provide a year-round service to the community which it proposes to serve under the Program only if it is a residential camp, or an applicant sponsor which provides a food service for the children of migrant workers, or when a failure to do so would deny the Program to an area in which poor economic conditions exist, or if a significant number of needy children will not have reasonable access to the Program: *Provided, however,* That such an applicant sponsor shall not be approved to operate more than 50 sites. The State agency may approve applicant sponsors which provide a food service for the children of migrant workers to operate more than 50 sites if the State agency determines that such sponsors have adequate capabilities and facilities and have provided services to migrant communities in prior years. State agencies, when approving the applications of such applicant sponsors shall take particular care to ensure that such applicant sponsors are timely in their Program planning and thoroughly prepared to assume and carry out all Program responsibilities.

(j) Applicant sponsors which qualify as camps shall be approved for reimbursement only for meals served free to children enrolled who meet the eligibility requirements for free and reduced price school meals.

§ 225.5 Responsibilities of State agencies.

(a) *State agency personnel.* Each State agency shall provide sufficient qualified consultative, technical and managerial personnel to administer the Program and monitor performance and to measure progress toward achieving Program goals. The State agency shall assign specific Program responsibilities to such personnel so as to insure that all applicable requirements under this part are met. All administrative personnel shall be employed and available for Program duties at least 30 calendar days prior to the State agency's sponsor application deadline date and all field staff personnel shall be employed and available at least 15 calendar days prior to the beginning of Program operations: *Provided, however,* That State agencies may submit to FNSRO written requests for exceptions to these hiring dates. Such requests shall include information in sufficient detail for FNSRO to determine that the exception is necessary for and will not adversely affect optimal Program administration and operation.

(b) *Program assistance.* Each State agency shall provide Program assistance as follows:

(1) Each State agency shall visit, prior to the approval of the application, all applicant sponsors which have not participated in the Program in the previous year and all applicant sponsors which participated in the previous year and have been determined by the State agency to need a pre-operational visit. Grounds for such a visit include, but are not limited to, sponsors with sites which were terminated for cause in the previous year and sponsors which had sites in violation of the meal service requirements in the previous year. These visits shall be utilized to provide the State agency the opportunity to further assess the applicant sponsor's potential for successful Program operations, assess information submitted on the application, and assure the State agency that the applicant sponsor is aware of its responsibilities under the Program.

(2) Each State agency shall, prior to approval, visit each new proposed nonschool site located in cities whose total elementary and secondary public school enrollment exceeds 75,000 for the purpose of evaluating its suitability for the food service proposed.

(3) Each State agency shall, prior to approval of any site with a proposed average daily attendance of more than 300 children, visit each such site to evaluate its capability of serving the number of children expected: *Provided, however,* That the State agency may elect to not carry out such a preapproval evaluation if the site has been used under the Program in a prior year and the State agency has documentation on file which supports the capability of the site and gives evidence of successful prior Program operations at the site.

(4) Each State agency shall review during the first 4 weeks of operations, all sponsors which operate 10 or more sites, and, at a minimum, an average of 15 percent of the sites of such sponsors, to insure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this title) and other applicable instructions as issued by the Department.

(5) In addition to the review requirements described in paragraph (b)(4) of this section, each State agency which expects to receive more than $250,000 in State administrative funds shall meet additional review requirements for all sponsors which operate 10 or more sites and which are located in cities whose total elementary and secondary public school enrollment exceeds 75,000. These additional requirements shall be to conduct reviews of 75 percent of the total number of nonschool sites in the State, and 25 percent of the total number of school sites, during the first four weeks of operation. In determining which sites shall be reviewed under this paragraph and under paragraph (b)(4) of this section, the State agency shall consider, at a minimum, whether or not the site has been used in prior years, the performance of the site in prior years, the performance of other sites operated by the same sponsor in both prior years and the current year and the performance of the applicable sponsor in prior years and in the current year.

(6) Each State agency shall, in addition, review 80 percent of the remaining sponsors, and an average of 10 percent of the remaining sites of such sponsors, at least once during the period of Program operations.

(7) In the conduct of reviews, each State agency shall develop a monitoring system to insure that sponsors, including site personnel, and the appropriate food service management com-

pany, if applicable, immediately receive a copy of any review reports which indicate Program violations and could result in a Program disallowance. Sponsors and site personnel shall be afforded every opportunity to make necessary corrections in a timely manner. In cases where corrective action of sites is not taken in accordance with this paragraph, and such sites are cancelled, each State agency shall insure that food service management companies are notified of all sites which are cancelled within a reasonable time.

(8) Documentation of Program assistance and results of such assistance shall be maintained on file by the State agency.

(9) Each State agency shall establish an order of priority for visiting facilities in its State in which food is prepared to be served in the Program. The State agency shall respond promptly to complaints concerning facilities with potential problems. Funds provided for in § 225.8(i) may be used for this purpose.

(10) Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, time of reviewer's arrival and departure, site supervisor's signature, certification statement to be signed by monitor, and corrective actions taken by sponsor and date of such actions.

(c) *Program availability.* Each State agency shall, by February 1 of each fiscal year, announce the purpose, eligibility criteria and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall compile a listing of potential sponsors which have not previously participated in the Program, and shall contact such potential sponsors. State agencies shall identify rural areas and Indian tribal territories which qualify for the Program and actively seek eligible applicant sponsors to serve such areas. States shall identify priority outreach areas in accordance with FNS guidance, for targeting outreach efforts in such areas.

(d) *Financial management system for sponsors.* Each State agency shall establish a financial management system which is in compliance with Attachment G of the Office of Management and Budget Circular A-102, under which sponsors shall maintain and report the information required in this part. The system shall also be consistent with the cost principles found in Federal Management Circular 74-4 and any applicable Instruction issued by FNS.

(e) *Payment of claims.* A State agency may make full or partial reimbursement upon receipt of a Claim for Reimbursement from a sponsor, but shall first make any necessary adjustments in payments.

(f) *Sponsor and food service management company contract.* Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. The contract shall expressly and without exception provide that:

(1) The sponsor shall provide to the food service management company a list of State agency approved food service sites and shall notify the food service management company of all sites which have been approved or cancelled subsequent to the submission of the initital approved site list. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(2) The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall report to the sponsor promptly at the end of each month, at a minimum;

(3) The food service management company shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program and it shall insure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals beings served. Such levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other establishments in the locality. Results of such inspections shall be submitted to the sponsor and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency upon which the bid was based;

(5) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract;

(6) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(8) Unitized meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meal orders shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(10) All meals served under the Program shall meet the requirements of § 225.10;

(11) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs the sponsor incurs by obtaining meals from another source; and

(12) A State agency may require any sponsor to establish a special account for the deposit of operating costs payments made by the State agency to the sponsor. A separate special account as provided for in § 225.9(i) shall be established for each food service management company under contract with a sponsor.

(g) *Advance and start-up payment procedures.* Each State agency shall inform sponsors of the procedure whereby they may apply for advance operating costs payments and advance administrative costs payments as provided for in § 225.13 and, where applicable, each State agency shall inform sponsors of the procedure whereby they may apply for start-up payments provided for in § 225.12(c).

(h) *Use of on-site facilities or school food service facilities.* State agencies shall make a positive effort to encourage sponsors to use the sponsors' own facilities or the facilities of public or nonprofit private schools to the maximum extent feasible, in the preparation, service, and delivery of meals under the Program.

(i) *Sponsor application deadline date.* Each State agency shall establish and inform all applicant sponsors of a deadline date for submission of a written application for participation in the Program: *Provided, however,* That State agencies shall approve the application of an otherwise eligible applicant sponsor submitted after the date established by the State agency, when the failure to do so would deny the Program to an area in which poor economic conditions exist or a significant number of needy children will not

have reasonable access to the Program. The State agency shall inform potential sponsors inquiring after the sponsor application deadline date of the possibility of approval if the sponsor qualifies under these terms. The State agency must act on all applications within 30 calendar days after the sponsor application deadline date: *Provided, however,* That the 30 calendar days may be extended upon approval by FNS. In the case of applicant sponsors which apply after the deadline date and qualify in accordance with the terms of this paragraph, the State agency shall act on such applications as soon as possible after receipt. Sponsors applying after the deadline must provide an explanation to the State on why they are applying late, and the State must maintain a record documenting all late submissions.

(j) *Meal service restriction.* (1) A State agency shall restrict to one meal service per day (i) any site determined to be in violation of the meal service requirements as set forth in this paragraph when corrective action is not taken within a reasonable time as determined by the State agency, and (ii) all sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the meal service requirements as set forth in this paragraph. If such action results in children not receiving any meals under the Program, the State agency shall make every reasonable effort to locate another source of meal service for such children. In addition, the State agency shall not approve the service of more than one meal per day at any site unless each type of meal is delivered separately within 1 hour of the beginning of the meal service or facilities capable of holding hot or cold meals within the temperatures required by State or local health regulations are available at the site.

(2) Meals which may be served under the Program shall be breakfast, lunch, supper, and supplemental food. Only camps may be approved to serve supplemental food and also participate in the Special Milk Program (7 CFR Part 215): *Provided,* That those camps keep separate records for each Program. Except for camps, sponsors shall be approved to serve only up to three meals a day at each site: *Provided,* That at least one of the three meals is a supplement. Residential camps shall be approved to serve up to four meals a day, and nonresidential camps shall be approved to serve four meals a day or three meals consisting of a breakfast, lunch, and supper, provided that camps have the administrative capability and where applicable, the food preparation and holding facilities: *And provided,* That the service period of different meals does not coincide or overlap. No sponsor shall be reimbursed for meals served outside of the meal service limitations contained in this subparagraph. No sponsor shall be approved for more than two supplements a day.

(3) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m.: *Provided, however,* That a State agency may consider a waiver of this requirement for extenuating circumstances. Such waivers shall be granted only when the State agency and the sponsor insure that special arrangements shall be made to monitor these sites. In no case may the completion of supper be later than 8 p.m. None of the preceding time restrictions of this subparagraph shall apply to residential camps. The duration of the meal service shall be limited to 2 hours for lunch or supper and 1 hour for all other meals. Meals served outside of the period of approved meal service shall not be eligible for Program payments. Any changes in meal service periods must be approved by the State agency. Each sponsor shall serve only the type or types of meals for which it is approved in its agreement with the State agency.

(k) *Records and reports.* (1) Each State agency shall maintain current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, and expenditures for administrative costs and operating costs. The records may be kept in their original form or on microfilm, and shall be retained for a period of 3 years after the date of submission of the final Financial Status Report, except that, if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of any issues raised by the audit. (2) No later than September 30 of each year, the State agency shall provide the Department with information on the scope of Program operations within the State, including information on Program levels in rural areas. (3) Each State agency shall report information on the use of Program funds and on Program operations to FNS on forms provided by FNS, as instructed by FNS.

(l) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file all evidence relating to such investigations and actions. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(m) *Commodity distribution information.* A list of sponsors which are to receive food commodities, with accompanying information on the average daily number of eligible meals to be served by such sponsors, shall be prepared not later than June 1 of each year by the State agency. Such a list shall contain only the names of sponsors which will prepare the meals to be served at their sites and the names of sponsors which have entered into an agreement with a school or school district for the preparation of meals to be served under the Program. If the State agency is other than the agency of the State which handles the distribution of food commodities donated by the Department, this information shall be forwarded to the agency of the State which handles the distribution of donated commodities. The State agency shall be responsible for promptly revising the information to reflect additions or deletions of sponsors and for providing such adjustments in participation data as are determined necessary by the State agency. Availability of commodities and other foods which are not donated commodities but are in plentiful supply shall be summarized and made available to all sponsors upon the approval of their application for participation.

(n) *Training.* Each State agency shall plan for and carry out Program training for sponsors, food service management company representatives, and health inspectors which will participate in the Program in that State. Each State agency shall, prior to program operations, insure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. Such training shall be structured and scheduled to reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize sponsors which have previously participated in the Program in such training, and to train site personnel regarding their responsibilities. Training should be made available at convenient locations. Each State agency shall make available, prior to the beginning of Program operations, training in all necessary areas of Program administration for representatives from all food service management companies and each health department which will participate in the Program in the current year.

(o) *Program materials.* Each State agency shall develop and make availa-

ble in a timely manner all necessary Program materials so that applicant sponsors have sufficient time to adequately prepare for their participation in the Program.

(p) *Procurement provisions.* State agencies shall adhere to the procurement provisions set forth in this part and in Attachment O of the Office of Management and Budget Circular A-102. In addition, State agencies shall encourage sponsors to use small and minority owned businesses, as sources of supplies and services. The Department will provide guidance on technical and financial assistance available to such businesses.

(q) *Management evaluation and audits.* (1) Each State agency shall insure that the requirements of this part are met and upon approval of applicant sponsors' applications whose total Claims for Reimbursement are expected to exceed $50,000 shall provide those sponsors with an audit guide to be used in the conduct of the audit required by § 225.9(k) and any other guidance necessary to enable them to comply with the requirements set out in § 225.9(k). The audit guide developed by the State agency shall, at a minimum, contain the standards set forth in the audit guide issued by the Department for the Program.

(2) In accordance with the plan submitted under § 225.6(a)(14), the State agency shall ensure that all sponsors within the State whose total Claims for Reimbursement are expected to be more than $50,000, shall provide for an annual audit of their program. Any audit of an organization which is conducted in accordance with the Program audit guide and includes the Program covered by this part may be included to meet a portion of the audit requirement contained in this section. The State agency shall also provide for audits bi-annually for sponsors whose total Claims for Reimbursement are expected to be less than $50,000 with the following exceptions: (i) Sponsors under $10,000, (ii) sponsors receiving other Federal funds, and subject to an organization-wide audit in accordance with OMB Circular A-102, and (iii) sponsors for which the State agency determines an audit is unnecessary based on program performance. States must justify and document all exemptions made to the bi-annual audit requirement. The cost of such audits shall be considered an allowable State administrative expense and in no case may the cost of such audits be passed through to sponsors. States who can justify that compliance with the requirement will impose financial hardship may initiate an appeal through FNSRO to FNS. Audits shall be conducted by State agency internal auditors, State Auditors General, State Comptrollers, other comparable independent State audit groups, Certified Public Accountants or State licensed public accountants.

(3) Each State agency shall coordinate its monitoring review findings under paragraph (b) of this section and the audit reports provided for under § 225.9(k). Each State agency shall insure that monitoring is conducted to result in a representative review of the sponsor's operations under the Program.

(4) While OIG shall rely to the fullest extent feasible upon State-sponsored audits, it shall, whenever it considers necessary, (i) make audits on a State-wide basis, (ii) perform on-site test audits, and (iii) review audit reports and related working papers of audits performed by or for State agencies.

(5) State agencies shall provide FNS and OIG with full opportunity to conduct management evaluations (including visits to sponsors) and audits of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds upon a reasonable request by FNS or OIG. OIG shall also have the right to make audits of the records and operations of any sponsor.

(6) State agencies are encouraged to utilize statistical sampling procedures in monitoring program performance and correcting deficiencies. Such statistical sampling must be conducted in accordance with guidelines issued by the Department. The Department will provide training on these procedures to State agencies. Whenever statistical sampling procedures are used, State agencies shall establish a system for prompt communication of adverse findings to sponsors and for corrective action by sponsors. In addition, if the State agency determines that the quality of the data permits, it shall be used as one factor in the settlement of claims. Greater weight should generally be given sampling results, when assessing claims, in instances where a sponsor has failed to take corrective action, after being notified of the results and their potential consequences, than in instances where a sponsor has acted promptly to correct its deficiencies.

(7) Use of program audit guide available from OIG is encouraged. When this guide is utilized, OIG will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(8) In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, where there are unpaid claims for the same fiscal year from which the overpayment can be deducted, or where there is substantial evidence of violation of criminal law or civil fraud statutes.

(r) *Food specifications and meal quality standards.* Each State agency shall, with the assistance of the Department, develop and make available to all sponsors, minimum food specifications and model meal quality standards which shall become part of the contracts between sponsors and food service management companies.

(s) *Food quality and preparation facility inspection procedures.* Each State agency shall, with the funds authorized in § 225.8(i), establish a procedure for inspections of food preparation facilities and food service sites. The procedures for carrying out work such as inspections and testing shall be consistent with procedures used by local health authorities. Copies of the results of the inspections of the facilities of food service management companies shall be provided to the State agency; the company and the sponsor shall also immediately receive a copy of the results of such inspections when corrective action is required.

(t) *Food service management company registration.* (1) Each State agency shall by February 1 provide to all food service management companies which participated in the Program in either of the prior 2 years in that State a notification of mandatory registration. Such notification shall contain at a minimum (i) a statement of the requirement for registration with the State agency as a prerequisite to participation in the Program during the applicable fiscal year, (ii) a summary of those items which are required to be submitted in the application for registration as set forth in paragraph (t)(2) of this section, (iii) an enumeration of the specific criteria developed by the State agency upon which registrant eligibility shall be based, and (iv) other relevant information necessary to make application for registration. In addition, each State agency shall, by the same date, issue through the appropriate media a notification of mandatory registration and information necessary to make application for registration.

(2) By March 15 each food service management company with the exception of school food authorities, which desires to participate in the Program within the State during such fiscal year shall submit an application for registration to the State agency. At a minimum, registration shall require (i) submission of name and mailing ad-

dress and any other names under which such food service management company presently or in the past two years has marketed its services, (ii) a certification that the food service management company meets applicable State and local health, safety and sanitation standards, (iii) disclosure of present company owners, directors and officers, and their relationship, in the past 2 years to any sponsor or food service management company which participated in the Program, (iv) records of contract terminations, disallowances, and health, safety, and sanitation code violations related to prior Program participation during the past two years, (v) records of any other contract terminations and health, safety and sanitation code violations during the past 2 years, (vi) the address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the local officials responsible for the operation of such facilities, (vii) the number of meals which may be prepared in each preparation facility in a twenty-four hour period for use in the Program, (viii) a certification that the food service management company will operate in accordance with current Program regulations, (ix) a statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites or for meals which are delivered to approved sites outside of the agreed upon delivery time or meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company, and (x) submission of a CPA audit report if one has been performed in the prior year.

(3) No food service management company shall be registered by the State agency if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which do not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with a prior Program operation.

(4) The State agency shall provide for inspections prior to registration of all food service management companies' food preparation facilities listed on the applications for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall ensure that such facility is inspected prior to registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of meals for use in the Program. The State agency may waive this inspection requirement if a facility was registered last summer and operated in accordance with Program requirements.

(5) The State agency shall notify in writing each food service management company which applied for registration of its determination on the application within 30 calendar days after receipt of the complete application. The State agency shall inform any food service management company whose application for registration has been denied of the procedures to request a review of the denial as provided for in paragraph (w) of this section. The official making the determination of denial must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(6) By October 15 of the current year, each State agency shall forward to the Department, on a form provided by FNS, information on all food service management companies which applied for registration to the State agency and their registration status. The Department shall allow any food service management company to review any information concerning that company which was submitted to FNS as required by this paragraph.

(7) A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year, if the State agency determines that the lack of registration could result in an area in which poor economic conditions exist not being served or a significant number of needy children not having reasonable access to the Program.

(8) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted on the form is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(u) *Bid opening monitoring.* Each State agency shall have a representative present at all procurement bid openings of sponsors which expect to receive more than $100,000 in Program payments.

(v) *Sponsor certifications.* Each State agency shall require applicant sponsors submitting Program applications, site information sheets, Program agreements or Claims for Reimbursement, and sponsors requesting advance payments, to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(w) *Sponsor and food service management company hearing procedures.* (1) Each State agency shall establish a procedure to be followed by an applicant requesting a review of a denial of an applicant sponsor's application for participation, a denial of a request by a sponsor for an advance payment, a denial of a claim by a sponsor for reimbursement, a denial of a sponsor's site or a denial of a food service management company's registration.

(2) At a minimum the procedure shall provide that:

(i) The denied applicant be advised in writing of the grounds upon which the State agency based the denial;

(ii) The denied applicant be advised in writing that the request for review must be made within a specified time. The State agency may establish this period of time at not less than one week nor more than two weeks from the date of receipt of the letter of denial;

(iii) The denied applicant be afforded the opportunity to review any information upon which the denial was based;

(iv) The hearing official be an official other than the one directly responsible for the original determination;

(v) The review be held within two weeks of the date of the receipt of the request for review;

(vi) The applicant may refute the charges contained in the letter of denial either in person or by mailing written documentation to the reviewing official. The applicant may retain legal counsel, or may be represented by another person;

(vii) Within 3 working days after the applicant's hearing, or within 3 working days after receipt of written documentation, the reviewing official must make a determination based on a full review of the administrative record; and

(viii) The State agency must inform the applicant of the determination of the review by certified mail, return receipt requested. The determination by the State reviewing official is the final administrative determination to be afforded an applicant.

(x) *Advance payment estimates.* Each State agency shall, when determining the amount of advance operating and administrative costs payments to be made to each sponsor under § 225.13 make the best possible estimate based on the amount requested by the sponsor and any other data available to the State agency.

(y) *Sponsor's budget approval process.* Each State agency shall, when approving an applicant sponsor's administrative budget, take into consideration the number of sites and children to be served, as well as any other factors determined by the State agency and set forth in guidance provided by the Department. The purpose of the sponsor's budget approval process is to assess the sponsor's ability to operate under the Program, within its projected reimbursement as described in § 225.8(c).

(z) *Special accounts.* A State agency may require a sponsor to establish a special account for the deposit of operating costs payments made by the State agency to the sponsor, as provided for in § 225.9(i), but shall first establish criteria for determining which sponsors will be required to establish such accounts. Criteria may include, but not be limited to, past performance of the sponsor, and the size of the sponsor's program.

§ 225.6 Program management and administration plan.

(a) Not later than February 15 of each fiscal year, each State agency shall submit to FNSRO a Program management and administration plan for that fiscal year. The plan shall have the original signature of the chief official (Commissioner or Superintendent) of the State agency. Approval of the plan by FNS shall be a prerequisite to the payment of Program funds, or to the donation by the Department of any commodities for use in the Program. The plan shall include the following information at a minimum:

(1) How the State plans to use Program funds and funds from within the State to the maximum extent practicable to reach needy children, including needy children in rural areas. The State should clearly define its methods for assessing need, the total number of children reached by the Program last year, its priority areas for program expansion, and its plans and schedule for informing potential sponsors of the availability of the Program;

(2) Estimated number and type of sponsors expected to participate and estimated number of sites and average daily attendance, and a description of the estimating methods used, including data on the number of sponsors which participated in the prior year;

(3) Estimated amount of Program funds, by month, needed for operating costs payments to sponsors;

(4) Estimated amount of Program funds, by month, needed for administrative costs payments to sponsors;

(5) The State's plans and schedule for providing technical assistance and training for sponsors, food service management company representatives and health department officials, including the number of such training sessions planned and number of reviews planned, including data on the number of reviews conducted in the prior fiscal year;

(6) The State agency budget, by month and function on the use of State administrative funds, including, but not limited to staffing (part-time and full-time), salaries, travel and per diem;

(7) The State's plan to comply with the Department's standards for disbursing administrative costs payments to sponsors;

(8) The actions to be taken by the State agency to maximize the use of on-site meal preparation and the use of school food service facilities;

(9) The actions to be taken by the State to ensure compliance with the requirements of the Department's regulations respecting nondiscrimination (7 CFR Part 15);

(10) The State's plan for monitoring and inspecting sponsors, sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(11) The State's plan for timely and effective action on Program violations;

(12) The State's plan and schedule for submission and approval of sponsor applications;

(13) The State's plan for determining the amounts and timing of Program payments to sponsors and for disbursing such payments;

(14) The State's plan for ensuring fiscal integrity by auditing sponsors as provided under § 225.5(q), including data on the number of audits performed in the prior fiscal year;

(15) The State's plan and procedure for registering food service management companies;

(16) The State's procedures for granting a hearing and prompt determination to any sponsor wishing to appeal a State's ruling denying its application for Program participation, its site participation, its approved level of administrative costs, Program advance payments, or Program reimbursement and the State's procedure for granting a hearing and prompt determination to any food service management company wishing to appeal a State's ruling denying the food service management company registration in the State;

(17) The State's plan for utilizing the funds provided for under § 225.8(i) to provide for health inspections and meal quality tests, including the estimated number and frequency of such inspections and tests and a description of the arrangements made by the State with the agencies which will perform these services;

(18) The amount of non-Federal funds made available to the State through direct State appropriations for the Program.

(19) An explanation of significant deviations in last year's actual Program operations and administration from that proposed in the plan for last year; and

(20) The State's procedures for soliciting and ensuring that timely comments or recommendations made by interested parties regarding this plan receive full consideration.

(b) The State agency shall give the Governor, or his delegated agency, the opportunity to comment on the relationship of the Program management and administration plan to comprehensive and other State plans and programs and to those of affected areawide or local jurisdictions. A period of 45 calendar days from the date of receipt of the Program management and administration plan shall be afforded to make such comments.

(c) All plans shall be approved or acted on by March 15, or if it is submitted late, within 30 calendar days following receipt of the plan. In cases where the plan initially submitted is not approved, the State agency and the approval authority shall work together to ensure that changes to the plan, in the form of amendments, shall be submitted so that the plan shall be approved within 60 calendar days following the initial submission of the plan.

(d) Upon plan approval, each State agency shall be notified of the level of State administrative funding which it is assured of receiving as provided for in § 225.7(f).

§ 225.7 Payment and use of State administrative funds.

(a) For each fiscal year, the Secretary shall pay to each State agency for administrative expenses incurred in the Program an amount equal to (1) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year; (2) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year; (3) 5

percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and (4) 2½ percent of any remaining funds properly payable to the State in the preceding fiscal year: *Provided, however,* That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FNS.

(b) State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as set forth in their approved Program management and administration plan.

(c) Not later than October 1 of each fiscal year, the Secretary shall make available to each State agency by Letter of Credit an initial allocation of State administrative funds for use in the fiscal year beginning on that October 1 and in an amount not to exceed one-third of the State administrative funds which are determined in accordance with the formula set forth in paragraph (a) of this section. For States which did not receive any Program funds during the fiscal year immediately preceding the fiscal year for which the initial allocation is being made, the amount to be made available by October 1 of each fiscal year shall be determined by the Department.

(d) An additional amount of State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed three-fourths of the State administrative funds which are determined in accordance with the formula set forth in paragraph (a) of this section and based on the estimates set forth in the approved Program management and administration plan.

(e) The balance of State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the second funding assessment provided for in paragraph (g) of this section, and shall be in an amount equal to that obtained by applying the formula set forth in paragraph (a) of this section to the State's actual program size as determined by information obtained during the second funding assessment, less the amounts paid under paragraphs (c) and (d) of this section. As provided for in paragraph (g) of this section, further adjustments in the levels of State administrative funding paid or payable to a State may be made.

(f) Notwithstanding the levels of payments provided for in this section, each State agency shall at the time FNS approves the State's management and administration plan, be assured of receiving State administrative funding in an amount equal to the lesser of 80 percent of that obtained by applying the formula set forth in paragraph (a) of this section to the total amount of Program payments made within the State during the prior fiscal year, or, 80 percent of that obtained by applying the formula to the estimated amount of Program funds as contained in the management and administration plan. The State agency shall be assured that it will receive no less than these levels unless FNS determines that the State agency has failed or is failing to meet its responsibilities as contained in this part.

(g) FNSRO shall at the times it deems most appropriate conduct assessments of the need for Program and State administrative funding within each State agency. At a minimum, such funding assessments shall be made at least twice during each fiscal year. The first of these assessments shall be conducted prior to the beginning of sponsor operations when FNSRO determines that there is adequate information available at the State agency upon which a reasonable projection of program size can be made. Based on information obtained during the initial assessment, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency to reflect changes in the size of the State's program as compared to that contained in its management and administration plan. The second assessment shall be conducted at some time during the period of program operations, but no later than August 1, or when information is available on the actual size of program operations. Immediately following such assessment, any remaining payment of State administrative funds shall be made to the State agency. Such payment may reflect adjustments in the level of State administrative funding, based on the information collected in the second assessment. FNS shall not decrease the amount of a State's administrative funds unless the State did not make reasonable efforts to administer the Program as it proposed in its management and administration plan, or unless the State incurred expenses that were not necessary.

(h) In no event may the sum of the amounts properly payable under this section for a fiscal year exceed the total amount of expenditures incurred by the State agency for its administrative costs in the same fiscal year. Each State agency shall report to FNS information on the use, in the prior year, of Program funds and State administrative funds, on a form provided by FNS, not later than November 30 of each fiscal year. FNS shall make, prior to February 15 of each fiscal year, any adjustments necessary in the Letter of Credit to reflect actual expenditures in the prior fiscal year.

§ 225.8 Payments to State agencies and use of Program funds.

(a) Upon approval of the State's Program management and administration plan, the Secretary shall make available by Letter of Credit to the State agency Program funds to be used to make start-up payments, where applicable, to sponsors as provided for in § 225.12(c).

(b) Not later than April 15, May 15, and July 1 of each fiscal year the Secretary shall make available to each State agency by Letter of Credit Program funds to be used by the State agency to make advance operating costs payments to sponsors in the months for which such Letter of Credit is issued. The amount of each of these payments shall be equal to 65 percent of the amount derived by multiplying the number of operating days in the month times the average daily attendance by meal type as estimated in the State's approved Program management and administration plan, times the maximum allowable rates payable to sponsors for operating costs payments as set forth in § 225.12(e).

(c) Not later than April 15, May 15, and July 1 of each fiscal year the Secretary shall make available, by Letter of Credit, Program funds to be used by the State agency to make advance administrative costs payments to sponsors. The amount of each of these payments shall be equal to one-third of the sum of the products obtained by multiplying: The estimated number of breakfasts times 3.75 cents; the estimated number of lunches times 7.25 cents; the estimated number of suppers times 7.25 cents; and the estimated number of supplemental meals times 2.00 cents: *Provided, however,* That the factors used in this formula shall be 4.75 cents for each breakfast, 8.75 cents for each lunch and supper and 2.50 cents for each supplement for rural sites, and self-preparation sites. Notice of any adjustment of these rates to reflect changes in the Department of Labor's food away from home series of the Consumer Price Index will be published in the FEDERAL REGISTER. The estimated number of meals shall be those which are contained in the approved Program management

and administration plan. FNS may make appropriate changes in the amounts of these payments based on information obtained during the conduct of the funding assessments provided for in § 225.7(g) and any other information available to FNS upon which determinations as to actual program size may be made.

(d) For sponsors which operate under a continuous school calendar, the Secretary shall make available Program funds by Letter of Credit to the State agencies to make advance payments to sponsors in an amount equal to the amount needed by the State agencies to make advance Program payments and advance administrative costs payments to such sponsors, as set forth in the State's approved Program management and administration plan, on the first day of the month prior to the month during which the food service will be conducted.

(e) The Secretary shall make available any remaining Program funds due, no later than 45 days following receipt of valid claims from sponsors by the State agency. Any funds advanced to a State agency for which valid claims have not been established within 180 days after the sponsor's operation shall be deducted from the next monthly payment to the State.

(f) Program funds shall be used by State agencies to make Program payments to sponsors in connection with meals served to children in accordance with the provisions of this part.

(g) Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(h) The State agency may use in carrying out special developmental projects an amount up to 1 percent of Program payments made in any fiscal year: *Provided, however,* That such projects have been included in the State's Program management and administration plan and have been approved in writing by FNS.

(i) By April 15 of each fiscal year, the Secretary shall make available by Letter of Credit to each State agency an additional amount equal to 1 percent of Program funds estimated to be needed by the State agency for Program payments in the State's approved Program management and administration plan and any amendments thereto for the current fiscal year. These funds shall be used solely to enable State or Local health departments of other governmental agencies charged with health inspection functions, to carry out health inspections and meal quality tests: *Provided, however,* That, if such agencies cannot perform such inspections or tests, the State agency may use such funds to contract with an independent agency to conduct either the inspection or the meal quality tests, or both. An adjustment may be made in the amount provided for in this paragraph based on the evaluation required in § 225.7(e) if such an adjustment is warranted. Program funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

Subpart C—Sponsor Provisions

§ 225.9 Requirements for participation.

(a) No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service;

(2) Has not been seriously deficient in operating the Program in prior years;

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualifies as a camp;

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site, including adequate personnel to visit all sites at least once in the first week of operation under the Program, to promptly take such actions as are necessary to correct deficiencies found at the time of the initial visit, to review food service operations at every site at least once during the first four weeks of Program operations, and thereafter to maintain a reasonable level of site monitoring. During these visits and reviews a monitoring form developed by the State agency shall be completed by the monitor;

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program except as provided for in § 225.4(i);

(6) Certifies that all sites have been visited and have the capability and the facilities for the meal service planned for the number of children anticipated to be served;

(7) Is a public or private nonprofit entity;

(8) If not a camp, provides documentation that its food service will serve children from an area in which poor economic conditions exist. If a camp, certifies that it will collect family-size and income information to support its Claim for Reimbursement; and

(9) If a summer school, is open to serve children in addition to those enrolled in the accredited school program or is a school serving children outside of the summer school hours.

(b) Applicant sponsors shall make written application to the State agency for participation in the Program as sponsors. Such application shall be made on a timely basis in accordance with the requirements of § 225.5(i).

(c) Each applicant sponsor shall submit, as part of the application, a site information sheet, as developed by the State agency, for each site where a food service operation is proposed.

(d) Applications shall include information in sufficient detail to enable the State agency to determine whether the applicant sponsor meets the criteria for participation in the Program as set forth in paragraph (a) of this section and the extent of Program payments needed, including requests for advance payments and start-up payments, if applicable, and administrative and operating budget, staffing and monitoring plan.

(e) Each applicant sponsor shall submit to the State agency, as part of the application for participation, a complete administrative budget for State agency review and approval. The budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate under the Program, within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(f) Each applicant sponsor shall submit to the State agency, along with its application, a plan for and a synopsis of its invitation to bid for food service, if a bid is required under § 225.11, and a copy of its letter of engagement with a certified public accountant or an independent State or local government accountant if required under paragraph (k) of this section. In addition, the selected accountant shall within the first two weeks of operation under the Program, submit a copy of the management letter to the sponsor and to the State agency.

(g) Each applicant sponsor, except a camp, shall submit, along with its site information sheet, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist. For those sites at which applicant sponsors will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization, which supports eligibility for

those children as a group. When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. Therefore, for such sites applicant sponsors shall only be required to obtain new documentation every other year. Camps shall submit to the State agency, prior to filing their Claims for Reimbursement for each session or at such time as specified by the State agency, family-size and income information which documents the number of children enrolled in each session whose family incomes meet the eligibility requirements for free or reduced price school meals.

(h) Sponsors approved for participation in the Program shall enter into written agreements with the State agency, or in those States in which FNSRO administers the Program, sponsors shall enter into written agreements with the Department. Such agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation or at some other time or times during the year for children on school vacation under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.10 during a period designated as the meal service period by the sponsor, and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are not eligible for free or reduced price school meals;

(4) Issue a policy statement in accordance with § 225.17;

(5) Hold training sessions for its administrative and site personnel with regard to Program duties and allow no site to operate until site personnel have attended such training sessions. Training of site personnel, at a minimum, shall include: Purpose of the Program, site eligibility, recordkeeping, site operations, meal pattern requirements, and duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors under § 225.5(n) and sponsors shall provide training throughout the summer to ensure that administrative and site personnel are thoroughly knowledgeable in all requisite areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities;

(6) Provide for an audit under any Program agreement for which it may receive over $50,000 in Program payments, as outlined in § 225.9(k);

(7) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period; except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who are eligible for free or reduced price school meals. No permanent changes may be made in the time of any meal service period until such changes are approved by the State agency;

(8) Submit Claims for Reimbursement in accordance with procedures established by the State agency, and those stated in § 225.13(a);

(9) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(10) Purchase, in as large quantities as may be efficiently utilized in the Program, foods designated as plentiful by the State agency or the Department;

(11) Accept and use, in as large quantities as may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(12) Have access to facilities necessary for storing, preparing, and serving food;

(13) Maintain a financial management system as prescribed by the State agency;

(14) Maintain on file documentation of site visits in accordance with paragraph (a)(4) of this section;

(15) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. Such records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of any issues raised by the audit; and

(16) Maintain children on site while meals are consumed.

(i) In addition to the provisions described in paragraph (h) of this section, State agencies may require an agreement between the State agency and the sponsor to provide that the sponsor shall establish a special account with a State or Federally insured bank for the deposit of Program payments for operating costs payable to the sponsor by the State. The special account agreement must specify that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain other terms as are agreed to by both sponsor and food service management company: *Provided, however,* That such terms are not inconsistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

(j) Upon notification of their approval, sponsors selected for participation in the Program shall submit evidence to the State agency that they have advised the appropriate health department of their intention to provide a food service during a specific period at specific sites. Such evidence shall be in the form of a letter to the health department.

(k) Each sponsor whose total Program payments under any program agreement are expected to exceed $50,000 shall have an audit conducted of its Program claims and the supporting documentation for those claims by an independent certified public accountant or an independent State or local government accountant and shall submit to the State agency a copy of the letter of engagement with the accounting firm or individual which is to conduct the audit. The sponsor's final Claim for Reimbursement under the agreement shall not be eligible for payment until the audit has been completed and the results have been reviewed by the State agency. The cost of the audit may be considered an administrative cost. All such audits shall be subject to review by the Department.

(l) Sponsors shall not claim reimbursement under Parts 210, 215, 220, or 226 of this chapter, or any other federally funded program for meals served under the Program.

(m) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities, or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(n) Sponsors shall operate the food service in accordance with the provisions of this part and any instructions and handbooks issued by FNS under this part or issued by the State agency which are not inconsistent with the provisions of this part.

§ 225.10 Food service requirements.

(a) Except as otherwise provided in this section and any appendices to this

part, each meal served in the Program shall contain, as a minimum, the indicated food components:

(1) A breakfast shall contain:

(i) One-half pint (1 cup) of milk as a beverage or on cereal or used in part for each purpose,

(ii) One-half cup serving of fruit or vegetable, or both, or full-strength fruit or vegetable juice, and

(iii) One slice of whole-grain or enriched bread; or an equivalent quantity of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour; or ¾ cup (volume) or 1 ounce (weight), whichever is less, of whole-grain or enriched or fortified cereal, or an equivalent quantity of any combination of these foods.

(2) A lunch or supper shall contain:

(i) One-half pint (1 cup) of milk as a beverage,

(ii) Two ounces (edible portion as served) of cooked lean meat, poultry, or fish; or 2 ounces of cheese; or one egg; or ½ cup of cooked dry beans or peas; or 4 tablespoons of peanut butter; or an equivalent quantity of any combination of the above-listed foods. To be counted in meeting this requirement, these foods must be served as a main dish or in a main dish and one other menu item.

(iii) A three-fourths cup serving consisting of two or more vegetables or fruit, or both. Full-strength vegetable or fruit juice may be counted to meet not more than one-fourth cup of this requirement,

(iv) One slice of whole-grain or enriched bread, or an equivalent quantity of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour.

(3) Supplemental food shall contain two of the following four components:

(i) One-half pint (1 cup) of milk,

(ii) One ounce of meat or meat alternate,

(iii) Six fluid ounces of full-strength fruit or vegetable juice (juices shall not be served when milk is served) or three-quarters of a cup of fruit or vegetable,

(iv) One slice of whole-grain or enriched bread, or an equivalent quantity of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour; or three-fourths cup (volume) or one ounce (weight), whichever is less, of whole-grain or enriched or fortified cereal, or an equivalent quantity of any combination of these foods.

(b) The quantities of food specified in subparagraphs (1) and (2) of paragraph (a) of this section are approximate amounts of food to serve 10 to 12 year-old boys and girls. Greater or lesser amounts of these foods may be served if participating children are older or younger and if the sponsor can demonstrate to the satisfaction of the State agency that it has the capability of controlling portion size so as to ensure that variations in portion size are in accordance with the age levels of the children served.

(c) if emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining delivery, the State agency may approve the service of breakfast, lunches, suppers, or supplemental food without milk during the emergency period.

(d) The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases the State agency may approve the service of meals without milk: *Provided,* That an equivalent amount of canned, whole dry, or nonfat dry milk is used in the preparation of the components of all meals. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(e) In American Samoa, Guam, Puerto Rico, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands and the Northern Mariana Islands, the following variations from the meal requirements are authorized: A serving of a starchy vegetable, such as ufi, tanniers, yams, plaintains, sweet potatoes, or a serving of enriched rice or enriched or whole-grain cereal products such as macaroni, dumplings or noodles may be substituted for the bread requirement.

(f) Substitutions may be made by sponsors in paragraph (a) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such food. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statements shall be kept on file by the sponsor.

(g) FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(h) Sponsors approved to serve children under 1 year of age shall be required to comply with the applicable meal patterns contained in the Child Care Food Program regulations (7 CFR Part 226).

§ 225.11 Food service management companies.

(a) Any sponsor may contract with a food service management company for the preparation of unitized meals, with or without milk. Sponsors may, prior to issuance of bids, submit in writing to the State agency, requests for exceptions to unitizing certain components of a meal. Such requests shall include sufficient reasons for the State agency to determine that the exception is necessary to effectively meet the meal requirements of this part. Each State agency shall notify the sponsor in writing of its determination in a timely manner. Any sponsor may contract with a food service management company to operate its entire food service: *Provided, however,* That a sponsor that so employs a food service management company shall remain responsible for assuring that the food service operation is in comformity with its agreement with the State agency and all applicable provisions of this part. Sponsors may contract only with food service management companies registered with the State in which the sponsor will operate, as provided for under § 225.5(t), except that food service management companies which have exclusive contracts with a school shall be exempted from all food service management company registration and competitive bid requirements under this part. This exception does not relieve schools of the responsibility to insure that normally accepted bidding procedures are adhered to before contracting with a food service management company. A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal. Any sponsor entering into a contract with a food service management company shall use the standard form of contract established by its State agency. For sponsors which are public institutions, sponsors desiring to contract only for the management of the Program, and sponsors whose contract with a food service management company will not exceed $10,000 this may be their existing or usual form of contrct if such form of contract has been submitted to and approved by the State agency. In any event, sponsors shall adhere to the procurement standards set forth in § 225.15. Each proposed additional provision to the established form of contract shall be submitted to the State agency for approval.

(1) In the absence of any State or local law, sponsors whose proposed contracts are subject to competitive bidding procedure shall, at a minimum, ensure that:

(i) All proposed contracts shall be publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement shall include the time and place of the bid opening;

(ii) The bids shall be publicly opened; and

(iii) The State agency is notified at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening.

(2) In addition, sponsor shall, at a minimum, when advertising for bids adhere to the following requirements:

(i) The invitation to bid shall not specify a minimum price;

(ii) The invitation to bid shall contain a cycle menu approved by the State agency upon which the bid shall be based;

(iii) The invitation to bid shall contain food specifications and meal quality standards approved by the State agency upon which the bid shall be based;

(iv) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(v) Neither the invitation to bid nor the contract shall provide for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(vi) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(vii) A copy of the food service management company registration determination issued by the State agency shall be submitted by the food service management company with each bid;

(viii) Sponsors shall submit to the State agency copies of all bids received and the reason for selecting the food service management company chosen;

(ix) All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval within 5 working days of receipt.

(b) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations.

(c) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(d) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of such contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the bond within ten days of the awarding of the contract.

(e) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570.

(f) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with § 225.18(b).

§ 225.12 Program payments.

(a) Program payments shall be made to sponsors only after execution of and in accordance with the terms of the agreement with the State agency or the Department. No Program payments shall be made for meals served at a site before the sponsor has received written notification of approval for the site from the State agency.

(b) Reimbursement shall be made to camps only for meals served to children whose eligibility is documented on the basis of family size and income information. Any nonresidential camp reduced to less than four meals per day under § 225.5(j)(1) shall continue to receive reimbursement for only those meals served to children eligible for free or reduced priced school meals.

(c) Sponsors which have executed an agreement may, at the descretion of the State agency, receive start-up payments not earlier than 2 months before beginning food service operations. Start-up payments shall not exceed 20 percent of the amount estimated by the State agency to be needed by a sponsor to administer the Program in accordance with the sponsor's approved administrative budget, as provided for under § 225.9(e). Start-up payments shall be deducted from the first advance payment made to a sponsor for allowable administrative costs.

(d) Payments to all sponsors for administrative costs shall equal the full amount of administrative costs as approved in the sponsor's budget by the State agency except that a sponsor's administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs if the sponsor's level of site participation or the number of meals served to eligible children changes significantly: *Provided, however,* That a sponsor shall not receive payment for administrative costs in excess of its actual expenditures for approved administrative costs or the per meal administrative rates by type as set forth in § 225.8(c) for meals actually served to eligible children, whichever is less.

(e) Payment to a sponsor for operating costs shall not exceed 92.75 cents for each lunch or supper, 51.50 cents for a breakfast and 24.25 cents for supplemental food: *Provided, however,* That the total Program payments paid to a sponsor for operating costs do not exceed the lesser of:

(1) The above rates times the meals by type actually served to eligible children during the Program operation, or

(2) The actual operating costs.

(f) Sponsors shall maintain accurate records to justify the operating costs and administrative costs claimed. Sponsors who wish to claim only for the costs of obtaining food shall maintain accurate records to justify their food costs. In no instance shall Program payments for the costs of obtaining food exceed the per meal operating costs payment rates.

(g) Sponsors shall plan for and prepare or order meals on the basis of participation trends, with the objective of providing only one meal per child at each meal service. Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of meals needed and to reduce the resultant waste, any excess meals that are prepared or ordered may be served to children and may be claimed for reimbursement unless the State agency determines that the sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. In monitoring the number of meals served at a site, the State agency shall withhold reimbursement for those meals served to children which exceed the number of children being served by the site when the State agency determines that the sponsor has not complied with the provisions of this paragraph.

§ 225.13 Program payment procedures.

(a) To be reimbursed under this part, each sponsor shall submit Claims for Reimbursement to the State agency monthly by the 10th calendar

day following the period of operations covered by the Claim. Claims may be submitted more frequently at the discretion of the State agency. Sponsors whose final period of operation is less than 10 calendar days in duration shall submit a combined Claim covering the final period and the period immediately preceding the final period. The State agency shall not be responsible for acting upon any Claim for Reimbursement which is not received by the State agency within 30 calendar days after the close of the sponsor's food service operations, except where the State agency determines that the Claim has been filed late because of circumstances beyond the control of the sponsor. Appropriate payments may then be made if the Claim submitted by the sponsor is valid.

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the required information for Program reports. In submitting a Claim for Reimbursement, in addition to the certification requirements set for the in § 225.5(v), each sponsor shall certify that records are available to support the Claim.

(c) Not later than June 1, July 15, and August 15 of each fiscal year, or in the case of sponsors which operate under a continuous school calendar, the first day of each month of operation, the State agency shall forward advance operating costs payments to each sponsor if a request for such payment was received from the sponsor no later than 30 calendar days prior to the date for each such payment: *Provided, however,* That the State agency shall not release the second month's advance operating costs payment to any sponsor which has not certified that it has held training sessions for its own personnel, including site personnel, with regard to Program duties and responsibilities: *And provided, further,* That no advance operating costs payment shall be made for any month in which the sponsor will serve meals under the Program for less than 10 calendar days. Requests by sponsors for advance operating costs payments received less than 30 calendar days preceding the applicable payment date shall be paid by the State agency within 30 calendar days of receipt.

(d) Each month's advance operating costs payment to any sponsor shall be in an amount equal to: (1) The total operating costs payment for meals served by such sponsor in the same calendar month of the preceding calendar year, or (2) 50 percent of the amount determined by the State agency to be needed by the sponsor for meals, if the sponsor contracts with a food service management company or (3) 65 percent of the amount determined by the State agency to be needed by the sponsor for meals for that month, if the sponsor prepares its own meals, which ever amount is greater: *Provided, however,* That the advance operating costs payment may not exceed the total amount estimated by the State agency to be needed by the sponsor for meals to be served in the month for which the advance operating costs payment is made.

(e) Not later than June 1 and July 15 of each fiscal year, or in the case of sponsors which operate under a continuous school calendar, the first day of each month of operation, the State agency shall forward advance administrative costs payments to each sponsor if a request for such payment was received from the sponsor no later than 30 calendar days prior to the date for each such payment: *Provided, however,* That (1) the State agency shall not release the second month's advance administrative cost payment to any sponsor until the sponsor has certified that it is operating the number of sites for which the administrative budget was approved, and that there has been no significant change in its projected administrative costs since approval of the administrative budget, (2) no advance administrative costs payment shall be made for any month in which the sponsor will operate under the Program for less than 10 calendar days, and (3) in the case of a sponsor that operates less than 10 calendar days in June but at least 10 calendar days in August, the second month's advance administrative costs payment shall be made on August 15. Requests by sponsors for advance administrative costs payments received less than 30 calendar days preceding the applicable payment date shall be paid by the State agency within 30 calendar days of receipt.

(f) Each sponsor's first month's advance administrative costs payment shall be in an amount equal to one third of the amount established by the State agency to be needed by the sponsor to administer the Program. Each sponsor's second month's advance administrative costs payment shall be in an amount equal to one-third of the amount established by the State agency to be needed by the sponsor to administer the Program. In the case of sponsors which will operate 10 calendar days or more in only one month and thereby will qualify for only one advance administrative costs payment the State agency shall provide an advance administrative costs payment of no less than one-half and no more than two-thirds of the amount established by the State agency to be needed by the sponsor as indicated in its approved administrative budget. The State agency shall forward any remaining payment due to a sponsor no later than 45 calendar days following receipt of valid claims: *Provided, however,* That the State agency shall not pay any sponsor for is final claim until the sponsor has certified that it did operate all sites approved in the administrative budget and that there has been no significant change in the projected administrative costs since the preceding claim or, in the case of sponsors which will receive only one month's advance, that there has been no significant change in the projected administrative costs since payment of the inititial advance administrative costs payments. The total Program payment paid to a sponsor for administrative costs shall not exceed the lesser of: (1) Actual expenditures incurred for administrative costs or (2) the per meal administrative rates contained in § 225.8(c) times meals by type served to eligible children.

(g) The sum of any advance operating costs payment and any advance administrative costs payment to a sponsor for one month shall not exceed $40,000: *Provided, however,* That a State agency may make advance payments totalling more than $40,000 to a sponsor for a given month if the State determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and management capability to justify a larger payment.

(h) Any prior Program payment which is under dispute or which is part of a demand for recovery under § 225.14(a) or § 225.14(d) shall be deducted from any advance operating costs payment or advance administrative costs payment.

(i) If the State agency has reason to believe that a sponsor will not be able to submit a valid Claim for Reimbursement covering the period for which advance operating costs payments and advance administrative costs payments have been made the subsequent month's advance operating costs payment and advance administrative costs payment shall be withheld until such time as the State agency has received a valid claim. Sponsors shall repay advance Program payments which are not subsequently deducted from a valid Claim for Reimbursement upon demand by the State agency. Any interest earned by a sponsor on advance operating costs payments and advance administrative costs payments shall be returned to the State agency. In States where FNSRO administers the Program, such interest shall be returned to FNS.

§ 225.14 Claims against sponsors.

(a) State agencies shall disallow any portion of a Claim for Reimbursement

and Promptly recover any Program payment made to a sponsor that was not properly payable under this part. State agencies shall use their own procedures to disallow claims and recover overpayments already made. This shall include court actions, where appropriate. However, the State agency shall notify the sponsor of the reasons for any disallowance or demand, and allow the sponsor full opportunity to submit evidence on appeal as provided for in § 225.5(w). If, in the determination of FNS, a State agency has acted in conformity with the provisions of this part and has made every reasonable effort to recover any overpayment, the State agency shall not be liable for failure to collect an overpayment.

(b) The State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of the final Financial Status Report, exeept that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of any issues raised in the audit.

(c) The amounts recovered by the State agency from sponsors may be utilized, first, to make Program payments to sponsors for the period for which the funds were initially available, and second, to repay any State funds expended in the payment of Claims for Reimbursement under the Program not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

(d) When a State agency disallows a Claim for Reimbursement or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the sponsor of the reasons for such disallowance or demand, and the sponsor shall have full opportunity to submit evidence as provided for in § 225.5(w) or to resubmit a claim for any amount disallowed or demanded.

(e) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts with respect to Program operations, evidence found in audits, investigations or other reviews shall be a basis for non-payment of Claims for Reimbursement.

Subpart D—Miscellaneous Provisions

§ 225.15 Procurement provisions.

(a) This section provides standards for use by sponsors in establishing procedures for the procurement of food, supplies, goods, and other services with Program payments. These standards are furnished to insure that such goods and services are obtained in an effective manner and in compliance with the provisions of applicable Federal laws and Executive Orders.

(b) The Standards contained in this section do not relieve the sponsor of the contractual responsibilities arising under its contracts. The sponsor is the responsible authority, without recourse to the State agency and the Department regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into under the Program. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authorities as may have proper jurisdiction.

(c) Sponsors may use their own procurement regulations which reflect applicable State and local law, rules and regulations: *Provided*, That procurements made with Program payments adhere to the provisions outlined in the Office of Management and Budget Circulars A-102 and A-110 and to the standards set forth as follows:

(1) The sponsor shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Program payments. The officers, employees, or agents, of a sponsor shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors on their own behalf or for others. To the extent permissible by State or local laws, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the sponsor's officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The sponsor shall be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(3) All sponsors shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(i) Proposed procurement actions shall be reviewed by sponsor's officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured: Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and, when so used, the specific features of the name brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by the sponsors to utilize small business and minority owned business as sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Program payments.

(iv) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the program. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (c)(3)(vi) of this section is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the sponsor, price and other factors considered. (Factors such as discounts, transportation costs and taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the sponsor. Any or all bids may be rejected when it is in the sponsor's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations.

(vi) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the sponsor if:

(*a*) The public exigency will not permit the delay incident to advertising; or

(*b*) The material or service to be procured is available from only one person or firm: (All contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the State agency for prior approval); or

(c) The aggregate amount involved does not exceed $10,000; or

(*d*) The contract is for personal or professional services, or for any service to be rendered by a university, college or other educational institutions; or

(*e*) No acceptable bids have been received after formal advertising; or

(*f*) The purchases are for highly perishable materials, for materials or services where the prices are established by law, if procured at the lowest applicable price for technical items or equipment requiring standardization and interchangeability of parts with existing equipment for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(*g*) Otherwise authorized by law, rules, or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records or files for purchases in amounts in excess of $10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(ix) A system for contract administration shall be maintained to assure contractual conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(d) The sponsor shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subcontracts:

(1) Contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in amounts which are in excess of $10,000, shall contain suitable provisions for termination by the sponsor, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by sponsors and their contractors or subcontractors having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) Where applicable, all contracts awarded by sponsors in excess of $2,500, which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or work-week is permissible: *Provided,* That the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week.

(5) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods, or for exploration into fields which directly concern public health, safety, or welfare, or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department and the sponsor. The contractor shall be advised as to the source of additional information regarding these matters.

(6) All negotiated contracts (except those of $10,000 or less) awarded by sponsors shall include a provision to the effect that the State agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

(7) Contracts and subcontracts of amounts in excess of $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the State agency and the Regional Office of the Environmental Protection Agency.

§ 225.16 Prohibitions.

(a) The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(b) Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

§ 225.17 Free Meal Policy.

(a) The State agency shall require each applicant sponsor to develop, at the time the applicant sponsor applies for Program participation, a written policy statement concerning free meals to be used uniformly at all sites under its jurisdiction as required in this section. Applicant sponsors shall not be approved for participation unless the free meal policy statement has been approved.

(b) A sponsor which serves all meals free to attending children shall develop a policy statement which consists of an assurance to the State agency that all children are served the same meals at no separate charge, regardless of race, color, handicap, or national origin, and that there is no discrimination in the course of the food service.

(c) A camp which serves meals at no separate charge to attending children shall develop a policy statement which consists of an assurance to the State agency that all children are served the same meals at no separate charge, regardless of race, color, or national origin and that there is no discrimination in the course of the food service.

(d) A camp which charges separately for meals shall develop a policy statement for determining eligibility for free meals which shall include the following:

(1) The specific criteria to be used in determining eligibility for free meals. The camp's standards of eligibility shall be in conformity with the State's family-size and income standards for free and reduced price school meals.

(2) A description of the method or methods to be used in accepting applications from families for free meals.

(3) A description of the method or methods to be used to collect payments from those children paying the full price of the meal which will pro-

tect the anonymity of the children receiving a free meal.

(4) An assurance that the camp will establish a hearing procedure which provides: (i) A simple, publicly announced method for a family to make an oral or written request for a hearing; (ii) an opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal; (iii) an opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal; (iv) that the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing; (v) an opportunity for the family to present oral or documentary evidence and agreements supporting its position without undue interference; (vi) an opportunity for the family to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses; (vii) that the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal; (viii) that the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record; (ix) that the family and any designated representatives shall be notified in writing of the decision of the hearing official; (x) that a written record shall be prepared with respect to each hearing, which shall include the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the family of the decision of the hearing official; and (xi) that such written record of each hearing shall be preserved for a period of three years and shall be available for examination by the family or its representatives at any reasonable time and place during such period.

(5) An assurance that there will be no identification of free meal recipients and no discrimination against any child on the basis of race, color, handicap, or national origin.

(e) The hearing procedure prescribed under paragraph (d)(4) of this section shall be followed when a camp challenges the eligibility of any child for a free meal. During the pendency of the challenge, the child shall continue to receive the free meal to which he is entitled under the eligibility standards announced by the camp based upon the information supplied in the application made by the family.

(f) Each sponsor shall make available on an annual basis to the information media serving the area from which the sponsor draws its attendance a public release announcing the availability of free meals to children. Each camp shall make available on an annual basis to all participants an announcement of the availability of free meals to children meeting the approved eligibility criteria. The public announcement must also state that meals are available to all children in attendance without regard to race, color, or national origin.

§ 225.18 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with Attachment K of the Office of Management and Budget Circular A-110 (41 FR 32016, July 30, 1976), or Attachment L of the Office of Management and Budget Circular A-102 (42 FR 45828, September 12, 1977), whichever is applicable.

(b) *Termination for cause.* The Department may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. The Department shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date and shall allow the State 30 calendar days to respond. In instances where the State does respond the Department shall inform the State of its final determination no later than 30 calendar days after the State responds. A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by FNS or the State agency that the sponsor has failed to comply with the conditions of the Program. When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* The Department and the State agency may terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations, as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in accordance with this paragraph.

(d) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part: *Provided, however,* That such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. The State agency shall, prior to imposing any additional requirements, receive approval from FNSRO.

§ 225.19 Program Information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, New Jersey 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30309.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, Illinois 60605.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430D, Denver, Colorado 80211.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, Texas 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust

Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(Catalog of Federal Domestic Assistance Programs No. 10.559)

NOTE.—A final impact analysis statement has been prepared and can be obtained by contacting Jordan Benderly, Director, Child Care and Summer Programs Division, FNS, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-9072.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Dated: December 26, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 78-36365 Filed 12-29-78; 8:45 am]

[3410-08-M]

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amdt. No. 97]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

FLUE CURED TOBACCO POUNDAGE QUOTA ENDORSEMENT

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Flue Cured Tobacco Poundage Quota Endorsement to provide that the flue cured tobacco support price for the previous crop year be used by the Federal Crop Insurance Corporation to establish the amount of insurance, rather than the current crop year support price, starting with the 1979 crop year.

EFFECTIVE DATE: January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: On Monday, August 28, 1978, there was published in the FEDERAL REGISTER (43 FR 38411) a notice of proposed rule making by the Federal Crop Insurance Corporation which would amend the Flue Cured Tobacco Poundage Quota Endorsement to provide that the flue cured tobacco support price for the previous crop year be used to established the amount of insurance rather than the current crop year's support price.

The public was given 60 days in which to submit written comments, data, and views on this proposal. One comment was received from the American Farm Bureau Federation which took issue with the Corporation's determination to use the previous crop year's support price in computing the amount of insurance coverage. The Tobacco Advisory Committee of the American Farm Bureau Federation recommended to the Bureau that it oppose the proposed regulation on the grounds that, according to the comments, the U.S. Department of Agriculture announces the average level of price support for flue cured tobacco about March 1, with the final support price announced before harvest, or about the first week in July, thus affording the Corporation enough time to determine premium, coverage, and value.

In its direct reply to the Bureau, the Corporation pointed out that, although the preliminary support prices are normally announced earlier, the final support price has not been available usually until May. The insurance contract provides that current insureds must decide by January or February whether they wish to continue their insurance for the next crop year. The Corporation is presently unable to tell producers with any certainty what level of dollar protection they will have until the final support prices are announced. The same difficulty exists with those producers who do not have the insurance, but who are considering getting it. The final support price is generally announced well past the final date for accepting applications for insurance for a particular crop year. In either case, the Corporation is only able to provide preliminary support price quotation, requiring contractual revision when the final support price is announced, which results in an unsatisfactory method both for growers and the Corporation.

In its proposed rule published on August 28, 1978 (43 FR 38411), the Corporation indicated that the proposed change would allow it to disregard the bottom four leaves of flue cured tobacco (downstalk tobacco) in determining the production to count in loss adjustment when such four leaves are not harvested due to changes in the flue cured tobacco poundage quota marketing regulation revisions by the Agricultural Stabilization and Conservation Service (ASCS).

The Corporation, after reviewing this portion of the proposed rule, determined that further explanation was needed to clarify the relationship between the downstalk tobacco and the change from current to previous year's support price usage.

Under the provisions of the ASCS flue cured tobacco poundage quota marketing regulations, producers are allowed a 20 percent increase in acreage if they agree not to harvest the bottom four leaves, thus an incentive for keeping the downstalk tobacco off the market. Normally, the Corporation appraises and counts all unharvested tobacco in determining an insurance loss. In order to encourage the effort to keep this downstalk tobacco off the market, the Corporation has provided that these bottom four leaves will not be counted in determining a loss if they are not harvested. The use of the previous year's support price rather than the current year somewhat compensates the Corporation for disregarding these four bottom leaves in such cases.

The Corporation appreciates the comments submitted by the American Farm Bureau Federation in response to the notice of proposed rule making, and after giving such comments careful consideration, has determined that in view of the need to provide firm dollar figures, as explained above, that the proposed rule as published in the FEDERAL REGISTER on August 28, 1978 (43 FR 38411), will remain unchanged and that it is hereby issued as a final rule effective for the 1979 and succeeding crop years.

FINAL RULE

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby amends, effective with the 1979 and succeeding crop years, the Flue Cured Tobacco Poundage Quota Endorsement (7 CFR 401.150) as appearing in the FEDERAL REGISTER on December 10, 1976 (41 FR 53969), by amending such regulations as found in 7 CFR 401.150(4)(b) to read as follows:

§ 401.150 The Flue Cured Tobacco Poundage Quota Endorsement.

* * * * *

(b) * * *

4. *Applicable poundage, amount of insurance, and premium for a unit.* * * *

(b) The amount of insurance for a unit shall be the dollar amount determined by multiplying the applicable poundage for the unit as determined in subsection (a) or (c) of this section by the applicable percentage of guarantee for the tobacco farm shown on the actuarial table for this purpose and the result by the previous year's flue cured tobacco support price per pound (rounded to

the nearest cent) less 3 cents for warehouse charges.

* * * * *

(Secs. 506 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).)

Effective date: January 2, 1979.

Dated: December 21, 1978.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

Dated: December 21, 1978.

JAMES D. DEAL,
Manager.

[FR Doc. 78-36429 Filed 12-29-78; 8:45 am]

[3410-02-M]

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

[Lemon Reg. 179; Lemon Reg. 178, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that maybe shipped to the fresh market during the period Dec. 31, 1978–Jan. 6, 1979, and increases the quantity of such lemons that may be so shipped during the period December 24-30. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 31, 1978, and the amendment is effective for the period December 24-30, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on December 22, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is declining.

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

§ 910.479 Lemon Regulation 179.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period December 31, 1978, through January 6, 1979, is established at 185,000 cartons.

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

§ 910.478 [Amended].

2. Paragraph (a) of § 910.478 Lemon Regulation 178 (43 FR 59827) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period December 24, 1978, through December 30, 1978, is established at 200,000 cartons."

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

Dated: December 28, 1978.

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

[FR Doc. 78-36466 Filed 12-27-78; 8:45 am]

[3410-02-M]

[Papaya Reg. 9]

PART 928—PAPAYAS GROWN IN HAWAII

Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets grade and size requirements for papayas grown in Hawaii for the 1979 season and is needed to provide orderly marketing in the interest of producers and consumers.

EFFECTIVE DATES: January 1, 1979, through December 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: On December 7, 1978, notice was published in the FEDERAL REGISTER (43 FR 57259) inviting written comments not later than December 22, 1978, on proposed grade and size requirements for shipments of 1979 season Hawaiian papayas, under Marketing Order No. 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Practically all the U.S. commercial papaya production is grown in Hawaii. In recent years production has increased substantially, ranging from 15 to 30 percent per year. The fruit is not well known to consumers in many market areas, and the thrust of the committee's promotional activity carried out under the marketing agreement and order is to introduce the fruit to prospective consumers as well as to encourage increased purchases by those who already are acquainted with the fruit. To expand and to maintain markets it is essential that the fruit offered to consumers be of a quality that will result in consumer satisfaction.

The regulation is based upon an appraisal of the prospective supply and market situation for papayas during the period January 1-December 31, 1979. It is designed to assure consumers of an adequate supply of acceptable quality papayas consistent with the quality and size composition of the crop. The committee estimates that 1979 production of Hawaiian papayas will total 70.0 million pounds. Disposition objectives are for 57.0 million pounds to fresh sales and the remaining 13.0 million pounds to processing outlets. In-state fresh sales are projected at 14.5 million pounds for 1979,

compared to 15.0 million pounds estimated for 1978. It is anticipated that out-of-state fresh sales will amount to 42.5 million pounds, .5 million pounds more than in 1978.

After consideration of all relevant matters presented, including the proposal in the notice and other available information, it is hereby found that the following regulation is in accordance with the marketing agreement and order and will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of papayas will be regulated only through December 31, 1978, by Papaya Regulation 8, as amended, and, in order to effectuate the declared policy of the act, this regulation should be effective not later than January 1, 1979, to provide continuity of regulation; (2) this regulation is the same as that which was specified in the notice to which no exceptions were submitted; and (3) compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective date thereof.

§ 928.309 Papaya Regulation 9.

Order. (a) No handler shall ship any container of papayas (except immature papayas handled pursuant to § 928.152):

(1) During the period January 1 through December 31, 1979, to any destination within the production area unless said papayas grade at least Hawaii No. 1, except that the allowable tolerances for defects shall be 5 percent: *Provided,* That not more than 3 percent shall be permitted for serious damage, not more than 1 percent for immature fruit, and not more than 1 percent for decay: *Provided further,* That such papayas individually weigh not less than 13 ounces.

(2) During the period January 1 through December 31, 1979, to any export destination unless said papayas grade at least Hawaii No. 1, except they shall be free from injury caused by bruises and free from deep scars; and scars, when scaly, cracked or not smooth, shall not aggregate a circle greater than 1 inch in diameter, or when smooth shall not aggregate more than 7.5 percent of the surface of the fruit, except that the total tolerance for all defects shall not exceed 3 percent: *Provided,* That of this amount not more than 1 percent shall be for immature fruit and not more than 1 percent shall be for decay: *Provided further,* That such papayas shall individually weigh not less than 11 ounces each.

(b) When used herein "Hawaii No. 1" shall have the same meaning as set forth in the Standards for Hawaii Grown Papayas, as amended, Subsection 5.32, Section 5, Regulation 1, Division of Marketing and Consumers Services, Department of Agriculture, State of Hawaii, issued pursuant to Section 147-4, Part I, and Section 147-22, Part II, Chapter 147, Title 11, Volume 3, Hawaii Revised Statutes. All other terms shall have the same meaning as when used in the marketing agreement and order.

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

Dated: December 27, 1978, to become effective January 1, 1979.

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

[FR Doc. 78-36452 Filed 12-29-78; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

Amendment of Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy hereby amends the regulations for its program of weatherization assistance for low-income persons. The amendments are based upon experience gained in the first year of program implementation and introduce greater flexibility into the administration of the program at the State and local levels. Several of the changes permit payment with program funds of certain previously ineligible costs.

EFFECTIVE DATE: January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary M. Bell, Director, Office of Weatherization Assistance, Department of Energy, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-8666.

Laurence J. Hyman, Office of General Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-8788.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Comments:
(a) Issues Beyond the Scope of this Rulemaking.
(b) Expedited Effective Date.
(c) Definitions.
(d) Allowable expenditures:
1. Allowable Expenditures for Repair Materials.
2. Other Allowable Expenditures.
(e) Oversight, Training and Technical Assistance.
(f) Administrative Review.

I. INTRODUCTION

On August 4, 1978, the Department of Energy (DOE) published a proposal in the FEDERAL REGISTER, 43 FR 34493, to amend the regulations for its program of weatherization assistance for low-income persons. The regulations currently in effect were promulgated by the Federal Energy Administration (FEA) on May 25, 1977, 10 C.F.R. 440, pursuant to Part A of Title IV of the Energy Conservation and Production Act (the Act), Pub. L. 94-385, 42 U.S.C. 6861 *et. seq.* On October 1, 1977, pursuant to the DOE Organization Act, Pub. L. 95-91, 42 U.S.C. 7101 *et. seq.*, the DOE assumed the responsibility of FEA for the weatherization assistance program.

The DOE received 114 comments on the proposed amendments during the 60-day comment period, including those of the twelve individuals who testified at the public hearing held on September 6, 1978. Most commenters strongly supported the increase in flexibility in the administration of the program proposed in the August 4 notice, but suggestions were made that resulted in certain changes in the final rule. The commenters critical of the proposal asserted that the DOE needed to introduce even more flexibility in the administration of the program at the local level.

II. DISCUSSION OF COMMENTS

(A) ISSUES BEYOND THE SCOPE OF THIS RULEMAKING

A number of commenters recommended changes to the regulations which could not be implemented under the statutory authority in effect at the time of the proposal. As the result of enactment of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, on November 9, 1978, the DOE plans soon to amend its regulations with regard to increasing the maximum expenditure per dwelling unit, raising the $50 limitation on expenditures for mechanical equipment, increasing the income eligibility criteria, and modifying the waiver procedures involving the State policy advisory councils.

A number of other comments were directed at issues beyond the scope of

the August 4 notice. Possibly foremost among these issues was labor. As noted in the proposal, the DOE was unable to address labor comprehensively in this rulemaking because the Act requires that grantees, to the maximum extent practicable, use volunteers and training participants, and public service employment workers, pursuant to the Comprehensive Employment and Training Act of 1976 (CETA). The proposal further noted that currently the DOE is taking steps in areas largely other than modifying the regulations in order to minimize the labor problem. As an example of this effort the proposal cited the Memorandum of Understanding, among the Department of Labor, the Community Services Administration and the FEA.

Since increased funding for labor would decrease the funds available for weatherization materials, the DOE considers it inadvisable to fund labor, other than some onsite supervisory personnel, from program grants at this time. The DOE further notes that many commenters predicated part of their request for funding of labor on the belief that Congressional appropriations for CETA were to end in September 1978. CETA funding has, however, been continued through the next program year. The DOE intends to continue to monitor the labor situation to determine if changing circumstances and conditions warrant a change in the regulations.

Also beyond the scope of the current rulemaking were comments requesting that:

(1) The Regional Representative of the DOE be given the authority to waive some of the restrictions on allowable expenditures in response to local conditions.

(2) The DOE require consulation with the appropriate State Historic Preservation Officer before allowing weatherization work to proceed in buildings in a listed historic district. The DOE believes that improvements made to dwelling units under this program need not be performed in a manner inconsistent with the goals of historic preservation and encourages grantees and subgrantees to give continuing attention to these goals.

(3) The DOE waive the requirement of § 440.15(b)(1) that the written permission of the property owner be obtained before weatherizing rental dwelling units in those cases in which the owner has abandoned the building or the municipality has seized title for nonpayment of taxes.

(4) The DOE take steps to obtain relaxation of limits prescribed by the department of the Treasury on the time a State can hold grant funds before disbursing them to its subgrantees.

(5) The DOE reduce some of the paperwork required to determine the weatherization work to be performed on a dwelling unit. While the DOE wants to avoid program red tape, it also considers it important to have a record of the actual condition of dwelling units used as a basis for weatherization activities.

(6) The DOE allow weatherized homes to be revisited to allow repairs to furnaces and materials previously installed.

(7) The DOE increase the present 10 percent allowance for administrative costs.

(8) The DOE revise the standards for weatherization materials eligible under the program.

The DOE will consider these comments to determine if they need to be addressed in subsequent rulemakings.

(B) EXPEDITED EFFECTIVE DATE

The DOE specifically solicited comments on the advisability of an expedited effective date for the final rule. The eleven commenters addressing this issue unanimously urged that the DOE make the final amendments effective on the date of publication or only very shortly thereafter. After considering these comments and the need for an early effective date demonstrated by the subgrantees, the DOE is setting the effective date as the date of publication of the final rule in the FEDERAL REGISTER.

(C) DEFINITIONS, § 440.3

The DOE received fifteen comments on the proposed addition of a definition of "repair materials." The commenters supported the addition of the term "repair materials" and its inclusion within the allowable expenditures for "weatherization materials." However, some took exception to the characterization of some items designated in the definition as "repair materials." Chief among these items were "windows and doors to replace those which cannot be repaired * * *." Commenters stated that such items reduced infiltration, a prerequisite for any other weatherization work to be effective, and therefore were properly considered "weatherization materials." Commenters also suggested restricting the definition to certain specific items.

The DOE notes that it proposed a definition of repair materials to allow repairs "incidental to the weatherization work but * * * nevertheless necessary for the weatherization work to be properly performed * * *." Consideration of the comments has led the DOE to agree that "windows and doors to replace those which cannot otherwise be repaired" are not incidental to the weatherization work, but rather an integral part of the work to be performed. The DOE has, therefore, removed this language from the final definition of "repair materials." This change will allow replacement of windows or doors, which will be treated as weatherization materials when the replacement is "intended primarily to improve the heating or cooling efficiency of a dwelling unit * * *"

The DOE has decided, however, not to remove from the definition of repair materials the language restricting the use of protective materials, such as paint, to the sealing of other materials installed under this program. The DOE remains concerned about the potential for abuse were there not some limitation on the use of protective materials.

Regarding the definition of "weatherization materials", commenters recommended specific items, such as screens, solar film, attic fans and shades, for inclusion in the nonexclusive list of weatherization materials.

The DOE does not consider separate screens or screen doors weatherization materials, although screens are often permissible as integral parts of triple-track storm windows. Items that improve attic ventilation, such as attic fans, were included in the proposed list of "weatherization materials." However, all items, including the items listed in the definition, must in the particular case satisfy the criteria of being items "intended primarily to improve the heating or cooling efficiency of a dwelling unit" or "repair materials". In addition, as required by § 440.17 (a) and (b), all items must also meet or exceed any applicable program standards for these materials.

(D) ALLOWABLE EXPENDITURES, § 440.16

1. *Allowable expenditures for repair materials.* Forty-seven respondents addressed themselves to the proposed $100 limitation on expenditures for repair materials and repairs to the heating source. All forty-seven asserted that in many instances $100 is insufficient to meet the need for repairs to both the dwelling and the heating source. They asserted the program would incompletely remedy the problems existing in those dwellings.

The DOE recognizes that low-income persons often occupy badly deteriorated housing in need of extensive repairs or rehabilitation.

The DOE has attempted in this rulemaking to strike a reasonable balance in the proportion of grant funds used directly for weatherization and the proportion used for materials to make the weatherization work effective. It should be recognized in this regard that under the NECPA revisions to the program, incidental repairs to make the installation of weatherization materials effective are limited to $100.

Among their options for additional resources in situations where repairs to dwelling units may need to be extensive, grantees and subgrantees should consider turning to such rehabilitation funds as are available under other Federal, State or local programs.

2. *Other allowable expenditures.* Fourteen respondents addressed generally the proposed revision to § 440.16(a), Allowable Expenditures. These commenters supported the proposed greater flexibility in treating certain costs as allowable expenditures.

A total of seventeen commenters specifically addressed proposed § 440.16(a)(2), which would allow a variety of nonmaterials costs under an "umbrella" restriction of 30 percent of the grant amount exclusive of administrative expenses. Subject to the 30 percent overall limit, expenditures for any item under the "umbrella" could be at levels reflecting the needs of the particular program area. Seven commenters supported this "umbrella" approach as proposed. Ten of the seventeen, however, considered 30 percent to be insufficient, and proposed amounts up to 60 percent of the grant funds be used for program support, including labor.

The DOE believes that the 30 percent limit should not be raised at this time, preferring a trial period for the 30 percent ceiling and noting that any further increase would almost necessarily reduce amounts available for the purchase of weatherization materials. The Act is specific in its emphasis on the use of grant funds to the maximum extent practicable for the purchase of weatherization materials.

Several commenters also argued that certain specific categories of expenditures under proposed § 440.16(a)(2), because of their magnitude, should be taken out of the 30 percent "umbrella" restriction. Additionally, some commenters requested that the items included within the "umbrella" be modified in various ways.

The allocation for transportation costs, for example, was declared insufficient by some program operators with large project areas or widely dispersed program recipients. One commenter requested that the DOE allow expenditures for the maintenance and operation of tools and equipment as well as for vehicles. And one commenter suggested that the cost of employment of on-site supervisory personnel, included in the proposed 30 percent "umbrella", could be supplemented by paying any employer taxes pursuant to § 440.16(a)(5), which is not under the "umbrella" and which allows "taxes for other allowable expenditures."

The DOE intends that the term "the cost of employment of on-site supervisory personnel" comprehend all costs, including any taxes, incident to the employment of on-site supervisory personnel and has modified the final rule to clarify this matter. DOE agrees, however, that maintenance expenses for tools and equipment should be included as allowable expenses, and has therefore added an appropriate provision under the "umbrella".

Regarding transportation costs, since a program manager has substantial flexibility in allocating funds to individual items so long as their total does not exceed the 30 percent ceiling, the DOE has determined not to separate transportation costs from the other costs under the "umbrella".

Finally, one of the commenters requested that the DOE allow the expenditure of grant funds for the payment of private contractors to repair heating systems. The DOE recognizes that many local building codes require repairs to heating systems to be performed by licensed personnel. Therefore, the final rulemaking does not prohibit payment to contractors to repair heating systems, within the limits set by the $100 ceiling of § 440.16(a)(4).

(E) OVERSIGHT, TRAINING AND TECHNICAL ASSISTANCE, § 440.20

Thirty-four commenters supported a set-aside of funds for training and technical assistance to grantees and subgrantees. Two commenters stated that a 10 percent set-aside for training and technical assistance would be excessive and recommended that the amount be reduced to 3 percent of the funds appropriated.

As appropriate, the DOE will exercise its discretion to reserve up to a 10 percent set-aside for technical assistance, but will provide only as much training and technical assistance as is necessary. The DOE anticipates that successively less money will be required for technical assistance as grantees and subgrantees acquire experience in performing weatherization activities.

One commenter suggested modifying proposed § 440.20(e) to provide for a comprehensive national plan for implementation through "the entities with a demonstrated capacity in developing and implementing appropriate technology." The DOE does not believe it advisable in this rule to narrow its discretion in using technical assistance funds. Therefore, the DOE is retaining the change to § 440.20 as proposed.

(F) ADMINISTRATIVE REVIEW, § 440.30

With respect to appeals by State or local applicants of adverse determinations of Regional Representatives, a change within § 440.30(h) was proposed to provide: "If no action has been taken by the Secretary after the expiration of the 21-day working period, the Secretary shall be deemed to have approved the determination of the Regional Representative." Commenters asked that the Secretary be required to act upon all such determinations by Regional Representatives. The DOE believes that even if the Secretary does not take specific action to indicate his position on a particular appeal, the interests of the State or local applicant are well served. The change in § 440.30 is intended to clarify that final agency action has been taken on a particular appeal if the Secretary takes no action within 21 working days.

This rule was developed in accordance with Executive Order 12044, "Improving Government Regulations." In compliance with the Executive Order, the proposal received a 60-day public comment period, and a regulatory analysis was determined not to be necessary.

Pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et. seq.*, the environmental impacts associated with implementation of the weatherization program were reviewed in a programmatic environmental assessment which was made available to the public on March 31, 1977. DOE has determined that no further environmental review is necessary to support issuance of these regulations.

(Energy Conservation and Production Act, Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-295, as amended; Department of Energy Organization Act, Pub. L. 95-91; Executive Order 12009; Executive Order 12044)

In consideration of the foregoing, Part 440 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective January 2, 1979.

Issued in Washington, D.C., December 27, 1978.

OMI WALDEN,
Assistant Secretary, Conservation and Solar Applications, Department of Energy.

§ 440.3 [Amended]

1. Section 440.3 is amended by deleting the definitions of "Administrator" "FEA" and "Regional Administrator" and by adding, in the appropriate alphabetical order, definitions of "DOE", "Regional Representative", "Repair materials", "Secretary" and "Skirting" as follows:

* * * * *

"DOE" means the Department of Energy.

* * * * *

"Regional Representative" means a Regional Representative of the Department of Energy.

* * * * *

"Repair materials" means items necessary for the effective performance or preservation of other weatherization materials. Repair materials include, but are not limited to, lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped; roofing materials used as a patch to repair leaks which would damage insulation installed under this program; materials used as a patch to reduce infiltration through the building envelope; and protective materials, such as paint, to seal materials installed under this program.

* * * * *

"Secretary" means the Secretary of the Department of Energy.

* * * * *

"Skirting" means material used to border the bottom of a dwelling unit to prevent infiltration.

* * * * *

2. Section 440.3 is further amended by revising the definition of "Weatherization materials" to read as follows:

* * * * *

"Weatherization materials" means items intended primarily to improve the heating or cooling efficiency of a dwelling unit and repair materials. Weatherization materials include, but are not limited to, ceiling, wall, floor, and duct insulation; vapor barriers; storm windows and doors; items to improve attic ventilation; skirting; and caulking and weatherstripping. Weatherization materials do not include mechanical equipment valued in excess of $50 per dwelling unit.

3. Part 440, Weatherization Assistance for Low-Income Persons, is amended by changing all references to the terms "Administrator", "FEA" and "Regional Administrator" to "Secretary", "DOE" and "Regional Representative", respectively.

§ 440.10 [Amended]

4. Section 440.10, paragraph (b), is amended by inserting the words "from available funds" between the words "State" and "as follows" in the initial clause.

§ 440.16 [Amended]

5. Section 440.16, paragraph (a), is revised to read as follows:

(a) To the maximum extent practicable, the grant funds provided to a grantee under this part shall be used for the purchase of weatherization materials. Allowable expenditures under this part include only the following—

(1) The cost of purchase, delivery, and storage of weatherization materials;

(2) An amount, not to exceed 30 percent of the grant funds to be used for allowable expenditures exclusive of administrative expenses, for—

(i) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(ii) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(iii) Maintenance of tools and equipment;

(iv) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to the DOE for prior approval in every instance; and

(v) The cost of employment of onsite supervisory personnel;

(3) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(4) The cost, not to exceed $100 per dwelling unit, of—

(i) Repair materials; and

(ii) Repairs to heating sources;

(5) Taxes related to other allowable expenditures, except this cost of employment of on-site supervisory personnel; and

(6) Allowable administrative expenses under paragraph (b) of this section.

6. Section 440.16, paragraph (b), is amended by deleting the third sentence.

§ 440.20 [Amended]

7. Section 440.20 is amended by revising the section heading to read "Oversight, Training and Technical Assistance" and by adding a new paragraph (e) to read as follows:

* * * * *

(e) The Secretary may reserve from the funds appropriated for any fiscal year an amount, not to exceed 10 percent, to provide, directly or indirectly, training and technical assistance to any grantee or subgrantee.

§ 440.30 [Amended]

8. Section 440.30(h) is amended by revising the last sentence to read as follows:

* * * * *

If no action has been taken by the Secretary after the expiration of the 21-working-day period, the Secretary shall be deemed to have approved the determination of the Regional Representative.

[FR Doc. 78-36469 Filed 12-28-78; 2:57 pm.]

[8025-01-M]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 121—SMALL BUSINESS SIZE STANDARDS

Procedures for Size Determinations; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; Correction.

SUMMARY: This corrects a final rule published in the FEDERAL REGISTER on March 31, 1978 (43 FR 13498) relating to procedures for size determinations.

DATE: Effective January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Stephen Klein, Office of General Counsel, Small Business Administration, Washington, D.C. 20416, 202-653-6762.

In FR Doc. 78-8489 appearing at page 13498 in the issue for Friday, March 31, 1978, on page 13499 the amendment to Section 121.3-2 (u) should have read "Section 121.3-2 (v) is amended * * *" and para (u) should have read "(v) 'Protest' means * * *"

Dated: December 26, 1978.

OLETA F. WAUGH,
Federal Register Liaison Officer.

[FR Doc. 78-36432 Filed 12-29-78; 8:45 am]

[8025-01-M]

[Rev. 13, Amdt. 25]

PART 121—SMALL BUSINESS SIZE STANDARDS

Special Salvage Timber Sales (SSTS) Set-Aside for Preferential Treatment for Small Business Concerns

AGENCY: Small Business Administration.

ACTION: Final Rule.

SUMMARY: This document establishes the basic rule governing the administration of the Special Salvage Timber Sales (SSTS) program effective with publication. The purpose of the SSTS program and its implementation is to assist qualified small busi-

ness logging and timber manufacturing firms to operate on additional salvage timber volume designated by the U.S. Forest Service (USFS). Set-aside sales preferentially offered under this SBA/USFS joint SSTS program are separate and distinct from the existing small business set-aside program involving USFS timber. The SBA/USFS will jointly test the SSTS program on a limited number of forests during Calendar Year 1979. Changes to the program are dependent on the test results and annual review. It is anticipated that the program will be expanded nationally upon completion of the test and reviewed annually for 2 succeeding years to ensure the program fulfills its intended purpose. The SSTS size standard and related supplementary information are outlined below. Applicable USFS policy and procedures are being published as a separate FEDERAL REGISTER notification.

EFFECTIVE DATE: January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Roland E. Berg, Chief, Property Sales Assistance Division, Telephone: (202) 753-6078/6079.

SUPPLEMENTARY INFORMATION:

GENERAL

On October 3 and 20, 1978, the SBA and USFS published proposed rules and policy which outlined operating procedures for administering the SSTS program. The adopted test program, as outlined below, is essentially as proposed and as discussed during public meetings held prior to publication of the proposed program. The test forests are outlined in the USFS Federal Register notification, which is being published under separate cover.

SUMMARY OF COMMENTS

The majority of comments received supported the proposed program. Comments received primarily addressed the following: The application of the 30/70 rule was questioned by several respondents, was generally supported by mill operators, and opposed as too restrictive by small loggers. This procedure requires that no more than 30 percent of the sale sawtimber volume can be sold to firms with more than 500 employees. The adopted policy provides for general application of the 30/70 requirement except where it is determined that a competitive market for the logs does not exist. This determination will be made jointly by USFS/SBA representatives. Crediting of the SSTS volume by size of the ultimate manufacturer to the 6-month analysis for the regular set-aside program (500-employee size standard) was challenged by many. Consideration was given to excluding this volume; however, with the adoption of the 30/70 rule and the charging of all SSTS volume to the size of the manufacturer, charging of volume was considered equitable. A major concern addressed was making available additional volume by the USFS, particularly that timber volume reported as going to waste in the forests. It was agreed that the National Forest Management Act of 1976 (NFMA-76) would, through the use of salvage funds, provide for the generation of the additional timber necessary to support the SSTS program; several comments were addressed at establishing an individual SSTS volume limit. Based on other program limitations, it was agreed that this is not appropriate for the test and would restrict sound USFS sales management. There were no comments received regarding the use of a size standard other than the proposed SSTS 25-employee ceiling. All of the comments received were carefully considered. All of the proposed procedures are subject to USFS/SBA review and appropriate revisions as a result of the test program.

PROGRAM GUIDELINES

The special guidelines to be followed in the establishment and implementation of a 1-year pilot test of the program are: (a) The applicable SBA size standard definition for eligible concerns is to limit this program to a small business concern that: (1) Is primarily engaged in the logging or forest products industry, (2) is independently owned and operated, (3) is not dominant in its field of operation, and (4) together with its affiliates, its number of employees has not exceeded 25 persons during any pay period for the past 12 months; (b) funding for the SSTS program would generally come from the revolving salvage sale account established by the National Forest Management Act of 1976, and that account would not be limited to the SSTS program; (c) "salvage" would be defined as "insect-infested, dead, damaged, or down timber" as provided in the National Forest Management Act; (d) in general, the 30/70 rule will apply to the SSTS program. This rule requires that no more than 30 percent of the advertised sawtimber volume of a given sale may be manufactured by concerns exceeding 500 employees. Exception to the rule will be agreed to by the appropriate SBA area industrial specialist and the USFS representative. The prime basis for exception to the 30/70 rule will be where competition for manufacturing is lacking; competition is considered to exist where there are two or more qualified mills in the market area. The advertised sawtimber volume for SSTS program purchases by nonmanufacturers will be accounted for and be credited to large or small business based on the estimated distribution for manufacturing purposes. The crediting to the appropriate industry size, based on anticipated distribution, insures full compatibility with the small business timber set-aside 6-month period analyses; (e) specific individual sale volume limits will not be prescribed but sales of sawtimber will be defined and conducted as follows: (1) Sale period no more than 1 year, (2) sale will involve only minor road construction or other improvements, (3) sale will not include catastrophic damage, (4) relatively small sales to be completed by SSTS defined logger/forest products concerns of average capability in the area, (5) sales will be jointly selected by the appropriate Forest Service and the respective SBA representatives and will be comprised of timber normally used by small business in the market area, (6) sales procedures will include self-certification. Appropriate reports will be required to permit monitoring of the program, (7) bidding procedures and other applicable requirements, unless otherwise stated above, will be in accordance with existing procedures/regulations; (f) the program will be tested in limited number of forests in order to allow flexibility and alterations which may be necessary in the development of specific limits and controls applicable to the new program. Results can be reviewed during and after the prescribed 1-year test period, and accommodations made; (g) appropriate rule/manual changes will be jointly developed by SBA/USFS to describe the program.

RULE CHANGE

The rule change is to be implemented on a test basis initially, is a rule adding to, and not substituting for, present rules and regulations defining small business concerns for the sale of Government-owned property (timber). The additional definition of small business concerns eligible to purchase small business preferentially treated sales applies only to those U.S. Forest Service Sales designated as special salvage timber sales (SSTS). Accordingly, § 121.3-9 is amended by adding new paragraphs as follows:

§ 121.3-9 Definition of small business for sales of Government property.

* * * * *

(c) Special salvage timber sales, (1) in connection with sale of Government-owned special salvage timber, designated by the USFS as SSTS, a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates, its number of employees does not exceed 25 persons during any pay period for the last 12 months.

(2) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, restricting the disposal of timber and, when the special salvage timber being purhased is to be resold, a concern is a small business when: (i) It is a small business within the meaning of paragraph (c)(1) of this section, and (ii) it agrees that it will not sell to a concern which is not a small business within the meaning of paragraph (b)(1) of this section more than 30 percent of such timber or, in the case of timber from certain geographical areas set forth in schedule E of this part, more than the percentage established therein for such area. The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer such as the sale of the assets of (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber (or sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(3) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, restricting the disposal of timber, and when the special salvage timber purchased is not to be resold in the form of sawlogs to be manufactured into lumber and timbers, a concern is a small business when (i) it meets the criteria contained in paragraph (c)(1) of this section, and (ii) it agrees that in manufacturing lumber or timbers from such sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under paragraph (b)(1) of this section as a small business. This provision assumes that the successful bidder will remain a small business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber (or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction. Any concern which self-certifies as a small business concern for the purpose of award under a small business set-aside sale of Government timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the name, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and the log species, grades, and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs but is to be manufactured into lumber or timbers by a concern other than the bidder, the bidder must maintain records to show the name, address, and size status of the concern manufacturing the sawlogs into lumber or timbers.

(4) In the case of Government-owned special salvage timber reserved for or involving preferential treatment of small businesses, the special salvage timber may be disposed of without restriction when there are less than two qualified mills in the market area.

Dated: December 26, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-36433 Filed 12-29-78; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-EA-69; Amdt. 39-3383]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-36-285 type airplanes and requires an inspection and repair where necessary of the wing spar carry through assembly for damage. The purpose of the inspection is to preclude structural weakness in the wing.

DATE: January 2, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 11745.

FOR FURTHER INFORMATION CONTACT:

J. Maher, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: There have been reports of cumulative damage to the wing spar carry through assembly developed by fatigue testing of the wing and other field evidence of a movement between the leg of the spar cap and the spar web. Since this deficiency can develop in similar type airplanes and thus affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

PIPER: Applies to Piper Model PA-36-285, Serial Nos. 36-7360001 thru 36-7560003 certificated in all categories except those aircraft incorporating wing spar carry through assembly Piper P/N 76824-02.

To prevent hazards in flight associated with damage cumulating in the wing spar carry through assembly, accomplish the following:

(a) Within the next 25 hours in service from the effective date of this AD or upon the attainment of 2000 hours in service, whichever is later, unless previously accomplished within the previous 100 hours in service, and thereafter, at intervals not to exceed 100 hours in service from the last inspection, inspect the wing spar carry through assembly P/N 97370-00 in accordance with the "Instructions Section—Paragraph A" of Piper Service Bulletin No. 552 or equivalent.

(b) If damage is observed, repair in accordance with the "Instructions Section—Paragraph B" of Piper Service Bulletin No. 552, or equivalent, prior to further flight, except the aircraft may be flown in accordance with FAR 21.197 to a base where a repair can be made.

(c) Equivalent inspections and repairs must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(d) Upon the incorporation of wing spar carry through assembly Piper P/N 76824-02, compliance with the requirements of this AD may be dispensed with.

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the inspection intervals specified in this AD.

EFFECTIVE DATE: This amendment is effective January 2, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of

Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.).

Issued in Jamaica, New York, on December 19, 1978.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc. 78-36243 Filed 12-29-78; 8:45 am]

[4910-13-M]

[Docket No. 78-SO-77; Amdt. No. 39-3381]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft Corp., Model PA-31-350

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: There have been several reported failures of the elevator bungee spring on certain Piper PA-31-350 Navajo Chieftain aircraft. Many of these failures were discovered while inspecting the elevator bungee spring in accordance with Airworthiness Directive 78-01-02, which required a check of spring tension to insure compliance with the aircraft original specifications. One failure occurred on takeoff, impairing pilot controllability during rotation and lift-off. Since this condition could exist in other aircraft of the same type design, an airworthiness directive is being issued to require inspection or replacement of the elevator bungee spring with a spring of new design.

DATES: Effective January 5, 1979. Compliance as prescribed in body of airworthiness directive.

ADDRESSES: Piper Service Bulletin No. 626 may be obtained from Piper Aircraft Corporation, Lock Haven Division, Lock Haven, Pennsylvania 17745, telephone (717) 748-6711. A copy of Piper Service Bulletin No. 626 is located in Room 275, Engineering and Manufacturing Branch, FAA, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT:

Steve Flanagan, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: There have been several reported failures of the elevator bungee spring on the Piper PA-31-350 Navajo Chieftain. While many of these failures were unnoticed until the area was inspected, one pilot experienced the spring failure on takeoff rotation, with a subsequent reduction in controllability during the remainder of the takeoff. Investigation has suggested that the spring failure is caused by fatigue in the hook end of the spring. This airworthiness directive is being issued to require repetitive inspection of the spring hook ends. Replacement of the existing spring with a new design will terminate the inspections required by this airworthiness directive.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

PIPER AIRCRAFT CORPORATION: Applies to Piper PA-31-350 Navajo Chieftain, Serial numbers 31-5001 through 31-7952045, certificated in all categories. Compliance required within the next 100 hours of operation after the effective date of this AD, and within each subsequent 100 hours of operation.

To prevent adverse controllability or handling qualities due to failure of the elevator bungee spring, accomplish the following:

1. Inspect the elevator bungee spring, Piper P/N 42377-02, at the hook ends in accordance with the instructions contained in Piper Service Bulletin No. 626, dated October 26, 1978, or later revision approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

2. Compliance with the provisions of this AD may be accomplished in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

3. The recurrent inspections required by this AD may be terminated by replacing the elevator bungee spring Piper P/N 42377-02 with a bungee spring of new design, Piper P/N 71056-02.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in East Point, Georgia, on December 18, 1978.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 78-36244 Filed 12-29-78; 8:45 am]

[4910-13-M]

[Docket Number 78-CE-20-AD; Amdt. 39-3382]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna Models 210G, H, J, M, N; T210G, H, J, M, N; and P210N Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This Amendment adds a new Airworthiness Directive (AD) applicable to Cessna Models 210G, H, J, M, N; T210G, H, J, M, N; and P210N airplanes. It requires inspection of the aircraft's fuel system to determine whether the fuel quantity transmitters operate properly and the replacement thereof if erroneous fuel quantity indications attributable to these components are detected. This AD, which is of an emergency nature, is necessary because pilots who rely on erroneous fuel quantity indications may experience engine power loss due to fuel starvation. Accidents may occur during the resulting forced landing.

EFFECTIVE DATE: January 4, 1979 to all persons except those to whom it has already been made effective by airmail letter from the FAA dated November 15, 1978.

COMPLIANCE: Before next flight.

ADDRESSES: Cessna Single Engine Service Letter SE78-69, dated November 15, 1978, or later revisions, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685-9111. A copy of the service letter cited above is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

John C. Pearson, Aerospace Engineer, Engineering and Manufacturing District Office, Federal Aviation Administration, Central Region, Room 238, Terminal Building, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 942-7927.

SUPPLEMENTARY INFORMATION: The FAA has determined that the problem described in the Summary is an unsafe condition which is likely to exist or develop in other airplanes of the same type design. Since the agency also determined that an emer-

gency situation existed and that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest. Accordingly, all known registered owners/operators of the affected airplanes were notified of the AD by airmail letter from the FAA dated November 15, 1978. The AD became effective as to those individuals upon receipt of the notification letter. Coincident with the issuance of the emergency AD, the manufacturer issued Cessna Service Letter SE 78-69 dated November 15, 1978 which pertains to the subject matter of this AD. Since the unsafe condition described herein still exists on other Cessna Models 210G, H, J, M, N; T210G, H, J, M, N; and P210N airplanes, the AD is being published in the FEDERAL REGISTER as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective as to all persons who did not receive the letter notification. Reference to the Cessna Service letter has also been incorporated in the AD.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13) is amended by adding the following new Airworthiness Directive.

CESSNA: Applies to Models 210G, H, J (Serial Number 21058819 through 21059199); 210M, N (Serial Numbers 21062274 through 21063025); T210G, H, J (Serial Number T210-0198 through T210-0454 and 21058140); T210M, N (Serial Numbers 21062274 through 21063025); and P210N (Serial Numbers P21000001 through P2100001141) airplanes.

COMPLIANCE: Required as indicated unless already accomplished. To detect binding of fuel quantity transmitter float arms and assure proper operation of the fuel quantity indicating system accomplish the following:

(A) On Models 210M, N and T210M, N (Serial Numbers 21062761 through 21063025 and P210N (Serial Numbers P21000063 through P21000141) airplanes, before next flight (except that the airplane may be flown to a location where this inspection may be accomplished, provided the pilot visually verifies through the fuel filler neck that adequate fuel is available to complete the flight), completely fill, then drain the left and right fuel tanks with the engine inoperative and the airplane stationary in the level ground attitude. Observe the fuel quantity gauge during draining and upon completion of drainage, verify that the respective fuel quantity gauge empty. Remove any Cessna P/N C668002-0101 or -0102 fuel quantity transmitter from which an erroneous fuel quantity reading is observed and check for binding of the float arm. Replace any fuel quantity transmitter found binding with an airworthy component. After replacement, check for fuel leaks and proper functioning of the fuel gauging system.

(B) For Models 210G, H, J, M (Serial Numbers 21058819 through 21059199 and 21062274 through 21062760), T210G, H, J, M (Serial Numbers T210-0198 through T210-0454, 21058140 and 21062274 through 21062760) and P210N (Serial Numbers P21000001 through P21000062) airplanes, before next flight, review the aircraft maintenance records to determine if a fuel quantity transmitter has been replaced since June 7, 1978.

(1) If a fuel quantity transmitter has not been replaced since June 7, 1978, make an entry in the aircraft maintenance records indicating that this Airworthiness Directive has been accomplished and the airplane may be returned to service.

(2) If a fuel quantity transmitter has been replaced since June 7, 1978, comply with the requirements of Paragraph (A).

(C) The review of the aircraft maintenance records required by Paragraph (B) may be accomplished by the holder of a Pilot's Certificate issued under Part 61 of the Federal Aviation Regulations on any aircraft owned or operated by that person.

(D) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region. Cessna Service Letter SE 78-69, dated November 15, 1978, or later approved revisions pertains to the subject matter of this AD.

This amendment becomes effective on January 4, 1979 to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated November 15, 1978.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (U.S.C. 1655(c)); Sec. 1189 of the Federal Aviation Regulations (14 CFR Sec. 11.89).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Missiouri on December 18, 1978.

JOHN E. SHAW,
Acting Director,
Central Region.

[FR Doc. 78-36245 Filed 12-29-78; 8:45 am]

[4910-13-M]

[Docket No. 18603; SFAR No. 39]

PART 47—AIRCRAFT REGISTRATION

Special Federal Aviation Reguation Registration of Aircraft Owned by a Foreign Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This special regulation sets forth an application of an aircraft registration requirement of the Federal Aviation Act of 1958 to aircraft owned by a corporation which is lawfully organized and doing business under the laws of the United States or any State thereof (but does not qualify as a corporate citizen of the United States), when the aircraft is to be exclusively used in the United States during the period that it is registered in the United States. It is being issued in response to recent Congressional legislation which expanded the eligibility for aircraft registration.

DATES: Effective Date: January 2, 1979. Comments by March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Clark H. Onstad, Esq., Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426-3773.

SUPPLEMENTAL INFORMATION:

BACKGROUND

Recent amendments to the Federal Aviation Act of 1958 expanded the eligibility requirements for aircraft registration in the United States (Act of November 9, 1977, Pub. L. 95-163, *as amended by* Act of March 8, 1978, Pub. L. 95-241). Amended Section 501(b) provides, among other things, that an aircraft is eligible for registration if it is not registered under the laws of a foreign country and it is "owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof so long as such aircraft is based and primarily used in the United States." Such a corporation is herein called a "foreign corporation".

The Secretary of Transportation is given the authority to define the term "based and primarily used in the United States". In his behalf, the FAA will soon issue a notice of proposed rule making, setting forth proposed regulations for the implementation of Section 501(b), including a definition of the "based and primarily used" requirement. Pending the adoption of final rules, however, the FAA has determined that it is necessary to apply Section 501(b)(1)(A)(ii) of the Act to qualified foreign corporations that wish to register aircraft that are to be operated exclusively in the United states during the period of U.S. registration.

The legislative history of Section 501(b) indicates that the "based and primarily used in the United States" limitation was incorporated into the expansion of eligibility for aircraft registration to prevent United States registry from becoming an international registry and United States air-

craft registration from becoming a so-called "flag of convenience". The limitation is designed to proscribe activities by foreign corporations that own and may wish to operate U.S. registered aircraft outside of the United States. Congress recognized that a restriction had to be placed upon such corporations to insure that those aircraft were to be used primarily in the United States. To accomplish these objectives, however, it is sufficient if the "based and primarily used in the United States" limitation applies only during the time an aircraft is registered in the United States. Therefore, an aircraft owned by a qualified foreign corporation which is to be used exclusively in the United States during the period of U.S. registration is eligible for registration under Section 501(b)(1)(A)(ii).

NEED FOR IMMEDIATE ADOPTION

Since this Special Federal Aviation regulation is an interpretive rule and a statement of general policy, I find that notice and public procedure are not required and that good cause exists for making it effective in less than 30 days. However, the FAA intends to review operating experience under the special regulation. Consequently, interested persons are invited to submit such written data, views or arguments as they may desire regarding this SFAR. Communications should identify the Docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, DC 20591. All communications received before March 1, 1979, will be considered by the Administrator and this SFAR may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

ADOPTION OF THE AMENDMENT

Accordingly, the following Special Federal Aviation Regulation is adopted, effective

:

Contrary provisions of Part 47 of the Federal Aviation Regulations notwithstanding, an aircraft is eligible for registration pursuant to Section 501(b)(1)(A)(ii) and (B) of the Federal Aviation Act of 1958 if it is:

(a) Owned by a foreign corporation which is lawfully organized and doing business under the laws of the United States or any State thereof;

(b) To be exclusively operated in the United States during the period that it is registered in the United States; and

(c) Not registered under the laws of any foreign country during the period that it is registered in the United States.

(Sections 313(a), 501, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1401), and Section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

NOTE.—The FAA has determined that this document is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on December 22, 1978.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-36374 Filed 12-29-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-SO-35]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Controlled Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Florida Transition Area, the South Atlantic Additional Control Area and the South Florida Additional Control Area by redefining the Florida Transition Area and the South Atlantic Additional Control Area boundaries, and by changing the lower limits of the three areas to 1,200 feet. This action provides additional controlled airspace to serve IFR helicopter operations and simplifies the area description.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

HISTORY

On October 2, 1978, the FAA published for comment a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to redefine the Florida Transition Area and the South Atlantic Additional Control Area, and to reduce the lower limits of these areas and the South Florida Additional Control Area to 1,200 feet (43 FR 45381). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The two comments received expressed no objection to the proposal. Sections 71.163, 71.181 of Part 71 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 348, 440).

THE RULE

This amendment to Part 71 of the Federal Aviation Regulations redefines the Florida Transition Area and the South Atlantic Additional Control Area boundaries, and reduces the lower limits of these areas and the South Florida Additional Control Area to 1,200 feet. The cumbersome definition of the Florida Transition Area is reduced to a simple one sentence description. Use of geographic coordinates to redefine the South Atlantic Control Area precisely describes the area without references to adjacent areas for its boundaries. The reduction of the lower limits of the areas provides additional controlled airspace for IFR operations at Vero Beach, Fla., and helicopter flights offshore.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, §§ 71.163 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 348, 440) are amended, effective 0901 GMT, February 22, 1979, as follows:

In § 71.163, under South Atlantic, the text is amended to read as follows:

"That airspace extending upward from 1,200 feet MSL bounded by a line beginning at Lat. 24°00'00"N., Long. 80°56'20"W.; to Lat. 24°45'40"N., Long. 80°48'00"W.; thence northward 3 NM from and parallel to the shoreline to Lat. 35°29'30"N., Long. 75°24'50"W.; to Lat. 34°21'18"N., Long. 73°58'53"W.; thence southward along the New York Oceanic CTA/FIR boundary to Lat. 32°15'00"N., Long. 77°00'00"W.; to Lat. 27°00'00"N., Long. 77°00'00"W.; to Lat. 27°00'00"N., Long. 78°53'00"W.; to Lat. 26°27'00"N., Long. 79°00'00"W.; to Lat. 24°40'00"N., Long. 79°00'00"W.; to Lat. 24°00'00"N., Long. 78°00'00"W.; thence to point of beginning."

Under South Florida, "from 2,000 feet" is deleted and "from 1,200 feet" is substituted therefor.

In § 71.181, under Florida, the text is amended to read as follows:

"That airspace extending upward from 1,200 feet above the surface within the boundary of the State of Florida including the offshore airspace within 3 NM of and parallel to the shoreline of Florida."

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a) and 1510; Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on December 22, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-36240 Filed 12-29-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-RM-23]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns V-160 airway from Denver, Colo., to Sidney, Nebr., via an intersection of airways approximately 22 miles northwest of Akron, Colo., and changes the segment of V-263 which currently extends between Hugo, Colo., to extend from Hugo to Denver via its present intersection with V-4 airway rather than continuing northwestward to Gill, Colo. These changes cause airway alignments to conform with arrival and departure routes in the vicinity of Denver.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C., 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

HISTORY

On November 24, 1978, the FAA published for comment a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V-160 between Denver and Sidney via the INT of Denver 046° and Sidney 201° magnetic radials and to change a segment of V-263 to extend from Hugo to Denver via the INT of Hugo 325° and Denver 082° magnetic radials (43 FR 54943). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The comment received expressed no objection to the proposal. Section 71.123 of Part 71 was republished in the FEDERAL REGISTER on January 3, 1978, (43 FR 307).

THE RULE

This amendment to Part 71 of the Federal Aviation Regulations realigns V-160 and V-263 as proposed in the notice except that the Sidney, Nebr., radial defining V-160 was inadvertently given in the magnetic value rather than the true value. The correct radials were given in the summary and are used correctly herein. These two airway changes improve the traffic flow in the Denver area by converting seldom used route segments to connect with normal arrival and departure routes thereby becoming more useful.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 307) is amended, effective 0901 GMT, February 22, 1979, as follows:

In § 71.123:

Under V-160 "to Sidney, Nebr." is deleted and "INT Denver 058° and Sidney, Nebr., 214° radials; to Sidney." is substituted therefor.

Under V-263 "Gill, Colo." is deleted and "INT Hugo 337° and Denver, Colo., 094° radials to Denver." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on December 22, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-36241 Filed 12-29-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-WE-18]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Jet Route 72 between Peach Springs, Ariz., and Albuquerque, N. Mex., to improve air traffic flow control procedures around the Las Vegas, Nev., terminal area.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

HISTORY

On November 2, 1978, (43 FR 51030) the FAA proposed an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would realign Jet Route 72, in part, from Peach Springs, Ariz., to Albuquerque, N. Mex., via Gallup, N. Mex. Presently, Jet Route 72 is aligned, in part, from Peach Springs, via Winslow, Ariz., and Zuni, Ariz., to Albuquerque. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. One objection to the proposal was received. Subpart B of Part 75 was republished in the FEDERAL REGISTER on January 3, 1978, (43 FR 714).

THE RULE

This amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) realigns Jet Route J-72, in part, from Peach Springs, Ariz., to Albuquerque, N. Mex., via Gallup, N. Mex. This realignment of J-72 provides a jet route segment in an area where Las Vegas arrivals/departures are normally vectored off course during the transition phase of flight. This action eliminates the crossing airway congestion in the vicinity of Zuni, Ariz.

DISCUSSION OF COMMENTS

The Department of the Air Force objected to the proposed alignment of Jet Route J-72 because it would penetrate the Air Traffic Control Assigned Airspace that lies above the SUNNY Military Operations Area (MOA), thereby restricting military flight training missions. However, all military missions in this area are coordinated with the FAA, and excellent radar coverage will enable the FAA to provide air traffic service without derogation of the military missions.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart B of Part 75 of the Feder-

al Aviation Regulations (14 CFR Part 75) as republished (43 FR 714) is amended, effective 0901 GMT, February 22, 1979, as follows:

Under Jet Route No. 72.

"Winslow, Ariz.; Zuni, Ariz.;" is deleted and "Gallup, N. Mex.;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C. on December 22, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-36275 Filed 12-29-78; 8:45 am]

[4910-13-M]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Docket No. 18597; Amdt. No. 1127]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final Rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT:

William L. Bersch, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the FEDERAL REGISTER expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * *Effective February 22, 1979*

Canton, IL—Ingersoll, VOR-A, Amdt. 3
Chicago (Wheeling), IL—Pal-Waukee, VOR Rwy 16, Amdt. 16
Chicago (Wheeling), IL—Pal-Waukee, VOR/DME Rwy 16, Amdt. 2
Bad Axe, MI—Huron County Memorial, VOR Rwy 3, Amdt. 5
Bad Axe, MI—Huron County Memorial, VOR Rwy 21, Amdt. 4
Hancock, MI—Houghton County Memorial, VOR Rwy 13, Amdt. 9
Hancock, MI—Houghton County Memorial, VOR Rwy 25, Amdt. 11
Hancock, MI—Houghton County Memorial, VOR Rwy 31, Amdt. 8
Howell, MI—Livingston County, VOR Rwy 31, Amdt. 4
Lapeer, MI—Dupont-Lapeer, VOR-A, Amdt. 8
Port Huron, MI—St. Clair County Intl, VOR/DME-A, Amdt. 1

Romeo, MI—Romeo, VOR/DME-A, Amdt. 3
Westland, MI—National, VOR-A, Amdt. 4
Olivia, MN—Olivia Municipal, VOR/DME-A, Amdt. 1
Sioux Falls, SD—Joe Foss Field, VOR Rwy 15, Amdt. 11
Sioux Falls, SD—Joe Foss Field, VOR/DME or TACAN Rwy 33, Amdt. 2

* * * *Effective February 8, 1979*

Chandler, AZ—Chandler Muni, VOR Rwy 4, Original
Chandler, AZ—Stellar City Airpark, VOR Rwy 17, Amdt. 2, cancelled
Chandler, AZ—Stellar City Air Park, VOR Rwy 35, Original
Goodland, KS—Renner Field (Goodland Muni), VOR Rwy 30, Amdt. 2
Goodland, KS—Renner Field (Goodland Muni), VOR/DME Rwy 30, Original
Worthington, MN—Worthington Municipal, VOR Rwy 11, Original
Worthington, MN—Worthington Municipal, VOR Rwy 17, Amdt. 7
Worthington, MN—Worthington Municipal, VOR Rwy 29, Original
Worthington, MN—Worthington Municipal, VOR Rwy 35, Amdt. 3
Dexter, MO—Dexter Muni, VOR/DME Rwy 36, Amdt. 2
Rolla/Vichy, MO—Rolla National, VOR Rwy 22, Amdt. 5
Rolla/Vichy, MO—Rolla National, VOR/DME Rwy 4, Amdt. 1
Missoula, MT—Johnson-Bell Field, VOR-C, Amdt. 1
Missoula, MT—Johnson-Bell Field, VOR/DME-A, Amdt. 10
Missoula, MT—Johnson-Bell Field, VOR/DME-B, Amdt. 3
Ogallala, NE—Searle Field, VOR Rwy 8, Original
Ogallala, NE—Searle Field, VOR Rwy 26, Original
Burlington, NC—Burlington Muni, VOR/DME-A, Original
State College, PA—State College Air Depot, VOR-A, Amdt. 7
Big Spring, TX—Howard County, VOR Rwy 16, Amdt. 10, cancelled
Lubbock, TX—Lubbock International, VOR/DME or TACAN Rwy 26, Amdt. 6
Waco, TX—James Connally, VOR-A, Amdt. 6

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

* * * *Effective February 22, 1979*

Hancock, MI—Houghton County Memorial, LOC/DME (BC) Rwy 13, Amdt. 4
Sioux Falls, SD—Joe Foss Field, LOC (BC) Rwy 21, Amdt. 16

* * * *Effective February 8, 1979*

Goodland, KS—Renner Field (Goodland Muni), LOC Rwy 30, Amdt. 1
Kansas City, MO—Kansas City International, LOC BC Rwy 19, Original
Montgomery, NY—Orange County, LOC Rwy 3, Amdt. 2
New Bern, NC—Simmons-Nott, LOC Rwy 4, Original
Lubbock, TX—Lubbock International, LOC BC Rwy 35L, Amdt. 8

* * * *Effective January 25, 1979*

Miami, FL—Opa Locka, LOC Rwy 9L, Original
Madison, WI—Dane County Regional/Truax Field, LOC BC Rwy 18, Amdt. 7, cancelled

* * * *Effective December 6, 1978*

Kirksville, MO—Clarence Cannon Memorial, LOC Rwy 36, Amdt. 1

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

* * * *Effective February 22, 1979*

Canton, IL—Ingersoll, NDB Rwy 36, Amdt. 3
Carbondale-Murphysboro, IL—Southern Illinois, NDB Rwy 18, Amdt. 6
Monticello, IN—White County, NDB Rwy 36, Amdt. 1
Hancock, MI—Houghton County Memorial, NDB Rwy 31, Amdt. 5
Port Huron, MI—St. Clair County Intl, NDB Rwy 4, Amdt. 6
Sioux Falls, SD—Joe Foss Field, NDB Rwy 3, Amdt. 16
Luray, VA—Luray Caverns, NDB-A, Amdt. 2

* * * *Effective February 8, 1979*

Goodland, KS—Renner Field (Goodland Muni), NDB Rwy 30, Amdt. 1
Missoula, MT—Johnson-Bell Field, NDB-D, Amdt. 1
Ogallala, NE—Searle Field, NDB Rwy 8, Amdt. 3
Ogallala, NE—Searle Field, NDB Rwy 26, Amdt. 2
Middletown, NY—Randall, NDB-A, Orignial, cancelled
Middletown, NY—Randall, NDB Rwy 26, Orignial,
Montgomery, NY—Orange County, NDB Rwy 3, Original
Montgomery, NY—Orange Co., NDB (ADF) Rwy 3, Original, cancelled
Greeneville, TN—Greeneville Muni, NDB Rwy 5, Amdt. 2
Waco, TX—James Connally, NDB Rwy 17L, Amdt. 5
Waco, TX—James Connally, NDB Rwy 35R, Amdt. 6

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

* * * *Effective February 22, 1979*

Carbondale-Murphysboro, IL—Southern Illinois, ILS Rwy 18, Amdt. 6
Chicago (Wheeling), IL—Pal-Waukee, ILS Rwy 16, Amdt. 2
Lexington, KY—Blue Grass, ILS Rwy 22, Original
Hancock, MI—Houghton County Memorial, ILS Rwy 31, Amdt. 5
Sioux Falls, SD—Joe Foss Field, ILS Rwy 3, Amdt. 19

* * * *Effective February 8, 1979*

Missoula, MT—Johnson-Bell Field, ILS 1 Rwy 11, Amdt. 7
Missoula, MT—Johnson-Bell Field, ILS 2 Rwy 11, Amdt. 3
Columbia, SC—Columbia Metropolitan, ILS Rwy 11, Amdt. 10
Waco, TX—James Connally, ILS Rwy 17L, Amdt. 6

* * * *Effective January 25, 1979*

Madison, WI—Dane County Regional/Truax Field, ILS Rwy 18, Original

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective February 22, 1979*

Sioux Falls, SD—Joe Foss Field, RADAR-1, Amdt. 2

* * * *Effective February 8, 1979*

Houston, TX—Clover Field, Radar-1, Original, cancelled

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective February 22, 1979*

Port Huron, MI—St. Clair County Intl, RNAV Rwy 4, Amdt. 2
Port Huron, MI—St. Clair County Intl, RNAV Rwy 22, Amdt. 3

* * * *Effective February 8, 1979*

Rolla/Vichy, MO—Rolla National, RNAV Rwy 22, Original
Goodland, KS—Renner Field (Goodland Muni), RNAV Rwy 12, Amdt. 2

* * * *Effective December 6, 1978*

Kirksville, MO—Clarence Cannon Memorial, RNAV Rwy 36, Amdt. 5
Kirksville, MO—Clarence Cannon Memorial, RNAV Rwy 18, Amdt. 4

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3).)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C. on December 22, 1978.

JAMES M. VINES,
Chief, Aircraft Programs Division.

NOTE.—The incorporation by reference in the preceding document was approved by the Director of the FEDERAL REGISTER on May 12, 1969.

[FR Doc. 78-36242 Filed 12-29-78; 8:45 am]

[3510-25-M]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

Exports of Petroleum Products from Hawaii, Guam, and United States Foreign-Trade Zones; Exports of Crude and Partially Refined Petroleum

AGENCY: Department of Commerce, Industry and Trade Administration, Bureau of Trade Regulation, Office of Export Administration.

ACTION: Final rule.

SUMMARY: These regulations establish a new General License under which petroleum products refined in United States Foreign-Trade Zones or in Guam from foreign-origin crude oil may be freely exported from those

areas, provided that the details of such exports are reported to the Department of Commerce on a quarterly basis. These regulations also modify the rules applicable to the issuance of licenses to export crude and partially-refined petroleum. These changes are made to bring petroleum export regulations into conformity with the Export Administration Amendments of 1977 and to prescribe the conditions under which exports of crude petroleum in exchange for the same commodity will be considered.

DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, Department of Commerce, Washington, D.C., 20230 (telephone 202-377-3795)

SUPPLEMENTARY INFORMATION: *Exports of Petroleum Products from Hawaii, Guam, and United States Foreign-Trade Zones* Section 108 of the Export Administration Amendments of 1977 (P.L. 95-52) adds Section 4(j) to the Export Administration Act of 1969, as amended (the "Act"). Section 4(j) excludes petroleum products refined from foreign-origin crude oil in United States Foreign-Trade Zones or in the Territory of Guam from any quantitative export restrictions imposed pursuant to the short supply provision of the Act (Section 3(2)(a)), "except that, if the Secretary of Commerce finds that a product is in short supply, the Secretary of Commerce may issue such rules and regulations as may be necessary to limit exports."

Section 377.6(d)(9) of the Export Administration Regulations (15 CFR § 377.6(d)(9)) currently provides for the export, without quantitative restriction, of petroleum products refined from foreign-origin crude petroleum form the Territory of Guam and the State of Hawaii (including Foreign-Trade Subzone No. 9A) when such products are refined in these areas. However, under the current procedures the exporter must obtain a validated export license and furnish—as a precondition to the issuance of such license—evidence that the petroleum products to be exported are surplus to the needs of the local economy (including the ships' bunker and aviation fuel markets) and local Department of Defense procurement needs.

While the exemptions and procedures presently contained in Sections 377.6(d)(9) and (e)(8), of the Regulations are continued with respect to exports from the State of Hawaii, the new regulations permit exports of petroleum products refined from foreign-origin crude oil in the Territory of Guam and United States Foreign-Trade Zones. Exports of such petroleum products from these areas may hereafter be made under a new General License, designated G-FTZ. Exporters using this General License are required, however, to submit reports to the Office of Export Administration at the end of each calendar quarter in which such General License was used. These reports will give details of export transactions and other information. The information contained in these reports will assist the Department in determining whether the commodities exported are in "short supply" within the meaning of Section 4(j) of the Act.

The new regulations also authorize the reexport under certain conditions of petroleum products which were first exported from the United States under this new General License.

Exports of Crude or Partially Refined Petroleum. With limited exceptions Section 110 of the Export Administration Amendments of 1977 prohibits the export of domestically-produced crude oil transported by pipeline over rights-of-way granted pursuant to Section 28(u) of the Mineral Leasing Act of 1920 unless the President makes and publishes an express multi-part finding as described below and reports that finding to the Congress as an energy action pursuant to Section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421). Unless extended, Section 110 will expire on June 22, 1979.

When Section 110 was enacted, exports of certain domestically-produced crude oil were already subject to export restrictions contained in three statutes: (1) Section 28(u) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185); (2) Section 103 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6212); and (3) Section 201 of the Naval Petroleum Reserves Production Act of 1976 (10 U.S.C. 7430). These three statutory provisions are already reflected in the Export Administration Regulations.

Section 110 left these three prior statutory provisions unchanged but added a tighter restriction on exports of domestically-produced crude oil which is transported by pipeline as described above.

While the provisions of Section 110 are similar to those contained in these earlier statutes, the substance of the President's finding and the requirement for Congressional review are different. Section 110 provides that no export based on a Presidential finding may take place until either both Houses of Congress have passed a resolution approving the proposed export, or neither House has passed a resolution disapproving such export during a period of 60-calendar days during which both Houses of Congress are in continuous session. Excepted from the foregoing restriction are *exchanges of similar quantity* for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state and temporary exports across parts of an adjacent foreign state which reenter the United States.

The new regulations incorporate the Section 110 provision and, in addition, they provide for consideration of applications to export crude or partially-refined petroleum not subject to the statutory restrictions in exchange for crude petroleum other than as part of a transaction carried out with persons or the government of an adjacent foreign state.

Waiver of Proposed Rulemaking Procedures and Invitation for Comment. The requirements for notice of proposed rulemaking and opportunity for comment are waived by the Department pursuant to Section 8 of the Export Administration Act of 1969, as amended. In addition, the Department has found that: (1) under the Energy Policy and Conservation Act, compliance with such procedures would seriously impair the Department's ability to maintain effective and timely controls over exports of petroleum and petroleum products; (2) the restrictions contained in Section 110 are so specific as to leave the Department no discretion with respect to implementing that Section and that notice and public comment on the changes to the regulations announced herein with respect to crude oil exports is accordingly both impractical and unnecessary; and (3) the regulatory changes announced herein relating to exports of petroleum products from United States Foreign-Trade Zones and from Guam implement a statutory provision which relieves a current restriction.

Written comments on the regulations announced herein are solicited on a continuing basis. Interested parties are encouraged to submit written comments, views or data concerning these regulations to the U.S. Department of Commerce, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, D.C. 20044.

Accordingly, the Export Administration Regulations (15 CFR 368 et seq.) are amended as follows:

PART 371—GENERAL LICENSES

1. Section 371.2(c)(9) is revised to read as follows:

§ 371.2 General provisions.

(c) * * *

(9) The commodity is listed in a Supplement to Part 377 as being under short supply control, unless the export is authorized under the provisions of General Licenses G-NNR, GLV, SHIP

STORES, PLANE STORES, RCS, or G-FTZ.

* * * * *

2. A new Section 371.7 is established reading as follows:

§ 371.7 General License G-FTZ: Exports of Petroleum Commodities From U.S. Foreign Trade Zones and From Guam.

(a) *Scope.* A General License designated G-FTZ is established. This license authorizes the export from a United States Foreign-Trade Zone or the Territory of Guam, of any petroleum commodity listed in Supplement No. 2 to Part 377 other than a Group A commodity, to any destination other than a Country Group S or Z destination, provided that the petroleum commodity was refined from foreign-origin crude petroleum in such Zone or Territory and is being exported therefrom.

(b) *Quarterly Reports.* As a condition for the use of a General License G-FTZ, an exporter shall file a report with the Office of Export Administration within 21 days following the end of each calendar quarter during which an export is made under General License G-FTZ. This report shall be in affidavit format, be signed by an authorized representative of the exporter, and contain the following:

(1) The details of each such export shipment, including the commodity description, quantity, value, ultimate consignee, purchaser, country of ultimate destination and all other pertinent details of such shipment, together with a copy of the Shipper's Export Declaration (Commerce Form No. 7525-V) filed with the carrier covering each such export shipment.

(2) A certification that the petroleum commodities which were exported during the preceding calendar quarter: (i) did not become available for export as a result of an exchange for commodities which would not qualify for export under General License G-FTZ, and will not be replaced within the exporter's customary domestic marketing area by commodities which do not so qualify; (ii) were refined exclusively from foreign-origin crude petroleum in a Foreign-Trade Zone or Guam; and (iii) have been reported to the Department of Energy as surplus and have been released by that Department from redirected distribution if, at the time of export, the commodities exported were subject to Department of Energy allocation regulations.

(3) A certification that, to the best of the exporter's knowledge and belief, the particular commodities and quantities exported during the preceding calendar quarter were: (i) surplus to the procurement needs of the Department of Defense Fuel Supply Center of the Defense Logistics Agency (formerly Defense Supply Agency); (ii) surplus to the needs of the domestic economy of the State, territory, dependency or possession of the United States in which the United States Foreign-Trade Zone is located or of the Territory of Guam; and (iii) not the subject of any purchase orders or solicitations from firms within the exporter's customary domestic marketing area. If the exporter is not able to certify to "(iii)", the exporter may, in the alternative, list by commodity, quantity, price and date of requested delivery any unsatisfied purchase orders or solicitations received during the current and preceding calendar quarter from any domestic purchaser within the exporter's customary domestic marketing area and explain the reasons why the exporter was unable to satisfy such purchase orders.

(4) A sworn affidavit signed by an authorized representative of the exporter stating that the exported commodity(ies) has (have) been reported as exports to the refiner(s), if the exporter is not the refiner of the commodity(ies), and the commodity(ies) when exported by a refiner is (are) required to be reported to the U.S. Department of Energy for purposes of adjustment of the volume of the refiner's crude oil runs to stills pursuant to 10 CFR 211.67(d)(2).

(c) Submission of Reports. Quarterly reports required to be filed under (b) above should be submitted to: Office of Export Administration, ATTENTION: Short Supply Division, Room 1617A, U.S. Department of Commerce, Washington, D.C. 20230.

Reports must be received no later than the 21st day of the month following the calendar quarter in which the export took place.

Should it come to the Department's attention that an exporter has made an export shipment under the terms of this General License G-FTZ and has failed to report the details of such shipment by the 21st day of the month following the calendar quarter in which the shipment was made, the provisions of this General License may be withdrawn with respect to that exporter and the exporter may be instructed to apply for a validated license for all future export shipments which would otherwise be subject to the provisions of this General License G-FTZ.

* * * * *

PART 374—REEXPORTS

3. Section 374.2(a)(1) is revised to read as follows:

§ 374.2 Permissive reexports.

(a) * * *

(1) May be exported directly from the United States to the new country of destination under General License G-DEST, GTE, G-NNR, or G-FTZ.

PART 377—SHORT SUPPLY CONTROLS

§ 377.6 [Amended]

4. Section 377.6(d) is amended as follows:

Paragraph (d)(1)(iv) is renumbered (d)(1)(vi), paragraph (d)(1)(iii) is revised, and new paragraphs (d)(1)(iv) and (d)(1)(v) are added to read as follows:

* * * * *

(d)(1) *Issuance of export licenses* * * *

* * * * *

(iii) If the crude or partially refined petroleum was produced from a Naval Petroleum Reserve but has not been and will not be transported by pipeline over a federal right-of-way granted pursuant to Section 28(u) of the Mineral Leasing Act of 1920, and the President makes and publishes an express finding that the export(s) will not diminish the total *quantity or quality* of petroleum available to the United States and that such export(s) are in the national interest and are in accord with the Export Administration Act of 1969, as amended; or

(iv) If the crude or partially refined petroleum has been or will be transported by pipeline over rights-of-way granted pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), and the President makes and publishes an express finding that the export of such crude or partially refined petroleum: (*a*) will not diminish *the total quantity or quality of* petroleum available to the United States, (*b*) will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs of refiners, (*c*) will be made only pursuant to contracts which may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened, (*d*) are in the national interest and in accordance with the provisions of the Export Administration Act; *and in addition thereto,* the President reports such finding to the Congress as an energy action as defined in Section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) and either (*1*) a 60-calendar day period during which both Houses of Congress are in continuous session, as defined in Section 551 of that Act, has elapsed and neither House has passed a resolution disapproving such finding, or (*2*) each House of Congress has passed a resolution approving such

finding or affirmatively stating, in substance, that such House does not object to such finding; or

(v) If the crude or partially-refined petroleum was not produced from the Naval Petroleum Reserves and was not and will not be transported by pipeline over rights-of-way granted pursuant to Section 28(u) of the Mineral Leasing Act of 1920, and such commodity will be exported as part of an overall transaction which: (*1*) will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of the same commodity, (*2*) will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs of refiners, (*3*) will take place pursuant to contracts which may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened, (*4*) will be in the national interest and in accordance with the provisions of the Export Administration Act and the purposes of the Energy Policy and Conservation Act *and, in addition,* for compelling economic or technological reasons, beyond the control of the applicant, the Group A commodity cannot reasonably be processed within the United States, *and* the Group A commodity to be imported into the United States would not be available for import had the export not taken place.

* * * * *

5. Section 377.6(d)(9) is revised to read as follows:

* * * * *

(d) * * *

(9) *Exemption from quantitative restriction of petroleum products refined from foreign-origin petroleum in Hawaii and exported therefrom.* An application for a validated license to export from Hawaii a commodity from Petroleum Commodity Group B, C, D, E, F, G, K, L, M and N-1 which was refined from foreign-origin crude petroleum in Hawaii will be considered without quantitative restriction if accompanied by supporting documentation as required by Section 377.6(c)(8).

* * * * *

6. Section 377.6(e)(8) is revised to read as follows:

* * * * *

(e) * * *

(8) *Petroleum products refined from foreign-origin crude petroleum in Hawaii, and exported therefrom.* An application for a validated license to export from Hawaii without regard to quota restriction a specified quantity of a commodity from Petroleum Commodity Group B, C, D, E, F, G, K, L, M or N-1 which was produced from foreign-origin crude petroleum in a refinery in Hawaii must be submitted with the same documentation required by Section 377.6(e)(2), together with the following:

(i) A sworn affidavit by the applicant stating that the petroleum commodities which he proposes to export (*a*) did not become available for export as a result of an exchange for products which would not qualify for exemption from quota restriction under this subsection and will not be replaced by products which do not so qualify; (*b*) was produced exclusively from foreign-origin crude petroleum in the State of Hawaii; and (*c*) have been reported to the Department of Energy as surplus and have been released by that Department from redirected distribution if, at the time of application for an export license, the commodity sought to be exported is subject to Department of Energy allocation regulations.

(ii) A signed statement from a duly authorized official of the Government of the State of Hawaii listing the particular petroleum commodities and the aggregate quantities thereof which the applicant proposes to export during the calendar quarter for which he is applying for an export license and stating that such products and quantities are surplus to the projected needs of Hawaii, including the ships' bunker and aviation fuel markets, during such calendar quarter. And

(iii) A signed statement from a duly authorized official of the Department of Defense Fuel Supply Center of the Defense Logistics Agency (formerly Defense Supply Agency), listing the particular petroleum commodities and aggregate quantities thereof which the applicant proposes to export during the calendar quarter for which he is applying for an export license and stating that such quantities and products are surplus to the projected procurement needs of the subject agency during the applicable calendar quarter.

The documentation listed under (ii) and (iii) above need be submitted only once during each calendar quarter. When applying for additional licenses for a particular calendar quarter, the applicant need only refer to the earlier submission of these documents and state, that, to the best of his knowledge and belief, the statements required by (ii) and (iii) above have not been withdrawn or modified.

* * * * *

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212); E.O. 11912, 41 FR 15825, 3 CFR 1969 Comp.; 10 U.S.C. 7430; Sec. 101, Pub. L. 93-153, 87 Stat. 876 (30 U.S.C. 185); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-36414 Filed 12-28-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 76N-0366]

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

Provisional Listing of Lead Acetate; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Commissioner of Food and Drugs on his own initiative is postponing the closing date for the provisional listing of lead acetate for use as a component of hair colors. The new closing date will be March 1, 1979. This brief postponement will provide time for completion of the review of the scientific data and for preparation and publication in the FEDERAL REGISTER of a document concerning the use of lead acetate.

EFFECTIVE DATE: December 31, 1978

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The current closing date of December 31, 1978 for the provisional listing of lead acetate was established by regulation published in the FEDERAL REGISTER of March 3, 1978 (43 FR 8790). The regulation set forth below will postpone the December 31, 1978 closing date for the provisional listing of that color additive until March 1, 1979.

The evaluation of the data submitted in support of the listing of the color additive has required more time than initially anticipated. Furthermore, a postponement of the closing date for lead acetate until March 1, 1979 will provide a brief period within which a document concerning the use of the color additive can be prepared and published in the FEDERAL REGISTER. The Commissioner concludes that the brief extension of the closing date to March 1, 1979 is necessary and is consistent with the protection of the public health.

Because of the shortness of time until the December 31, 1978 closing date, the Commissioner concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing this postponement as a final rule. This regulation, to be effective on December 31, 1978, will permit the uninterrupted use of the color additive until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation and is being made effective on December 31, 1978.

Therefore, under the transitional provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner (21 CFR 5.1), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for the entry "Lead acetate" in paragraph (g) to read "March 1, 1979."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing of additives,* by revising the closing date for "lead acetate" in paragraph (b) to read "March 1, 1979."

In accordance with Executive Order 12044, the economic effects of this final rule have been carefully analyzed and it has been determined that this final rule 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.

Effective date. This regulation is effective December 31, 1978.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note).)

Dated: December 28, 1978.

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

[FR Doc. 78-36472 Filed 12-29-78; 10:51 am]

[4310-02-M]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 251—LICENSED INDIAN TRADERS

Regulating Sale of Arms and Ammunition

AGENCY: Bureau of Indian Affairs.

ACTION: Final Rule.

SUMMARY: The nature of the action being taken is to remove an obsolete rule Part 251, Title 25, Code of Federal Regulations. The intended effect of the action is to relieve Agency Superintendents, Indians and Indian Traders from unnecessary compliance with an obsolete rule. Section 251.8 requires permission from the Superintendent for an Indian Trader to sell arms or ammunition to an Indian. The sale may be made only on assurances to the Superintendent that the arms are to be used only for a clearly established lawful purpose.

Circumstances which gave rise to this rule no longer exists. Indians are now able to purchase arms and ammunition at any place they are lawfully for sale.

EFFECTIVE DATE: This revocation is effective on January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Eugene F. Suarez, Sr., Chief, Division of Law Enforcement Services, Bureau of Indian Affairs, Department of the Interior, Washington, D.C. 20245. Telephone 202/343-5786.

SUPPLEMENTARY INFORMATION: The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Section 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

On September 21, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 42767) regarding intent to revoke § 251.8, Part 251, Subchapter W, Chapter I of Title 25, Code of Federal Regulations.

Interested persons were invited to participate in the proposed rulemaking proceedings through written comment, objections or suggestions by October 23, 1978. No responses were received.

The primary author of this document is, Eugene F. Suarez, Sr., Division of Law Enforcement Services, Bureau of Indian Affairs, Washington, D.C. 20245. Telephone number 202/343-5786.

REVOCATION OF THE RULE

Accordingly, § 251.8, Part 251, Subchapter W, Chapter I of Title 25, Code of Federal Regulations is revoked.

FORREST J. GERARD,
Assistant Secretary—Indian Affairs.

[FR Doc. 78-36430 Filed 12-29-78; 8:45 am]

proposed rules

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

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 989]

[Docket No. AO-198-A10]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Decision on Proposed Further Amendment of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would amend the Federal marketing agreement and order covering California raisins. The proposed changes pertain to: (1) Clarifying the intent and language of existing volume regulation provisions used to tailor supplies to needs; and (2) creating a new raisin varietal type for regulatory purposes under the program to recognize a relatively new method of making raisins in the United States. The proposed changes were initially recommended by the Raisin Administrative Committee which handles the local administration of the program under USDA supervision, and three raisin dehydrators. The proposed changes offer opportunity to improve the present program and would tend to further effectuate the declared policy of the act. Raisin growers will vote in a referendum to determine whether or not they favor issuance of the proposed changes.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued March 30, 1978; published April 4, 1978 (43 FR 14024).

Notice of Recommended Decision—Issued July 12, 1978; published July 17, 1978 (43 FR 30567).

PRELIMINARY STATEMENT

A public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. 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 (7 CFR Part 900), in Fresno, CA, April 18, 1978, pursuant to notice thereof.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on July 12, 1978, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. Six exceptions were filed. The Raisin Administrative Committee, Raisin Bargaining Association, and Congressman John Krebs filed exceptions against the separate classification of oleate seedless raisins. The proponents of the proposal to put oleate raisins into a separate varietal type (Tri-Boro Farms, Inc., Melikian Farms, Inc., and Salwasser Dehydrator) commented on the Committee's exception. Tenneco West, a marketer of water-dipped raisins, agreed with the recommendation to separately classify oleate raisins. Professor Vincent E. Petrucci, California State University, Fresno, California, the developer of the oleate method of drying raisins, commented on the equitability of placing oleate raisins into a separate varietal type and on the validity of the cleanliness, moisture, and stickiness comparisons used by the proponents to justify the separation.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision published July 17, 1978, in the FEDERAL REGISTER (43 FR 30567), are hereby incorporated by reference herein and made a part hereof, subject to the following additions:

In Material Issue (2), a new paragraph is added after the fifth paragraph as follows: "An exceptor stated that placing oleate raisins into a separate varietal type was fair and justified. However, he indicated that proponents' contention that water-dipped and soda-dipped raisins are washed before drying and thus meet cleanliness and moisture standards more readily than oleate raisins is meaningless because oleate raisins are normally cleaner than raisins otherwise drying in the field. He also questioned proponents' contention that water-dipped raisins are not as sticky as oleate and soda-dipped raisins. He noted that oleate raisins, if handled properly, are less sticky than either the water-dipped or soda-dipped raisins mainly because the skin of the grape is not broken in making oleate raisins, while fine hairline cracks occur in the grapes when making water-dipped and soda-dipped raisins. The exceptor added that, because oleate raisins may also be artificially dehydrated, the cleanliness and moisture comparisons should not be a part of the recommended decision. However, the exception is addressed to proponents' reasons why the three types of raisins (water-dipped, soda-dipped, and oleate) are different, not to the findings and conclusions of the recommended decision. Thus, the cleanliness and moisture comparison should not be deleted, and this exception is denied."

In Material Issue (2), five new paragraphs are added after paragraph 20 as follows: "Three exceptors noted the similarities in appearance between oleate, water-dipped, and soda-dipped raisins, and proposed that these raisins remain classified together. Two of the exceptors indicated that the consumer basically cannot tell the difference between these three types of raisins and Natural (sun-dried) Seedless raisins. One exceptor added that the differences between natural and water-dipped raisins are graphically greater than the differences between oleate, water-dipped, and soda-dipped raisins. He therefore indicated that, if the consumer cannot tell the difference between all four types, this is even more reason to continue the combination of the three dipped type raisins in the same varietal type. It would seem to follow from this and exceptors' other arguments that all four types could be included in the same varietal type.

Two of the exceptors stated that the percentages for any varietal type may differ from that of another varietal type but this is due only to the differences in the relationship of inventory, production, and prior year's shipments of the specific varietal type under consideration. This is true under the current method of computing volume percentages. However, under this system if a grower changes from sun-drying in one year to oleate spraying the following year, his raisin production in the second year would be added to the water-dipped and soda-dipped production for that year. Since the prior

year's shipments of Dipped Seedless raisins into free tonnage outlets form the basis for establishing free tonnage of the varietal type, the added oleate production would tend to depress the free percentage and increase the reserve percentage for Dipped Seedless raisins. This would reduce the quantity that could be shipped into free tonnage outlets by handlers of water-dipped and soda-dipped raisins.

Both exceptors contended that a producer consistently producing Natural (sun-dried) Seedless raisins is similarly affected by a producer who switches from natural raisin production to wine production and vice versa from year to year. The same could also be said of the Dipped Seedless segment. However, if natural seedless raisin producers shift to the winery outlet, or vice versa, in any given year, the shift would have only a comparatively slight effect on the free and reserve percentages for these raisins because of the large quantity of natural raisins produced and shipped each year. On the other hand, the effect on the volume percentages for Dipped Seedless raisins would be magnified if a number of producers of natural seedless raisins switched to oleate raisins because production and shipments of water-dipped raisins are so small compared to those of natural raisins.

The three exceptors also contended that the order should be an industry-wide order and not be designed or operated to the advantage or disadvantage of one producer, packer, or dehydrator, or one type of raisin over another. The recommended varietal type structure is not intended to conflict with this premise. Its purpose is to provide for the orderly marketing of all raisins. The burden of volume regulation must be applied equitably among all segments of the industry, as stated previously. To achieve this, oleate raisins should be classified separately from water-dipped and soda-dipped raisins.

Two of the exceptors contended that the proposal will be impossible to administer, and that the possibility of subterfuge exists if the reserve percentages for water and soda-dipped raisins are different from oleate raisins in any given year. It was alleged that producers will maintain their raisins are of the varietal type with the largest free percentage. That the possibility of subterfuge exists cannot be denied. It is the duty of the Raisin Administrative Committee to exercise surveillance over the handling of raisins, and it is not expected that surveillance in this instance will be burdensome."

In Material Issue (2), in the third line of paragraph eight, "and" is substituted in lieu of "all".

In the event that the proposal to establish oleate raisins as a separate varietal type is submitted to producers in a referendum, three exceptors requested that this proposal be separated from other proposals on the ballot to allow producers to vote on this issue separately from other proposals. The Department's procedure for the conduct of referenda in connection with marketing orders does not permit separate approval of each amendatory proposal by producers. This procedure requires referenda to be conducted on orders or amendatory orders, and not on individual issues or proposals.

One exceptor requested that if a producer referendum is held and the amendatory proposals approved, the effective date of such proposals be August 1, 1979, the beginning of the 1979-80 crop year under the order. If the amendatory proposals are approved, this request will be taken into consideration when the final order is issued on this action.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, the exceptions to the recommended decision were carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California", and "Order Amending the Order, as Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California" which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision except the annexed marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum order. It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order as amended and as hereby proposed to be further amended, regulating the handling of raisins produced from grapes grown in California, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the area of production in the production of the regulated commodity for market.

The representative period for the conduct of such referendum is hereby determined to be August 1, 1977, through July 31, 1978.

The agents of the Secretary to conduct such referendum are hereby designated to be Charles Fuqua, Richard Van Diest, and William J. Higgins.

Signed at Washington, D.C. on December 26, 1978.

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

Order[1] *amending the order, as amended, regulating the handling of raisins produced from grapes grown in California.*

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto. Except the findings as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed.

(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 proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effective the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing

[1] This order shall not become effective unless and until the requirements of $900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production ara would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of raisins produced from grapes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

ORDER RELATIVE TO HANDLING

It is therefore ordered, that on and after the effective date hereof the handling of raisins produced from grapes grown in California, shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

The provisions of the recommended amendment of the marketing agreement and order, as amended, contained in the recommended decision issued by the Deputy Administrator on July 12, 1978, and published in the Monday, July 17, 1978, FEDERAL REGISTER (43 FR 30567), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. A new § 989.24b is added to read as follows:

§ 989.24b Free tonnage outlets.

For marketing policy purposes, free tonnage outlets shall be regarded as any markets not eligible for the purchase of reserve tonnage raisins.

2. Section 989.54 (a) and (d) are revised to read as follows:

§ 989.54 Marketing policy.

(a) *Free tonnage.* On or before August 15 of each crop year, the Committee shall review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the quantity of free tonnage shall be 90 percent of the prior crop year's shipments into free tonnage outlets for that varietal type, adjusted by the physical carryin inventory. The desirable carryin inventory on August 1 for Natural (sun-dried) Seedless raisins shall be a minimum of 35,000 tons. This free tonnage quantity shall be publicized by the Committee in accordance with paragraph (f) of this section. In years following limited shipments into free tonnage outlets due to abnormal circumstances, the Committee may use shipments of any one of the 3 years preceding the limited year as a base to determine the free tonnage.

* * * * *

(d) *Reserve tonnage to sell as free tonnage.* On or before November 15 of the crop year, the Committee shall offer to handlers a quantity of the prior or current crop year's reserve tonnage raisins. One offer shall consist of a quantity equal to 10 percent of the prior year's shipments into free tonnage outlets to equate the current year's supply with the prior year's shipments into free tonnage outlets plus the desirable carryin inventory. This offer shall be allocated to handlers on the basis of their prior year's acquisitions. At the same time, a second offer shall consist of a quantity equal to 10 percent of the prior year's shipments into free tonnage outlets for market expansion. The offer shall be allocated to handlers on the basis of their prior year's shipments, to all outlets, of free tonnage plus any reserve tonnage released for use as free tonnage and shipped during that crop year. Each offer shall be open to handlers not more than 5 business days and, subsequently, two reoffers of any tonnage unsold in the original offers, open not more than 2 business days each, may be made. The reoffer tonnage shall be allocated to handlers who purchase 100 percent of their allocation in preceding offers and shall be on the basis of the quantity each handler purchased as a percentage of the total quantity purchased by all handlers eligible to participate. At the close of the second reoffer any remaining tonnage may be offered to handlers purchasing all of their previous allocations on a first come, first served basis and such offer shall be open to handlers for 2 business days. Any handler who had no shipments or acquisitions of raisins during the prior crop year will be allocated raisins under these offers on the basis of his acquisitions (up to the time the offer is made) of raisins in the current crop year. If field prices are not established on or before November 15, the offers shall be made not more than 15 days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage under this section shall be the established field price for free tonnage raisins of the applicable varietal type, plus estimated costs to equity holders incurred by the Committee, plus 3 percent of the established field price for free tonnage.

* * * * *

3. Section 989.10 is revised to read as follows:

§ 989.10 Varietal types.

"Varietal types" means raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. Varietal types are the following: Natural (sun-dried) Seedless, Dipped Seedless, Golden Seedless, Muscats (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Oleate Seedless: *Provided,* That the Committee may, subject to approval of the Secretary, change this list of varietal types or the definitions thereof.

[FR Doc. 78-36435 Filed 12-29-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Office of Energy Conservation and Solar Applications

[10 CFR Part 430]

ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Advance Notice of Proposed Rulemaking and Notice of Public Meetings Regarding Energy Efficiency Standards for Nine Types of Consumer Products

AGENCY: Department of Energy.

ACTION: Advance Notice of Proposed Rulemaking and Notice of Public Meetings.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, requires that the Department of Energy prescribe energy efficiency standards for nine types of consumer products no later than December 1980. The purpose of this advance notice of proposed rulemaking and notice of public meetings is to facilitate the gathering or information prior to proposing the standards. Therefore, this notice is designed to familiarize the public with the standards program as presently envisioned, and to invite the public's review and comments.

DATES: Written comments in response to this notice to be filed by 4:30 p.m. March 5, 1979. Requests to speak at the public meetings to be received by 4:30 p.m., local time, January 19, 1979. Speakers to be notified by 4:30 p.m., local time, January 24, 1979.

Meetings to be held on the following dates and times:

January 26, 1979, 9:00 a.m., Washington, D.C.

January 26, 1979, 9:00 a.m., Boston, Massachusetts.

January 31, 1979, 9:00 a.m., Chicago, Illinois.

February 2, 1979, 9:00 a.m., Atlanta, Georgia.

February 6, 1979, 9:00 a.m., Dallas, Texas.

February 8, 1979, 9:00 a.m., San Francisco, California.

ADDRESSES: Comments on the document to:

U.S. Department of Energy, Consumer Products Efficiency Branch, Room 2248, CSA-RM-78-110, 20 Massachusetts Avenue, N.W., Washington, D.C. 20461 (202) 376-4814.

Requests to speak at the Washington, D.C., meeting: U.S. Department of Energy, ATTN: Margaret Sibley, CSA-RM-78-110, Federal Building, Room 5324, Washington, D.C. 20461 (202) 633-8608.

Requests to speak at the Boston, Massachusetts meeting: U.S. Department of Energy, ATTN: Roberta Walsh, Analex Bldg. Room 700, 150 Causeway Street, Boston, Massachusetts 02114 (617) 223-0504 (FTS) 223-0504.

Requests to speak at the Chicago, Illinois meeting: U.S. Department of Energy, ATTN: Ken Johnson, 175 West Jackson Boulevard, Room A-333, Chicago, Illinois 60604 (312) 353-0650 (FTS) 353-0650.

Requests to speak at the Atlanta, Georgia meeting: U.S. Department of Energy, ATTN: Roy Pettit, 1655 Peachtree Street, N.E., Atlanta, Georgia 30309 (404) 881-2838 (FTS) 257-2838.

Requests to speak at the Dallas, Texas meeting: U.S. Department of Energy, ATTN: Grace Morrison, P.O. Box 35228, 2626 West Mockinbird Lane Dallas, Texas 75235 (214) 749-7621 (FTS) 749-7621.

Requests to speak at the San Francisco, California meeting: U.S. Department of Energy, ATTN: Dennis Wong, 111 Pine Street, Third Floor, San Francisco, California 94111 (415) 556-7216 (415) 556-7216.

Meeting locations: 2000 M Street, N.W., Washington, D.C.; JFK Federal Building, Government Center, Boston, Massachusetts; Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois; the Atlanta Civic Center, 395 Piedmont Avenue, N.E., Atlanta, Georgia; Earl Cabell Federal Building, 1100 Commerce Street, Dallas, Texas; Hyatt Regency Union Square, 345 Stockton Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT:

James A. Smith, U.S. Department of Energy, Office of Conservation and Solar Applications, Division of Buildings and Community Systems, Consumer Products Efficiency Branch, Room 2248, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376-4614.

Mary-Lynn Wrabel (Media Contact Only), U.S. Department of Energy, Office of Conservation and Solar Applications, Division of Buildings and Community Systems, Technology & Information Transfer Branch, Mail Stop 2221-C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376-4669.

William J. Dennison, U.S. Department of Energy, Office of General Counsel, 12th and Pennsylvania Avenue, N.W., Room 7148, Washington, D.C. 20461 (202) 633-8788.

CONSUMER INFORMATION TELEPHONE NUMBERS: (202) 376-5924; (800) 424-5163.

SUPPLEMENTARY INFORMATION:

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B. Energy Efficiency Standards
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I. Introduction

A. Planned Regulatory Action

Section 325 of the Energy Policy and Conservation Act (Act) (Pub. L. 94-163), as amended by section 422 of the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619), requires that the Department of Energy (DOE) prescribe energy efficiency standards for the types of consumer products listed in section 322(a) of the Act. These consumer products are sometimes referred to as "covered products." Standards for nine of these product types are required by section 325, as amended, to be published in the FEDERAL REGISTER no later than December 1980. The nine types of consumer products include refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, home heating equipment (not including furnaces), kitchen ranges and ovens, central air conditioners, and furnaces. Standards for dishwashers, televisions, clothes washers, humidifiers, and dehumidifiers are required to be published in the FEDERAL REGISTER no later than November 1981.

The Act defines energy efficiency standards as performance standards, which means that they will establish the minimum energy efficiency level required to be achieved by each unit of a covered product type or class, but will not prescribe the methods, designs, processes, or materials to be used to achieve any particular efficiency level. The standards will apply only to new products manufactured after the effective date of the standards.

B. Purpose and Scope of This Notice

Section 325(i), as amended, requires DOE, as the first step in establishing standards, to publish this advance notice of proposed rulemaking which is required to specify the type or class of covered products to which a standard is likely to apply, and to invite comments from interested persons relevant to establishing the energy efficiency standards. The primary purpose of this notice is to facilitate the gathering of information prior to proposing standards. The notice provides an opportunity for public comment and participation in the early planning stages of the standards development process. DOE expects that the comments received as a result of this notice will provide a major portion of the informational base from which the standards will be proposed.

Accordingly, this notice is designed to present an extensive discussion of DOE's current views concerning the standards program and the process for implementation. Ensuing sections deal with the legislative background, the standards implementation process, the phase-in period for standards, the development of proposed standards, a listing of the product types and classes to which standards are likely to apply, DOE's present views regarding the criteria for classes and the maximum technologically feasible efficiency for each class of products, and a request for comments on various standards-related issues.

Interested persons are invited to provide views, written presentations of data, and arguments relevant to establishing energy efficiency standards. In addition, interested persons are encouraged to provide alternative programmatic approaches within the framework of the legislation.

II. Legislative Framework

A. Background

The energy conservation program for improving the efficiency of consumer products, Title III, Part B of the Act, is designed to encourage manufacturers to produce, and consumers to purchase, significantly more efficient consumer products. The Act sets forth two interrelated strategies for accomplishing this objective: to require manufacturers to produce more efficient products and to enhance consumer acceptance of more efficient products.

The first strategy, as contained in section 325 of the Act prior to amendment by NECPA in November 1978, originally called for the promulgation of voluntary efficiency improvement targets representing aggregate industry levels of efficiency improvement to be achieved by 1980. As an incentive for the industry to reach these targets, a reporting and monitoring system was to be established by DOE in order to track industry progress. In the event that achievement of a target for a particular product appeared unlikely, DOE would have been required to initiate an administrative proceeding to prescribe a mandatory minimum efficiency standard for the product in question.

In the National Energy Plan proposed by the President in April 1977, the voluntary target program was to be replaced with a mandatory minimum efficiency standards program because of the voluntary nature of the targets and the long delays in establishing standards if the target levels were not achieved. Section 422 of NECPA amends section 325 of the Act to provide for a program similar to the mandatory standards program requested by the President in the National Energy Plan.

The second strategy, contained in section 324 of the Act, as amended, involves development of a labeling program to require that manufacturers label each covered product with energy consumption information to assist consumers in making purchasing decisions. The Federal Trade Commission (FTC) has the responsibility for developing labeling rules and administering the labeling program.

In conjunction with issuance of the labeling rules, section 337 of the Act requires requires DOE to develop a consumer education program to enhance consumer awareness of the labels and create a better understanding of the information provided on the labels. This is intended to encourage comparison shopping and to enhance consumer demand for the more efficient products. As a consequence, it is anticipated that manufacturers will be influenced to expedite efficiency improvements for their various product lines to meet market demand.

In order to support these dual strategies, section 323 of the Act mandates that DOE develop test procedures for the determination of estimated annual operating costs and at least one other measure of energy consumption for each covered product which will assist consumers in making purchasing decisions. Testing by manufacturers in accordance with these test procedures will serve as a basis for: (1) the energy cost and consumption information that will be required to be included on product labels under the FTC labeling program and (2) representations by manufacturers regarding the energy consumption of their products. Also, measurements of efficiency which are derived from the test procedures will be used as the basis for energy efficiency standards. Manufacturers will be required to establish that their products are in conformance with the standards by testing in accordance with test procedures. Further, the compliance of individual units with the standards will be determined by using these procedures. DOE has prescribed final test procedures for the covered products listed in Table I. DOE has made a tentative determination to include heat pumps as a class of central air conditioners and plans to propose test procedures for heat pumps on March 9, 1979. In accordance with section 325(i), as amended, within 30 days after these test procedures are final an advance notice of proposed rulemaking for heat pump standards will be issued.

Table I.—*Federal Register Citation for Test Procedures*

Covered product type	Proposed	Final
1. Refrigerators, refrigerator-freezers.	(42 FR 21576, Apr. 27, 1977)	(42 FR 46140, Sept. 14, 1977)
2. Freezers	(42 FR 21576, Apr. 27, 1977)	(42 FR 46140, Sept. 14, 1977)
3. Dishwashers	(42 FR 15423, Mar. 22, 1977)	(42 FR 39964, Aug. 8, 1977)
4. Clothes dryers	(42 FR 21576, Apr. 27, 1977)	(42 FR 46140, Sept. 14, 1977)
5. Water heaters	(42 FR 21576, Apr. 27, 1977)	(42 FR 54110, Oct. 4, 1977)
6. Room air conditioners	(41 FR 31237, July 27, 1976)	(42 FR 27896, June 1, 1977)
7. Home heating equipment	(42 FR 23860, May 11, 1977) (unvented) (42 FR 43930, Aug. 31, 1977) (vented).	(43 FR 20108, May 10, 1978)
8. Television sets	(42 FR 21576, Apr. 27, 1977)	(42 FR 46140, Sept. 14, 1977)
9. Kitchen ranges and ovens	(42 FR 30627, June 16, 1977) (42 FR 65576, Dec. 30, 1977)	(43 FR 20108, May 10, 1978)
10. Clothes washers	(42 FR 25329, May 17, 1977)	(42 FR 49802, Sept. 28, 1977)
11. Humidifiers and dehumidifiers	(42 FR 27941, June 1, 1977)	(42 FR 55599, Oct. 18, 1977)
12. Central air conditioners	(42 FR 30401, June 14, 1977)	(42 FR 60150, Nov. 25, 1977)
13. Furnaces	(42 FR 40826, Aug. 11, 1977)	(43 FR 20108, May 10, 1978)

Test procedure design must be flexible enough to allow for technological variation among different product lines within a product type, yet standardized enough to assure that different manufacturers' product lines will be subject to the same measurement criteria in order to provide comparable measures of energy efficiency. DOE is aware that new products or designs will be developed which (1) do not fall under the product test procedure definitions (10 CFR 430.2) or (2) do fall under the definitions but which when tested reflect inaccurate efficiencies. DOE intends to propose in the near future procedural guidelines relating to the modification of test procedures.

B. Energy Efficiency Standards

The Act, as amended,[1] requires that standards be prescribed for the types of consumer products listed in section 322(a). However, section 325(g) requires that priority be given to the nine product types listed earlier in this notice. The remaining product types (dishwashers, television sets, humidifiers, dehumidifiers, and clothes washers) will be the subject of a separate advance notice which is required by section 325 to be published no later

[1]Subsequent references to the "Act" and sections of the Act refer to the Energy Policy and Conservation Act as amended by NECPA.

than November 1979. The Act also permits DOE to prescribe standards for other products which meet certain criteria stated in section 325(a)(2). A list of such products which DOE considers may be subject to standards is required to be published no later than November 1980, but may be revised thereafter.

The standards prescribed, including any intermediate standards, are required by section 325(c) to be designed so as to achieve the maximum improvement in energy efficiency which is technologically feasible and economically justified. Under that subsection, however, no standard can be prescribed for a particular type or class of covered product if (1) there is no DOE test procedure for the type or class; or (2) DOE determines, by rule, that establishment of a standard for the particular type or class would not result in significant conservation of energy or is not technologically feasible or economically justified.

Section 325(d) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After receiving comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard,

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard,

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard,

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard,

(5) The impact of any lessening of competition determined in writing by the Attorney General that is likely to result from the imposition of the standard,

(6) The need of the Nation to conserve energy, and

(7) Any other factors which DOE considers relevant.

Section 325(f) provides that minimum energy efficiency levels do not have to be identical for all products within a type or class. Products that consume different kinds of energy (oil, natural gas, electricity, etc.) or that have a capacity or other performance-related feature different from other products within the same type or class can be required to have higher or lower energy efficiency levels. For example, different minimum energy efficiency levels could be prescribed for gas and electric water heaters or for manual and automatic defrost refrigerator-freezers.

Section 325(e) provides that manufacturers having annual gross revenues of less than $8,000,000 (within the meaning of that subsection) may apply to DOE for exemption for up to 24 months from any standards requirement. This authority may not be exercised unless DOE, after obtaining the written views of the Attorney General, determines that failure to allow the exemption would likely result in a lessening of competition.

Other provisions provide for (1) a review of test procedures within three years of NECPA enactment, section 323(a)(7); (2) reevaluation of the standards within five years of prescription, section 325(h); (3) supersession of state energy efficiency regulations under conditions and procedures specified in section 327; and (4) authority to use power otherwise available to collect information relating to the economic impact of compliance with proposed standards requirements, section 326(d).

Section 325(j) of the Act provides for standards to include any requirements on manufacturers which DOE determines are necessary to assure that each covered product to which a standard applies meets the required minimum energy efficiency level. DOE expects such provisions to include testing and submission of information to DOE before a munufacturer introduces products into commerce.

Section 333 provides that any persons who knowingly violate any provision of section 332 (which lists prohibited acts) shall be subject to civil penalties.

Other enforcement-related provisions provide for: (1) DOE to prescribe rules requiring manufacturers to allow DOE to observe and inspect results of testing conducted by the manufacturer or his agent, section 326(b)(5); (2) the manufacturer to supply to DOE a reasonable number of products for testing purposes, section 326(b); (3) the manufacturer to submit information or reports necessary to insure compliance, section 326(d); and (4) injunctive relief against any prohibited act, including distribution of noncomplying products, section 334.

C. IMPLEMENTATION PROCESS

Section 325(i) outlines the process by which the standards are to be prescribed. This process is substantially different from that followed in the target program in one important respect. Section 325(i)(3) requires DOE to identify, in the proposed rule, the maximum technologically feasible level of efficiency for each type (or class) of product, and if any proposed standard is not designed to achieve this level, to state the reasons for proposing a different level as the standard.

In anticipation of this requirement and to facilitate the gathering of relevant information, DOE is providing a detailed discussion in this notice of product classes, levels of efficiency and analytical concepts, and further, is holding a series of public meetings following publication of this notice in order to familiarize the public with this standard setting program and to achieve the highest possible degree of public awareness, involvement and comment.

Based upon comments received from this notice and information otherwise available, DOE will issue a notice proposing standards for the nine types of products. The proposal is scheduled to be issued in October 1979. That notice will provide DOE's determination of the maximum technologically feasible level of efficiency for each type (or class) of products, and if the standards proposed are not the maximum technologically feasible level of efficiency, the notice will state, as required by section 325(f), the reasons why the proposed standards are different. In addition, that notice is expected to propose a program for assuring compliance with the standards. A 60-day public comment period and a series of public hearings will follow.

After the public hearings, review and analysis of the comments, survey data, and other information will begin. Final standards are required to be issued no later than December 1980. The final rule will contain the standards and is expected also to contain compliance requirements. Under section 325(i), the standards may not become effective earlier than 180 days after publication of the final rule in the FEDERAL REGISTER.

D. PLANNED PHASE-IN OF STANDARDS

Section 325(c) allows for the phasing-in of standards over a period of up to five years through the establishment of intermediate standards. Use of the full five-year period for establishing final standards will provide manufacturers with the greatest possible planning and development time, and thus it would appear that they would be better able to meet higher final standards than might otherwise be the case were a shorter period adopted.

DOE's tentative planning is to utilize the full phase-in period and to prescibe standards which are to be achieved by December 1985. To assure that manufacturers make steady prog-

ress toward the 1985 standards, intermediate standards are planned for June 1981 and December 1983. In June 1981, six months after standards are promulgated, the first intermediate standards would become effective. These standards would take into account the short lead time that manufacturers will have to make design changes. Intermediate standards for December 1983 would be higher because those standards would have been published for a period of three years. If this alternative is followed, DOE will identify in the proposed rulemaking, for each class, minimum energy efficiency levels for each of the three years (1981, 1983, 1985).

One alternative to this phase-in strategy would be to set a 1981 standard and only one additional standard, the final standard, which would become effective sometime before 1985. Since under this approach manufacturers would have less time to achieve compliance with a final standard, this approach lacks the flexibility of the first one and could result in lower standards.

Another option which DOE is exploring would be to have different phase-in periods for the various product types or classes. This alternative might permit maximum efficiency levels to be reached over shorter time periods, but DOE does not have sufficient information about the efficiency improvement possibilities for individual types and classes of products to consider this approach at this time.

III. Product Types, Likely Product Classes and Tentative Determinations Concerning the Maximum Technologically Feasible Energy Efficiency Levels

A. DEFINITIONS

For purposes of this notice:

"Energy efficiency standard" means a performance standard (as opposed to a design standard) which prescribes for each unit of a covered product a minimum energy efficiency level. Energy efficiency standards include test procedures prescribed in 10 CFR Part 430, Subpart B, and any requirements on manufacturers which DOE determines are necessary to assure that each covered product to which a standard applies meets the required minimum energy efficiency level specified in the standard.

"Minimum energy efficiency level" means the minimum value of the measure of efficiency (i.e., energy factor, energy efficiency ratio, seasonal energy efficiency ratio, annual fuel utilization efficiency, defined and measured according to DOE test procedures in 10 CFR Part 430, Subpart B), which each unit of a covered product must meet or exceed in order to be in compliance with an energy efficiency standard.

"Type" of covered products means one of the categories of consumer products designated in section 322(a) of the Act. For example, freezers are a type of covered product.

"Class" of covered products means a group of covered products, the functions or intended uses of which are similar. A class of covered products is subject to a single energy efficiency standard. Such standard may prescribe either the same minimum energy efficiency level for all of the basic models of the class, or different minimum energy efficiency levels for basic models which are distinguished by capacity or other performance-related features that affect efficiency and utility. For example, automatic defrost freezers are a class of covered products.

B. TENTATIVE DETERMINATIONS OF THE MAXIMUM TECHNOLOGICALLY FEASIBLE ENERGY EFFICIENCY LEVEL

In the proposed rule, DOE is required to identify the maximum technologically feasible energy efficiency level for each class of covered products. In order to facilitate the gathering of data, views and arguments, DOE is offering for consideration a definition of the term "maximum technologically feasible energy efficiency level" and presenting in Table II DOE's tentative determination of such levels based on 1978 data. The levels in Table II may be modified in the proposed rule as a result of either modifying the definition, obtaining better information regarding the highest levels of energy efficiency of basic models commercially available, or identifying efficiency improvements that occur in commercially available products prior to the time of the proposal.

For purposes of this advance notice, the term "maximum technologically feasible energy efficiency level" means, for each class of covered product, the highest level of the measure of energy efficiency (i.e., energy factor, energy efficiency ratio, seasonal energy efficiency ratio, annual fuel utilization efficiency, defined and measured according to DOE test procedures) of any basic model that is commercially available at the time of proposal (which is planned for October, 1979). Based on this definition, DOE's tentative determinations of maximum technologically feasible energy efficiency level for each product class are listed in Table II. As mentioned earlier, those levels are based on products commercially available in 1978. For the product classes for which DOE has incomplete information on the levels of the measure of efficiency of the basic models commercially available in 1978, DOE has estimated the maximum technologically feasible energy efficiency level based on the best available information. Classes for which levels have been estimated are noted in Table II by three asterisks.

C. CRITERIA FOR SELECTION OF CLASSES

DOE has segregated the basic models of product types into classes to which different energy efficiency standards are likely to apply. These classes are tentative, and different classes may be specified in the proposed rule if DOE receives data, views and arguments which justify changes. DOE used the following two criteria to segregate the basic models of product types into classes:

1. DOE is specifying classes whenever different basic models of the product type consume different types of energy (i.e., oil, gas, or electricity).

2. DOE is specifying classes in order to insure that consumer products having different capacities or other useful performance-related features which affect efficiency and utility remain available to consumers.

These criteria are applied to each product type in Section III E of this notice. For each class within a product type, Section III E includes a discussion of the justification for establishing minimum energy efficiency levels different from those which apply to other classes within the same product type.

D. METHOD OF SPECIFYING MINIMUM ENERGY EFFICIENCY LEVELS

For covered products other than refrigerators, refrigerator-freezers, freezers, and window room air conditioners, the same minimum energy efficiency level is likely to apply to each basic model within a particular class.

For refrigerators, refrigerator-freezers, freezers, and window room air conditioners, minimum energy efficiency levels within any class are likely to vary with capacity (i.e., net refrigerated volume or cooling capacity). Therefore, within a single class, basic models differing according to capacity are likely to be subject to different minimum energy efficiency levels. This method of establishing minimum energy efficiency levels is likely to be used for refrigerators, refrigerator-freezers, and freezers because their efficiency, as measured by the energy factor, tends to increase with volume. The same method is likely to be used for window room air conditioners because the minimum energy efficiency level is expected to vary greatly with capacity.

The likely product classes, and the tentative determinations of the maximum technologically feasible energy efficiency level for each class, are presented in Table II. Section III E con-

tains a discussion of the considerations leading to the selection of the individual classes.

E. PRODUCT CLASS RATIONALE

1. *Refrigerators and Refrigerator-freezers*

Three classes of electric refrigerators and electric refrigerator-freezers are specified in this notice. These classes are distinguished by two performance-related features which affect utility: freezer compartment design temperature and the type of defrost system.

Refrigeration products which require manual defrosting are separated into two classes. Basic models of the first class have freezer compartments designed to operate at 15°F. This group is referred to as "manual defrost refrigerators" in DOE test procedures. Basic models of the second class have freezer compartments designed to operate at 5°F. This group is referred to as "partial automatic defrost refrigerator-freezers" in DOE test procedures and as "cycle defrost refrigerator-freezers" by certain members of the refrigeration industry.

According to the U.S. Department of Agriculture, food can be stored for much longer periods of time at 5°F than at 15°F. Therefore, the lower freezer compartment temperature provides additional utility to the consumer.

Despite the references to manual defrosting and partial-automatic defrosting in DOE test procedures, DOE believes that there are no significant differences between these products with regard to the type of consumer actions needed to accomplish defrosting. DOE believes, therefore, that "partial automatic" defrosting, as compared to manual defrosting, is not, in itself, a performance-related feature which affects utility.

Because of the different freezer compartment design temperatures, the energy factors of units having freezer compartments designed to operate at 5°F should tend to be lower than the energy factors of units having freezer compartments designed to operate at 15°F. Minimum energy efficiency levels appropriate for units having freezer compartments designed to operate at 15°F may not be achievable by units having freezer compartments designed to operate at 5°F. DOE is contemplating segregating these units into separate classes in order to insure that units having freezer compartments designed to operate at 5°F remain available to consumers.

Automatic defrost units do not require any consumer action to accomplish defrosting, and thus provide a utility to the consumer not provided by manually defrosted units. Moreover, automatic defrost units should tend to have lower energy factors because of the extra energy consumed by the automatic defrosting cycle. Minimum energy efficiency levels appropriate for other classes of refrigerators and refrigerator-freezers may not be achievable by automatic defrost refrigerator-freezers. Since automatic defrost refrigerator-freezers offer a distinct performance-related feature which affects utility and efficiency, DOE is specifying a class of automatic defrost refrigerator-freezers in order to insure that such units remain available to consumers. DOE is not further classifying automatic defrost refrigerator-freezers on the basis of freezer compartment design temperature because DOE believes that the freezer compartments of all automatic defrost refrigerator-freezers are designed to operate at the same temperature.

2. *Freezers*

Three classes of freezer are specified in this notice. These classes are distinguished by performance-related features which affect utility and efficiency. One such feature is the configuration of the unit, i.e., chest or upright. Examples of the extra utility which distinguishes upright freezers from chest freezers, include greater accessibility to the freezer contents and more efficient use of floor space. Information available to DOE indicates that the energy factors of upright freezers should tend to be lower than the energy factors of chest freezers. Therefore, minimum energy efficiency levels appropriate for chest freezers may not be achievable by upright freezers. Since upright freezers offer distinct performance-related features which affect utility and efficiency, DOE is specifying in this notice separate classes in order to insure that upright freezers remain available to consumers.

Another performance-related feature which affects utility and efficiency is the type of defrost system, which determines the extent of consumer action needed to accomplish defrosting. Automatic defrost units do not require any consumer action to accomplish defrosting, and thus provide the consumer with utility not provided by manual defrost units. Moreover, automatic defrost units, as compared to manual defrost units, should tend to have lower energy factors because of the extra energy consumed by the automatic defrosting cycle. Minimum energy efficiency levels appropriate for manual defrost freezers may not be achievable by automatic defrost freezers. Since automatic defrost freezers offer a distinct performance-related feature, DOE is specifying in this notice a class of automatic defrost freezers in order to insure that such units remain available to consumers. Because DOE is not aware of any automatic defrost chest freezers distributed in commerce, DOE is not planning to segregate automatic defrost freezers according to configuration.

3. *Clothes Dryers*

Three classes of clothes dryers are specified in this notice. These classes are distinguished either by the type of energy consumed by the basic models of a class or by performance-related features which affect utility and efficiency.

Basic models of clothes dryers are segregated into those which consume gas energy and those which consume electric energy. Failure to establish separate classes according to the type of energy consumed might result in the elimination of all basic models consuming certain types of energy. Such possibility is contrary to indications of the intent of Congress, as stated in the legislative history of the NECPA amendments.

Basic models of clothes dryers are also distinguished by the amount of room occupied by the unit, a performance-related feature which affects utility and efficiency. Compact clothes dryers take up less room than standard clothes dryers. Another related feature which affects utility is the drum size, which determines the size of an economical load: compact clothes dryers will dry the small loads typically needed by small families at a lower cost than standard clothes dryers. Information available to DOE indicates that the energy factors of compact clothes dryers should tend to be lower than the energy factors of standard clothes dryers. Since compact clothes dryers offer a distinct performance-related feature which affects utility and efficiency, DOE is specifying in this notice a separate class for compact electric clothes dryers in order to insure that such units remain available to consumers. DOE is not specifying a class for compact gas clothes dryers because DOE is not aware of any such units distributed in commerce.

4. *Water Heaters*

Three classes of water heaters are specified in this notice, based on the type of energy consumed: oil, gas, or electricity. Failure to establish separate classes according to the type of energy consumed might result in the elimination of basic models consuming certain types of energy, which is undesirable for the reasons already stated in the discussion concerning clothes dryers.

5. *Room Air Conditioners*

Four classes of room air conditioners are specified in this notice. Room air conditioners are distinguished by the

configuration of the unit: packaged terminal, through-the-wall (no outdoor louvers), reverse cycle, and window room air conditioners. (Because through-the-wall room air conditioners with outdoor side louvers and window room air conditioners can often be used interchangeably, through-the-wall units with outdoor side louvers will be considered as part of the class of window room air conditioners.)

These four classes are each distinguished by performance-related features which affect utility and efficiency. Packaged terminal air conditioners have special mounting provisions essential to use in apartment complexes or condominiums. Through-the-wall units (no outdoor louvers) are typically designed to be flush mounted with the outside wall of the building. Reverse cycle air conditioners have the capability of providing heat to the conditioned space. Window units are designed to be mounted in various window openings.

The energy efficiency levels which are the maximum technologically feasible and economically justified are likey to be distinct for each of the classes. Minimum energy efficiency levels appropriate for one class may not be achievable by basic models of other classes. Since the basic models of each class offer distinct performance-related features, DOE is specifying in this notice four separate classes in order to insure that basic models of each class remain available to consumers.

6. *Home Heating Equipment (not including furnaces)*

Thirteen classes of home heating equipment (not including furnaces) are specified in this notice. These classes are distinguished by the type of energy consumed by the basic models of each class and by performance-related features which affect utility and efficiency.

Basic models of home heating equipment are segregated according to whether they consume electricity, gas or oil. Failure to establish separate classes according to the type of energy consumed might result in the elimination of basic models consuming certain types of energy, which is undesirable for the reasons already stated in the discussion concerning clothes dryers.

Basic models of gas-fired home heating equipment are further distinguished by methods of hot air distribution (i.e., forced-air or gravity), and the configuration (i.e., wall furnace, floor furnace, or room heater). Basic models of oil-fired home heating equipment are distinguished by methods of air distribution (i.e., gravity or forced-air) and configuration (i.e., wall furnace, floor furnace or room heater). Information available to DOE indicates that the minimum energy efficiency levels which are the maximum technologically feasible and economically justified are likely to be distinct for each of the proposed classes of oil-fired and gas-fired equipment. Therefore, minimum energy efficiency levels appropriate for one class may not be achievable by basic models of other classes. Since the basic models of each class offer distinct performance-related features which affect utility and efficiency, DOE is specifying twelve classes of oil-fired and gas-fired home heating equipment.

It is not necessary to differentiate between basic models of electric home heating equipment because all units are 100 percent efficient at point of use, according to the applicable DOE test procedures.

7. *Kitchen Ranges and Ovens*

Seven classes of kitchen ranges and ovens are specified in this notice. These classes are distinguished by the type of energy consumed by the basic models of each class, by the function of the basic models of the class, or by other performance-related features which affect utility and efficiency of the basic models of the class.

Basic models of kitchen ranges and ovens are segregated into classes according to whether basic models of the class consume electric energy only, or gas energy. Failure to establish separate classes according to the type of energy consumed might result in the elimination of all basic models consuming certain types of energy, which is undesirable for the reasons already stated in the discussion concerning clothes dryers.

This product type has been further segregated to account for the differing functions of the three major cooking components, i.e., microwave ovens, conventional ovens (electric and gas) and cooking tops (electric and gas). DOE anticipates that, instead of setting single standards for basic models which consist of two or more major cooking components, a separate standard will be set for each component.

Electric ovens and gas ovens have been further segregated into classes of self-cleaning ovens and non-self-cleaning ovens because of their differing utility to consumers. Self-cleaning ovens, as compared to non-self-cleaning ovens, should tend to have lower energy factors because of the extra energy consumed by the self-cleaning cycle. Minimum energy efficiency levels appropriate for non-self-cleaning ovens may not be achievable by self-cleaning ovens. Since self-cleaning ovens offer a distinct performance-related feature which affects utility and efficiency, DOE is specifying in this notice a class of self-cleaning ovens in order to insure that such units remain available to consumers.

Information available to DOE indicates that the minimum energy efficiency levels which are the maximum technologically feasible and economically justified are likely to be distinct for each of the specified classes of kitchen ranges and ovens. Therefore, minimum energy efficiency levels appropriate for one class may not be achievable by basic models of other classes. Since the basic models of each class offer distinct performance-related features, DOE is specifying seven classes of kitchen ranges and ovens in order to insure that such models remain available to consumers.

8. *Central Air Conditioners*

Two classes of central air conditioners are apecified in this notice. These classes are distinguished by their configuration, a performance-related feature which affects utility and efficiency.

Central air conditioners are segregated according to whether the units make up a single package or a split system (separated indoor and outdoor components connected by refrigeration and electrical lines). Certain households cannot accommodate split systems because suitable space is not available for the outdoor unit. Technical information available to DOE indicates that the measures of efficiency of single package systems should tend to be lower than the measures of efficiency of split systems. Minimum energy efficiency levels appropriate for split systems may not be achievable by single package systems. Since single package systems offer distinct performance-related features which affect utility and efficiency, DOE is specifying a separate class for single package systems.

9. *Furnaces*

Six classes of furnaces are specified in this notice. These classes are distinguished either by the type of energy consumed by the basic models of each class, or by performance-related features which affect utility.

Basic models of furnaces are segregated according to whether they consume electricity, gas, or oil. Failure to establish separate classes according to the type of energy consumed might result in the elimination of basic models consuming certain types of energy, which is desirable for the reasons already stated in the discussion concerning clothes dryers.

One performance-related feature which affects utility is the method of heat distribution to the household. Gas furnaces use air circulation systems based either on the effect of gravity on low density heated air, or on the action of a blower (i.e., forced air). Gravity-type systems offer the

utility of operating without an electrical connection. In addition, a further class of furnaces, gas boilers, use hot water or steam to distribute heat. These various distribution systems result in different characteristics of heat transfer from the furnace flame to the conditioned space, and different losses through the flue. Information available to DOE indicates that the measure of efficiency of gravity gas furnaces should tend to be lower than the measures of efficiency of forced-air gas furnaces. Further, the measure of efficiency of forced-air furnaces should tend to be lower than the measure of efficiency for gas boilers. Minimum energy efficiency levels for one class of gas furnaces may not be achievable by other classes of gas furnaces. Since each class of gas furnaces provides distinct performance-related features, DOE is specifying separate classes in order to insure that all groups remain available to consumers.

Identical arguments lead to the specification of separate classes for forced-air oil furnaces and oil boilers. A class of oil furnaces using gravity to circulate hot air is not specified because DOE is not aware of any such units distributed in commerce.

TABLE II.—*Likely Classes and Tentative Determinations of Maximum Technologically Feasible Energy Efficiency Levels*

Covered product type	Class	Preliminary maximum technologically feasible energy efficiency level**
Refrigerators and refrigerator-freezers.	Electric, manually defrosted, 15° freezer	10.4 ft³/kWh-day (EF)
	Electric, manually defrosted, 5° freezer	10.1 ft³/kWh-day (EF)
	Electric, automatic defrost	6.6 ft³/kWh-day (EF)
Freezers	Manual defrost, chest	16.9 ft³/kWh-day (EF)
	Manual defrost, upright	13.9 ft³/kWh-day (EF)
	Automatic defrost	9.1 ft³/kWh-day (EF)
Clothes dryers	Electric, standard	2.77 lb/dWh (EF)
	Electric, compact	2.61 lb/dWh (EF)
	Gas	2.46 lb/dWh (EF)
Water heaters	Electric	0.89 (EF)***
	Gas	0.59 (EF)***
	Oil	0.50 (EF)***
Room air conditioners	Window and through the wall (with outdoor side louvers)	11.6 Btu/watt-hour (EER)
	Through the wall (no outdoor side louvers)	7.5 Btu/watt-hour (EER)
	Packaged terminal	8.7 Btu/watt-hour (EER)
	Reverse cycle	8.8 Btu/watt-hour (EER)
Home heating equipment, not including furnaces.	Electric, primary and supplementary	100% efficiency
	Gas, gravity, vented room heater	58% (AFUE)***
	Gas, forced air, vented room heater	74% (AFUE)***
	Gas, gravity, vented wall furnace	60% (AFUE)***
	Gas, forced air, vented wall furnace	70% (AFUE)***
	Gas, gravity, vented floor furnace	70% (AFUE)***
	Gas, forced air, vented floor furnace	(AFUE)*
	Oil, gravity, vented room heater	(AFUE)*
	Oil, forced air, vented room heater	(AFUE)*
	Oil, gravity, vented wall furnace	(AFUE)*
	Oil, forced air, vented wall furnace	(AFUE)*
	Oil, gravity, vented floor furnace	(AFUE)*
	Oil, forced air, vented floor furnace	(AFUE)*
Kitchen ranges and ovens	Microwave oven	44%(EF)***
	Electric cooking top	79% (EF)
	Electric oven	16% (EF)***
	Electric oven, self-cleaning	14% (EF)***
	Gas cooking top	46% (EF)
	Gas oven	8.5% (EF)
	Gas oven, self-cleaning	7.8% (EF)
Central air conditioners	Split system	10.3 (SEER)***
	Single package	8.9 (SEER)***
Furnaces	Gas, gravity	70% (AFUE)***
	Gas, forced air	75% (AFUE)
	Gas, boilers	79% (AFUE)
	Oil, boilers	85% (AFUE)
	Oil, forced air	82% (AFUE)***
	Electric	100% (AFUE)

*Information is not available to determine the maximum technologically feasible energy efficiency level.
**Based on data obtained by using DOE test procedures.
***Based on best available information.

EF=energy factor.
EER=energy efficiency ratio.
AFUE=annual fuel utilization efficiency.
SEER=seasonal energy efficiency ratio.

IV. DEVELOPMENT OF PROPOSED ENERGY EFFICIENCY STANDARDS

A. APPROACH

Section 325(i) of the Act requires DOE to determine the maximum improvement in energy efficiency that is technologically feasible for each type (or class) of covered product in proposing a standard. If the proposed standard is not designed to achieve this level of efficiency, DOE is required to state in the proposed rule the reasons therefor. If standards are proposed at a level below that which is the maximum technologically feasible, the reasons for such a proposal are expected to be primarily economic, i.e. related to the seven factors identified by Congress which must be considered to the extent practicable in determining whether a standard is economically justified. In order to supplement available data for identifying any reasons for not proposing a standard at the

maximum technologically feasible level, DOE has developed a series of questions framed around components of these seven factors. Any comments regarding the components and any responses to the questions will also be used as a framework for identifying areas which require additional data in determining final standards.[2] The components are listed in Part B and the questions are listed in Part C of this section.

B. COMPONENTS

The following is a listing of the seven factors and the major components of each factor. DOE has identified these major components in order to facilitate public comment. In addition to the components identified below, there may be other areas of concern regarding the seven factors. The public is invited to identify any additional areas of concern and to comment upon them.

The seven factors and their components are as follows:

1. The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.
1.1. Impact on Manufacturers
a. Production
b. Employment
c. Capital Investment
d. Industry Structure
e. Change in Retail Price
1.2. Impact on Consumers
a. Choice of Products Available in the Market
b. Change in Retail Price
c. Utility/Performance
d. Maintenance
e. Energy Savings
f. Differential Impact of the Standard on Consumers

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard.
a. Estimated Average Product Life
b. Estimated Energy Savings
c. Changes in Maintenance Expenses
d. Change in Retail Price

3. The total projected amount of energy savings likely to result directly from the imposition of the standard.
a. Number of Units Produced Annually
b. Aggregate Energy Savings

4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard.
a. Product Classes

5. The impact of any lessening of competition determined in writing by the Attorney General that is likely to result from the imposition of the standard.
a. Changes in Competitive Situation for Each Manufacturer

6. The need of the Nation to conserve energy.
a. Estimated National Energy Savings

7. Any other factors which DOE considers relevant.
a. Impact of Standards on the Suppliers of Component Parts
b. Impact of Standards on the Distributors, Retailers and Institutional Sales Outlets
c. The Maximum Energy Efficiency Level Achievable by Manufacturers

C. QUESTIONS

The questions dealing with the components of the seven factors are listed below. Each question may invite responses based upon as many as three different sets of assumptions:

Current data—Answers to the questions using calendar year 1978 actual data. If actual data are not available for the complete year 1978, estimated data, based upon part-year data, may be used.

Scenario 1—Answers using 1986 estimated data, based on plans and forecasts assuming no energy efficiency standards program.[3] In the questions listed below, the term "Scenario 1" indicates the need for this type of answer.

Scenario 2—Answers using 1986 estimated data, assuming that the maximum technologically feasible levels of energy efficiency for each product class as given in Table II of this notice are to be met by 1986.[3] In the questions listed below, the term "Scenario 2" indicates the need for this type of answer.

In responding to questions involving Scenario 1, the assumptions underlying the plans and forecasts for 1986 should be identified, such as assumptions regarding the price of energy, the rate of inflation, etc. To permit useful comparison and analysis, answers involving Scenario 2 should be based on the same assumptions as those involving Scenario 1, plus the assumption of having to meet the maximum technologically feasible levels of energy efficiency as defined in this notice. Some of the questions have been repeated, because certain types of information are relevant in quantifying the impacts of more than one of the seven factors.

The questions, listed according to factors and components, are as follows:

1. The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.
1.1. Impact on Manufacturers
a. Production
(1) What is the number of models manufactured by each company, for for each product class during calendar year 1978? [4] What is this number projected to be under Scenario 1 and Scenario 2?
(2) What is the number of units produced, and the average per unit price of the product at shipment from the factory, of each model during calendar year 1978? [4] What are these numbers and prices projected to be under Scenario 1 and under Scenario 2?
(3) In accordance with DOE test procedures, identify the capacity or other measure of useful output of services, the average annual energy consumption, and the level of the measure of energy efficiency for each model manufactured during calendar year 1978.[4] What is this same information projected to be under Scenario 1 and under Scenario 2?
(4) For those models to be producerd in 1986, what would be the percentage change in the cost of production (i.e., the sum of materials, labor, and overhead) since 1978 under Scenario 1 and under Scenario 2?
b. Employment
(1) What is the total employment for each firm and what percentage of this total are production workers for each of the 9 product types covered by this notice? [4] What would these figures be under Scenario 1 and under Scenario 2?
c. Capital Investment
(1) By product class, what is the dollar amount of capital investment by each firm for 1978 (actual data) and 1979 through 1986 (estimated data), on a year by year basis, assuming no standards? What is the dollar amount of capital investment for 1979 through 1986 (estimated data) assuming that the maximum technologically feasible level of efficiency of each product class as given in this notice is required to be met by 1986? [4]
d. Industry Structure
(1) What is share of market for each firm within each product class in calendar year 1978? [4] What is this share projected to be under Scenario 1 and under Scenario 2?
e. Change in Retail Price
1. What is the average retail price for each model manufactured by each company for calendar year 1978? [4] If the actual retail price is not available, give the suggested or estimated retail

[2] A description of the analysis proposed to be used in determining whether a standard is economically justified will be available to the public upon written request. These requests should be sent to James A. Smith at the address listed at the beginning of the notice.

[3] If 1986 estimates are not currently available, use latest actual or estimated data to develop them.

[4] See Table II of this notice for a listing of product classes by product type.

price and identify it as such. What would this price be under Scenario 1 and under Scenario 2?

1.2. Impact on Consumers

a. Choice of Products Available in the Market

(1) What is the number of models manufactured by each company, and for each product class, during calendar year 1978? What is this number projected to be under Scenario 1 and under Scenario 2?

b. Change in Retail Price

(1) What is the average retail price for each model manufactured by each company for calendar year 1978? If the actual retail price is not available, give the suggested or estimated retail price and identify it as such. What would this price be under Scenario 1 and under Scenario 2?

c. Utility/Performance

(1) What would be the difference, if any, in the utility/performance of each product class, between Scenario 1 and Scenario 2?

(2) Describe product design features that affect energy consumption of each model manufactured during calendar year 1978. Describe what these features are projected to be under Scenario 1 and Scenario 2.

d. Maintenance Expenses

(1) What are the estimated annual average maintenance expenses for each product class manufactured during calendar year 1978, over the life of the product? What are these expenses projected to be under Scenario 1 and under Scenario 2?

e. Energy Savings

(1) In accordance with DOE test procedures, identify the capacity or other measure of useful output of services, the average annual energy consumption and the level of the energy efficiency measure for each model manufactured during calendar year 1978. What is the information projected to be under Scenario 1 and under Scenario 2?

f. Differential Impact of the Standard on Consumers

(1) What factors are important when considering differential impacts on consumers?

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products, which are likely to result from the imposition of the standard.

a. Estimated Average Product Life

(1) What is the estimated average life for each product class manufactured during calendar year 1978? What is the average life projected to be under Scenario 1 and Scenario 2?

b. Estimated Energy Savings

(1) In accordance with DOE test procedures, identify the capacity or other measure of useful output of services, the average annual energy consumption and the level of the energy efficiency measure for each model manufactured during calendar year 1978. What is this information projected to be under Scenario 1 and under Scenario 2?

c. Changes in Maintenance Expenses

(1) What are the estimated annual average maintenance expenses for each product class manufactured during calendar year 1978, over the life of the product? What are these expenses projected to be under Scenario 1 and under Scenario 2?

d. Change in Retail Price

(1) What is the average retail price for each model manufactured by each company for calendar year 1978? If the actual retail price is not available, give the suggested or estimated retail price and identify it as such. What would this price be under Scenario 1 and under Scenario 2?

3. The total projected amount of energy savings likely to result directly from the imposition of the standard.

a. Number of Units Produced Annually

(1) What is the number of units of each model produced during calendar year 1978? What is this number projected to be under Scenario 1 and under Scenario 2?

b. Aggregate Energy Savings

(1) In accordance with DOE test procedures, identify the capacity or other measure of useful output of services, the average annual energy consumption and the level of the energy efficiency measure for each model manufactured during calendar year 1978. What is this same information projected to be under Scenario 1 and under Scenario 2?

(2) What is the estimated average life for each product class manufactured during calendar year 1978? What is the average life projected to be under Scenario 1 and Scenario 2?

4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard.

a. Product Classes

(1) What would be the difference, if any, in the utility/performance of each product class manufactured, between Scenario 1 and Scenario 2?

5. The impact of any lessening of competition determined in writing by the Attorney General that is likely to result for the imposition of the standard.

a. Change in Competitive Situation by Manufacturer

(1) What is each company's share of the market for each product class, in calendar year 1978? What is the share projected to be under Scenario 1 and under Scenario 2?

(2) To what extent will the implementation of standards under Scenario 2 change the degree of competition within each product class and within each of the 9 product types covered by this notice, and with regard to the overall competitiveness of each firm?

6. The need of the Nation to conserve energy.

a. Estimated National Energy Savings

(1) In accordance with DOT test procedures, identify the capacity or other measure of useful output of services, the average annual energy consumption and the level of the energy efficiency measure for each model manufactured during calendar year 1978. What is this same information projected to be under Scenario 1 and Scenario 2 as defined above?

(2) What additional information is pertinent to conserving energy with respect to the 9 products types covered in this notice?

7. Any other factors which DOE considers relevant.

a. Impact of Standards on the Suppliers of Component Parts

(1) What is the projected impact in 1986 on the suppliers of component parts to the manufacturers, assuming Scenario 2?

b. Impact of Standards on the Distributors, Retailers and Institutional Sales Outlets

(1) What is the projected impact in 1986 on the distributors, retailers and institutional sales outlets for the 9 products types covered in this notice, assuming Scenario 2?

c. The Maximum Energy Efficiency Level Achievable by Manufacturers

(1) Assuming a standards program as outlined in this notice, what should the 1985 level of the measure of efficiency be for each product class expected to be covered by the program? (It is expected that this level would exceed the level projected under Scenario 1, since Scenario 1 assumes no standards program.) If this level for a product class is different from the maximum technologically feasible level of energy efficiency listed in Table II, what are the reasons for this difference based on any answers to the questions listed above or with reference to the components of the factors identified in Part B of this section?

D. STATEMENT OF CONFIDENTIALITY

Persons responding to this notice may consider parts of their comments to be of a confidential nature, because the release of certain types of information might be deemed to cause substantial competitive injury. If any person believes that any information submitted is covered by the exemption of the Freedom of Information Act

concerning trade secrets and commercial or financial information obtained from a person and considered privileged or confidential (5 U.S.C. 552(b)(4)), the person should so state at the time of submission and request that DOE treat this information as confidential. Factors of interest to DOE when evaluating requests to treat information that has been submitted as confidential includes: (1) a description of the item; (2) an indication whether and why such items of information have been treated by the submitting person as confidential and whether and why such items are customary treated as confidential within the industry; (3) whether the information is generally known or publicly available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; and (6) an indication when such information might become nonconfidential due to the passage of time. DOE retains the right to make its own determination with regard to any claim of confidentiality.

DOE is also interested in obtaining views on what specific types of information warrant consideration under the exemption set forth in (5 U.S.C. 552(b)(4). Examples of specific types of information might include:

1. Number of units produced by model annually
2. Factory shipment price of each model
3. Total employment by product type
4. Estimated cost increase by model to meet a proposed standard
5. Capital investment annually by product type.

V. Enforcement

An enforcement program is expected to be included in the notice of proposed rulemaking specifying requirements on manufacturers for demonstrating compliance with a standard, as well as stating the actions which DOE will take to assure such compliance.

DOE is undertaking an analysis of enforcement program alternatives which will include the evaluation of ongoing Federal, State, and industry programs. An important part of the evaluation will include contact with manufacturers, trade associations, and consumer groups to identify various approaches to the enforcement program. The different approaches will be analyzed according to the overall program costs and benefits, including cost to manufacture, consumers, and the Government.

The programs that will be evaluated include the following:

1. U.S. Environmental Protection Agency;
   a. Noise Enforcement Program
   b. Automobile Exhaust Emission Certification Program.
2. National Highway Traffic Safety Administration; Enforcement of Motor Vehicle Safety Standards.
3. U.S. Department of Defense; Fleet Ballistic Missiles Procurement Standards
4. State of California; Enforcement of Appliance Energy Efficiency Standards.
5. Association of Home Appliance Manufacturers; Certification Program for Room Air Conditioners.
6. Air Conditioning and Refrigeration Institute; Certification of Unitary Air Conditioners.
7. Underwriters Laboratory; Product Safety Certification.

In providing any comments or alternative approaches, commenters should focus on the enforcement authority granted in the Act (discussed in section II B. of this notice) and the potential impacts of implementing various approaches available pursuant to this authority.

VI. Consumer Participation

Because of the direct impact of the standards on individual consumers, DOE wishes to achieve in the standards development process the maximum level of consumer participation possible. The first major action taken to reach this goal will be a series of public meetings in six cities across the country.

Representatives of consumer groups and individual consumers are urged to attend these meetings and to make oral statements regarding the standards program. DOE is mailing copies of this notice to all individuals and consumer organizations identified by DOE as having an interest in standards development. Further, DOE will accept collect telephone calls, at the consumer information numbers listed at the beginning of this notice, from individuals making requests to speak at the public meetings or requesting information about this program until the close of the comment period March 5, 1979.

Additional consumer input is expected to be received from a consumer survey to be conducted under DOE's direction. The survey will be used to determine, with respect to energy efficiency, what products have been purchased and what products consumers expect to purchase. Data from this survey will be used in DOE's demand analysis studies in determining the economic impacts of standards.

DOE requests interested persons to submit suggestions and comments on any methods DOE should consider in order to maximize consumer participation in the development of standards

VII. Environmental Impact Analysis

The issuance of regulations under this program is subject to review pursuant to the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.). DOE believes that the setting of minimum energy efficiency standards for the nine type of consumer products, discussed herein, may be a major Federal action significantly affecting the quality of the human environment. Consequently, the Department will prepare an Environmental Assessment to serve as the basis to determine whether an Environmental Impact Statement (EIS) is required. If an EIS is required, a Notice of Intent to prepare an EIS will be published in the Federal Register.

VIII. Comments on Issues

Issues and questions relating to the development of standards are found throughout this notice. The following list of issues, while highlighting some of the major areas of interest to DOE, is not intended to be comprehensive and should not be construed as limiting the scope of comments relating to this notice.

1. DOE intends to *phase in standards* over a five year period as described in this notice, with the final standards becoming effective in December 1985. It is expected that intermediate standards may be prescribed for 1981 and 1983 so that progress toward meeting the 1985 efficiency levels will be assured. DOE is interested in comments relating to this schedule and other alternative phase-in schedules.

2. DOE has identified the product types and classes to which standards are likely to apply. Product classes were selected based on two criteria. First, classes were divided by the type of energy (electricity, gas, oil) the product consumes; second, classes were established within energy types by taking into account utility and performance-related features. DOE would like to receive comments pertaining to the *proposed classes.* If additional classes are recommended, the recommendations should include the rationale for the establishment of such classes based on the two class selection criteria discussed above.

3. For purposes of this notice, DOE has defined *"maximum technologically feasible energy efficiency level"* in section III B. DOE invites comments on this definition and on the preliminary efficiency levels listed in Table II.

4. DOE's approach to the development of an energy efficiency standard *enforcement* program has been dis-

cussed in section V. Suggestions relating to a DOE enforcement program would be most valuable in the early stages of program development. In providing any comments or approaches, manufacturers, trade associations and the general public should focus on the enforcement authority granted in the Act (discussed in section II B) and the effectiveness and potential impacts of implementing various approaches pursuant to this authority.

5. DOE believes, on the basis of information currently available, that retail prices vary widely for products of similar efficiencies manufactured by different manufacturers. Further, retail prices of identical products manufactured by a single manufacturer vary widely. In quantifying the impacts of standards, what relationships are important in accounting for the numerous *retail pricing* stragtegies found in the marketplace?

6. Costs to operate consumer products vary widely across the nation, due to different costs of energy, climatic variations, and the different ways in which consumers use these products. DOE is interested in receiving comments that address methods that could be used for assessing the impacts for these *variable costs* when developing minimum energy efficiency levels for a standard.

7. Congress identified seven factors which must be considered to the extent practicable in determining the economic justification of a standard. In section IV, DOE has identified the major components within each factor and listed a series of questions framed around these components to focus any comments regarding the economic impacts of standards. DOE is interested in comments on the following issues relating to the seven factors:

(a) Whether or not the components and questions presented are sufficient.

(b) The need to obtain answers to the questions on a firm-by-firm basis.

(c) The best method for DOE to use to collect data of this nature.

IX. Comment Procedures

Interested persons are invited to participate in the development of standards by submitting, to the address indicated at the beginning of this notice, data, views or arguments with respect to the subjects set forth in this notice.

Comments should be identified on the outside of the envelope, and on documents submitted to DOE, with the designation, "Energy Efficiency Standards for Consumer Products." If possible, fifteen copies should be submitted, but this is not a requirement for submitting comments.

Any person submitting information which he believes to be confidential should so identify the information and submit one copy only of the information. DOE reserves the right to determine the confidential status of the information or data, as discussed above in section IV D, and to treat it according to that determination.

All comments received on or before March 5, 1979 will be considered by DOE in developing the proposed standards. The comment period will extend over a period of 60 days, rather than the 45 day comment period specified in section 325(i)(1)(B) of the Act because DOE's policy pursuant to Executive Order 12044 requires at least a 60 day comment period. Further, DOE believes that the additional 15 days will result in more meaningful response to this notice, and this extension will not result in delay of the legislated timetable for the prescription of standards.

X. Oral Presentation: Conduct of Meetings

Any person who has an interest in this proceeding, or who is a representative of a group of persons having an interest, may request in writing an opportunity to make an oral presentation at any of the public meetings. Such requests should be labeled both on the document and on the envelope, "Energy Efficiency Standards for Consumer Products—Request to Speak at Public Meeing," and should be sent to the address for the appropriate meeting indicated at the beginning of this notice, by the time there specified.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of a group that has an interest, and give a phone number where he or she may be contacted.

DOE reserves the right to select the persons to be heard at these meetings, to schedule the respective presentations, and to establish the procedures governing the conduct of the meetings. The length of each presentation may be limited, due to the number of persons requesting to be heard. If time permits, the official conducting the meeting may, at his or her discretion, accept additional comments or questions from those attending the meeting.

A DOE official will be designated to preside at the meeting. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the meetings, except during those periods when comments are requested from the floor. Any further procedural rules needed for the proper conduct of the meetings will be announced by the presiding officer.

Transcripts of the meetings will be made, and the entire record of the meetings, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office in the Forrestal Building, Independence Avenue and L'Enfant Plaza, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued in Washington, D.C., December 26, 1978.

Omi Walden,
Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 78-35936 Filed 12-27-78; 10:49 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Purchase, Sale, and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration.

ACTION: Proposed Rule.

SUMMARY: The proposed rule would permit a Federal credit union (1) to purchase from, sell to, or pledge to any source any eligible obligations of its members; (2) to purchase from a liquidating credit union any eligible obligations of the liquidating credit union's individual members; and (3) when engaged in real estate lending pursuant to Section 701.21-6, to purchase from other credit unions real estate loans granted in accordance with that section if the purchase will facilitate the purchaser's packaging of a pool of such loans to be sold or pledged on the secondary market, and to sell or pledge to any source any real estate loans purchased in packaging of a pool of such loans. The rule is necessary to implement provisions of the April 19, 1977 amendments to the Federal Credit Union Act (Public Law 95-22, 91 Stat. 49). It is intended to provide Federal credit unions greater flexibility both in meeting member demands and in spreading the risk of those demands. This should enhance a credit union's ability to react quickly and efficiently to meet liquidity needs. It is also intended to provide a Federal credit union making long term real estate loans greater access to the secondary mortgage market.

DATE: Comments must be received on or before January 31, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, Room 4202, 2025 M Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Stephen W. Raver, Director, Division of Examination, Office of Examination and Insurance, or John L. Culhane Jr., Attorney-Advisor, Office of General Counsel, National Credit Union Administration, 2025 M Street, N.W., Washington, D.C. 20456. Telephone numbers: (202) 254-8760 (Mr. Raver), (202) 632-4870 (Mr. Culhane).

SUPPLEMENTARY INFORMATION:

1. BACKGROUND

Before Public Law 95-22 was passed, Federal credit unions could not purchase, sell, or pledge obligations of their members. Public Law 95-22 granted these powers.

As an interim measure, the Administration issued a rule allowing Federal credit unions to sell long term real estate loans to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, and to Federal, state, and local housing authorities. 43 Fed. Reg. 33899 (1978). This interim rule, Section 701.21-8, was later amended to allow Federal credit unions to sell their members' guaranteed student loans to the Student Loan Marketing Association. 43 Fed. Reg. 36239 (1978). Although the interim rule was effective immediately, comments on it were requested and were considered in drafting the proposed rule.

Once adopted in final form, this proposed rule will replace the interim rule. The proposed rule follows the general format of Section 701.21-7, the final rule governing participation loans. With the exception of differing restrictions specifically imposed by the Federal Credit Union Act (the Act), restrictions similar to those placed on participation loans are proposed. The Administration does not intend to favor one arrangement over another. It believes that, insofar as possible, the decision either to enter into a participation arrangement prior to or at the time of origination of a loan, to subsequently purchase or sell a loan, or to pledge a loan should be made by the credit union's board of directors.

2. AUTHORITY

The proposed rule is based primarily on three sections of the Act: 107(5)(A)(i), 107(13) and 107(15).

Subsection 107(13) authorizes a Federal credit union to purchase, sell, pledge, discount, or otherwise receive or dispose of, in whole or in part, any eligible obligations of its members. It also authorizes a Federal credit union to purchase from a liquidating credit union notes made by individual members of the liquidating credit union. Prices are to be agreed upon by the boards of directors of the liquidating credit union and of the purchasing credit union.

On its face, 107(13) does not authorize one Federal credit union to purchase a real estate loan from another Federal credit union, unless the person liable on the loan happens to be a member of both credit unions. Considering the Congressional intent to allow credit unions to take advantage of secondary mortgage market facilities, the Administration does not believe that Congress intended 107(13) to be an express prohibition on such purchases, provided they are authorized by other sections of the Act.

It is the Administration's belief that the power to make such pruchases is incidental to the power to make long term real estate loans. In order to operate an effective real estate lending program, a Federal credit union must be able to access the secondary market efficiently. This can best be done by pooling loans. Thus the Administration feels that the incidental powers clause, 107(15), and the long term real estate lending power, 107(5)(A)(i), taken together, allow a Federal credit union actively engaged in real estate lending to purchase the real estate loans of other credit unions when necessary to package a pool for the secondary market.

Mindful of the restrictions placed on real estate lending by Congress, it is the Administration's belief that credit unions cannot purchase real estate loans from institutions other than credit unions. Congress did not intend for credit union funds to be diverted to institutions where they might be used for luxury homes or for other than one to four family dwellings. Therefore balancing the need of Federal credit unions for efficient access to the secondary market against Congressional intent in restricting the real estate loans to be made by Federal credit unions, the Administration proposes to allow Federal credit unions actively engaged in real estate lending to purchase loans made by other credit unions in compliance with Section 701.21-6 when necessary to package a pool for the secondary market. This will benefit smaller Federal credit unions engaged in real estate lending by making entry into the secondary market more feasible and will benefit larger Federal credit unions by allowing them to sell or pledge their loans in such a way as to take greater advantage of marketplace conditions.

3. ELIGIBLE OBLIGATIONS

The term "eligible obligations" is defined in 701.21-8(a)(1) to parallel the definition of participation loans in 701.21-7(a)(1). Regular line of credit loans are excluded from the definition of "eligible obligations" because the Administration believes that operational problems would result if they could be sold and purchased. The only line of credit loans that may be sold and purchased are those of liquidating credit unions. Because the relationship between the member and the credit union is essentially frozen when the credit union enters liquidation, these loans are then substantially similar to closed-end loans. Consequently, the operational problem that would result if regular line of credit loans could be sold and purchased should not exist with these loans.

4. PURCHASE

The purchase of eligible obligations is governed by 701.21-8(b). Basically, a Federal credit union may purchase different eligible obligations in different situations. First, a Federal credit union may purchase from any source the eligible obligations of its own members. This restriction is imposed by 107(13) of the Act, and is consistent with the creation of Federal credit unions as organizations providing services only to their members. Second, a Federal credit union may purchase the eligible obligations of the individual members of a liquidating credit union which are held by the liquidating credit union. The eligible obligations need not be obligations of members of the purchasing Federal credit union. Third, a Federal credit union engaged in real estate lending may purchase form other credit unions real estate loans granted in accordance with Section 701.21-6 if the purchase will facilitate the purchaser's packaging of a pool of such loans to be sold or pledged on the secondary market.

Federal credit unions are allowed to purchase only those loans which they have the authority to make. It is the Administration's belief that Congress did not intend that Federal credit unions should be handling unfamiliar obligations or that the purchase and sale authority should be used to evade statutory restrictions on lending.

In all cases, the board of directors must approve the purchase. In addition, all purchase agreements must be reduced to written contracts stating the basic responsibilities of seller and purchaser.

Subsection 107(13) prohibits the aggregate balance of unpaid notes purchased from exceeding 5 per centum of the unimpaired capital and surplus of the purchaser. The Administration does not intend to impose a similar restriction on real estate loans purchased from other credit unions to package a pool because that would unduly hamper the ability of Federal credit unions to access the secondary mortgage market. However, a Federal credit union's acquired interest in real

estate loans with maturities in excess of 12 years will be included in the aggregate dollar amount of real estate loans allowed under Part 701.21-6(b)(4) of the National Credit Union Administration Rules and Regulations. This restriction is proposed so that the purchase of eligible obligations rule will be similar to the final participation loan rule, so that the consumer credit needs of members will not be overshadowed by speculation in real estate lending, and so that credit unions will not be encouraged to purchase loans to complete pools rather than to make loans to their member to complete pools.

5. SALES

The sale of eligible obligations is governed by 701.21-8(c). A Federal credit union may sell to any source the eligible obligations of its members. This includes the sale of real estate loans to a credit union packaging a pool of such loans to be sold or pledged on the secondary market. A Federal credit union may also sell on the secondary market any loans it has purchased to package a pool.

However, not all loans which may be purchased may be resold. Subsection 107(13) does not authorize the sale of eligible obligations purchased from a liquidating credit union. Consequently a Federal credit union may not sell such obligations unless they are also obligations of a member or real estate loans being sold to a credit union putting together a pool of such loans to be sold or pledged on the secondary market.

Once approved by the board of directors, loans may be sold, but agreements must be reduced to written contracts containing the same minimum provisions that would be required if the credit union purchased the loans.

6. PLEDGES

The pledge of eligible obligations is governed by 701.21-8(d). A Federal credit union may pledge the eligible obligations of its members and real estate loans purchased to package a pool. Once approved by the board of directors, they may be pledged to any source, but agreements must be reduced to written contracts stating the basic responsibilities of pledgor and pledgee.

7. DISCOUNTS

The Administration does not intend to regulate the discounting of eligible obligations at this time. Abuses of the power which amount to unsafe and unsound practices will be remedied by appropriate administrative actions, including cease and desist actions. Should the circumstances arise, the Administration will also consider the appropriateness of civil and criminal actions against the directors of a credit union who abuse the power. It is the Administration's belief that directors who willfully abuse this type of power would be personally liable to the credit union for any losses caused as a result of their actions.

8. TEN PERCENT LIMITATION

For purposes of uniformity and to avoid a Federal credit union's committing its funds to benefit only a limited number of members, a Federal credit union's retained or acquired interest in loans to a member must be added with other loans to the member and with partial interests in participation loans to determine the member's total indebtedness to the credit union. The sum of these amounts may not exceed 10 percent of the credit union's unimpaired capital and surplus. Real estate loans purchased for the purpose of packaging a pool of loans to be sold or pledged on the secondary market need not be considered in determining whether the statutory limit has been exceeded since these loans will not normally be obligations of members, will only be held by the credit union for a limited time (until the pool is sold or pledged), and because a contrary result would unduly hamper the purchasing credit union's ability to access the secondary market.

LAWRENCE CONNELL,
Administrator.

DECEMBER 27, 1978.

Authority: Sec. 107(5)(A)(i), 91 Stat. 49 (12 U.S.C. 1757(5)(A)(i)), Sec. 107(13), 91 Stat. 51 (12 U.S.C. 1757(13)), Sec. 107(15), 82 Stat. 284 (12 U.S.C. 1757(15)), Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 109, 84 Stat. 1104 (12 U.S.C. 1789).

§ 701.21-8 Purchase, Sale, and Pledge of Eligible Obligations.

(a) For purposes of this section:

(1) "Eligible Obligation" means a loan or group of loans, other than a line of credit loan, except, however, the term shall include a line of credit loan of a liquidating credit union.

(2) "Obligation account" means a special payable account established for the accumulation of payments on a loan awaiting distribution to the purchaser of an eligible obligation.

(b) *Purchase.* (1) A Federal credit union may purchase, in whole or in part, from any source eligible obligations of its members and from a liquidating credit union eligible obligations of the liquidating credit union's individual members, within the limitations of the board of directors' written policies, *Provided:*

(i) It only purchases those types of loans it is empowered to grant;

(ii) The board of directors or investment committee approves the purchase; and

(iii) A written agreement and a schedule of the eligible obligations covered by the agreement is retained in the purchaser's office.

(2) The agreement to purchase a partial interest in eligible obligations shall, at a minimum:

(i) Identify the eligible obligation covered by the agreement;

(ii) Provide for the collection, processing and/or remittance of payments of principal and interest, late charges, service charges, escrow accounts (if required), and obligation accounts;

(iii) Disclose the responsibilities of each party in the event an eligible obligation becomes subject to collection, loss or foreclosure;

(iv) Provide that in the event of loss each owner shall share in the loss in proportion to its interest in the eligible obligation;

(v) Provide for the distribution of payments of principal to each owner proportionate to its interest in the eligible obligation;

(vi) Provide for loan status reports; and

(vii) State the terms and conditions under which the agreement may be terminated or modified.

(3) The aggregate of the unpaid balances of eligible obligations purchased under this subsection shall not exceed 5 per centum of the unimpaired capital and surplus of the purchaser.

(4) Notwithstanding the limitation set forth in paragraph (1) of this subsection, a Federal credit union engaged in real estate lending pursuant to § 701.21-6 may also purchase, in whole or in part, from other credit unions real estate loans granted in accordance with that section if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. A purchase made in accordance with this paragraph shall:

(i) Comply with paragraphs (1) and (2) of this subsection; and

(ii) Be included in the aggregate dollar amount of real estate loans allowed under § 701.21-6(b)(4).

(c) *Sale.* (1) A Federal credit union may sell, in whole or in part, to any source eligible obligations of its members and real estate loans purchased in accordance with subsection (b)(4), within the limitations of the board of directors' written policies, *Provided:*

(i) The board of directors or investment committee approves the sale; and

(ii) A written contractual agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(2) An agreement to sell a partial interest in eligible obligations shall at a minimum comply with the requirements set forth in subsection (b)(2).

(3) A sale of an eligible obligation shall not be subject to recourse or repurchase provisions. However, the following are permitted:

(i) An agreement which requires the seller to repurchase the eligible obligation because of any breach of warranty or misrepresentation;

(ii) An agreement which allows the seller to repurchase at its discretion; and

(iii) An agreement which allows substitution of one loan for another loan.

(d) *Pledge.* (1) A Federal credit union may pledge, in whole or in part, to any source eligible obligations of its members and real estate loans purchased in accordance with subsection (b)(4), within the limitations of the board of director's written policies, *Provided:*

(i) The board of directors or investment committee approves the pledge;

(ii) The original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligation.

(2) The pledge agreement shall, at a minimum:

(i) Identify the eligible obligation covered by the agreement;

(ii) Disclose the responsibilities of each party in the event an eligible obligation becomes subject to collection, loss or foreclosure;

(iii) Set forth the terms and conditions regarding substitution; and

(iv) Set forth the terms and conditions under which the agreement may be modified or terminated.

(e) *Servicing.* A Federal credit union may agree to service any eligible obligation it purchases or sells, in whole or in part.

(f) 10 Percent Limitation

The total indebtedness owing to any Federal credit union by any person, inclusive of retained and acquired interests, shall not exceed 10 per centum of its unimpaired capital and surplus. Real estate loans purchased pursuant to the authority and for the purpose set forth in subsection (b)(4) shall not be included in considering this 10 percent limitation.

[FR Doc. 78-36439 Filed 12-29-78; 8:45 am]

[7535-01-M]

[12 CFR Part 701]

ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Borrowed Funds From Natural Persons

AGENCY: National Credit Union Administration.

ACTION: Proposed rule, correction of preamble.

SUMMARY: The third sentence of the "Supplementary Information" section of the proposed rule, § 701.38 Borrowed Funds From Natural Persons, published on December 12, 1978 (43 FR 58096) is hereby corrected by eliminating the word "removing" and inserting in its place the word "raising". The corrected sentence should read: "Effective July 7, 1978, Section 701.35 was amended to provide Federal credit unions with further flexibility to attract, maintain, and manage member savings by raising the dividend ceiling on share certificate programs for retirement accounts."

EFFECTIVE DATE: Comments on the proposed regulation must be received on or before February 23, 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 INFORMATON CONTACT:

Mike Fischer, Special Assistant for Examination and Insurance, at the above address. Telephone: (202) 254-8760.

LAWRENCE CONNELL,
Administrator.

DECEMBER 22, 1978.

[FR Doc. 78-36438 Filed 12-29-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 47]

[Docket No. 18604 Notice No. 78-18]

AIRCRAFT REGISTRATION

Eligibiliy for Aircraft Registration

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes rules and procedures for the registraion of aircraft owned by foreign citizens lawfully admitted for permanent residence in the United States and by certain foreign-owned United States corporations whose aircraft were not previously eligible for registration. This notice sets forth proposed regulations responsive to recent Congressional legislation which expanded the eligibility for aircraft registration to aircraft owned by such persons.

DATE: Comments on the proposed regulation must be received before March 1, 1979.

ADDRESSES: Send comments on the proposals, in duplicate, to: Federal Aviation Administration Office of the Chief Counsel Attn: Rules Docket (AGC-24), Docket No. 18604 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Florine Crockett, Chief, Technical Section (AAC-251) FAA Aircraft Registry Aircraft, Registration Branch Box 25082 Oklahoma City, Oklahoma 73125, Telephone (405) 686-2284.

SUPPLEMENTARY INFORMATION:

I. COMMENTS INVITED

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before March 1, 1979 will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket.

II. AVAILABILITY OF NPRMS

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

III. BACKGROUND

Since the enactment of the Air Commerce Act of 1926, Pub. L. 69-254 (44 Stat. 568), except during the years from 1934 to 1938, foreign-owned aircraft could not qualify for registration in the United States. The limitation on eligibility for registration most recently has been in Section 501(b) of

the Federal Aviation Act of 1958 (Act; 49 U.S.C. 1401(b)) which provided as follows:

(b) An aircraft shall be eligible for registration if, but only if—

(1) It is owned by a citizen of the United States and it is not registered under the laws of any foreign country; or

(2) It is an aircraft of the Federal Government or of a State, Territory or possession of the United States, or the District of Columbia, or a political subdivision thereof.

The limitation of registration eligibility to United States citizens posed difficulties for foreign nationals that wanted to base their aircraft in the United States. Foreign nationals had two alternatives: (1) to rent aircraft from persons eligible for U.S. registration or (2) to own and operate an aircraft in the United States while maintaining its registry in a foreign country. The latter course of action was and is subject to the condition that such operation is authorized by applicable orders and regulations issued by the Civil Aeronautics Board pursuant to Section 1108(b) of the Act (49 U.S.C. 1508(b)).

In 1977 and 1978, the Congress revised Section 501(b) of the Act to read as follows:

(b) An aircraft shall be eligibile for registration if, but only if—

(1)(A) It is—

(i) Owned by a citizen of the United States or by an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States; of

(ii) Owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof so long as such aircraft is based and primarily used in the United States; and

(B) It is not registered under the laws of any foreign country; or

(2) It is an aircraft of the Federal Government, or of a State, territory or possession of the United States or the District of Columbia or a political subdivision thereof.

For purposes of this subsection, the Secretary of Transportation shall, by regulation, define the term "based and primarily used in the United States". (Act of Nov. 9, 1978, Pub. L. 95-163, *as amended by* Act of March 8, 1978, Pub. L. 95-241.)

This notice proposes to amend Part 47 of the Federal Aviation Regulations to provide for: (1) the registration of aircraft by an individual citizen of a foreign country who has been lawfully admitted for permanent residence in the United States; (2) the registration of aircraft by a corporation (other than a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof, if the aircraft is based and primarily used in the United States; and (3) a definition of "based and primarily used in the United States". Additionally, certain technical amendments are now to be made. These involve aspects of registration by partnerships, trustees, and corporations that use voting trusts, the substitution of the term "person" where appropriate, and the provision for immediate termination of a certificate when eligibility has ceased.

IV. Discussion of the Proposal

A. Individual Foreign Citizens Who Have Lawfully Been Admitted for Permanent Residence in the United States

Neither revised Section 501(b) nor the Federal Aviation Regulations define the term "individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States". The statutory authority for the immigration of aliens to the United States is the Immigration and Nationality Act of 1952 (INA; 8 U.S.C. 1101 *et seq.*). The INA defines "lawfully admitted for permanent residence" as the "status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed," 8 U.S.C. 1101(a)(15). An "immigrant" is defined by the INA in negative terms, that is, as what an immigrant is not. Section 1101(a)(15) provides that an immigrant is every alien except an alien who is within one of twelve classifications of nonimmigrant aliens who do not have permanent status.

An alien who is lawfully admitted as a permanent resident of the United States, in accordance with the INA and the regulations of the Immigration and Naturalization Service of the Department of Justice (8 CFR Chapter 1), is issued an alien registration number. This registration number varies with the classification of the alien. An alien who has been given permanent residency status will possess a registration number which reflects that status. Accordingly, proposed § 47.7(b) provides that it will be sufficient, for the purposes of proof of eligibility for aircraft registration, for a foreign citizen with permanent residency status to identify the applicant's assigned alien registration number on the application for aircraft registration, in addition to a representation of having been lawfully admitted as a permanent resident of the United States.

B. Corporations Not United States Citizens

Under revised Section 501(b), in order for a corporation which does not qualify as a citizen under Section 101(16) of the Federal Aviation Act (49 U.S.C. 1301(16)) to be eligible for registration, it must be lawfully organized and doing business under the laws of the United States or any State thereof. This proposal would require a noncitizen corporation to provide evidence with an application for aircraft registration, that it is lawfully organized and doing business under the laws of the United States, or any State thereof.

Section 501(b)(1)(A)(ii) placed an additional limitation upon noncitizen corporations that wish to register aircraft in the United States: each aircraft must be based and primarily used in the United States. The proposed definition of this limitation, new § 47.9(b), has been established by examining the purpose of the limitation.

The legislative history of Section 501(b) indicates that the "based and primarily used" limitation was incorporated into the expansion of eligibility for aircraft registration to prevent United States registry from becoming an international registry, and United States registration from becoming a so-called "flag of convenience." In order to achieve Congressional intent, Congress recognized that it is necessary to define more precisely "based and primarily used in the United States", by regulation, to make certain that those corporations desiring to register aircraft in the United States actually intend to use those aircraft primarily in the United States.

The FAA has determined that the percentage of flight hours in the United States is the most effective method of determining where an aircraft is based and primarily used. The FAA believes that the phrase "based and primarily used in the United States" implies that only those aircraft which are operated at least 60 percent of the time in the United States are eligible for registration. The 60 percent figure represents a judgment as to the figure which permits the greatest amount of flexibility to the registrant while being consistent with the Act. Accordingly, proposed § 47.9(b) provides that in any 180 consecutive day period, 60 percent of the total flight hours of the aircraft must be spent in the United States.

"United States", as defined by Section 101(41) of the Act (49 U.S.C. 1301(41)), means "the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof." The FAA interprets "used in the United States" to include all non-

stop (except in emergencies and for purposes of refueling) flights between two points in the United States. Therefore, although an aircraft may be in flight over the high seas or over a neighboring country during a nonstop flight between two points in the United States, all of the flight hours accumulated during such a flight are considered flight hours accumulated in the United States. Proposed § 47.9(d) sets forth this interpretation.

The FAA has concluded that the determination of whether an aircraft is based and primarily used in the United States is prospective from the time that it is enrolled in the U.S. registry. In other words, the "based and primarily used" restriction is applicable only during the period that the aircraft is registered in the United States. Proposed § 47.9(d) sets forth this position.

To ascertain compliance with the "based and primarily used in the United States" restriction, record keeping and reporting requirements are proposed in § 47.9(e). The registered owner or operator of a U.S. aircraft is required by § 91.173(a)(2)(i) (14 CFR 91.173(a)(2)(i)) to keep records of the total time in service of the airframe. Proposed § 47.9(e)(1) would require that a record also be maintained of the total flight hours in the United States of the aircraft. Proposed § 47.9(e)(2) additionally would require that a report be submitted to the FAA Aircraft Registry at the end of each 180-day period indicating total time in service of the airframe and total number of flight hours in the United States during that period.

C. CLARIFICATION OF THE CITIZENSHIP REQUIREMENT

1. General

Under the terms of Section 501(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(b)), any U.S. citizen is eligible to register aircraft in the United States. As now defined by the Act, a citizen of the United States may be an individual citizen, a partnership of which each member is such an individual, or a U.S. corporation or association which is owned or controlled, as defined in Section 101(16)(c) of the Act (49 U.S.C. 1301(16)(c)), by persons who are U.S. citizens.

Regulations and comprehensive policy criteria for applicants that fall into the categories of partnerships and corporations that wish to achieve citizenship through the use of voting trusts are needed. It is proposed to include in a new § 47.7 a clarification of FAA practice regarding these applicants.

2. Partnerships

The FAA's longstanding interpretation of Section 101(16)(b) of the Act is that all partners, both limited and general, of a partnership seeking to register an aircraft, must be eligible as citizens of the United States in order to register the aircraft. Proposed § 47.7(d) sets forth this FAA policy.

3. Voting Trusts

In order to provide guidance to corporations that wish to come within the scope of Section 101(16) of the Act through the use of a voting trust, proposed § 47.7(e) sets forth the position of the FAA with regard to this matter. The issue of validity of a voting trust arises, in the context of aircraft registration, when a corporate applicant meets all of the requirements of Section 101(16), except that 75 percent of the voting interest in the domestic corporation is not owned or controlled by U.S. citizens. To satisfy this requirement, control of foreign-owned stock may be placed in a voting trust, utilizing U.S. citizens as trustees.

The FAA, in determining the validity of a voting trust for the purposes of registration eligibility, must ascertain that a corporation that wishes to register an aircraft pursuant to Section 501(b)(1)(A)(i) of the Act (49 U.S.C. 1401(b)(1)(A)(i)) is a citizen within the meaning of the Act. In terms of a voting trust, the problem is whether the voting interest of the stock of the corporate applicant has been so placed in the hands of U.S. citizens as voting trustees that the trustees have a valid, independent, and bona fide control of the voting interest.

For the purposes of verification of the bona fide nature of the voting trust arrangement, proposed § 47.7(e)(2) sets forth the requisite representations of the corporate applicant.

D. TRUSTEES

Section 47.11(h) presently recognizes that registration may be issued in the name of a trustee. Increased activities of foreign investors in aircraft financing necessitate clarification of trustee registration eligibility, where legal title to an aircraft is held by a trustee that is a U.S. citizen or an individual foreign citizen lawfully admitted for permanent residence in the United States, but some or all of the beneficial interest is held by foreign investors. FAA experience has shown that trust beneficiaries may wish to exercise various degrees of control over a trustee under trust agreements submitted with registration applications.

The fundamental issue for registration eligibility is who is the "owner" of the aircraft within the meaning of Section 501(b) and (c) of the Act. FAA practice, as reflected in proposed § 47.7(c), has been to ignore the scope of economic participation of foreign beneficiaries if the trust is an active trust and if the trustee exercises totally independent judgment with respect to all decisions involving the aircraft. Conversely, the FAA has previously concluded, in cases involving passive trusts, where the trustee is strongly controlled by the foreign investor, that the beneficiaries are the true owners of the aircraft for administrative purposes, and that the aircraft is not eligible for registration under Section 501(b)(1)(A)(i).

E. DURATION OF CERTIFICATE OF REGISTRATION

Proposed § 47.41(7) and (8) provide for the invalidation of a certificate of aircraft registration upon certain changes in status of the applicant or utilization of the aircraft. If the owner of an aircraft loses his status as a lawful permanent resident of the United States, the certificate of aircraft registration becomes invalid by operation of law. Similarly, if a noncitizen corporate owner ceases to be organized and lawfully doing business in the United States or if the aircraft is no longer based and used primarily in the United States, the certificate of registration becomes invalid by operation of law. Subsequent flight would be deemed to be flight of an unregistered aircraft and the owner and operator would be subject to the applicable sanctions.

On occasion, a noncitizen corporation may acquire citizenship status. In those cases, that corporation may elect to submit a new application for registration as a citizen since the statutory restrictions that the aircraft be based and primarily used in the United States would no longer apply.

Conversely, corporations which register aircraft as United States citizens may subsequently lose that status. This may occur by changes in corporate management or by transfer of the voting interest in the corporation. Such changes could constitute a loss of citizenship under the Act, and would result in invalidation of the certificate of registration. The corporate owner would be eligible to file a new registration application, if the eligibility requirements for a noncitizen corporation are met.

F. TECHNICAL CHANGES

The proposed amendments to §§ 47.5, 47.11, 47.33(a) and 47.37(a) provide for the substitution of the term "a person" for "citizen of the United States" and "governmental unit". Section 101(32) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(32)), defines "person" as "any individual,

firm, copartnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof". This substitution is necessary because of the elimination of citizenship as a criterion for aircraft registration and the administrative practice of the FAA of accepting the applications of legally recognized owners of property such as co-owners, receivers, trustees, associations, executors, and bodies politic.

The proposed amendment to 47.5 includes a revision of the definition of "owner". This revision is not intended as a substantive change, but rather as a clarification of current § 47.5 to reflect actual administrative practice.

V. Economic Impact of Proposed Regulation

The FAA has determined that this document involves a proposed regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044, and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978). In addition, the FAA has determined that the expected impact of these proposals is so minimal that they do not require an evaluation. However, interested persons are invited to comment on the economic impact of the proposed rule by submitting such written data, views or arguments as they may desire.

Proposed Amendments to Part 47

Accordingly, the Federal Aviation Administraton proposes to amend Part 47 of the Federal Aviation Regulations (14 CFR Part 47) as follows:

1. By revising the contents of Subpart A of Part 47 to read as follows:

Subpart A—General

Sec.
47.1 Applicability.
47.3 Registration required.
47.5 Applicants.
47.7 United States citizens and foreign citizens admitted for permanent residence in the United States.
47.9 Corporations not United States citizens.
47.11 Evidence of ownership.
47.13 Signatures and instruments made by representatives.
47.15 Identification number.
47.16 Temporary registration numbers.
47.17 Fees.
47.19 FAA Aircraft Registry.

2. By revising § 47.3(a) to read as follows:

§ 47.3 Registration required.

(a) Section 501(b) of the Federal Aviation Act of 1958 (49 USC 1401(b)) defines eligibility for registration as follows:

(b) An aircraft shall be eligible for registration if, but only if—

(1) It is—

(i) Owned by a citizen of the United States or by an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States; or

(ii) Owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States; and

(2) It is not registered under the laws of any foreign country; or

(3) It is an aircraft of the Federal Government, or of a state, territory, or possession of the United States or the District of Columbia or a political subdivision thereof.

* * * * *

3. By revising § 47.5 to read as follows:

§ 47.5 Applicants.

(a) A person that wishes to register an aircraft in the United States must submit an Application for Aircraft Registration under this part.

(b) An aircraft may be registered only by and in the legal name of its owner. In this part, "owner" includes—

(1) A buyer in possession of an aircraft under a contract of conditional sale;

(2) A bailee or lessee under a contract for the bailment or leasing of an aircraft by which it is agreed that—

(i) The bailee or lessee will pay as compensation a sum substantially equivalent to the value of the aircraft and,

(ii) The bailee or lessee is bound to become, or has the option of becoming, the owner of the aircraft upon full compliance with the terms of the contract; and

(3) The assignee of a person described in paragraphs (b)(1) or (b)(2) of this section.

(c) Section 501(f) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(f)), provides that registration is not evidence of ownership of aircraft in any proceeding in which ownership by a particular person is in issue. The FAA does not issue any certificate of ownership or endorse any information with respect to ownership on a Certificate of Aircraft Registration. The FAA issues a Certificate of Aircraft Registration to the person who appears to be the owner on the basis of the evidence of ownership submitted pursuant to § 47.11 with the Application for Aircraft Registration, or recorded at the FAA Aircraft Registry.

4. By adding a new § 47.7 to 14 CFR Part 47, to read as follows:

§ 47.7 United States citizens and foreign citizens admitted for permanent residence in the United States.

(a) *United States citizens; general.* Section 101(16) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(16)) defines citizen of the United States as follows:

(1) An individual who is a citizen of the United States or of one of its possessions, or

(2) A partnership of which each member is such an individual, or

(3) A corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(b) *Foreign citizen admitted for permanent residence in the United States.* An applicant for aircraft registration under Section 501(b)(1)(A)(i) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(b)(1)(A)(i)), who is an individual foreign citizen lawfully admitted for permanent residence in the United States, must furnish a representation of permanent residence and the applicant's alien registration number issued by the Immigration and Naturalization Service. For the purposes of this Part, a foreign citizen lawfully admitted for permanent residence in the United States is an individual who, at the time of application, has been accorded the privilege of residing permanently in the United States as an immigrant in conformity with the regulations of the Immigration and Naturalization Service of the Department of Justice (8 CFR Chapter 1).

(c) *Trustees.* An applicant (whether an individual or a corporation) for aircraft registration under Section 501(b)(1)(A)(i) of the Federal Aviation Act of 1958 (49 U.S.C. 1401 (b)(1)(A)(i)) that holds legal title to an aircraft in trust must be either a United States citizen or an individual foreign citizen lawfully admitted for permanent residence in the United States. If there are several co-trustees, each must be such a person. If:

(1) Any beneficiary under the trust is not a United States citizen or an individual foreign citizen lawfully admitted for permanent residence in the United States, or

(2) Regardless of any trustee's status, any beneficiary is directly or indirectly controlled by a foreign interest, each applicant must submit:

(i) One or more affidavits establishing that each trustee is not aware of any reason, situation, or relationship

with either a beneficiary or any foreign interest which could influence or limit the exercise of totally independent judgment by a trustee;

(ii) A true copy of the trust document with all amendments establishing that—

(A) Any trustee has full authority over all matters of administration of the trust, including matters relating to dispositions of the aircraft, independent of any direction from a beneficiary or any foreign interest, and

(B) No trustee is subject to direction or removal (except for cause) by beneficiaries who are U.S. citizens or individual foreign citizens lawfully admitted for permanent residence in the United States and have among themselves control of at least 75 percent of the beneficiaries' aggregate power to give direction to, or effect removal of, a trustee.

For the purpose of this section, a foreign interest is any person that is not a U.S. citizen or an individual foreign citizen lawfully admitted for permanent residence in the United States.

(d) *Partnerships.* A partnership may apply for a Certificate of Aircraft Registration under Section 501(b)(1)(A)(i) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(b)(1)(A)(i)) only if each partner, whether a general or limited partner, is a citizen of the United States. Nothing in this section makes ineligible for registration an aircraft which is not owned as a partnership asset but is co-owned by:

(1) Foreign citizens who have lawfully been admitted for permanent residence in the United States, or

(2) One or more such foreign citizens and one or more United States citizens.

(e) *Voting trusts.* If a voting trust is used to qualify a domestic corporation as a U.S. citizen conforming to Section 101(16)(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1301 (16)(c)), the corporate applicant must submit to the FAA Aircraft Registry—

(1) A true copy of the fully executed voting trust agreement, which must identify each voting interest of the applicant, and which must be binding upon each voting trustee, the applicant corporation, all foreign stockholders, and each other party to the transaction; and

(2) An affidavit executed by, or on behalf of, each person designated as voting trustee in the voting trust agreement, in which each affiant represents—

(i) That each voting trustee is a citizen of the United States within the meaning of Section 101(16) of the Act;

(ii) That each voting trustee is not a past, present, or prospective director, office, employee, attorney, or agent of any other party to the trust agreement;

(iii) That each voting trustee is not a present or prospective beneficiary, creditor, debtor, supplier or contractor of any other party to the trust agreement; and

(iv) That each voting trustee is not aware of any reason, situation, or relationship under which any other party to the agreement might influence the exercise of the voting trustee's totally independent judgment under the voting trust agreement.

(f) Each voting trust agreement submitted under paragraph (e)(1) of this section must provide for the succession of a voting trustee in the event of death, disability, resignation, termination of citizenship, or any other event leading to the replacement of any voting trustee. Upon such succession, the replacement voting trustee shall immediately submit to the FAA Aircraft Registry the affidavit required by paragraph (e)(2) of this section.

(g) If the voting trust terminates or is modified, and the result is less than 75 per cent control of the voting interest in the corporation by citizens of the United States, a loss of citizenship of the holder of the registration certificate occurs, and § 47.41(a)(5) of this Part applies.

(h) A voting trust agreement may not empower a trustee to act through a proxy.

5. By adding a new § 47.9 to 14 CFR Part 47, to read as follows:

§ 47.9 Corporations not United States citizens.

(a) A corporation applying for registration of an aircraft under Section 501(b)(1)(A)(ii) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(b)(1)(A)(ii)), must submit to the FAA Aircraft Registry a certified copy of its certificate of incorporation. The applicant must demonstrate, in writing, to the Registry that the applicant is qualified lawfully to do business in one or more States.

(b) For the purposes of registration, an aircraft is based and primarily used in the United States if the flight hours accumulated within the United States amount to at least 60 percent of the total flight hours of the aircraft during any 180 consecutive days.

(c) For the purposes of this section, all flight hours accumulated during a non-stop (except in emergencies and for purposes for refueling) flight between two points in the United States, even if the aircraft is outside of the United States during part of the flight, are considered flight hours accumulated within the United States.

(d) In determining compliance with this section, any periods during which the aircraft is not validly registered in the United States are disregarded.

(e) The corporation that registers an aircraft pursuant to Section 501(b)(1)(A)(ii) (49 U.S.C. 1401(b)(1)(A)(ii)) shall:

(1) Maintain records, for the duration of the period that the aircraft is registered in the United States, containing the total flight hours in the United States of the aircraft; and

(2) Send to the FAA Aircraft Registry, 180 days after registration and at the end of each 180-day period thereafter, a signed report containing:

(i) The total time in service of the airframe, as provided in § 91.173(a)(2)(i), accumulated during that period; and

(ii) The total flight hours in the United States of the aircraft accumulated during that period.

6. By amending § 47.11(a) and (h) to read as follows:

§ 47.11 Evidence of Ownership.

Except as provided in §§ 47.33, 47.35, and 47.37, each person that submits an Application for Aircraft Registration under this Part must also submit the required evidence of ownership, recordable under §§ 49.13 and 49.17 of this Chapter, as follows:

(a) The buyer in possession of an aircraft under a contract of conditional sale and the bailee of lessee of an aircraft under a contract for the bailment or leasing of an aircraft, as described in § 47.5(b)(2), must submit the contract. The assignee of one of these persons must submit both the contract (unless it is already recorded at the FAA Aircraft Registry), and the assignment from the original buyer, bailee, lessee, or prior assignee, that bears the written assent of the seller, bailor, lessor, or assignee thereof, under the original contract.

* * * * *

(h) The trustee of property that includes an aircraft, as described in § 47.7(c), must submit either a certified copy of the order of the court appointing the trustee, or a complete and true copy of the instrument creating the trust. If there is more than one trustee, each trustee must sign the application. The Certificate of Aircraft Registration is issued to a single applicant as trustee, or to several trustees jointly as co-trustees.

7. By deleting the words "a citizen of the United States" from §§ 47.33(a), 47.35(a) and 47.37(a) and substituting the words "a person".

8. by inserting "47.3, 47.7, 47.9," after the words "complies with §§" and the words, ", as applicable" after "47.17" in §§ 47.33(a)(1), 47.35(a) and 47.37(a)(1).

9. by deleting the word "or" at the end of § 47.41(a)(5); by deleting the period at the end of § 47.41(a)(6) and substituting a semicolon; and by

adding new subparagraphs (a)(7) and (a)(8) to § 47.41 to read as follows:

§ 47.41 Duration and Return of Certificate.

(a) * * *

(7) The owner, if an individual who is not a citizen of the United States, loses status as a lawful permanent resident of the United States; or

(8) The owner, if a corporation other than a corporation which is a citizen of the United States, ceases—

(i) To be lawfully organized and doing business under the laws of the United States or any State thereof; or

(ii) To have the aircraft based and primarily used in the United States.

* * * * *

10. by revising subparagraphs (a)(3) and (a)(4) of § 47.43 to read as follows:

§ 47.43 Invalid Registration.

(a) * * *

(3) The applicant is not qualified to submit an application under this part; or

(4) The interest of the applicant in the aircraft was created by a transaction that was not entered into in good faith, but rather was made to avoid (with or without the owner's knowledge) compliance with § 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401).

* * * * *

(Sections 307, 313(a), 501, 503, 1102, Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a), 1401 and 1502), and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C. on December 22, 1978.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-36375 Filed 12-29-78; 8:45 am]

[4910-13-M]

[14 CFR Parts 71 and 73]

[Airspace Docket No. 78-NW-20]

PROPOSED ALTERATION OF RESTRICTED AREA AND EXTENSION OF VOR FEDERAL AIRWAY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to extend Victor Airway No. 298 northwest of Yakima, Wash., and further subdivide the nearby Restricted Area R-6714. These actions are needed to relieve traffic congestion on Victor Airway No. 4 between Yakima and Seattle, Wash. Adoption of these actions would enhance the management of air traffic in the area.

DATE: Comments must be received on or before January 22, 1979.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA Northwest Region, Attention: Chief, Air Traffic Division, Docket No. 78-NW-3, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Northwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash., 98108. All communications received on or before January 22, 1979, will be considered before actions is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) that would extend V-298 and further subdivide R-6714. V-298, which now terminates at Yakima, Wash., would be extended via the Yakima 331° T(310° M) radial to its intersection with V-2, 20 miles northwest of Yakima. R-7614 is presently divided into R-6714A, R-6714B and R-6714C. In order to provide sufficient lateral spacing between the restricted area and the centerline of the proposed extension of V-298, it would be necessary to add another subdivision, R-6714D. The overall vertical and lateral limits of the restricted area would not be changed. These actions would improve air traffic service by relieving traffic congestion on Victor Airway V-4 over which all low altitude traffic between Yakima and Seattle, Wash., is currently routed. Subpart B of Part 73 and Subpart C of Part 71 was republished in the FEDERAL REGISTER on January 3, 1978, (43 FR 659 and 307, respectively).

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 73 and Part 71 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (43 FR 659 and 307) as follows:

In § 73.67:

R-6714A Yakima, Wash., would be redescribed as follows:

R-6714A Yakima, Wash.

Boundaries. Beginning at Lat. 46°51'00" N., Long. 119°58'00" W.; along the west shore of the Columbia River to Lat. 46°42'30" N., Long. 119°58'15" W., to Lat. 46°33'00" N., Long. 120°04'00" W.; to Lat. 46°37'00" N., Long. 120°20'00" W., to Lat. 46°43'00" N., Long. 120°26'38" W., to Lat. 46°40'35" N., Long. 120°26'35" W.; to Lat. 46°43'00" N., Long. 120°26'38" W.; to Lat. 46°51'00" N., Long. 120°21'30" W.; to Lat. 46°51'00" N., Long. 120°16'30" W., to Lat. 46°54'30" N., Long. 120°15'00" W.; clockwise along the arc of a 12-mile radius circle centered at Lat. 46°44'45" N., Long. 120°20'00" W., to Lat. 46°51'00" N., Long. 120°08'30" W.; to point of beginning.

Designated altitudes. Surface to 29,000 feet MSL.

Time of designation. Intermittent.

Controlling agency. Federal Aviation Administration, Seattle ARTC Center.

Using agency. Commanding General, Fort Lewis, Wash.

R-6714 Yakima, Wash., would be altered by adding a new restricted area described as follows:

"R-6714D Yakima, Wash.

Boundaries. Beginning at Lat. 46°43'00" N., Long. 120°26'38" W.; to Lat. 46°37'00" N.,

Long. 120°20'00"W.; to Lat. 46°40'35"N., Long. 120°26'35"W.; to point of beginning.

Designated altitudes. Surface to 29,000 feet MSL.

Time of designation. Intermittent.

Controlling agency. Federal Aviation Administration, Seattle ARTC Center.

Using agency. Commanding General, Fort Lewis, Wash."

In § 71.123, under V-298, the words "From Yakima, Wash., via" would be deleted and "From INT Seattle, Wash., 106°T(085°M) and Yakima, Wash., 331°T(310°M) radials, via Yakima, Wash., 331°T(310°M) radial to Yakima;" would be substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on December 13, 1978.

B. KEITH POTTS,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-36246 Filed 12-29-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 419]

GAMES OF CHANCE IN THE FOOD RETAILING AND GASOLINE INDUSTRIES

Proposed Amendment of Trade Regulation Rule to Modify Hiatus Provision

AGENCY: Federal Trade Commission.

ACTION: Order granting motion to dispense with public hearings and beginning period for rebuttal comments.

SUMMARY: Because of the limited nature of this proceeding, limited participation in public hearings and the small number of requests for presentation of oral testimony, the public hearing scheduled for January 3, 1979, as published in the FEDERAL REGISTER on October 19, 1978 (43 FR 48654), will not be held and the period for submitting rebuttal comments will begin January 3, 1979.

DATES: Effective December 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Denis E. Hynes, Presiding Officer, Office of the General Counsel, Federal Trade Commission, (202) 523-3421.

SUPPLEMENTARY INFORMATION: In the matter of games of chance on the food retailing and gasoline industries proposed amendment of trade regulation rule to modify hiatus provision; order granting motion to dispense with public hearings and beginning period for rebuttal comments.

On December 14, 1978, the rule staff moved to dispense with public hearings on the proposed modification of this rule. As previously scheduled by a notice published in the FEDERAL REGISTER on October 19, 1978 (43 F.R. 48654), public hearings on the proposed modification are due to commence on January 3, 1979.

The limited nature of this proceeding, the limited participation in public hearings sought,[1] and the fact that the modification or elimination primarily a question of legislative fact, all suggest that public hearings should be limited.

The period established in the FEDERAL REGISTER for submitting rebuttal comments was to begin following the completion of public hearings. Because no public hearing will be held, the period for submitting rebuttal comments will begin on January 3, 1979. *Therefore it is hereby ordered,* The public hearing set for January 3, 1979, will not be held, and the period for submitting rebuttal comments will begin on January 3, 1979.

DENIS E. HYNES,
Presiding Officer.

Dated: DECEMBER 26, 1978.

[FR Doc. 78-36423 Filed 12-29-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 175]

[Docket No. 78F-0332]

CALGON CORP.

Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Calgon Corp. has filed a petition proposing to amend § 175.105 of the food additive regulations to provide for the safe use of 1, 2-dibromo-2,4-dicyanobutane as a preservative for adhesives used as components of articles for packaging, transporting, or holding food.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B3374) has been filed by Calgon Corp., Post Office Box 1346, Pittsburgh, PA 15230, proposing that the food additive regulations be amended to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as a preservative for adhesives used as components of articles for packaging, transporting, or holding food.

The agency has determined that the proposed action falls under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)) and is exempt from the need of an envrionmental impact analysis report, and that no environmental impact statement is necessary.

Dated: December 19, 1978.

SANFORD A. MILLER,
Director, Bureau of Foods.

[FR Doc. 78-36386 Filed 12-29-78; 8:45 am]

[1] Only two requests to present oral testimony were received. Counsel for both parties seeking to present oral testimony has indicated he is aware of the pending motion and has no objection to it being granted.

[4910-22-M]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Part 635]

[FHWA Docket No. 78-43]

INTERSTATE MAINTENANCE GUIDELINES

AGENCY: Federal Highway Administration, DOT.

ACTION: Advance notice of proposed ruemaking.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this advance notice to solicit suggestions for guidelines describing criteria applicable to the Interstate system to insure that the condition of these routes is maintained at the level required by the purposes for which they were designed. The establishment of these guidelines is required by Section 116(d) of the Surface Transportation Assistance Act of 1978.

This Act requires that States must certify each year to the FHWA that it has a maintenance program for the Interstate system to meet the guidelines established. Failure to certify that such a program has been implemented by a State will result in a reduction of Interstate funds normally apportioned to such State.

DATE: Comments must be received on or before March 1, 1979.

ADDRESS: Submit comments, preferably in triplicate, to FHWA Docket No. 78-43, Federal Highway Adminis-

tration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Mr. P. E. Cunningham, Office of Highway Operations, 202-426-0436 or Mr. Wilbert Baccus, Attorney, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. The FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Public comments are requested to assist in the development of guidelines for State highway maintenance levels of service for the Interstate system. The FHWA intends to develop a national set of guidelines pertaining to those maintenance roadway features that include prevention of normal deterioration of the entire highway, safety, and efficient utilization.

Comments are specifically requested, but not limited, to the following:

1. Should the guidelines be written to establish a level of consistency of maintenance service across the nation?
2. Should the guidelines be generally written descriptions of the completed activities or measured values?
3. Should available funds, equipment, personnel, or local conditions dictate adjustments in the guidelines?
4. What are the implications of the guidelines as they may affect Federal, State, and local legal responsibilities?
5. Should FHWA define "critical" maintenance elements in terms of physical maintenance and traffic services or in other terms?
6. Should maintenance elements be rated by safety, rideability, protection of the investment, and aesthetics to assure quality assurance?
7. Should the guidelines differ for rural and urban conditions?
8. Should the States be allowed to develop independent guidelines subject to approval of the FHWA?
9. Should a method be developed to determine when routine maintenance is no longer sufficient to keep a pavement at the original designed level?
10. What criteria should be used to judge relative conformance of a States' maintenance program to the guidelines?

This proposed regulation would codify the policies and procedures contained in the Federal-Aid Highway Program Manual,[1] Volume 6, Chapter 4, Section 3, Subsection 1.

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

This notice of proposed rulemaking is issued under the authority of 23 U.S.C. § 109(m), 315; 49 CFR 1.48(b).

Issued on: December 27, 1978.

JOHN S. HASSELL, Jr.,
Deputy Administrator.

[FR Doc. 78-36436 Filed 12-29-78; 8:45 am]

[6820-96-M]

GENERAL SERVICES ADMINISTRATION

[41 CFR Part 101-47]

DISPOSAL OF PROPERTY FOR EDUCATIONAL AND PUBLIC HEALTH PURPOSES

Proposed Rule

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend its regulations governing the disposal of surplus real property for educational and public health use to require that all such conveyances and notices of no objections be subject to perpetual use restrictions. The proposed changes are intended to prevent windfall profits, marginal applications, and nonuse.

DATE: Comments must be received on or before: February 1, 1979.

ADDRESS: Written comments should be sent to the General Services Administration (DR), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT:

James H. Pitts, Office of Real Property, Special Programs Division (202-566-0003).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this proposed regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Accordingly, it is proposed to revise § 101-47.308-4(i), (j), and (k) to read as follows:

§ 101-47.308-4 Property for educational and public health purposes.

* * * * *

(i) If the recommendation is approved, the disposal agency shall assign the property by letter or other document to the Secretary of Health, Education, and Welfare for disposal and shall inform the Secretary that there will be no objection to the proposed transfer. Assignment and notice of no objection shall be conditioned upon a perpetual use restriction. If the recommendation is disapproved, the disposal agency will so notify the Secretary. Such assignment or notice will be given within 30 calendar days after the Department of Health, Education, and Welfare has submitted the recommendation. GSA will furnish to the holding agency a copy of the assignment or notice, unless the holding agency is also the disposal agency.

(j) The Department of Health, Education, and Welfare shall prepare the transfer document and take all other actions necessary to accomplish the transfer of the property within 60 calendar days after the date of the assignment of the property to the Secretary of Heath, Education, and Welfare. The transfer document shall provide that all such property shall be used and maintained for the purpose for which it was conveyed in perpetuity and that in the event that such property ceases to be used or maintained for such purpose, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States.

(k) The Secretary of Health, Education, and Welfare has the responsibility for enforcing compliance with the terms and conditions of transfer; for the reformation, correction, or amendment of any transfer instrument; for the granting of releases; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of section 203(k)(4) of the act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice of no objection shall be conditioned upon a perpetual use restriction, if appropriate. Notice to the head of the disposal agency by the Secretary of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

* * * * *

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Dated: December 20, 1978.

ROY MARKON,
Commissioner, Federal Property Resources Service.

[FR Doc. 79-36416 Filed 12-29-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[48 CFR Parts 2, 8, 17]

FEDERAL ACQUISITION REGULATION PROJECT

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of Availability and Request for Comment on draft Federal Acquisition Regulation.

SUMMARY: The Office of Federal Procurement Policy is making available for public and Government agency review and comment a segment of the draft Federal Acquisition Regulation (FAR) regarding acquisition of livestock products, jewel bearings and leader company contracting. Additional segments will be announced for availability and comment on later dates. The regulation is being developed to replace the current system of procurement regulations. It will be a single uniform acquisition regulation for use by all Federal executive agencies in the acquisition of supplies and services with appropriated funds.

DATE: Comments must be received on or before March 2, 1979.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William W. Thybony, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

William Maraist, or Strat Valakis, (202) 395-3300.

SUPPLEMENTARY INFORMATION: The fundamental purpose of the FAR is to reduce the proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following subparts of the draft Federal Acquisition Regulation are available upon request for public and Government agency review and comment.[1]

PART 2—DEFINITIONS AND SPECIAL POLICIES

§ 2.215 Acquisition of livestock products.

This section implements that part of the Humane Slaughter Act of 1958 (7 U.S.C. 1901-1906) which restricts the acquisition of livestock products to suppliers or processors that are in compliance with Secretary of Agriculture regulatons (9 CFR Part 390) governing the humane handling and slaughter of livestock. A Statement of Eligibility (Humane Slaughter Act) is required by the Act and contractors are permitted to file the Statement annually with the contracting officers where multiple purchases are anticipated. Contract clauses for acquiring livestock products are provided with the text for review. They will be published in Part 52 of the completed FAR.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

§ 8.2 Jewel bearings and related items.

This section prescribes the William Langer Plant, Rolla, North Dakota, as the required source for jewel bearings and related items. It defines jewel bearings and related items and includes the required contract clause in appropriate acquisitions which will appear in Part 52 of the FAR.

NOTE.—Section 8.2 has been retitled. It was formerly Industrial Preparedness Production Planning. The FAR will not include coverage on this subject at this time. The Federal Preparedness Agency is conducting a study to determine guidance applicable to Government-wide industrial preparedness for national emergencies. When the FPA completes this study, consideration will be given to the incorporation of appropriate material in the FAR. The requirement for domestic manufacture of miniature and instrumental ball bearings has also been excluded from the FAR. The DOD purchases and uses more than 99% of all Government requirements for these items. Informal contacts with civilian agencies likely to have need of these items indicate there is no need for this coverage. The Staff Director, Industrial Preparedness Program, OUSD (R&E)(AP), indicates that additional benefits to the industrial preparedness program would not require extension of this program to non-defense agencies.

PART 17—SPECIAL CONTRACTING METHODS

§ 17.4 Leader company contracting.

This Subpart provides for an extraordinary acquisition technique which requires the developer or sole producer of a product or system (leader company) to furnish assistance and know-how to a follower company so it can become a source of supply. This type of contracting would be used to reduce delivery time, achieve geographic dispersion of suppliers and achieve economies in production. Use of this technique is limited to situations where no other source can meet the Government's requirements without assistance of a leader company and the leader company has the necessary production know-how and is able to furnish such assistance to a follower contractor.

Dated: December 27, 1978.

LESTER A. FETTIG,
Administrator.

[1] Filed as part of the original document.

[FR Doc. 78-36468 Filed 12-29-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[4310-10-M]

ADVISORY COUNCIL ON HISTORIC PRESERVATION

MEETING

Notice is hereby given in accordance with the Council's Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 800) that the Advisory Council on Historic Preservation will meet on January 17-18, 1979, in Washington, D.C. The meeting is open to the public with the exception of the portion of the Executive Director's report concerning the FY 80 Council budget.

The Council was established by the National Historic Preservation Act of 1966 (Pub. L. 89-665, as amended, Pub. L. 94-422) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretaries of the Interior; Housing and Urban Development; Commerce; Treasury; Agriculture; Transportation; State; Defense; Health, Education and Welfare; and the Smithsonian Institution; the Attorney General; the Administrator, General Services Administration; Chairman of the Council on Environmental Quality; Chairman of the Federal Council on the Arts and Humanities; Architect of the Capitol; Chairman of the National Trust for Historic Preservation; President of the National Conference of State Historic Preservation Officers; and twelve non-Federal members appointed by the President.

The meeting will begin at 9:30 a.m. on Wednesday and Thursday, January 17-18, 1979, in the Cash Room, the Department of the Treasury, 15th and Pennsylvania Avenue, NW., Washington, D.C.

The agenda for the meeting includes the following:

I. Chairman's Report.
II. Council Policy Group Reports.
III. Report of the Executive Director.
IV. Consideration of Proposed Amendments to Section 106 Regulations.
V. Report of the Office of General Counsel.
VI. Report of the Office of Intergovernmental Programs and Planning.
VII. Report of the Office of Special Studies.
VIII. Report of the Office of Review and Compliance
IX. International Centre Committee Report.
X. Other Business.

Additional information concerning either the meeting agenda or the submission of oral and written statements to the Council is available from the Executive Director, Advisory Council on Historic Preservation, Suite 530, 1522 K Street, NW., Washington, D.C. 20005, 202-254-3495.

Dated: December 18, 1978.

ROBERT M. UTLEY,
Deputy Executive Director.

[FR Doc. 78-36054 Filed 12-29-78; 8:45 am]

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture is publishing the final decision on a formula to be used in determining the program (food) funding level for each State agency participating in the Special Supplemental Food Program for Women, Infants and Children (WIC).

DATED: December 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Jennifer R. Nelson, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250, 202-447-8206.

On October 11, 1978, the Department published a notice describing the formula proposed for use in determining program (food) funding allocations, beginning the first quarter of FY 1979, for the Special Supplemental Food Program for Women, Infants and Children (WIC). This notice was published to allow the opportunity for public comment. The comment period was, however, for only 30 days in order to allow time for a decision to be made on the final formula before the second quarter allocations.

The department received 24 comment letters. Fifteen letters were from State and local agency representatives, one letter was received from a nutrition group, and six letters came from public and special interest groups. Only one comment letter was received from a Congressman and the general public. A review of the comments revealed that there was no general agreement on any alternative proposal to the formula. The majority of the 24 comment letters expressed different ideas, with three being the greatest number to agree on any one alternative.

The comments that exhibited the greatest amount of conformity agreed with factors selected by the Panel. The Panel on WIC's Program and Administrative Funding Structure convened on September 6-8, 1978, to provide the Department with its recommendations concerning the best allocation method (see the October 11, 1978 notice for more detail).

Two commentors were encouraged by the formula because it indexed the factors chosen by the Program and Administrative Funding Panel. Another commentor endorsed the factors selected by the Department. The Panel's selection of factors was based on the value of each factor's assessment of the economic and health need of the WIC target population in each State agency. Additionally, these commentors requested more administrative funding and suggested adjusting the poverty level for each State to reflect cost of living differences. As another notice will be published for comment which deals specifically with administrative funding; this issue will not be addressed at this time.

The Department gave serious consideration to including the suggestion to adjust the poverty level to reflect each State agency's cost of living difference. The Department reviewed data from Autumn of 1977 from a Bureau of Labor Statistics (BLS) publication.[1] The data considered dealt with statistics for the cost of food consumed at home by families with low household budgets. This particular data was se-

[1] News-BLS-U.S. Department of Labor, USDL-78-3-393, Wednesday-April 26, 1978.

lected as this most closely reflects variations between State agencies for food costs. Upon review of this data, it was apparent that there were some disadvantages in using a cost of living index such as food consumed at home by families with low household budgets. It was found that there is not sufficient data to consider all areas equitably. Although BLS statistics do consider metropolitan versus nonmetropolitan areas, nonmetropolitan areas are considered communities with populations from 2,500 to 50,000, with the emphasis being on communities of 10,000 or more. Therefore, rural communities are probably under-represented to a significant degree.

Aside from the problem of underrepresentation of rural areas, there are also problems with disparities between regions, within regions and even within States. For instance, there is an overall difference of 11.2 percent between the region with the lower cost for food (South), to the region with the highest (Northeast). However, within the Northeast region, there is an 8.9 pervent difference in food costs, and within the Southern region, a 17 percent difference. The same variances occur when selected communities within a State are compared. In the final analysis, if one compares purely the difference between metropolitan areas and nonmetropolitan areas on a national basis, there is only a 6.3 percent difference in food costs. Therefore, due to the complexities and inequities in using an adjustment to account for variations in food costs, the Department believes such a factor should not be used in the formula.

The Program and Administative Funding Panel members who submitted comments stated that the formula accurately reflected the intentions of the Panel. Two other comments which were made suggested allocating and reallocating funds at the local level based on budget submissions with amounts adjusted to reflect performance. These commentors also objected to the use of infant mortality rate as an indicator of need. In response to the first comment, the Department views the process of allocating funds to the local level as a State responsibility. Regarding the second comment, the Department believes that the purpose of the Program is to reach those persons who have domonstrated the greatest need. Thus, the Department feels that infant mortality rate is the best indicator of relative need. Further, to ensure that Program benefits reach the persons with the greatest need, the Department will use the 1976 infant mortality rates in the computation of the program funding formula (previously 1975 data was used). As this is the most recent data available, it will reflect a more accurate picture of each State agency's need.

Two commentors expressed confusion about the content and intent of the notice. The remainder of the comments were made by single individuals. Groups of similar comments are as follows:

(1) It was suggested that the Department consider States separate from territories and Indian agencies. Both the Panel members and the Department felt that all State agencies should be considered in the same manner. Public Law 95-627 reinforces this concept of equal treatment in its discussion of the allocation of funds between States serving Indians and Indian State agencies and vice versa. Therefore, the treatment of all State agencies will continue to be equal.

(2) One commentor believed the Department should reallocate funds before April 1, 1979. The Department believes that six months is needed from October 1, 1978 to allow State agencies sufficient time to expand their operations before their level of unspent funds in examined for reallocation. As a result of the late passage of legislation, a number of State agencies have not expanded as rapidly as usual in October. Consequently, these State agencies will probably spend part of their second month and possibly their third month attempting to strengthen their operations.

(3) It was recommended that the Department develop a formula based on the relative need being met by each State. The program funding formula was designed to meet the need of each State agency based on children under five years under 200 percent of the poverty level, and reflects an adjustment based on the level of each State agency's infant mortality rate. The purpose of the hold harmless level (fourth quarter annualized plus 10 percent) was to allow for inflation and some limited growth, as well as, guarantee that no one would be terminated from the Program. The Department believes that the formula as proposed responds to each State's relative need.

(4) Another comment proposed adapting the formula to compare and to consider variations within States. However, an average of each State agency's infant mortality rate as well as the total number of children under five years below 200 percent of the poverty level is used in the formula. Variations within each State were combined to determine each State agency's rate and this average was compared to the national total. The Department feels that variations were given sufficient consideration in the base of the funding formula and that it is the State agency's responsibility to allocate funds to neediest areas.

(5) Comments which dealt with the use of alternative factors include:

(a) Give more weight to infants from birth to one year than to children one to five years in the children under five years figure;

(b) Use a composite infant mortality rate computed on data from several recent years;

(c) Give special consideration to children under five years under 100 percent of poverty and migrant populations, and place more emphasis on infant mortality; and

(d) Identify variables and/or considerations independent of the data being used.

These commentors suggested the use and/or special consideration of various health and economic factors. The Department agrees that some other health factors may also be appropriate for use in the WIC Program. However, the use of such data is restricted as it is not available for Indian State agencies. The Department did consider some of the other suggested factors mentioned in the comment letters, and the Panel discussed these factors mentioned at length, specifically the factors listed in number 5(c) above. However, as a participant's income eligibility cut-off is 195 percent of the Secretary's income poverty guidelines, it was believed inconsistent to distribute funds according to the number of children under five years under 100 percent of poverty. Migrant populations were also addressed but data available on migrants is unreliable and not suitable for use in a formula. Finally, if more emphasis were given to infant mortality rate, the result of the funds distibution would be disproportionately skewed as it bears no relationship to total population.

Commentors suggested alternatives to using as a base the amount of funds available for expenditure in the fourth quarter of fiscal year 1978. One suggestion was to use the September operational level. However, the major drawback to using the September operational level is that September reports from State agencies are not received until October 30th. According to P.L. 95-627, the distribution of funds must be made by the Department before October 1. Consequently, estimates of the September operational level would have to be used and adjustments would have to be made as reports are received. Thus, the allocation process would become dependent on changes, e.g., preliminary closeout reports, and final closeout reports, and would be drawn out for an unreasonable period of time. The final result would place far more States at the hold harmless level and fewer States receiving funds according to the formula. For these reasons, the Department believes that use of the FY '78

fourth quarter level should remain the base on which to run the formula.

In addition, three other comments were received which related more to administrative funding than the program funding. As another notice, as well as proposed regulations, will address this issue, these comments will not be discussed at this time.

In conclusion, the Department believes that as only 24 comments were received, and there was little conformity in those comments, the majority of State and local agencies and interested groups approve of the formula as proposed. Therefore, it is the Department's decision that the funding formula will remain unchanged. The program funding formula that will be used is as follows:

Number of each State's children under five, under 200 percent poverty
divided by
Sum of all State agencies' children under five, under 200 percent poverty
times
State's infant mortality rate
divided by
National infant mortality rate

2. The results of the formula are then compared to each State agency's fourth quarter annualized level. If the fourth quarter annualized level is more than the amount allocated under the formula, that State agency is held harmless (or guaranteed at least that level of funding).

3. The maximum grant is computed for each State agency and is also compared to the State agency's fourth quarter annualized level. If the fourth quarter annualized level is higher than the maximum grant, the State agency receives the maximum grant.

4. All State agencies then receive a 10 percent increase over their fourth quarter annualized level (except those State agencies which are at maximum grant) and a total is computed.

5. The total from number 4 is subtracted from the funds available and the formula is run again on the difference for only those State agencies which were not held harmless or at maximum grant.

6. The amount allocated by the 10 percent increase and the amount received through the second run of the formula is added together to arrive at the grant for the State agencies that participated in the second formula run.

7. At this point an analysis is made to determine if any State agency which has a fourth quarter annualized level of over $5 million has an increase of over 50 percent. For these State agencies, the amount in excess is recaptured, totaled and distributed through a third run of the formula to the other State agencies that participated in the second formula run.

Signed at Washington, D.C., on December 26, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 78-36226 Filed 12-29-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

INVESTIGATION OF UNFAIR METHODS OF COMPETITION IN ESTABLISHING AND MAINTAINING FARES AND SERVICES

[Docket No. 34318; Order 78-12-172]

Order Instituting Informal Nonpublic Investigation

Issued under Delegated Authority December 26, 1978.

The Bureau of Consumer Protection has received information that various air carriers may have engaged in unfair or anti-competitive business practices by agreeing among themselves to fix and maintain the level of their fares, rates and charges. Air carriers who compete in certain markets may have combined to lessen or eliminate competition in those markets by agreeing to establish common tariff provisions without Board approval; by cooperating to set, maintain, or alter their fares; and by agreeing to reduce or limit the services provided in those markets.

Price-fixing and similar anti-competitive practices cut to the heart of the regulatory scheme envisioned by Congress when it amended the Federal Aviation Act of 1958 ("the Act") by passing the Airline Deregulation Act of 1978. Under the revised statute, it is essential that competition in air transportation markets be real and vigorous. This investigation, therefore, is intended to determine whether certain air carriers may have acted to reduce or eliminate competition by agreeing to set, maintain or limit the fares and services which they provide in certain markets. If air carriers, or persons acting on their behalf or in concert with them, have attempted in any way to limit price and service competition, they may have committed unfair practices or unfair methods of competition within the meaning of Section 411 of the Act. Such conduct might also involve attempts to monopolize or conspiracies in restraint of trade which violate the antitrust laws.

We will conduct an informal nonpublic investigation in accordance with Part 305 of the Board's Procedural Regulations to determine whether formal investigtion should be instituted with respect to such conduct. This action is taken under the authority of sections 202, 204, 411, 415, 1001, 1002, 1004, and 1007 of the Act and the authority delegated to the Director of the Bureau of Consumer Protection by section 385.22 of the Board's Organizational Regulations.

Petitions for review of this order may be filed by any person who discloses a substantial interest which would be adversely affected within the meaning of section 385.50 of the Regulations by this staff action. Such petitions must meet the requirements of section 385.51 of the Regulations and be filed within ten (10) days of service of this order or within ten (10) days of receipt of any subpena issued under section 305.7(a) of the Regulations, whichever shall be earlier.

Because these issues are so important to the Board's regulatory requirements and the public's confidence in the integrity of its air transportation system, immediate action is required. The institution of this investigation is consistent with Board precedent and policy. Accordingly, petitions for review shall not of themselves stay the effectiveness of this order, the conduct of the investigations it creates, or the validity or effectiveness of any subpena issued under it.

Accordingly,

1. We initiate an informal nonpublic investigation, pursuant to Part 305 of the Board's Procedural Regulations for the purpose of providing the Director, Bureau of Consumer Protection, with information to determine:

a. Whether air carriers or persons acting on their behalf or in concert with them may have engaged in unfair business practices or unfair methods of competition within the meaning of section 411 of the Act, or may have violated other provisions of Title IV of the Act, or regulations or Board Orders issued thereunder, with respect to attempts to limit or eliminate competition, to monopolize, or to restrain trade in certain air transportation markets;

b. Whether, on the basis of the information secured, the Board should take any remedial action.

2. Mary E. Downs, Robert C. Seldon, and Robert D. Young, staff attorneys for the Bureau of Consumer Protection are hereby designated as Investigation Attorneys for the purposes of conducting this investigation.

3. This Order shall be stayed only by the express direction of the Board.

4. This Order shall be published in the FEDERAL REGISTER as provided in Section 305.10 of the Board's Procedural Regulations.

REUBEN B. ROBERTSON,
Director, Bureau of Consumer Protection.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36457 Filed 12-29-78; 8:45 am]

[6320-01-M]

[Order No. 78-12-176; Docket Nos. 33294, 33360]

LLOYD AEREO BOLIVIANO, S.A.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of December, 1978.

BACKGROUND

Lloyd Aereo Boliviano, S.A. (LAB) is the holder of a foreign air carrier permit authorizing foreign air transportation of persons, property and mail.[1] In addition, LAB is authorized to perform charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations.

On September 7, 1978 LAB filed an application for amendment of its permit to include Cali, Colombia, and Manaus, Brazil, as intermediate points on its route.

On August 25, 1978 LAB filed an application for a second foreign air carrier permit authorizing (a) foreign air transportation of property only between a point or points in Bolivia; the intermediate points Guayaquil, Ecuador; Cali and Bogota, Colombia; Manaus, Brazil; Caracas, Venezuela; Panama City, Panama, and the terminal point Houston, Texas; and (b) the performance of charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations. On September 11, 1978 the carrier amended its application to request authority to engage in nonscheduled foreign air transportation of property on the route described above.

In both applications LAB also seeks a waiver from the requirements of Part 312 of the Board's Economic Regulations concerning environmental statements (14 CFR 312) because the requested route authority will not result in any significant increase in its total civil aviation operations.[2]

OWNERSHIP AND CONTROL

LAB is a Bolivian company incorporated September 15, 1925 under the laws of the Republic of Bolivia. Of the two million shares of capital stock authorized and issued, 99.97 percent are held by the Republic of Bolivia and the remaining .03 percent are held by citizens of Bolivia. We tentatively conclude that ownership and control of the applicant are vested in the Republic of Bolivia.

FINANCIAL AND OPERATIONAL FITNESS

In granting a permit to LAB in 1971 the Board found that the carrier met the operational and financial fitness standards of the Federal Aviation Act and that its services were in the public interest. The present applications continue to support these findings. The carrier plans to serve both Manaus and Cali twice a week on its flights to Miami, and to operate nonscheduled property only service between Houston and Bolivia via intermediate points with B-707/323 CF aircraft on an average of one flight per week.

PUBLIC INTEREST

In support of its applications LAB states that service to Manaus and Cali is provided for in the United States-Bolivia Air Transport Services Agreement, as amended; that LAB has been appropriately designated by the Government of Bolivia;[3] that the proposed all-cargo service between Houston, Texas, and Bolivia would satisfy the needs of shippers more efficiently and effectively; and that an opportunity for reciprocity exists for U.S. air carriers seeking to perform similar operations to Bolivia.

No answers to either of LAB's applications have been received.

In view of the foregoing and all the facts of record, we tentatively find and conclude that:

1. It is in the public interest to amend the foreign air carrier permit held by the Lloyd Aereo Boliviano, S.A. so as to authorize it to engage in foreign air transportation of persons, property, and mail between a point or points in Bolivia; the intermediate points Lima, Peru; Guayaquil and Quito, Ecuador; Bogota and Cali, Colombia; Manaus, Brazil; Caracas, Venezuela; and Panama City, Panama; and the terminal point Miami, Florida and to issue Lloyd Aereo Boliviano, S.A. a new foreign air carrier permit authorizing it (a) to engage in foreign air transportation of property between a point or points in Bolivia and Houston, Texas, via specified intermediate points, and (b) to perform charter trips pursuant to Part 212 of the Board's Economic Regulations, for a period of five years, in the specimen forms attached;

2. The public interest requires that the exercise of the privileges granted by these permits shall be subject to the terms, conditions, and limitations contained in the specimen permits and attached to this order and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

3. Lloyd Aereo Boliviano, S.A. is fit, willing, and able properly to perform the transportation described in the specimen permits attached to this order, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board;

4. An oral evidentiary hearing is not required in the public interest; [4]

5. The issuance of the proposed foreign air carrier permits to Lloyd Aereo Boliviano, S.A. will not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a) of the Board's Regulations; and

6. Except to the extent granted the applications of Lloyd Aereo Boliviano, S.A. in Dockets 33294 and 33360 should be denied.

Accordingly,

1. We direct interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions, and (2) subject to the disapproval of the President, issue foreign air carrier permits to Lloyd Aereo Boliviano, S.A. in the specimen forms attached;

2. Any interested person having objection to the issuance of an order making final the Board's tentative findings and conclusions and issuing the proposed foreign air carrier permits shall file with the Board and serve on the persons named in paragraph 5, no later than January 15, 1979, a statement of objections specifying the part or parts objected to, and include a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections. If an oral hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material

[1] See Order 71-12-41 approved by the President December 7, 1971. The permit authorizes LAB to operate over the following route: Between a point or points in Bolivia; the intermediate points Lima, Peru; Guayaquil, and Quito, Ecuador; Bogota, Colombia; Caracas, Venezuela; Panama City, Panama, and the terminal point Miami, Florida.

[2] Considering the limited impact of the operations to be conducted, we will grant the requested waivers. The applicant states that operations at Miami would increase from four to six weekly flights; operations at Houston would not exceed an average of one flight weekly; and that less than 10 million gallons of fuel would be consumed.

[3] The Agreement includes the following route for Bolivia: "From Bolivia to Miami via intermediate points in South America and Panama."

[4] Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached permits, shall be allowed 15 days from the date of service of this order to respond.

facts would be expected to be established through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, we shall give consideration to the matters and issues raised by the objections before we take further action; *Provided,* that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in the order if we determine that there are no factual issues present that warrant the holding of an oral hearing; [5]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which (1) shall make final our tentative findings and conclusions set forth in this order, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, shall issue two foreign air carrier permits to the applicant in the specimen forms attached; and

5. We shall serve a copy of this order upon Lloyd Aereo Boliviano, S.A., the Ambassador of Bolivia in Washington, D.C., Braniff International, and the Departments of State and Transportation.

We shall publish this order in the FEDERAL REGISTER and transmit a copy to the President of the United States.

By the Civil Aeronautics Board.[6]

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT—I

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

Permit to Foreign Air Carrier (as Amended)

LLOYD AEREO BOLIVIANO, S.A. is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Board, to engage in foreign air transportation of persons, property, and mail, as follows:

Between a point or points in Bolivia; the intermediate points Lima, Peru; Guayaquil and Quito, Ecuador; Bogota and Cali, Colombia; Manaus, Brazil; Caracas, Venezuela; and Panama City, Panama; and the terminal point Miami, Florida.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Bolivia for Bolivian international air service.

The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with the operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Bolivia shall be parties.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation of persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the name and address of the member insurers.

The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; *However,* this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on ———— . Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of Bolivia (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Bolivia in lieu of the holder, or (3) upon the termination or expiration of the Air Services Agreement between the Government of the United States of America and the Government of Bolivia, signed September 29, 1948, effective November 4, 1948, as amended:

However, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation authorized become the subject of any treaty, convention or agreement to which the United States of America and Bolivia are or shall become parties.

The Civil Aeronautic Board, through its Secretary, has executed this permit and affixed its seal on .

Secretary.

SPECIMEN PERMIT—II

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

Permit to Foreign Air Carrier

LLOYD AEREO BOLIVIANO, S.A. is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Board, to engage in foreign air transportation of property as follows:

Between a point or points in Bolivia; the intermediate points Guayaquil, Ecuador; Cali and Bogota, Colombia; Manaus, Brazil; Caracas, Veneuzela; Panama City, Panama, and the terminal point Houston, Texas.

The authority granted above shall be subject to the condition that the holder shall not engage in scheduled foreign air transportation under the terms of this permit.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed in Part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Bolivia for Bolivian national air service.

The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with the operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Bolivia shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to fair competition, the holder and the Board will consult, and will use their best efforts to agree upon modifications satisfactory to the Board and the holder.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

[5] Since provision is made for filing of objections to this order, petitions for reconsideration will not be entertained.

[6] All members concurred.

The holder shall not provide foreign air transportation under this permit unless (1) there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and (2) there is in effect minimum liability insurance coverage for bodily injury to or death of cargo handlers in the amount of $75,000 per cargo handler, and (3) there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amount and liability limits of the insurance provided under (1) and (2) above. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation: *However*, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on ———— and shall terminate five years thereafter; *Provided*, that if during the period this permit shall be effective, the operation of the foreign air transportation authorized here becomes the subject of any treaty, convention, or agreement to which the United States and Bolivia are or shall become parties, then this permit is continued in effect during the period provided in such treaty, convention or agreement.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on ————.

Secretary.

[FR Doc. 78-36462 Filed 12-29-78; 8:45 am]

[6320-01-M]

[Order No. 78-12-174; Docket Nos. 33209, 31217, 33838]

NATIONAL AIRLINES, INC., ETC.

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of December, 1978.

Application of National Airlines, Inc. to amend its certificate of public convenience and necessity for Route 168. Application of Trans International Airlines, Inc. for a certificate of public convenience and necessity. Application of Trans International Airlines, Inc. for an exemption pursuant to 416(b)(1) of the Federal Aviation Act, as amended (U.S.-Europe-Israel).

On August 16, 1978, National Airlines, Inc. filed an application to have its current transatlantic authority (Route 168) expanded to include Zurich, Switzerland and Tel Aviv, Israel.[1]

National's application was accompanied by a petition that the proposed amendment be handled by show cause procedures. In support of its request, National states that the factual situation meets the criteria established in Order 78-4-68 (*Piedmont Aviation, Inc., Order to Show Cause*) for processing of 401 applications by non-oral hearing procedures; that at present there are no U.S.-flag services to Zurich; that the proposed service would represent the first direct services between the southern part of the United States via the Miami gateway to Tel Aviv and the Holy Land; that the extension of National's transatlantic services to Zurich and Tel Aviv will be substantially beneficial to the travelling public; and that it is carrying through the transatlantic plans it originally outlined in the *transatlantic Route Proceeding*, Docket 25908.

National notes that the United States and Israel have recently signed a new liberal bilateral air transport Protocol which, among other things, affirms the United States' freedom to make multiple designations of U.S. flag carriers to serve Israel.[2] It urges that the United States make immediate use of the bargained-for rights.

National also claims that there is a serious need to remedy the great imbalance in the exercise of traffic rights between the United States and Switzerland/Israel and the concomitant imbalance in traffic carried by the air carriers of those countries. At present, National states that Israel's state-owned airline carries almost 90 percent of the total U.S.-Israel traffic, 76 percent of which is U.S. citizens. Most of this traffic moves through the New York gateway.

National's initial schedule pattern calls for three flights weekly between Miami and Tel Aviv. Intermediate stops will be made in Amsterdam, Paris, and Zurich. The extension beyond Paris and Amsterdam will be provided by B-727 type aircraft which will directly connect on a change-of-gauge basis with national's existing pattern of wide-bodied DC-10 transatlantic services. No new transatlantic operations will be required.

National states that it is anxious to commence these operations as soon as possible. It forecasts that the new service will benefit some 15,794 U.S.-Israel passengers during the first full year of operations and some 7,971 U.S.-Zurich passengers during the same period. Total Amsterdam/Paris/Zurich-Tel Aviv Fifth Freedom traffic is expected to equal about 6,760 passengers, for an estimated total of 30,525.[3] Load factors on the B-727 within Europe are expected to average 60.9 percent.

Dade County, Florida, and the Greater Miami Traffic Association have filed a joint answer supporting National's application and petition for show cause. In addition, a statement of views has been filed by the Department of State in which it supports National's petition for an early isssuance of a show cause order and applications by any other U.S. airlines for authority to provide air transportation between the United States and Israel. The Department urges the United States to fully utilize the multiple designation provision of the recent Protocol with Israel.

Trans World Airlines, Inc. (TWA) objects to granting National unrestricted authority by show cause procedures. it states, however, that if the Board amended National's certificate, the certificate should be drafted so as to: (1) preclude National from operating via Paris to either Tel Aviv or Zurich; and (2) prevent National from combining its New York-Amsterdam exemption authority granted by Order 78-9-2 with any Amsterdam-Tel Aviv/Zurich authority which would allow National to operate through-plane service between New York, on the one hand, and Tel Aviv and Zurich, on the other hand.

On October 26 Trans International Airlines, Inc. (TIA) filed an amend-

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[1] National requests that Route 168 be amended to read as follows: "Between the coterminal points New Orleans, La., Tampa and Miami, Fla., the intermediate points London, England, Amsterdam, the Netherlands, Frankfurt, Germany, Paris, France, and Zurich, Switzerland; and the terminal point Tel Aviv, Israel." The only new points are Zurich and Tel Aviv.

[2] The protocol contains: (1) for Israel four new U.S. points of its choice (two immediately and two more on August 1, 1979), three new intermediate points, and blind sector beyond rights to Asia and South American and from one U.S. to Israel with free choice of intermediate and beyond points; and for both parties (3) multiple designation for scheduled and charter services; (4) a mutual suspension tariff article effective on August 1, 1979, which requires both countries to agree before a rate or fare may be suspended, and which permits third country carriers to match rates; (5) provisions for the operation of charters in accordance with charter worthiness rules of the country of traffic origin; (6) fair competition provisions which denies either party the right to limit volume, frequency or aircraft type; and (7) new provisions for enforcement, aviation security, and commercial operations of the carriers. The protocol was formally signed on August 16, 1978.

[3] National application, Appendix G. National estimates that it will carry about 1,560 Paris-Tel Aviv Fifth Freedom passengers.

ment to its application for a certificate of public convenience and necessity in Docket 31217 to add points in Switzerland and Israel to the transatlantic authority it has requested. TIA now seeks authority to provide scheduled forcign air transportation of persons, property and mail between the coterminal points Seattle, Washingtron; San Francisco-Oakland, and Los Angeles, California; Chicago, Illinois; Detroit, Michigan; Miami-Ft. Lauderdale, Florida; Dallas-Ft. Worth, Texas; Atlanta, Georgia; Washington, D.C.-Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New York-Newark, New Jersey; and Boston, Massachusetts, on the one hand and intermediate and terminal points in Belgium, the Netherlands, Luxembourg, France, Germany, Austria, Switzerland and Israel, on the other hand.

TIA's amended application was accompanied by a motion to have its revised application consolidated with National's application for expansion of Route 168. TIA maintains that it would be inequitable and a deprivation of TIA's due process rights to permit National to implement U.S.-Israel services in these markets ahead of competing applicants such as TIA without a comparative hearing. TIA cites as precedent *Kodiak Airways, Inc.* v. *CAB*, 144 U.S. App. D.C. 371, 447 F.2d 341 (1971), and *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945). TWA responded to TIA's motion by stating that it has no objections to consolidation provided both applications are set for an oral evidentiary hearing.

In addition, on October 26 TIA filed with the Board in Docket 33838 an application for an exemption pursuant to section 416(b)(1) of the Federal Aviation Act of 1958 (Act) as amended by section 31 of the Airline Deregulation Act of 1978, so as to operate scheduled low-fare service between Los Angeles, Chicago, New York, and Tel Aviv, Israel, via intermediate points in Western Europe, namely Amsterdam and Zurich, pending final decision on TIA's application in Docket 31217. Currently TIA does not have certificate authority to serve either Amsterdam or Zurich, but it was recently granted exemption authority to serve Amsterdam in Order 78-11-156. TIA proposes three flights per week between Los Angeles and Tel Aviv, two of which would operate via intermediate traffic stops in Europe. The Chicago service would consist of three wide-body flights per week with two traffic stops in Europe. TIA's proposed service from New York calls for three weekly wide-body flights, two operating via Western Europe and one direct to Tel Aviv. In support of its request, TIA submits that the proposed services will represent the first real competition in these markets; that it will institute new single-plane and wide-body service and new low, unrestricted fares to Israel; that traffic growth will be stimulated; that the services will be profitable in the first year of operations; that the services will not divert traffic now moving on the incumbent U.S.-flag carriers; that the bilateral agreement with Israel is analogous to the agreements with the Netherlands and Belgium which prompted the Board to award liberal exemptions in Order 78-9-2; and that the legislative history behind the amendments to section 416 in the Airline Deregulation Act of 1978 demonstrates Congressional desire for more liberal grants of exemption authority.

Pan American World Airways, Inc. (Pan American) and TWA recommend that TIA's exemption application as outlined in Docket 33838 be denied. Pan American states that the application is, in effect, a call for the Board to totally ignore the certification requirements imposed by section 401 of the Act. TWA declares that the Declaration of Policy in section 102 of the Act has been changed so as to place primary reliance upon competition, but that it was not changed with respect to foreign air transportation; that the Act as amended still requires the Board to consider "competition to the extent necessary" as one of the public interest factors to be taken into account in authorizing foreign air transportation by exemption; that Congress intended for the Board to place primary reliance upon certification in authorizing foreign air transportation; and that the *Benelux* order is not analogous to this application. TIA filed a consolidated Reply to the TWA and Pan American Answers, stating that the carriers have made no showing that the exemptions would not be in the public interest, and that Congress did intend for the Board to pursue a more liberal exemption program in the international area.

Upon consideration of the pleadings and all other relevant facts, we have decided to issue an order directing all interested persons to show cause why: (1) National's certificate should not be amended to add Zurich and Tel Aviv to Route 168,[4] and (2) TIA should not be granted a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between the U.S. coterminal points specified in its application and the terminal points Zurich and Tel Aviv.[5] These applications fall within the class of cases that can be handled to show cause procedures due to the absence of any material, determinative issue of fact requiring resolution in a formal evidentiary proceeding.[6] In addition, we propose to grant TIA exemption authority to operate between Amsterdam, Zurich and Tel Aviv.

We tentatively find that there is a need for competitive U.S. flag authority from the United States to both Zurich and Tel Aviv.[7] Zurich is not currently served directly from the United States by any U.S. carrier.

No person has objected to the proposals to serve Zurich, and we believe that the best way to assure new service and a variety of price/quality of service options for the traveling and shipping public is to award competitive authority to both applicants. The United States-Israel market is similarly in need of additional U.S.-flag service. Although TWA currently provides New York-Tel Aviv service, El Al now carries over 90 percent of U.S.-Israel traffic. The grant of both applications will create incentives to increase efficiency in the market by providing for new potential or actual competition. Consequently, we tentatively find that both applicants should be certificated. The authority we grant here will, even if not exercised, present a competitive challenge that will evoke lower fares and/or innovative services from active carriers.[8] We need not find that either or both applicants will be successful in order to certificate both.

Although TWA objects to entry by TIA or National into the New York-Tel Aviv market, its arguments are primarily based on law and policy, and it does not establish a factual case for diversion significant enough to impair its ability to perform its certificate ob-

[4] We propose to amend Condition number 2 of this certificate in light of the amendment to section 401(j) of the Act contained in the Airline Deregulation Act of 1978, which allows a carrier to suspend service to any point upon proper notice. Condition 2 previously required National to provide service to all points. The revised language would allow National to suspend service to any point as permitted by 401(j), but suspension from points other than Zurich and Tel Aviv (which are permissive) could be grounds for deletion of the points from the certificate if the public interest requires, *e.g.*, where a restrictive bilateral precludes entry by a willing carrier because of the unused authority.

[5] We will deny TIA's motion to consolidate, as its application requests certificate authority to many European points not at issue in National's application. Authority to Belgium, the Netherlands, and Luxembourg is at issue in the *U.S.-Benelux Low Fare Proceeding*, Docket 30790. Authority to France, Germany and Austria will be considered in other proceedings.

[6] *See, e.g.*, Orders 78-10-146, October 3, 1978; 78-9-91, September 20, 1978; 78-8-97, August 17, 1978; 78-7-168, July 31, 1978; 78-4-69, April 14, 1978.

[7] We also tentatively find that this authority should be made permissive to allow the carriers maximum operating flexibility.

[8] *See, e.g., Philadelphia-Bermuda Nonstop Proceeding*, Docket 32786, decision submitted to the President September 25, 1978; *Oakland Service Case*, Orders 78-4-121, May 30, 1978 and 78-9-96, September 21, 1978.

ligations. TWA's only attempt to allege a factual basis for denial of National's application is the unsupported, conclusory assertion that authorization of a second U.S. carrier between Paris and Tel Aviv would exacerbate existing difficulties with the French Government over TWA's Fifth Freedom capacity on that sector. National, on the other hand, has provided a specific projection of its Fifth Freedom traffic on this sector,[9] and for the reasons set forth below we see no basis for finding that National's proposed operations will have a detrimental impact on our aviation relations with France that is serious enough to outweigh the public benefits from National's proposal. TWA's only factual claim in operation to TIA's certificate application is that an additional U.S.-flag New York-Tel Aviv competitor would duplicate services already provided by TWA. This is not disputed by any party, and thus TWA has raised no factual issue at all on TIA's application, much less the sort of factual dispute that can be best resolved in a hearing.

We feel an obligation to emphasize that in international route award cases we are bound by the substantive standards of the Federal Aviation Act, not the more procompetitive standards of the Airline Deregulation Act of 1978. Nevertheless, the Deregulation Act, the President's policies and our own policies all require that we decide route cases more quickly and economically than we have in the past, to the extent that we are able to do so consistently with the rights of interested parties and the public. We believe these considerations require us to avoid subjecting new entrants to the expense, delay and competitive disadvantage of unnecessary oral hearing procedures. Nevertheless, should the responses to this show cause order raise factual issues that require oral hearing procedures, it is a well-established principle under our standard show cause practice that we will postpone a final order until such hearing is held.

A prime factor in our decision to award this authority to both applicants by show cause procedures is the need to quickly take advantage of our bilateral rights to make multiple designations of U.S.-flag carriers to these points. As in the case of the Benelux countries,[10] we have recently negotiated a bilateral agreement with Israel which allows liberal entry and low fares, and it is essential to our policy of increasing the forces of competition in foreign air transportation to exercise these rights as quickly as possible. Our position in future negotiations is substantially strengthened if U.S. carriers have in fact been awarded the multiple entry rights bargained for in past cases. Likewise, the bilateral agreement with Switzerland allows multiple designations, and the recent withdrawal of Pan American from Zurich has created an immediate need for new U.S. flag services.

We find no merit to TWA's suggestion that National be prohibited from operating via Paris to Tel Aviv or Zurich. We are aware that the French are concerned over what they see as excessive operations by TWA beyond Paris. In the past summer TWA operated 21 weekly flights beyond Paris, 15 of which went to Tel Aviv either directly or through Rome (TWA's frequencies have been reduced for the winter). National's proposed service will include only one Paris-Tel Aviv nonstop frequency a week and one Paris-Zurich-Tel Aviv routing per week. These flights are commensurate with the scope of its U.S.-Paris and U.S.-Zurich/Tel Aviv traffic and operations. They are primarily related to Third and Fourth Freedom traffic, and should evoke no objection by the French that National will be operating an excessive proportion of Fifth Freedom capacity. National's traffic projections indicate that beyond-Paris Fifth Freedom traffic will be a little over 15 percent of total traffic.[11]

We also tentatively find that National and TIA have made a plausible showing that services by one or more carriers could be economically feasible in the near future, and that no further proceedings are necessary on this issue.[12] As we have explained on many occasions, we no longer deem it necessary for an applicant for 401 authority to prove that its services will necessarily be profitable.[13] All that we require is that an applicant demonstrate some plausible set of assumptions which would render the proposed services economically feasible. TIA and National estimate profits of $12.2 million and $1.3 million respectively. Whether or not these profits are actually realized is a concern only for the carriers' stockholders, and we require this information only as an initial screening test to determine whether the Board should expend its resources in processing the applications. In the final analysis, the marketplace will decide whether these services will be profitable far better than we can, and further evidentiary procedures to air differences of judgment on this issue would serve no regulatory purpose.

For these reasons, we tentatively find that the public convenience and necessity require the proposed authority; that National and TIA are citizens of the United States and are fit, willing and able properly to perform the air transportation we propose to authorize and to conform to the provisions of the Act and the Board's rules, regulations and requirements; and that an oral evidentiary hearing is not required.

At the same time, we have tentatively decided to authorize TIA to operate Amsterdam-Zurich and Amsterdam-Tel Aviv services by exemption. This would allow TIA to link its U.S.-Amsterdam exemption authority (Order 78-11-156, Nov. 30, 1978) with its service to Zurich and Tel Aviv, in accordance with the schedules it has proposed.[14] We are not considering Amsterdam-Zurich-Tel Aviv certificate authority here because TIA does not have certificate authority for the United States to Amsterdam segment. This authority is in issue in the *Benelux* proceeding, and if TIA is granted authority to the Benelux countries in that proceeding, it can request link-up certificate authority to Zurich or Tel Aviv at that time. We tentatively find that grant of a link-up exemption is consistent with the public interest, because it will allow TIA maximum operating flexibility, render the services to Zurich and Tel Aviv more economically feasible, and improve service to Europe and within Europe. The main beneficiaries of this interim authority will be consumers, who will enjoy a wider variety of services and a greater choice among carriers. This authority will terminate at the same time as the exemptions granted in Order 78-11-156: in two years, or 60 days after final decision in the *Benelux* proceeding, whichever comes first.

TIA has by footnote requested that any exemptions granted in response to its application in Docket 33838 include link-up exemptions with its U.S.-Vienna exemption. However, TIA has offered no service proposal for Vienna-Zurich or Vienna-Tel Aviv, and as we explained in Order 78-11-156 we will require such service proposals as a precondition to grant of exemptions. Of course, we are aware of the public benefits to be derived from additional service out of Vienna, especially in light of Pan American's recent withdrawal from Eastern Europe, and we invite TIA to submit a service proposal in response to this order. All persons are on notice that we tentatively find it to be consistent with the public interest to grant TIA an exemption for Vienna-Zurich-Tel Aviv service, and

[9] *See* note 3 above.
[10] *See* Order 78-9-2.
[11] National projects 3,120 Paris-Zurich passengers per year and 1,560 Paris-Tel Aviv passengers. Total traffic over the entire route is estimated at 30,525 passengers. *See* National Application, Appendix G.
[12] For the purpose of evaluating TIA's proposal, we have used the data contained in its exemption application, Docket 33838, which is coextensive with the authority we intend to grant here.
[13] *See, e.g.*, Order 78-4-69 at 6-8.
[14] *See* Docket 33838, Application of TIA for an exemption, Appendix B.

would grant such an exemption providing that TIA submits the required supporting information.

Upon review of the environmental evaluations of TIA and National, we tentatively find that the proposed services would 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, as the number of additional flights from U.S. points will be comparatively insignificant. Moreover, as the proposed operations would not result in the near-term consumption of 10 million gallons of fuel, our action would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

Accordingly,

1. We direct interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated in this order and amend the certificate of public convenience and necessity of National Airlines, Inc. for Route 168 to read as follows: [15]

Between the coterminal points New Orleans, La., Tampa and Miami, Fla., the intermediate points London, England, Amsterdam, the Netherlands, Frankfurt, Germany, Paris, France and Zurich, Switzerland; and the terminal point Tel Aviv, Israel.

2. We direct interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated in this order and issue a certificate of public convenience and necessity to Trans International Airlines, Inc. to authorize scheduled foreign air transportation of persons, property and mail between the coterminal points in the United States named in its application, on the one hand, and the terminal points Zurich, Switzerland, and Tel Aviv, Israel, on the other.

3. We direct interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated in this order and grant an exemption from Section 401 of the Act to authorize Trans International Airlines, Inc. to operate scheduled services between Amsterdam, the Netherlands, on the one hand, and Zurich, Switzerland, and Tel Aviv, Israel, on the other, for two years or until 60 days after final decision in Docket 30790, whichever comes first.

4. We direct interested persons having objections to the issuance of the orders making final the proposed findings and conclusions, or to the proposed certificate amendment, certificate, and exemption set forth in this order, on or before January 10, 1979, to file with the Board and serve upon all persons listed in paragraph 9 below, a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections. If an oral hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant or material facts would be expected to be established through such hearing which cannot be established in written pleadings.

5. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action; *Provided* that the Board may proceed to enter orders in accordance with its findings and conclusions set forth in this order if it is determined that there are no factual issues present that warrant the holding of an oral evidentiary hearing.[16]

6. In the event no objections are filed, we deem that all further procedural steps have been waived, and we direct the Secretary to enter an order which, subject to the disapproval of the President pursuant to section 801(a) of the Act, (1) makes final the Board's tentative findings and conclusions set forth in this order, (2) issues an amended certificate of public convenience and necessity for Route 168 to National Airlines, Inc. in the form attached, (3) issues a certificate of public convenience and necessity to Trans International Airlines, Inc. for United States-Zurich/Tel Aviv service, and (4) grants an exemption to Trans International Airlines, Inc. for Amsterdam-Zurich-Tel Aviv authority.

7. We grant the petition of National Airlines, Inc. for issuance of an order to show cause; and

8. We deny the Trans International Airlines, Inc., motion to consolidate Dockets 31217 and 33209; and

9. We will serve a copy of this order upon National Airlines, Inc., Trans World Airlines, Inc. and all other certificated air carriers; Dade County, Florida, and the Greater Miami Traffic Association; the Governors of Florida and Louisiana; and the U.S. Departments of State and Transportation.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[17]

PHYLLIS T. KAYLOR,
Secretary.

Specimen Certificate

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Trans International Airlines, Inc. is authorized, subject to the provisions set forth, the provisions of Title IV of the Federal Aviation Act of 1958 as amended, and the orders, rules, and regulations issued under it, to engage in foreign air transportation on a permissive basis of persons, property, and mail as follows:

"Between the coterminal points Seattle, Washington; San Francisco-Oakland, and Los Angeles, California; Chicago, Illinois; Detroit, Michigan; Miami-Ft. Lauderdale, Florida; Dallas-Ft. Worth, Texas; Atlanta, Georgia; Washington, D.C.-Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New York-Newark, New Jersey; and Boston, Massachusetts, on the one hand, and the coterminal points Zurich, Switzerland, and Tel Aviv, Israel, on the other."

The service authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements, and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The holder may continue to serve regularly any named point through the airport last regularly used by the holder to serve it before the effective date of this certificate. Upon compliance with procedures prescribed by the Board, the holder may, in addition, regularly serve a named point through any convenient airport as provided by Agreements between the United States and other countries.

(3) The holder shall obtain from the appropriate foreign governments such operating rights as may be necessary.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

In accepting this certificate the holder acknowledges and agrees that it is entitled to receive only service mail pay for the mail service rendered or to be rendered solely in connection with the operations serving Seattle, Washington; San Francisco-Oakland, and Los Angeles, California; Chicago, Illinois; Detroit, Michigan; Miami-Ft. Lauderdale, Florida; Dallas-Ft. Worth, Texas; Atlanta, Georga; Washington, D.C.-Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New York-Newark, New Jersey; and Boston, Massachusetts, Zurich, Switzerland; or Tel Aviv, Israel, and that it is not authorized to request or receive any compensation for mail service rendered or to be rendered for such operations in excess of the amount payable by the Postmaster General.

This certificate shall be effective on ————: *Provided however,* That the con-

[15] In order to give National maximum flexibility in scheduling its service, we will make the new authority permissive.

[16] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[17] All Members concurred.

tinuing effectiveness of the temporary authority granted here shall be conditioned upon the timely payment by the holder of such license fees as may be appropriate under rules to be prescribed by the Board.

The Civil Aeronautics Board has directed its secretary to execute this certificate and affix the Board's seal on ————.

Secretary

Specimen Certificate

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (AS AMENDED) FOR ROUTE 168

National Airlines, Inc. is authorized, subject to the provisions set forth, the provisions of Title IV of the Federal Aviation Act of 1958 as amended, and the orders, rules, and regulations issued under it, to engage in foreign air transportation of persons, property, and mail as follows:

"Between the coterminal points New Orleans, La., Tampa and Miami, Fla., the intermediate points London, England, Amsterdam, the Netherlands, Frankfurt, Germany, Paris, France and Zurich, Switzerland; and the terminal point Tel Aviv, Israel." Authority to serve Zurich and Tel Aviv is permissive.

The service authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements, and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) Termination of services to any of the named points except Zurich and Tel Aviv may be grounds for deletion of such point from the certificate, except for temporary suspensions of service as may be authorized by the Board. Service may begin or terminate, or begin and terminate at intermediate points, provided that all flights must serve a point in the United States.

(3) The holder may continue to serve regularly any named point through the airport last regularly used by the holder to serve it before the effective date of this certificate. Upon compliance with procedures prescribed by the Board, the holder may, in addition, regularly serve a named point through any convenient airport as provided by Agreements between the United States and other countries.

(4) The holder shall obtain from the appropriate foreign governments such operating rights as may be necessary.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

In accepting this certificate the holder acknowledges and agrees that it is entitled to receive only service mail pay for the mail service rendered or to be rendered solely in connection with the operations serving New Orleans, La., Tampa, Fla., Paris, France, Amsterdam, the Netherlands, Frankfurt, Germany, Zurich, Switzerland, or Tel Aviv, Israel and that it is not authorized to request or receive any compensation for mail service rendered or to be rendered for such operations in excess of the amount payable by the Postmaster General.

The holder's authority to serve New Orleans, Tampa, Paris, Amsterdam, and Frankfurt shall expire on January 26, 1983.

This certificate shall be effective on ————: *Provided, however,* that the continuing effectiveness of the temporary authority granted here shall be conditioned upon the timely payment by the holder of such license fees as may be appropriate under rules to be prescribed by the Board.

The Civil Aeronautics Board has directed its secretary to exeeute this certificate and affix the Board's seal on ————.

Secretary

[FR Doc. 78-36461 Filed 12-29-78; 8:45 am]

[6320-01-M]

[Docket No. 33511; Order No. 78-12-141]

OLYMPIC AIRWAYS, S.A.

Statement of Tentative Findings and Conclusions and Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of December, 1978. Application of OLYMPIC AIRWAYS, S.A. for amendment of foreign air carrier permit pursuant to section 402 of the Federal Aviation Act of 1958, as amended.

Olympic Airways, S.A. is the holder of a foreign air carrier permit [1] which authorizes a) foreign air transportation of persons, property, and mail on Route 1 between a point or points in Greece; the intermediate points Rome, Italy, and Paris, France; and the terminal point New York, New York and on Route 2 between a point or points in Greece; the intermediate point Montreal, Canada; and the terminal point Chicago, Illinois and b) the performance of charter trips in foreign air transportation under Part 212 of the Board's Economic Regulations.

On September 22, 1978 Olympic Airways filed an application for amendment of its Route 1 between Greece and New York to add Frankfurt, Germany as a third European intermediate point and a petition for an order to show cause. In its application, Olympic Airways also requested a waiver of the requirements of Part 312 of the Board's Procedural Regulations.[2] On the same date, Olympic Airways also filed a motion to expedite because it originally intended to initiate the Frankfurt service on November 1, 1978.[3]

On October 12, 1978, Olympic Airways filed a motion to withdraw its application to amend the permit and to discontinue the proceeding. Olympic Airways stated that it was able to accomplish its goal of consolidating flights and maximizing use of its flight crews without amending its permit to add Frankfurt as an intermediate point. However, on October 26, 1978, Olympic Airways filed a motion to withdraw its motion of October 12, 1978 and to reinstate its original application, filed on September 22, 1978. Olympic Airways now wishes to pursue its application as its long-range plans contemplate intermediate service at Frankfurt.

No objections to the application or answers to the motions have been received.

The Air Transport Agreement between the United States and Greece dated March 27, 1946, as amended on February 7, 1966 and December 20, 1968 authorizes the airlines of Greece to operate between Greece and New York via three European intermediate points. Until recently, the Government of Greece had selected only two such intermediate points, Paris and Rome. In its Diplomatic Note presented to the Department of State on August 25, 1978, the Government of Greece selected Frankfurt, Germany as its third European intermediate point and designated Olympic Airways for the service through Frankfurt.

The Board has previously found (Order 69-5-136, served May 29, 1969) after a full oral evidentiary hearing that Olympic Airways was substantially owned and effectively controlled by Greek nationals, met the fitness standards of the Federal Aviation Act of 1958 as amended, and performed services in the public interest. We are not aware of any reason to doubt the continuing validity of these findings. In 1969, when the Board last examined the ownership and control of Olympic Airways, the carrier was privately owned by Greek citizens. Olympic Airways was nationalized on January 1, 1975 and is still owned and controlled by Greek nationals.

The specimen permit also reflects the Board's updating of permit language since Olympic Airways' last permit was issued in 1969. Standard provisions concerning initial tariff filings, liability insurance, and safety which were not in Olympic Airways' last permit have been included in the specimen permit in accordance with recent Board practice.

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[1] Issued pursuant to Order E-23719, May 21, 1966, as amended by Order E-24571, December 23, 1966 and Order 69-5-136, May 28, 1969.

[2] We will grant this request, since amendment of Olympic Airways' permit involves only one new European point on an existing route, and the net environmental impact is *de minimis*.

[3] On September 1, 1978, pursuant to Part 216 of the Board's Economic Regulations, Olympic Airways filed an application for special authorization to operate between New York and Athens via Frankfurt without traffic rights between Frankfurt and New York. The Bureau of International Aviation, using delegated authority, granted the authority on September 28, 1978 but then cancelled it on October 25, 1978 at the request of the Olympic Airways.

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes that:

1. It is in the public interest to amend the foreign air carrier permit held by Olympic Airways, S.A. so as to authorize it on its Route 1 to engage in foreign air transportation of persons, property, and mail between a point or points in Greece; the intermediate points Rome, Italy, Frankfurt, Germany, and Paris, France; and the terminal point New York, New York;

2. The public interest requires that the exercise of the privileges granted by the amended permit shall be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

3. Olympic Airways, S.A. is substantially owned and effectively controlled by nationals of Greece;

4. Olympic Airways, S.A. is fit, willing, and able properly to perform the foreign air transportation described in the specimen permit, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board;

5. The public interest does not require an oral evidentiary hearing on the application; [4]

6. The amendment of Olympic Airways, S.A.'s foreign air carrier permit would not constitute "a major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of the Board's Regulations; [5]

7. The request of Olympic Airways, S.A. for a waiver of Part 312 of the Board's Regulations, regarding the requirements for the filing of an environmental evaluation should be granted;

8. The motion of Olympic Airways, S.A. filed October 26, 1978 to withdraw its motion of October 12, 1978, should be granted; and

9. Except to the extent granted, the application of Olympic Airways, S.A. in Docket 33511 should be denied.

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[4] Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions, and issuing the attached permit, shall be allowed 15 days in which to respond from the date of service of this order.

[5] Our tentative findings are based upon the fact that amendment of Olympic Airways, S.A.'s permit will not result in a significant increase in civil aviation operations at U.S. points, nor will it result in the annual consumption of 10 million gallons of fuel.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions, and (2) subject to the disapproval of the President issue an amended foreign air carrier permit to Olympic Airways, S.A. in the specimen form attached;

2. Any interested person having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached specimen permit shall, no later than January 10, 1979, file with the Board and serve on the persons named in paragraph 5 below, a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence expected to be relied upon in support of the objections. If an oral evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts would be expected be be established through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action, *Provided*, that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order, if we determine that there are no factual issues presented that warrant the holding of an oral evidentiary hearing; [6]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which (1) shall make final our tentative findings and conclusions set forth in this order, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, shall issue an amended foreign air carrier permit to the applicant in the specimen form attached; and

5. We are serving this order upon Olympic Airways, S.A., Trans World Airlines, Inc., the Ambassador of Greece in Washington, D.C. and the U.S. Departments of State and Transportation.

This order will be published in the FEDERAL REGISTER.

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[6] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

By the Civil Aeronautics Board: [7]

PHYLLIS T. KAYLOR,
Secretary.

Specimen Permit

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

Olympic Airways, S.A. is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules and regulations of the Board, to engage in foreign air transportation of persons, property, and mail, as follows:

1. Between a point or points in Greece; the intermediate points, Rome, Italy, Frankfurt, Germany, and Paris, France; and the terminal point, New York, New York.

2. Between a point or points in Greece; the intermediate point, Montreal, Canada; and the terminal point, Chicago, Illinois.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Greece for Greek international air service.

The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with the operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Greece shall be parties.

The holder shall keep on deposit with the Board a signed counterpart of C.A.B. Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in Agreement C.A.B. 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addressed of the member insurers.

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[7] All Members concurred.

The initial tariff filed by the holder shall not set forth rates, fares and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; *However*, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claims arising out of operations by the holder under this permit.

The exercise of the privileges granted here shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

This permit shall be effective on———. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of Greece (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Greece in lieu of the holder, or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States of America and the Government of Greece, dated March 27, 1946, as amended by Exchange of Notes, dated February 7, 1966 and December 20, 1968; *However*, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation authorized becomes the subject to any treaty, convention, or agreement to which the United States of America and Greece are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on

Secretary

[FR Doc. 78-36458 Filed 12-29-78; 8:45 am]

[6320-01-M]

ORDER ESTABLISHING FINAL SERVICE MAIL RATES

The Board adopted Order 78-12-159 on December 21, 1978, establishing the *Final Service Mail Rates in the Transatlantic, Transpacific, and Latin American Service Mail Rates Investigation*, Docket 26487.

After full public hearing and consideration of the record the Board ordered that:

1. The motions of Flying Tiger, filed June 2, 1977, of the Department of Transportation, filed June 6, 1977, and the Seattle Parties, filed July 22, 1977, for leave to file otherwise unauthorized documents are granted.

2. The fair and reasonable rates of compensation per nonstop great-circle mail ton-mile to be paid to Airlift International, Inc., Alaska Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., The Flying Tiger Line, Inc., Hughes Air Corp. d/b/a Hughes Airwest, Mackey International, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Seaboard World Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc., by the Postmaster General, pursuant to section 406(c) of the Federal Aviation Act of 1958, as amended, for the transportation of mail by aircraft over their respective routes,[1] the facilities used and useful therefor, and the services connected therewith are as follows:

a. For the carriage of space available mail as provided for by sections 3401(b) and 3401(c) of the United States Code,

(1) For the period March 8, 1974 to the date of publication of this order in the FEDERAL REGISTER, the rates established by Order 75-2-3;

(2) For the period from the date of publication of this order in the FEDERAL REGISTER to June 30, 1979,

(a) For the Atlantic Rate Area, the sum of a linehaul charge of 15.14 cents per nonstop great-circle ton-mile and a terminal charge of 17.70 cents per pound originated;

(b) For the Pacific Rate Area, the sum of a linehaul charge of 14.43 cents per nonstop great-circle ton-mile and a terminal charge of 15.19 per pound originated; and

(c) For the Latin American Rate Area, the sum of a linehaul charge of 18.30 cents per nonstop great-circle ton-mile and a terminal charge of 7.12 cents per pound originated.

b. For the carriage of military ordinary mail,

(1) For the period March 8, 1974 to the date of publication of this order in the FEDERAL REGISTER, the rates established by Order 75-2-3;

(2) For the period from the date of publication of this order in the FEDERAL REGISTER to June 30, 1979,

(a) For the Atlantic Rate Area, the sum of a linehaul charge of 23.53 cents per nonstop great-circle ton-mile and a terminal charge of 21.50 cents per pound originated;

(b) For the Pacific Rate Area, the sum of a linehaul charge of 24.77 cents per nonstop great-circle ton-mile and a terminal charge of 15.95 cents per pound originated; and

(c) For the Latin American Rate Area, the sum of a linehaul charge of 27.18 cents per nonstop great-circle ton-mile and a terminal charge of 7.09 cents per pound originated.

[1] The Atlantic, Latin American and Pacific Rate Areas are delineated in Attachments 1, 2, and 3, respectively.

c. For the carriage of all other mail,[2] [3]

(1) For the period March 8, 1974 to the date of publication of this order in the FEDERAL REGISTER, the rates establishes by Order 75-2-3;

(2) For the period from the date of publication of this order in the FEDERAL REGISTER to June 30, 1979,

(a) For the Atlantic Rate Area, the sum of a linehaul charge of 22.60 cents per nonstop great-circle ton-mile and a terminal charge of 19.16 cents per pound originated;

(b) For the Pacific Rate Area, the sum of a linehaul charge of 20.83 cents per nonstop great-circle ton-mile and a terminal charge of 18.17 cents per pound originated; and

(c) For the Latin American Rate Area, the sum of a linehaul charge of 23.39 cents per nonstop great-circle ton-mile and a terminal charge of 7.71 cents per pound originated.

3. The foregoing rates are to be paid in accordance with the terms and conditions set forth below.

CONDITIONS

In computing the mail compensation, the mail ton-miles for each shipment of mail shall be based upon the nonstop great-circle mileage between the points of origin and destination of each shipment, *provided, however*, that for mail shipments moving between the Atlantic and Pacific rate areas which transit the carrier's certificate junction point, the applicable per mail ton-mile rate as set forth above, and the nonstop great-circle miles to be recognized for each of the rate areas, shall be determined by considering the carrier's certificate junction point to be a "point of destination" for mail shipments on the flights destined beyond the junction point, and to be a "point of origin" for the subsequent movement of such mail shipments beyond such junction point, whether or not the flight actually stops at the aforesaid junction point. The total mail compensation payable in such instances shall be the sum of the compensation computed for each geographic rate area. The nonstop great-circle mileages shall be the mileages computed in accordance with the formula set forth in the Notice to Users of C.A.B. official mileages issued May 21, 1970 (35 FR 8249).

No air carrier shall transport space available mail at the rates fixed herein on any aircraft if such transportation will displace any other available revenue traffic.

No military ordinary mail may be transported on any aircraft unless the

[2] Other than space available mail, military ordinary mail, and mail for which rates are established elsewhere.

[3] The rates prescribed in this section (c) do not apply to Eastern Air Lines, Inc. Except as to space available mail and military ordinary mail, Eastern Air Lines, Inc., over its entire system, is covered under the domestic service mail rates. See Order 78-11-80 (Docket 23080-2).

air carrier has first provided fully for the needs of the postal service for the transportation of all mail other than military ordinary mail and space available mail on that aircraft and (in the case of a service offering passenger transportation) has also first provided fully for the passenger requirements on that flight.

ORIGIN AND DESTINATION OF MAIL SHIPMENTS

As used herein, "point of origin" means the point at which the carrier first enplanes the mail shipment after receipt thereof from a postal administration or its representatives, from another ratemaking division of the same carrier the operations of which are not encompassed herein, or from another carrier; and "point of destination" means the point at which the carrier deplanes the mail shipment for delivery to a postal administration or its representatives, to a separate ratemaking division of the same carrier the operations of which division are not encompassed herein, or to another carrier.

EQUALIZATION OF RATES

a. *Election to equalize*—Any air carrier or, pursuant to agreement, any two or more air carriers providing service on an interline or interchange basis may, by notice, elect to establish a reduced charge for the carriage of mail between (a) any point where a U.S. Postal Service international exchange office is located [4] and any other point to which such international exchange office is authorized to dispatch mail, or (b) foreign points, equal to the charge then in effect for service between such points by any other carrier or carriers.[5]

b. *Notice of Election to Equalize Rates*—An original and three copies of election and agreement pursuant to equalization paragraph a above shall be filed with the Board, and a copy thereof shall be served upon the Postmaster General and each carrier providing on-line or connecting service between the stated points. Such notices shall contain a complete description of the reduced charge being established, the routing over which it applies, how it is constructed, and the charge with which equalization is sought.

Any equalized rate established pursuant to this order shall be effective for the electing carrier or carriers as of the date of filing of the notice required by such paragraphs or such later date as may be specified in the notice and shall continue in effect until such election is terminated. Elections may be terminated by any electing carrier upon 10 days' notice filed with the Board and served upon the Postmaster General and each carrier providing on-line or connecting service between the stated points.

c. *Division of Equalized Rates*—In case of equalization of rates by agreement pursuant to equalization paragraph 1 or 2 above, the agreement shall provide for the proration of the mail compensation between participating carriers on the basis of the relative compensation which would otherwise be payable to each carrier in the absence of the provisions of equalization paragraph 1 or 2 above. In the absence of an agreement among carriers pursuant to equalization paragraph 1 or 2 above for equalization of rates for interline or interchange shipments between a stated pair of points, any carrier (or two or more carriers jointly) may, by notice, elect to receive as its portion of the total compensation for each shipment the amount remaining after subtracting from such total compensation the compensation due the other carrier or carriers involved (nonelecting carriers). Such total compensation shall be computed on the basis of the lowest rate then in effect for service between the stated pair of points for any carrier or carriers. The compensation due the nonelecting carrier or carriers shall be that otherwise applicable to the point-to-point service it actually provides. In those instances where there is a nonelecting carrier or carriers involved in providing the through service and two or more carriers elect to receive payment under this provision, the total payment due such electing carriers shall be prorated by them on the basis of the relative compensation which would otherwise be payable to each of them in the absence of the provisions of this paragraph.

d. *Division of Equalized Rates Prescribed by the Board*—In the event that any carrier is unable to enter into an agreement with any other carrier to transport mail between any stated point at a reduced rate pursuant to equalization paragraph 1 or 2 above, it may file an application with the Board requesting it to determine and fix a different method of apportioning the total compensation for each such shipment of mail between the participating carriers. Such applications shall not be deemed to reopen the mail rates fixed by this order. Applications filed pursuant to this paragraph shall conform generally to the provisions of the Rules of Practice governing the filing of petitions in mail rate cases. Within 7 days after the application is served, any party may file an answer in support of or in opposition to the application, together with any documentary material upon which it relies. Any order upon an application filed pursuant to this paragraph shall be effective no earlier than the filing date of the application with the Board.

In reviewing such application, the Board will consider, among other pertinent factors, the need for the proposed service, the historical participation of the electing carrier or carriers in the transportation of mail between such stated points, the amount of absorption required, and the grounds for refusal by the carrier or carriers to enter into an equalization agreement. After hearing the carriers concerned, either orally or in writing, in those cases where it deems such action appropriate, the Board will, by order, prescribe the method for apportioning the total compensation between such carriers, but in no event shall the carrier or carriers which refuse to enter into an agreement to equalize compensation be required to accept less than the compensation which would have been payable if the services were performed under voluntary agreement pursuant to equalization paragraph 1 or 2 above.

4. The rates here fixed, determined, and published are service mail rates payable in their entirety by the Postmaster General pursuant to section 406 (c) of the Federal Aviation Act of 1958 as amended.

5. The investigation in Docket 26487 is terminated.

6. The order be served upon all parties to the proceeding in Docket 26487.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36437 Filed 12-29-78; 8:45 am]

[4] International exchange offices currently authorized to dispatch mail for the Atlantic Rate Area are located in Boston, Chicago, Dallas, Detroit, Houston, Los Angeles, Miami, New Orleans, New York, San Juan, Washington, and Charlotte Amalie, Frederiksted, and Christiansted, V.I. For the Pacific Rate Area, they are located in Anchorage, Chicago, Guam, Honolulu, Los Angeles, New York, Pago Pago, San Francisco, Seattle, Wake, and Washington. The terms of this paragraph shall apply to points at which international exchange offices are hereafter established and shall cease to apply to any points at which international exchange offices are discontinued. The Postmaster General will file notice of such new and discontinued offices in this docket and serve a copy on each carrier subject to this order.

[5] Outstanding equalizations shall continue in effect hereunder until canceled by the equalizing carrier or carriers.

[6320-01-M]

[Order No. 78-12-94; Docket No. 32954]

TEXAS INTERNATIONAL AIRLINES, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of December, 1978.

Application of TEXAS INTERNATIONAL AIRLINES, INC. for amendment of its certificate of public convenience and necessity for Route 82.

By Order 78-10-25, October 5, 1978, we invited interested persons to show cause why we should not amend the certificate of Braniff Airways for Route 9 so as to add the point Midland/Odessa, Texas. We denied Midland's request that we authorize Braniff to provide service in the Midland/Odessa-Dallas/Ft. Worth market by exemption. Finally, we left to be handled by a later order an application of Texas International Airlines (TXI) for amendment of its certificate for Route 82 so as to provide nonstop service between Dallas/Ft. Worth and Oklahoma City.[1] The facts of that application were discussed in the order.

Braniff has responded to TXI's economic exhibits filed on August 14. It opposes the requested authority, contending that TXI is not proposing significant service improvements; that issuance of an order to show cause in response to the petition would run contrary to established Board policy because the certification sought would substantially alter existing competitive relationships in the Dallas/Ft. Worth-Oklahoma City market; and that the petition raises questions which preclude resolution by show-cause procedures.

We have tentatively concluded, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to amend TXI's certificate so as to add the nonstop segment Dallas/Ft. Worth-Oklahoma City; such service should be made permissive; TXI is fit, willing and able to perform properly the air transportation it proposes and to conform to the provisions of the Act and the Board's rules; our proposed action would not constitute a major Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act of 1969; and it is not a major regulatory action under the Energy Policy and Conservation Act of 1975 (EPACA).[2]

Grant of TXI's request comports with the Airline Deregulation Act of 1978, particularly with 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. TXI has proposed competitive service in the primary market and service beyond Dallas/Ft. Worth to Midland/Odessa, where direct service from Oklahoma City has been eliminated by Continental. In addition, TXI has proposed fare reductions which will provide a greater choice of price. Even should TXI not enter the market, however, or ultimately leave it, the realistic threat of entry will help to force incumbents to operate efficiently and responsively.

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 those persons to direct their objections, if any, to specific matters dealt with here, and to support their objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections. We remind objectors that, under the 1978 Act, the burden of proof is on them to show why the award of authority here is not 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 here and amending TXI's certificate for Route 82 by adding the segment Dallas/Ft. Worth, Tex.-Oklahoma City, Okla.;

2. We direct any interested persons having objections to the issuance of an order making final the proposed findings, conclusions and certificate amendment set forth here to file with us, no later than January 18, 1979, 1978, and serve upon all persons listed in paragraph 6 below, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; interested persons shall file answers to objections no later than January 29, 1979;

3. If timely and properly supported objections are filed, we will give full consideration to the matters or issues raised before we take further action; [3]

4. In the event no objections are filed to any part of this order, we will eliminate all further procedural steps relating to such part or parts and we will proceed to enter an order in accordance with the tentative findings and conclusions set forth in this order;

5. We will grant the petition of Texas International Airlines for an order to show cause in Docket 32954; and

6. We will serve this order on Texas International Airlines, Inc.; Braniff Airways, Inc.; the Midland/Odessa Parties; the Texas Aeronautics Commission; Continental Air Lines, Inc.; the Dallas/Ft. Worth Parties; the City of Oklahoma City; American Airlines, Inc.; Delta Air Lines, Inc.; Trans World Airlines, Inc.; North Central Airlines, Inc.; Northwest Airlines, Inc.; and Western Air Lines, Inc.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board: [4]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36459 Filed 12-29-78; 8:45 am]

[1] Such authority, if granted, would permit TXI to offer Midland/Odessa-Oklahoma City one-stop service via Dallas/Ft. Worth.

[2] TXI filed an environmental evaluation, to which we received no objections, indicating that there would be no significant impact on the environment as a result of its proposed service. We have analyzed TXI's evaluation and find it to be reasonable. Its service will require the use of only 1,029,888 gallons of additional fuel.

[3] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[4] All Members concurred.

[6320-01-M]

[Order No. 78-12-173; Docket No. 33712]

TIGER INTERNATIONAL-SEABOARD ACQUISITION CASE

Order Instituting Proceeding

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of December, 1978.

On October 17, 1978, Tiger International Inc., the holding company parent of Flying Tiger Line, placed its holdings of 9.9 percent of Seaboard World Airlines stock into a voting trust similar to that allowed by the Board in Orders 78-8-150 and 78-8-151 for Texas International and Pan American's holdings of National stock. Two days later on October 19, Tiger International increased its holdings of Seaboard stock to 12.8 percent and applied to the Board for permission to own up to 25 percent of Seaboard stock without a voting trust. On October 20, 1978, Seaboard filed an emergency petition for an order temporarily restraining Tiger International from acquiring additional Seaboard stock which the Board granted the same day in Order 78-10-101. Tiger continued to purchase Seaboard stock until the close of the stock exchanges on October 20 and now owns 15.6 percent of Seaboard's outstanding shares in the voting trust. In Order 78-10-101, we provided interested persons the opportunity to submit comments as to whether or not Tiger International should be permitted to resume its purchases of Seaboard stock.

In responding to Order 78-10-101, Tiger International argues that the acquisition of control and possible combination with Seaboard would not result in any appreciable diminution of competition, would be legal under the Federal Aviation Act of 1958, as amended, and section 7 of the Clayton Act, and should therefore be ap-

proved. Tiger defines the geographic market as worldwide but also identifies three submarkets: transatlantic, domestic and transpacific. The proposed relevant international product market consists of all scheduled and chartered air freight operations using combination, belly or freighter equipment, as well as modern containerships. Tiger argues that the domestic market encompasses all freight carriers, including air taxis and combination aircraft, expedited truck services and certain high speed rail services.

Using these market definitions, Tiger contends that both internationally and domestically it faces fierce competition; that a combination with Seaboard which would enable Tiger to move quickly into the transatlantic marketplace is necessary to maintain its competitive posture; that the replacement of Seaboard by Tiger in the Atlantic will bring significant transportation benefits to the shipping public due to Tiger's aggressive competitive spirit; that the elimination of Seaboard as a potential competitor in the North Atlantic and Pacific would not violate the antitrust laws according to the Justice Department's merger guidelines using Tiger's calculations of firm concentration; and that the elimination of Seaboard as an actual competitor in the domestic expedited freight business is similarly legal under the merger guidelines permitting the acquisition of a firm with less than two percent of the market by a firm with less than a 15 percent market share where the four largest firms have less than 75 percent of the market as calculated by Tiger.

Tiger maintains that its acquisition of Seaboard stock in excess of ten percent in a voting trust does not violate the Act since Tiger cannot exert control until the Board approves its application permitting the voting trust to be revoked. Further, Tiger states that the Board's adoption of prescreening procedures was in excess of its authority since it does not serve the public interest; that the retroactive application of this procedure to Tiger violates the due process clause of the Fifth Amendment; that the Board failed to comply with procedural requirements for a rulemaking; that the Board, like the Federal Trade Commission, has no injunctive authority pursuant to section 7a of the Clayton Act; and that the Board has no power to issue an injunction prior to a finding that control has been acquired in violation of section 408 or section 11 of the Clayton Act.

Seaboard contends that Tiger has willfully violated sections 408 and 411 of the Federal Aviation Act and section 7 of the Clayton Act by acquiring presumptive control of Seaboard prior to Board approval, and that the acquisition of control by Tiger may substantially lessen competition, tend to create a monopoly and constitute an unfair method of competition in the aircraft leasing market and the all-cargo carrier market. Seaboard therefore asks that the Board restore the *status quo ante* by ordering Tiger to divest itself of its Seaboard stock in excess of 9.9 percent, by restraining Tiger from acquiring Seaboard stock, and by prohibiting Tiger from voting any of its Seaboard stock pending a full hearing on Tiger's application.

Seaboard defines the relevant international geographic markets as the transatlantic and transpacific, with individual countries constituting relevant submarkets due to the barriers to entry raised by foreign governments and the Board's certification requirements. Seaboard views the domestic submarkets as the city-pairs in which Seaboard and Tiger actually or potentially compete. Seaboard's product market definition is limited to U.S. flag all-cargo freighter aircraft that can meet the special shipping requirements involve in the expeditious transportation of outsized shipments, large intermodal cargo containers, hazardous materials, live animals, and internationally, military airlift command transport. Under this definition, Seaboard argues that the relevant domestic, transatlantic, and transpacific markets in which Tiger and Seaboard actually or potentially compete are highly concentrated and characterized by high entry barriers, notably the scarcity of widebodied freighters capable of meeting stringent noise standards; that Seaboard's removal from the marketplace through acquisition by Tiger would violate the antitrust laws if the Justice Department merger guidelines are applied to Seaboard's calculations of market share and firm concentration; and that the anticompetitive effects of eliminating a non-IATA competitor in price and innovative services are not outweighed by significant transportation conveniences and needs of the public that cannot be satisfied by reasonably available alternatives having materially less anticompetitive effects.

The Department of Justice argues that the acquisition of Seaboard by Tiger raises substantial competitive questions under section 7 of the Clayton Act and section 408 that require the *status quo* be maintained pending a full hearing on the merits; that the Board, acting in the manner of an antitrust court, should prevent Tiger from purchasing additional Seaboard stock in the interim; that the Airline Deregulation Act of 1978 requires the Board to apply a traditional section 7 Clayton Act analysis at the prescreening stage and at the hearing on the merits; and that the standard to be used in presecreening Tiger's application is whether serious questions going to the merits are raised. While the Department views the relevant product market as the movement of cargo by air, it contends that economically relevant submarkets are U.S. flag all-cargo service in the transatlantic market and the entire United States, and U.S. government cargo service worldwide. DOJ asserts that Seaboard and Tiger are substantial actual competitors in these already concentrated markets and a combination of the two carriers would increase that concentration. Given the existence of these serious competitive questions going to the merits of Tiger's application, Justice urges the Board to continue in effect Order 78-10-101 prohibiting further acquisition of Seaboard common stock by Tiger International.

A private citizen, claiming to represent a group of Seaboard stockholders, submitted a letter arguing that the Board's action in Order 78-10-101 was arbitrary and unmindful of the damaging results to Seaboard stockholders; that the Board's interference with the market has caused some Seaboard stockholders to suffer financial loss; and that the Board should not restrict Tiger from continuing to purchase Seaboard stock.

On November 9, 1978, Tiger International filed a motion for leave to file an answer to Seaboard's comments, which we will grant. Tiger argues that Seaboard's market analysis contained some fundamental errors and inconsistencies because the distinctive services that Seaboard alleges can only be provided effectively by all-cargo aircraft can and are provided by belly and combination carriers, and that Seaboard failed to include Federal Express, the second largest domestic airfreight carrier, in Seaboard's market definition. Further, Tiger comments that Seaboard's measurement of market concentration in terms of available capacity rather than as revenue or RTM's is erroneous; that Seaboard's analysis of North Atlantic market concentration using the period ending June 30, 1976, is outdated due to several major changes in the market since that time; that in analyzing the transatlantic market, military airlift is not a relevant submarket; that Tiger is not a significant competitor in the European airfreight market; that economic barriers to entering the domestic freight market are low and will remain low; and finally, that any competition between Seaboard and Tiger in the aircraft leasing market is irrelevant to the present case.

On November 17, 1978, Seaboard filed a motion for leave to file in reply to Tiger, which we will also grant. Seaboard argues in its response that Tiger's application to the Board for a

certificate for New York-London scheduled cargo and mail authority in direct transatlantic competition with Seaboard demonstrates that there may be a substantial lessening of competition in violation of the Act by Tiger's acquisition of control of Seaboard; that there is a less anticompetitive alternative for Tiger fulfilling its alleged transportation needs and conveniences than by acquiring Seaboard; and that Tiger has ignored the judicial recognition of relevant submarkets in which the lessening of competition may be measured.

After careful consideration of these comments, the Board has determined to vacate Order 78-10-101 restraining Tiger International from further purchases of Seaboard stock. However, Tiger International, its affiliates, and any trustee acting in its behalf are prohibited from purchasing more than 25 percent of Seaboard stock requested in Tiger's application and are ordered to retain Tiger's current stock holding of 15.6 percent and any additional purchases not to exceed 25 percent of Seaboard's outstanding shares in an approved voting trust. We are also instituting a proceeding to investigate the public interest, especially the competitive significance of the proposed acquisition.[1]

As a rule, the Board is hesistant to interfere in the normal workings of the capital markets. We said that:

> the transaction system should not be spared the disciplines, or denied the benefits of, the capital markets, unencumbered by the Board unless some clearly demonstrated special circumstances is [sic] present.[2]

The Board has accordingly indicated its willingness to approve the use of a voting trust in some instances as a means of ameliorating the undesirable effect that the rigid presumption of control under section 408(f) [3] may have on the capital markets and on procompetitive acquisitions.[4]

In Order 78-10-100, adopted the same day as the order under review here, the Board approved the continued use of voting trusts by Texas International and Pan American to acquire up to 25 percent of National Airline's stock. While cautioning that the use of a voting trust does not necessarily guarantee that control has not been acquired, the Board found that the voting trusts as amended and the circumstances surrounding the applications, especially the hostile nature of Texas International's takeover bid, were sufficient to rebut the presumption of control.[5] In support of this determination, we noted that a proportional voting trust denied either carrier the clearest avenue of control by prohibiting the owner from voting the stock according to its wishes. Further, the Board dismissed the argument that the target company's management would necessarily bow to the pressure of a large but only potentially powerful stockholder. We concluded that:

> To adopt [this] position on the existence of control . . . would turn section 408(f) into a virtual bar to unfriendly acquisitions. There is no need to take this approach, since the competitive and public interest goals of section 408 are protected by the need for explicit approval before any consolidation can take place, and by our other statutory powers.[6]

At the same time, we nevertheless expressed general approval of the Department of Justice's suggestion that the Board undertake a preliminary analysis of the competitive effects of a merger in order to determine if the acquiring carrier should be permitted to purchase another carrier's stock in excess of the 10 percent presumption of control pending a hearing on the merits. The Board was persuaded that the disturbance which the target company's management would experience in its daily operations, the potential for concerted anticompetitive behavior, and the hardship to shareholders in the event of divestiture should be averted. Therefore, the Board stated that ". . . where we can see probable anticompetitive problems with the consummated transaction, there will be obvious reasons to enjoin any significant steps toward acquisition. . . ." [7] This preliminary screening policy was made applicable to Tiger's application by Order 78-10-101, in which the Board suspended Tiger's purchases of Seaboard stock.

In its comments on Order 78-10-101, the Department of Justice suggests that the Board rely upon the body of law developed under section 7 of the Clayton Act and the judicial standards applied by the courts when the government seeks a preliminary injunction. Justice believes that the Board should maintain the *status quo* because this case involves serious competitive questions and, when the government shows that serious questions exist, the balancing of hardships immediately tips toward preventing possibly illegal mergers. Tiger and Seaboard agree that the amended section 408 requires the Board, at least initially, to evaluate the competitive consequences under antitrust standards applicable to unregulated industries. Although they differ in their characterizations of the facts, Seaboard and Tiger focus their discussion upon the judicial interpretations of section 7 of the Clayton Act without dealing extensively with the standard to be applied in a situation analogous to a preliminary injunction. Indeed, Tiger, relying on the burden of proof contained in amended section 408(b), denies the Board's authority to restrain it from purchasing Seaboard stock. On the other hand, Seaboard contends that it meets the inferentially applicable standard because Seaboard has demonstrated probable success on the merits, irreparable harm to Seaboard with no countervailing hardship to Tiger, and the public interest in preventing violations of the antitrust law.

On reflection, we have decided not to make a preliminary assessment of the probable ultimate competitive effects of the possible merger, which must be carefully distinguished from the acquistion of stock that is at issue here. We are concerned that a choice among any of the asserted standards for a preliminary ruling at this point may produce unintended results, especially when we have not yet had an opportunity to consider any of the merger cases now before us under the requirements of the recently amended Act. We fear that the adoption of a particular test for such a preliminary ruling at this time might imply that the particular factors relied on under that test, such as market shares and firm concentration predicated upon particular market definitions which might ultimately prove to be incorrect, are of decisional pre-eminence in all our merger deliberations. Regardless of which test we applied, we would have to make a number of factual assumptions about which we have no evidence or experience. Consequently, our necessary reliance upon tentative analysis would create confusion about the antitrust implications of other contemplated transactions and inadvertently discourage some attempted stock acquisitions of one air carrier by another, and could have an especially

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[1] The Board vacated Order 78-10-101 in Order 78-12-91, adopted December 14, 1978. The Board is acting here pursuant to section 408 of the Federal Aviation Act of 1958, 49 U.S.C. § 1378, *as amended by* section 26(a) of P.L. 95-504, the Airline Deregulation Act of 1978; sections 411 and 414 of the Act, 49 U.S.C. §§ 1381 and 1384; and sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18, 21.

[2] Order 78-6-208 at 6. *See also Missouri Portland Cement Co. v. Cargill, Inc.*, 498 F.2d 851, 854 (2d Cir.), *cert. denied*, 419 U.S. 883 (1974).

[3] Section 408(f), 49 U.S.C. § 1378(f) provides: For the purpose of this section, any person owning beneficially 10 percentum or more of the voting securities or capital of an air carrier shall be presumed to be in control of such air carrier unless the Board finds otherwise. As used herein, beneficial ownership of 10 percentum of the voting securities of a carrier means ownership of such amount of its outstanding securities as entitles the holder thereof to cast 10 percentum of the aggregate votes which the holders of all the outstanding voting securities of such carriers are entitled to cast. *See* Order 78-10-100 at 4-7.

[4] Order 78-10-100 at 7.

[5] Order 78-10-100 at 4, 11-12.

[6] *Id.* at 8.

[7] *Id.* at 12.

chilling effect upon hostile takeovers. The Board is therefore hesitant to place hostile takeovers at a distinct procedural disadvantage in relation to consensual mergers which involve no competitive prescreening.

We are also reluctant seemingly to prejudge the outcome of this particular acquisition or the evolutionary path of the Board's merger policy under the new Act. In this case, there is no compelling need for the Board to act immediately in order to protect the public interest. In contrast, a preliminary decision by the antitrust court is often required because the merger of assets can usually be completed or the tender offer withdrawn before a trial on the merits of the antitrust claim.[8] But, as we have already noted, the public interest in preventing unlawful mergers will be adequately protected in the interim since, unlike a control relationship or merger in an unregulated industry, any agreement affecting competition between Tiger and Seaboard must receive explicit Board approval before going into effect.[9]

Consistent with the Pan American and TXI approach, the Board has decided to scrutinize the voting trust device carefully in light of the broader public interest implications associated with its use instead of undertaking the originally proposed analysis focusing on probable anticompetitive effects of the ultimate transaction. There is an obvious public interest in enforcing the Act's requirement that a merger not be consummated or control exercised before the Board has a chance to examine and approve the transaction. We can envision situations involving voting trusts where control may be created in fact despite the legal form of the transaction. First, the voting trust instrument itself must be sufficient to prevent the acquiring carrier from exercising control over the stock. Second, the amount of stock to be acquired is significant since ownership of a large enough portion of the stock could influence the target company's performance even if it is voted proportionally. Finally, we cannot foreclose the possibility that the Board may be convinced that the anticompetitive effects from the stock interlock during the period the Board is considering the merits of the possible merger outweigh the public interest in avoiding unnecessary interference with stock acquisitions. In such cases, the Board might order immediate divestiture if the applicant has acquired more than 10 percent of the target's stock. The Board can also be expected to order divestiture if the acquiring company does not promptly apply for approval of the acquisition. We appreciate that the use of the voting trust device in order to purchase stock in the target company may be a necessary short-term strategy to achieve eventual control if the Board ultimately approves the acquisition. But ownership of the entrusted stock without Board scrutiny raises the issue of whether control has in fact been acquired in violation of section 408.

We cannot find that any of these possible reasons for disapproval of a stock acquisition is applicable in this case. Tiger has placed its Seaboard stock in a voting trust whose terms in all relevant aspects are equivalent to that employed by Pan American and approved by the Board.[10] Moreover, Tiger has only applied to the Board for approval of the outright ownership of 25 percent of Seaboard's outstanding shares and this amount of stock will be subject in the interim to the voting trust. No party has convincingly demonstrated that mere ownership of this particular amount of stock would irreparably harm Seaboard or endanger the public interest in the orderly adjudication of the underlying competitive issues in this case. Of course, there may conceivably be instances in which collusion with other large voting shareholders could be a factor,[11] or occasions when the percentage of stock to be acquired is so high that the amount requested alone could be inferentially adverse to the public interest despite the interpositioning of an otherwise acceptable voting trust. But such effects have not been demonstrated here.

Arguably, there are other short term effects on competition which could influence the Board's determination of whether to permit entrusted ownership of stock in excess of the statutory presumption of control. Generally, however, the Board can monitor the activity of the acquiring and target companies and encourage specific complaints.[12] If there are unfair or anticompetitive practices, the Board can enter an appropriate order. However, blocking the purchase of stock subject to a voting trust merely on the basis of predictions about the ultimate Board decision does not appear to serve any public interest purpose in this case. We are therefore confirming in this case our earlier observations that a properly structured voting trust can, barring unusual circumstances, effectively rebut the presumption of control under section 408(f).[13] At the same time, the Board is not dismissing the possibility that Tiger has otherwise acquired control of Seaboard in violation of section 408 or that the Clayton Act has been violated.[14] We have merely analyzed the factual circumstances surrounding the use of the voting trust and reached a determination that the presumption of control predicated solely on the ownership of stock has been overcome.

When a voting trust can insulate control and when we see no injury to the public interest, the Board is hesitant to interfere with the capital markets to the extent contemplated in announcing a prescreening program. While originally citing our concern with the possibility of unfair harm to carrier management and shareholders of the target company, we have concluded that these difficulties are inherent business and investment risks which the Board should not seek to regulate. Of course, our experience with voting trusts and other merger applicants may prompt us to reject the use of the voting trust in a particular case or persuade us to conduct a prescreening on the basis of the anticompetitive impacts of an acquisition. For the moment, the Board perceives no harm to the public interest from treating this voting trust consistently with the other recent cases. In this case, Board-ordered divestiture of this amount of Seaboard stock would not be difficult to implement and the Board can surely design a plan to avoid any undue hardship. In any event, we do not perceive that the Board's actions with respect to divestiture procedures would be influenced by whether the amount of stock involved is 9.9 percent, 15.6 percent, or 25 percent.

However, to avoid any misunderstanding on the part of the parties, investors, and shareholders, we must again emphasize that we have made no prejudgment on the merits of a Tiger-Seaboard merger. Our decision here is simply that it would be premature to make any sort of judgments on the basis of the record as it now stands and before we have had an opportunity to decide any of the pending merger cases under the standards of the Airline Deregulation Act. Divestiture is likely if the Board's decision is ad-

[8] *See, e.g., Missouri Portland Cement Co.* v. *Cargill, Inc.*, 498 F. 2d 851, 854 (2d Cir.), *cert. denied*, 419 U.S. 883 (1974); *Copperwald Corp.* v. *Imetal*, 403 F. Supp. 529, 607-08 (1975); *U.S.* v. *Pennzoil*, 252 F. 2d 962, 987-88 (W.D. Pa. 1975).

[9] Order 78-10-100. *See FTC* v. *Pepsico*, 477 F. 2d 24, 28-29 (2d Cir. 1973); *FTC* v. *Lancaster Colony Corp., Inc.*, 434 F. Supp. 1088, 1096-97 (S.D. N.Y. 1977). *See FTC* v. *Dean Foods, Inc.*, 384 U.S. 597, 606 n.5 (1966).

[10] Orders 78-8-150 and 78-10-100.

[11] The Board must be notified under section 407 of persons holding five percent of the carrier's stock so it is highly unlikely that the Board would be unaware of such potentials for abuse.

[12] In fact, shortly after Tiger's application, Seaboard entered in direct competition with Tiger in nine major domestic city-pairs and Tiger subsequently applied for dormant authority in the New York-London market. SW-111, Seaboard Comments at 31-33; Seaboard Reply comments at 1-2.

[13] Order 78-10-100 at 4-8.

[14] *Id.* at 9.

verse. Recognizing this possibility, any investor who seeks to find some clue to the final decision in this order does so at his own risk. Further, we trust that Tiger and Seaboard will accurately inform the present shareholders of the need for prior Board approval if there is a tender offer.

A good deal of assessment of the public interest and the relative hardship of the parties is based on our belief that an evidentiary hearing on the issues in this case can be handled expeditiously. The Board will thus have the benefit of a fully developed record in a relatively short time. Although Tiger has applied for the acquisition and control of 25 percent of the Seaboard stock in this proceeding, Tiger has stated that its reason for seeking this block of stock is to facilitate a business combination with Seaboard and that it is willing to litigate the merger issue in this case.[15] In order to remove any ambiguity, we wish to include the issue of the effect on competition resulting from the merger of Flying Tiger and Seaboard within the scope of this investigation. Based on Tiger's representation,[16] we also tentatively find that this proceeding will not constitute a major Federal action significantly affecting the human environment.[17]

Consistent with our treatment of this issue in the Pan American and Texas International acquisition case, we are granting waivers to the Director, Bureau of Pricing and Domestic Aviation and the Director, Bureau of Consumer Protection, from Part 300 of the Board's Rules so that they may participate in the Board's consideration of this case. *See* Order 78-12-109.

Accordingly, under the authority granted in sections 204, 407, 408, 411, 414 and 1002 of FAA, as amended by P.L. 95-504; the Board's regulations; and sections 11 and 18 of the Clayton Act:

1. A proceeding to consider the application of Tiger International, Inc., for approval of the acquisition of control of Seaboard World Airlines, Inc., is instituted in Docket 33712, and is set for hearing before an Administrative Law Judge of the Board;

2. Authority to order testimony and the production of documents is delegated to the Administrative Law Judge conducting the proceeding instituted in paragraph 1 above as provided for in section 1004(e) of the Act. This authority is not limited by the provisions of Rule 20 of the Rules of Practice;

3. The petition for intervention of Northwest Airlines, Inc., is granted, in accordance with section 302.15 of the Board's Procedural Regulations;

4. Motions to consolidate and petitions for reconsideration of this order shall be filed within 10 days of the date of service of this order and responsive answers shall be filed 5 days thereafter;

5. This order shall be served on Tiger International, Seaboard World Airways, United States Department of Justice, Department of Transportation, and Department of Defense, the Federal Trade Commission, the Securities and Exchange Commission; and the Bank of California National Association;

6. The Bank of California National Association is directed to vote all Seaboard World Airline shares held by it pursuant to a trust agreement with Tiger International, Inc., dated October 16, 1978, only in accordance with paragraph 7 of that agreement until further order of the Board; and

7. Tiger International, Inc., is permitted to purchase no more than 25 percent of the shares of Seaboard World Airlines, Inc. to be held in the trust described in paragraph 6.

8. The motions of Tiger International, dated November 9, 1978, and the motion of Seaboard World Airways, dated November 17, 1978, to file on otherwise unauthorized documents are granted.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board: [18]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36460 Filed 12-29-78; 8:45 am]

[15] *Application of Tiger International, Inc. For Approval of the Ownership Without a Voting Trust of Seaboard World Airlines, Inc.'s Common Stock* at 4.

[16] *Id.* at 6.

[17] Section 312.9(a)(2)(i)-(v).

[18] All Members concurred.

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Computer Systems Technical Advisory Committee will be held on Thursday, January 18, 1979, at 9:30 a.m. in Room 6029, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computor 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 Committee advises the Office of Export Administration, Bureau of Trade Regulation, 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 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 Committee meeting agenda has five parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Report on the current work program of the Subcommittees:

(a) Technology Transfer;

(b) Foreign Availability;

(c) Hardware; and

(d) Licensing Procedures.

(4) Review of proposed subcommittee study programs for 1979.

EXECUTIVE SESSION

(5) 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 Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (5), 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, P.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 Committee during the Executive Session of the meeting have been properly classi-

fied under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

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).

Dated: December 27, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36454 Filed 12-29-78; 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, January 17, 1979, at 9:00 a.m. in Conference Room D, 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 performance; 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 possible future activities for the Subcommittee. Some of the topics to be discussed will be performance measures with respect to computer equipment versus computer systems, new computer architectures, user microprogrammability features, and multi-processor systems.

EXECUTIVE SESSION

4. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and stategic 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, P.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.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

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 subcommitees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41073).

Date: December 27, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36453 Filed 12-29-78; 8:45 am]

[3510-15-M]

Maritime Administration

[Docket No. S-632]

ZAPATA PRODUCTS TANKERS, INC.

Application

Zapata Products Tankers, Inc. (Zapata) is the holder of a long-term operating-differential subsidy contract in the worldwide bulk trade. Zapata Bulk Transport (Bulk Transport), an affiliate of Zapata, is considering responding to a Military Sealift Command (MSC) Request for Proposals in connection with the operation of four 37,000 DWT tankers, namely, the USNS's COLUMBIA, NECHES, SUSQUEHANNA and HUDSON. Bulk Transport, under the terms of the RFP, would operate the tankers under

the direction of the MSC and from time to time might operate them in the domestic trade carrying petroleum or its products between points in the United States.

Zapata will require written permission of the Maritime Administration under section 805(a) of the Merchant Marine Act, 1936, as amended, if Bulk Transport is to operate the four tankers as outlined above.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on January 8, 1979, file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Assistant Secretay for Maritime Affairs.

Dated: December 27, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-36388 Filed 12-29-78; 8:45 am]

[3510-18-M]

Office of the Secretary

DOMESTIC POLICY REVIEW ON INDUSTRIAL INNOVATION

Public Symposia

Notice is hereby given that the Department of Commerce has scheduled a series of public symposia to be held as a part of the Domestic Policy Review on Industrial Innovation. This review, being undertaken pursuant to President Carter's concern for the status of industrial innovation in the United States, is focusing on the effects upon industrial innovation of:

Economic and trade policy
Federal procurement policy
Federal patent policy
Federal information policy
Federal direct support of research and development
Federal environment, health and safety regulations
Regulation of industry structure and competition

These subjects will be the focus of seven symposia in which senior executives from the business, industrial, labor, academic and public interest communities will participate. The symposia will be chaired by Dr. Jordan J. Baruch, Assistant Secretary of Commerce for Science and Technology. Other federal agencies will be represented at the highest policy level.

Each session will consist of both formal presentations and informal discussion, with ample opportunity for audience participation. The sessions will begin at 9:30 a.m. and conclude at 5:00 p.m., with a break for lunch between 12 noon and 1:30 p.m. Following is the schedule for these symposia, and their locations.

DOMESTIC POLICY REVIEW OF INDUSTRIAL INNOVATION

PUBLIC SYMPOSIA SCHEDULE

Subject of symposium	Date (1979)
Procurement	January 15
Direct Support of Research and Development.	January 16
Environment, Health, and Safety Regulations.	January 17
Regulation of Industry Structure and Competition.	January 19
Economic and Trade Policy	January 22
Patents	January 24
Information	January 25

Location: All symposia will be held in the U.S. Department of Commerce Auditorium on the first floor of the Main Commerce Department building (entrance on 14th Street between Constitution and Pennsylvania Avenues, NW.)

Dated: December 18, 1978.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

[FR Doc. 78-36363 Filed 12-29-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON, WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS FROM MACAU

Import Restraint Levels

DECEMBER 27, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products from Macau during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 3, 1975, as amended, between the Governments of the United States and Portugal, establishes levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Macau and exported to the United States during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to limit imports for consumption and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in Categories 333/334/335, 338, 340, 341, 347/348, 445/446, 633/634/635 and 641, to the designated levels during the twelve-month period beginning on January 1, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, as amended, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert C. Woods, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20203 (202/377-5423).

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

DECEMBER 27, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Arrangements Regarding International Trade in Textile done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of March 3, 1975, as amended, between the Governments of the United States and Portugal, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories from Macau in excess of the indicated levels of restraint:

Category	12-month level of restraint
333/334/335	77,616 dozen
338	97,222 dozen
340	93,625 dozen
341	48,276 dozen
347/348	244,807 dozen
445/446	67,242 dozen
633/634/635	172,666 dozen
641	48,276 dozen

In carrying out this directive, entries of textile products in Category 347/348, produced or manufactured in Macau and exported to the United States prior to January 1, 1979, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1978 and extending through December 31, 1978. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Merchandise exported prior to January 1, 1979 in categories other than Category 347/348 will not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of March 3, 1975, as amended, between the Governments of the United States and Portugal which provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Portugal and with respect to imports of cotton, wool, and man-made fiber textile products from Macau have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-36421 Filed 12-29-78; 8:45 am]

[3510-25-M]

CERTAIN COTTON TEXTILE PRODUCTS FROM PAKISTAN, EFFECTIVE ON JANUARY 1, 1979

Import Restraint Levels

DECEMBER 27, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton textile products imported from Pakistan, effective on January 1, 1979.

SUMMARY: The Bilateral Cotton Textile Agreement of January 4 and 9, 1978 between the Government of the United States and Pakistan establishes specific levels of restraints for cotton textile products in Categories 313, 315, 338 and 363, produced or manufactured in Pakistan and export to the United States during the twelve-month period beginning on January 1, 1979. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Categories 313, 315, 338, and 363 be limited to the designated twelve-month levels of restraint.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).)

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20203 (202/377-5423).

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

DECEMBER 27, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, between the Governments of the United States and Pakistan, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1979, and for the twelve-month period extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories in excess of the indicated levels of restraint:

Category	12-month level of restraint
313	60,366,330 square yards.
315	26,049,000 square yards.
338	1,709,028 dozen of which not more than 885,554 dozen shall be in T.S.U.S.A. 380.0651 and 380.0652.
363	5,029,000 numbers.

In carrying out this directive, entries of cotton textile products in the foregoing categories, except Category 315, produced or manufactured in Pakistan, which have been exported to the United States prior to January 1, 1979, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1978 and extending through December 31, 1978. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Entries of cotton textile products in Category 315, which have been exported to the United States prior to January 1, 1979, shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of January 4 and 9, 1978 between the Governments of the United States and Pakistan which provide, in part, that: (1) within the aggregate and group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same

levels may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textiles and cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-36420 Filed 12-29-78; 8:45 am]

[3510-25-M]

CERTAIN COTTON, WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS FROM THE REPUBLIC OF THE PHILIPPINES, EFFECTIVE ON JANUARY 1, 1979

Import Restraint Levels

DECEMBER 27, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products imported from the Philippines, effective on January 1, 1979.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, between the Governments of the United States and the Republic of the Philippines establishes levels of restraint for cotton, wool, and man-made fiber textile products in Categories 338/339, 340, 445/446, 604, 631, 636(pt.), 641(pt.), 643, 645/646(pt.), and 649, produced or manufactured in the Philippines and exported to the United States during the 12-month period beginning on January 1, 1979. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool, and man-made fiber textile products in the foregoing categories be limited to the designated 12-month levels of restraint.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

DECEMBER 27, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979 entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, exported from the Republic of the Philippines in the following categories, in excess of the indicated twelve-month levels of restraint:

Category	12-Month Level of Restraint
338/339	696,358 dozen
340	214,070 dozen
445/446	17,249 dozen
604	1,973,899 pounds
631	1,467,911 dozen pairs
636 [1]	39,077 dozen
641 [2]	158,586 dozen
643	41,174 dozen of which not more than 25,750 dozen shall be in T.S.U.S.A. numbers 380.0464, 380.5176, 380.8451 and 380.8452.
645/646 [3]	86,664 dozen
649	3,502,416 dozen

[1] In Category 636, all T.S.U.S.A. numbers except T.S.U.S.A. 382.0414, 382.0467, 382.7818 and 382.8175.

[2] In Category 641, all T.S.U.S.A. numbers except T.S.U.S.A. 382.0460, and 382.8137.

[3] In Category 645/646, all T.S.U.S.A. numbers except 382.0427 and 382.7870.

In carrying out this directive entries of textile products in the foregoing categories, except Category 445/446, which have been exported to the United States prior to January 1, 1979, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1978 and extending through December 31, 1978.

In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in the letter. Wool textile products in Category 445/446, exported prior to January 1, 1979, shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilaterial agreement of August 22 and 24, 1978, between the Governments of the United States and the Republic of the Philippines which provide, in part, that: (1) three percent growth shall be applied to certain specified ceilings during the second and each successive agreement year; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton, wool and man-made fiber textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making

provisions of 5 U.S.C 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-36422 Filed 12-29-78; 8:45 am]

[3510-25-M]

TEXTILE CATEGORY SYSTEM

DECEMBER 27, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes in the *Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated.*

SUMMARY: A notice published in the FEDERAL REGISTER on January 4, 1978, Part VI, announced details of the new textile category system which became effective January 1, 1978. On January 25, 1978, FEDERAL REGISTER, Vol. 43, No. 17, page 3421; on March 3, 1978, FEDERAL REGISTER, Vol. 43, No. 43, page 8828; and on September 5, 1978, FEDERAL REGISTER, Vol. 43, No. 172, page 39408 listed certain corrections and changes in the textile category system. There is published below a list further amending the system to reflect changes in the Tariff Schedules of the United States Annotated which were effective January 1, 1979. Copies of the amended Correlation are available by request to the Director, Trade Analysis Division, Office of Textiles, Room 2815, U.S. Department of Commerce, Washington, D.C. 20230.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Leonard A. Mobley, Director, Trade Analysis Division, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230. (202-377-4212).

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

CORRELATION CHANGES

[Effective January 1, 1979]

Page	TSUSA	Action
46	376.5408	Add to Cat. 334
46	376.5410	Delete from Cat. 334
47	376.5412	Add to Cat. 335
47	380.0910	Delete from Cat. 334
47	380.0915	Add to Cat. 334
47	380.0920	Delete from Cat. 334
49	382.3321	Add to Cat. 336
49	382.3322	Delete from Cat. 336
49	382.3323	Add to Cat. 336
49	382.3324	Delete from Cat. 336
49	382.3325	Add to Cat. 336
50	380.3911	Add to Cat. 337
50	380.3912	Delete from Cat. 337
50	380.3914	Add to Cat. 337

CORRELATION CHANGES—Continued

[Effective January 1, 1979]

Page	TSUSA	Action
50	382.3328	Delete from Cat. 337
50	382.3329	Add to Cat. 337
50	382.3330	Add to Cat. 337
50	382.3332	Add to Cat. 337
52	380.2743	Add to Cat. 340
52	380.2745	Add to Cat. 340
52	380.2750	Delete from Cat. 340
52	380.2753	Add to Cat. 340
52	380.2755	Add to Cat. 340
52	380.2760	Delete from Cat. 340
52	380.2785	Add to Cat. 340
52	380.2787	Add to Cat. 340
52	380.2788	Delete from Cat. 340
52	380.2794	Add to Cat. 340
52	380.2796	Add to Cat. 340
52	380.2798	Delete from Cat. 340
53	382.3305	Add to Cat. 341
53	382.3306	Delete from Cat. 341
53	382.3307	Add to Cat. 341
53	382.3308	Delete from Cat. 341
53	382.3309	Add to Cat. 341
53	382.3310	Delete from Cat. 341
53	382.3311	Add to Cat. 341
53	382.3312	Delete from Cat. 341
58	380.2400	Delete from Cat. 351
58	380.2405	Add to Cat. 351
58	380.2410	Add to Cat. 351
58	380.3909	Delete from Cat. 351
58	380.3915	Add to Cat. 351
58	382.2400	Delete from Cat. 351
58	382.2410	Add to Cat. 351
58	382.2415	Add to Cat. 351
58	382.3327	Add to Cat. 351
61	380.3908	Add to Cat. 359
61	380.3986	Delete from Cat. 359
61	380.3987	Add to Cat. 359
62	382.3328	Add to Cat. 359
62	382.3391	Delete from Cat. 359
62	382.3396	Add to Cat. 359
78	376.5609	Add to Cat. 634
78	376.5610	Delete from Cat. 634
78	376.5612	Add to Cat. 635
79	382.8107	Delete from Cat. 635
79	382.8109	Delete from Cat. 635
79	382.8111	Delete from Cat. 635
79	382.8113	Delete from Cat. 635
79	382.8115	Delete from Cat. 635
79	382.8117	Delete from Cat. 635
79	382.8145	Add to Cat. 635
79	382.8154	Add to Cat. 635
79	382.8159	Add to Cat. 635
79	382.8160	Add to Cat. 635
79	382.8163	Add to Cat. 635
79	382.8165	Add to Cat. 635
80	380.8422	Add to Cat. 637
80	380.8424	Add to Cat. 637
80	382.8119	Delete from Cat. 636
80	382.8121	Delete from Cat. 636
80	382.8127	Delete from Cat. 637
80	382.8168	Add to Cat. 637
80	382.8171	Add to Cat. 637
80	382.8172	Add to Cat. 637
80	382.8173	Add to Cat. 636
80	382.8174	Add to Cat. 636
80	382.8175	Add to Cat. 636
82	380.8431	Add to Cat. 640
82	380.8433	Add to Cat. 640
82	380.8435	Delete from Cat. 640
82	380.8441	Add to Cat. 640
82	380.8443	Add to Cat. 640
82	380.8445	Delete from Cat. 640
83	382.8102	Delete from Cat. 641
83	382.8103	Delete from Cat. 641
83	382.8105	Delete from Cat. 641
83	382.8130	Delete from Cat. 642
83	382.8132	Delete from Cat. 642
83	382.8133	Add to Cat. 641
83	382.8137	Add to Cat. 841
83	382.8139	Add to Cat. 641
83	382.8143	Add to Cat. 641
83	382.8144	Add to Cat. 641
83	382.8183	Add to Cat. 642
83	382.8184	Add to Cat. 642
84	382.8134	Delete from Cat. 644
84	382.8187	Add to Cat. 644
87	382.8129	Delete from Cat. 648
87	382.8136	Delete from Cat. 648
87	382.8138	Delete from Cat. 648

CORRELATION CHANGES—Continued

[Effective January 1, 1979]

Page	TSUSA	Action
87	382.8182	Add to Cat. 648
87	382.8189	Add to Cat. 648
87	382.8190	Add to Cat. 648
88	380.8428	Add to Cat. 651
88	380.8429	Add to Cat. 651
88	380.8430	Delete from Cat. 651
88	382.8123	Delete from Cat. 850
88	382.8125	Delete from Cat. 651
88	382.8178	Add to Cat. 650
88	382.8180	Add to Cat. 651
91	380.8421	Add to Cat. 659
91	380.8487	Delete from Cat. 659
91	380.8488	Add to Cat. 659
92	382.8140	Delete from Cat. 659
92	382.8148	Delete from Cat. 659
92	382.8153	Delete from Cat. 659
92	382.8157	Delete from Cat. 659
92	332.8167	Add to Cat. 659
92	382.8191	Add to Cat. 859
92	382.8192	Add to Cat. 659
92	382.8193	Add to Cat. 659
92	382.8199	Add to Cat. 659
111	386.0839	Add to Cat. 669

[FR Doc. 78-36419 Filed 12-29-78; 8:45 am]

[3810-71-M]

DEPARTMENT OF DEFENSE

Department of the Navy

TECHNOLOGY SUB-PANEL OF THE CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Technology Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on January 25-26, 1979. The January 25 a.m. session will be held at the National Photographic Interpretation Center, Washington, D.C.; and the January 25 p.m. and the January 26 sessions will be held at the National Security Agency, Fort George G. Meade, Md. Sessions of the meeting will commence at 9:00 a.m. and terminate at 5:30 p.m. on both days. All sessions of the meeting will be closed to the public.

The entire agenda will be devoted to discussions of intelligence related to developments in Soviet naval research and development. The agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander Robert B. Vosilus, U.S. Navy, Executive Secretary of the CNO Executive Panel Advisory Committee, 1401 Wilson Boulevard, Room 405, Arling-

ton, VA 22209, telephone number (202) 694-3191.

Dated: December 22, 1978.

P. B. WALKER,
Captain, JAGC, U.S. Navy, Deputy Assistant, Judge Advocate General (Administrative Law).

[FR Doc. 78-36409 Filed 12-29-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Issuance of Prohibition Orders to Certain Powerplants

The Department of Energy (DOE) hereby gives notice that on December 22, 1978, it issued Prohibition Orders, pursuant to the authorities granted it by Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 *et seq.*, and Chapter II, Title 10, Code of Federal Regulations (10 CFR), Parts 303 and 305, to the following powerplants:

Docket Number	Owner	Generating Station	Powerplant	Location
DCU-169 & 170	Public Service Company of Colorado.	Cameo	1 & 2	Palisade, Colorado
DCU-175, 176, 177, & 178.	Public Service Company of Colorado.	Arapahoe	1, 2, 3, & 4	Denver, Colorado
DCU-179	Public Service Company of Colorado.	Valmont	5	Boulder, Colorado

By publication in the FEDERAL REGISTER on July 31, 1978, (43 FR 33288, 33300 and 33305 as amended by 43 FR 38742, August 30, 1978), DOE gave notice of its intention to issue Prohibition Orders to the above-named powerplants. Pursuant to this notice, written comments were requested on the proposed Orders and a public hearing was held in Denver, Colorado, on September 26, 1978, to receive oral presentation of data, views, and arguments. Comments received by DOE during the period provided for written comment, as well as oral testimony received during the public hearing and any supplemental comments, were considered and evaluated before the Prohibition Orders were issued. Comments received which were considered pertinent to DOE's findings are addressed in the Prohibition Orders.

The Prohibition Orders prohibit the above-named powerplants from burning natural gas or petroleum products as their primary energy source. The Orders will not become effective, however, until (1) the Administrator of the Environmental Protection Agency (EPA) certifies, pursuant to Section 2(b) of ESECA and Section 113(d) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401, *et seq.*), the earliest date that the affected powerplants will be able to burn coal and comply with applicable air pollution requirements and (2) DOE has considered the environmental impact of making the Orders effective, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplants with Notices of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7. The date the Prohibition Orders will be effective will be stated in the Notices of Effectiveness.

The above-named powerplants have been served the Prohibition Orders by registered mail. In addition, copies of these Prohibition Orders will be available to the public at DOE's Freedom of Information Reading Room, Room GA 152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, and at the DOE Regional Office VIII, Room 206, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colorado 80226, between the hours of 7:30 a.m. and 4:30 p.m. Monday through Friday.

Any questions regarding these Prohibition Orders should be directed to Mr. Robert L. Davies, Deputy Assistant Administrator for Fuels Conversion, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461, telephone (202) 254-3910.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*), as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), as amended by Pub. L. 95-70; Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C., December 26, 1978.

DORIS J. DEWTON,
Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-36370 Filed 12-29-78; 8:45 am]

[6450-01-M]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Prohibition Order

Docket Number	Owner	Generating Station	Powerplant Number	Location
DCU-179	Public Service Company of Colorado.	Valmont	5	Boulder, Colorado

Pursuant to Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, as amended, 15 U.S.C. 791 *et seq.* (ESECA), and Chapter II, Title 10 of the Code of Federal Regulations (CFR), Parts 303 and 305, (10 CFR Parts 303 and 305, *as amended*, 42 FR 23132 (1977)), the Department of Energy (DOE) hereby orders that the above listed powerplant shall be prohibited from burning natural gas or petroleum products as its primary energy source. Such prohibition shall become effective on the date stated in the Notice of Effectiveness to be served on the powerplant, pursuant to 10 CFR 303.10(b), 303.37(b) and 305.7, subsequent to issuance of this Prohibition Order.

Section 2 of ESECA requires that DOE make certain findings prior to issuing a Prohibition Order. On July 31, 1978, DOE published a notice of "Intention to Issue Prohibition Orders to Certain Powerplants" (43 FR 33305, as amended by 43 FR 38742, August 30, 1978) that contained DOE's proposed conclusions with respect to those find-

ings and the rationale therefor that DOE proposed to make with respect to the powerplant listed above. That notice invited interested persons to make written or oral presentation of data, views and arguments regarding the proposed findings and other matters. A public hearing was held in Denver, Colorado on September 26, 1978, for the purpose of receiving the oral presentation of data, views and arguments. In addition, DOE provided an opportunity subsequent to the public hearing for supplemental written comments.

Based on a consideration of the data, views and arguments received by DOE at the public hearing as well as supplemental data, views and arguments received during the public comment period and an analysis of other information submitted to or otherwise available to DOE, DOE hereby finds with respect to the above listed powerplant that:

1. On June 22, 1974, the powerplant had the capability and necessary plant equipment to burn coal;

2. The burning of coal by the powerplant, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of ESECA;

3. Coal and coal transportation facilities are expected to be available during the remaining actual sevice life of this powerplant, which is the period the orders are in effect; and

4. The prohibition of the powerplant from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service by such powerplant.

Stated below is the rationale for each finding ESECA requires DOE to make prior to issuing a Prohibition Order, and an evaluation of the significant, material issues raised by interested persons in their oral or written presentations of data, views and arguments. Such presentations were made in response to the notice of "Intention to Issue A Prohibition Order to Certain Powerplants" published in the FEDERAL REGISTER on July 31, 1978 (43 FR 33305, as amended by 43 FR 38742, August 30, 1978). Where such presentations were adopted by DOE and resulted in changes in DOE's calculations these are reflected in the specific findings. After an evaluation of the data, views and arguments presented by interested persons, DOE concludes that no issues or facts were presented that render DOE unable to make the findings and therefore it must proceed with the issuance of the instant order.

Public Service Company of Colorado shall be referred to as the "utility" and as "PSCC".

I. *Capability and necessary plant equipment to burn coal.* DOE finds that, on June 22, 1974, Powerplant Number 5 at Valmont Generating Station (Valmont 5) had, or thereafter acquired or was designed with the capability and necessary plant equipment to burn coal. This finding is based on the facts and interpretations stated below:

A. Based on information supplied to the Federal Energy Regulatory Commission by PSCC and a site visit performed by PEDCo Environmental, Inc. (PEDCo) and DOE representatives, it has been determined that Valmont 5 had in place, on June 22, 1974, a boiler that was capable of burning coal. The boiler had been designed and constructed or modified to burn coal as its primary energy source.

An historical profile of coal burned at the Valmont 5 Generating Station is set forth below:

1974 Coal/Gas	1975 Coal/Gas	1976 Coal/Gas	1977 Coal/Gas
47-53	43-57	49-51	76-24

B. Based on information provided by PSCC to DOE during the above-mentioned site visit and other information available to DOE, Valmont 5 will not require additional air pollution control equipment when this generating station burns 100% coal. Valmont 5 presently burns coal operating existing air pollution control equipment and there are no pending air quality violations against the station.

C. DOE finds that, on June 22, 1974, Valmont 5 had all other significant plant equipment and facilities associated with the burning of coal.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that Valmont 5 has the capability and necessary plant equipment to burn coal as stated above.

II. *The burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* DOE finds that the burning of coal at Valmont 5 in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based upon the presumption that Valmont 5 will be operated at a 65 percent capacity factor, have a remaining useful life of 31 years (as of the date of this Prohibition Order), is expected to have 31 years of remaining useful life after the total conversion of the powerplant, and on the facts and interpretations stated below:

A. *The burning of coal is practicable.*—1. *Costs associated with burning coal.*—a. *Capital investment costs.* Based upon information provided by PSCC at the public hearing and in its written comments it has been determined that the capital investment costs of $4,691,000 for the acquisition of air pollution control equipment as stated in Section II.A.1.a. of the Notice of Intention should be excluded because Valmont 5 presently burns coal with existing equipment without violating any air quality standards. Therefore, they will not require any additional air pollution equipment.

b. *Annual operating and maintenance costs.* The expected increase in operating and maintenance costs of $356,000, exclusive of fuel costs, as stated in Section II.A.1.b. of the Notice of Intention was based on costs related to the operation of additional equipment and facilities believed to be necessary to burn coal at Valmont 5. Since such equipment is not required, the operating and maintenance costs will not increase as stated. PSCC has informed DOE that burning the additional quantity of coal to achieve total conversion of Valmont 5 will not result in a significant change in current operating and maintenance costs.

(c). *Fuel costs.* (i) Based on information provided by the utility, the price of natural gas available to Valmont 5 is approximately $1.24 per million BTU's. This represents $1.24 per Mcf of natural gas, assuming 1,000,000 BTU's per Mcf.

(ii) Based on information supplied by PSCC and the Federal Energy Regulatory Commission (FERC), the price of coal available to Valmont 5 is approximately $.91 per million BTU's. This represents $18.88 per ton of coal, assuming 20.8 million BTU's per ton or 10,400 BTU's per pound.

(iii) DOE estimates that the burning of 100% coal in lieu of natural gas by this powerplant will result in an overall reduction of approximately $.33 per million BTU's, or $816,000 per year in fuel costs.

(iv) Based on information supplied by PSCC, DOE finds that Valmont 5 should continue to burn coal as its primary energy source. It is expected that a decrease in fuel costs will result from the issuance of a Prohibition Order.

d. *Total annual costs associated with conversion.* As a result of this Prohibition Order to Valmont 5, there will be no increase in the total annual costs incurred.

2. *Reasonableness of costs of conversion.* The foregoing analysis of the costs of conversion provides the basis for deciding whether the conversion of Valmont 5 is reasonable.

As a result of total conversion, the utility will not incur additional annual capital investment costs, or significant operating and maintenance costs and will experience an annual fuel cost savings of approximately $816,000. Therefore, the estimated net annual decrease in cost of producing electricity at Valmont 5 after total conversion is estimated to be $816,000.

The burning of coal instead of natural gas at Valmont 5 will result in an estimated annual equivalent savings of

2,455,600 Mcf of natural gas (or approximately 409,000 barrels of oil equivalent) that would otherwise be used in providing steam for electric power generation. The cost savings of conversion per Mcf of natural gas is estimated to be $.33.

DOE finds that since the burning of coal will not increase the cost of producing electricity at Valmont 5, and there are significant potential savings as a result of the fuel costs differential between natural gas and coal burning at the powerplant and because of potential future increases in the fuel cost differential in favor of coal, the reduced costs associated with burning coal confirm the reasonableness of conversion from the standpoint of costs.

3. *Financial capabilities of PSCC.* The utility will not incur additional capital investment costs or significant operating and maintenance costs as a result of total conversion of Valmont 5. In addition, DOE's analysis took into consideration PSCC's estimate of its 1977 construction budget of $158,000,000, the total capitalization of the utility of $1,200,000,000 and the average remaining useful life of 31 years after conversion of Valmont 5. Accordingly, such conversion does not create an unreasonable burden on the financial capabilities of PSCC.

Total annual costs associated with conversion. The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) that would be associated with the burning of coal, as opposed to natural gas, attributable to compliance with this and other outstanding Prohibition Orders would be $1,076,000. DOE has taken into consideration costs to PSCC that may result from compliance with all other Prohibition Orders issued to date under authority of Section 2(a) and (c) of ESECA to PSCC powerplants. This estimate of $1,076,000 is based on an investment oriented analysis described in an Ultrasystems Inc. report entitled *Computer Methodology For Coal Conversion Cost Determination,* August 1976, (hereafter "Ultrasystems Computer Model").

The total estimated annual increase in costs of $1,076,000 associated with conversion ultimately will be recovered in rates. However, due to the potential offsetting aggregate value of fuel cost savings of approximately $1,522,000 attributable to compliance with this and other outstanding Prohibition Orders, the net annual revenue requirements of PSCC should decrease by approximately $466,000.

4. *Consumer impact.* The impact of a Prohibition Order to Valmont 5 would result in a net decrease of .000069 per kilowatt hour sold. The impact of this Prohibition Order and all other outstanding Prohibition Orders would be a net decrease in revenue required from PSCC consumers of approximately $.000038 per kilowatt hour of electricity sold by the PSCC system.

The estimates are based on DOE's analysis of the "Ultrasystem Computer Model" result.

The eventual amount of decrease would depend on the actual amount of the investment necessary to comply with this and other outstanding Prohibition Orders, the methods which PSCC selects to finance the increased costs associated with burning coal as a primary energy source at Valmont 5 and PSCC's other facilities; the extent to which the cost increase is spread among PSCC customers, the regulations or policies of the regulatory agencies with jurisdiction over PSCC regarding inclusion of such cost decrease in consumer rates, the actual amount of the fuel cost differential, and other factors.

B. *Consistency with the purposes of ESECA.* Because the issuance of a Prohibition Order to Valmont 5 will discourage the use of natural gas or petroleum products and encourage the increased use of coal, DOE concludes that this action will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels. On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of a Prohibition Order, as well as the necessity for this powerplant to comply with the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and other applicable environmental protection requirements, DOE finds that issuance of a Prohibition Order to Valmont 5 will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that the burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA as stated above.

III. *Coal and coal transportation facilities are expected to be available during the remaining actual service life of this powerplant*—A. *Coal availability*—1. *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the foreseeable future. United States Department of the Interior, Bureau of Mines data show a demonstrated coal reserve base of over 438 billion tons (*Demonstrated Coal Reserve Base of the United States on January 1, 1976,* Bureau of Mines (August 1977) (hereafter "BOM" Survey)). Mining experience in the United States has indicated that, on a national basis at least one-half of the coal, 219 billion tons, in the reserve base may be technically and economically recoverable. The nation's uncommitted coal reserves are sufficient to reasonably conclude that coal is expected to be available during the remaining actual service life of this powerplant. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies, referenced herein, which together provide the best current evidence as to coal availability.

2. *National coal production and demand.* The comparison stated below of estimated national coal production, and national coal demand shows that there should be sufficient production of coal to meet the total national demand through the remaining actual service life of this powerplant.

a. *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production potential (million tons)*
1979	781
1980	818
1981	858
1982	899
1983	942
1984	987
1985	1,034

The figures shown above are derived from *Projections of Energy Supply and Demand and Their Impacts, Energy Information Administration* (DOE/EIA 0036/2) dated April 1978 (hereafter "Energy Supply and Demand Report"). The coal production forecast was derived from analytic procedures utilizing historic coal consumption patterns, in addition to derived demand under a forecast economic and energy case. These projections of national coal production generally reflect the coal industries plans for additional increments of coal production over the next several years. Throughout the period of these projections it is expected that total national production will equal or exceed total national demand. DOE intends to fully update, for purposes of being current, its coal availability finding pertinent to Valmont 5 prior to the issuance of a Notice of Effectiveness.

b. *National demand including ESECA Prohibition Order demand.* The estimated national demand, including any increased demand resulting from DOE actions under the authority of Section 2(a) of ESECA is

projected as follows (Energy Supply and Demand Report):

Year:	Demand (millions of tons)
1979	758
1980	798
1981	841
1982	885
1983	932
1984	982
1985	1,034

These demand projections include the actions taken under ESECA.

c. *National ESECA Prohibition Order demand.* DOE has estimated potential demand for coal resulting from this Prohibition Order and from all other outstanding Prohibition Orders issued to date under authority of Section 2(a) of ESECA to be as follows:

Year:	Demand (million tons)
1979	15.0
1980	21.4
1981	23.6
1982	30.0
1983	30.3
1984	30.3

(The above estimated demand figures include projections for Prohibition Orders issued on June 30, 1975).

3. *Characteristic coal production and demand*—a. *Characteristic coal requirements for this powerplant.* Based on information provided by PSCC in its written comments, DOE concludes that the dry-bottom boiler, of the type used at Valmont 5, is able to burn coal with the following characteristics and comply with all applicable air pollution control requirements:

	Approximate values
BTU's/lb	10,400.
Moisture	13.26 pct.
Ash	8.59 pct.
Volatile	36.81 pct.
Ash softening temp	2,130-2,500 (°F).
Sulfur	.83 pct.
Grindability	44 to 50.

b. *Charactristic coal demand from this powerplant.* The potential increased annual demand for coal, of the type described above, which would result from this Prohibition Order, is estimated to be as follows:

	Potential annual demand (thousand tons)
Year: 1979	118

c. *Characteristic coal available to this powerplant.* Based on post hearing information provided by PSCC, the utility has two long-term contracts with Energy Fuels Corporation, the first of which is for 2 million tons of coal per fiscal year, ending on June 30, 1987, and a second contract for 3,650,000 tons of coal to be furnished between 1978 and 1981. This contract coal can be burned at Valmont, Cameo and Arapahoe Generating Stations.

The Rosebud Coal Sales Company also provides additional supplies of characteristic coal to Valmont. PSCC has a contract with Rosebud for 300,000 tons per ciendar year through 1983. This contract is currently being renegotiated for the same annual tonnage through 1988. This characteristic coal is used at the Valmont Generating Station.

In addition, Colowyo Coal Company provides characteristic coal to Valmont and Arapahoe under a short-term 1978 contract for 350,000. DOE has examined the quantities of coal for Valmont, Arapahoe, and Cameo Generating Stations and finds that there is sufficient characteristic coal available to satisfy the increase in demand represented by these Prohibition Orders.

4. *State and local laws.* DOE has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to DOE's attention.

5. *Conclusion.* On the basis of PSCC's present coal contract commitments, DOE finds that coal of the characteristics required will be available to Valmont 5. Furthermore, on the basis of the Bureau of Mines Survey and the Energy Supply and Demand Report, DOE expects that national coal production potential will exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential demand represented by this Prohibition Order and from all other outstanding Prohibition Orders issued to date under authority of Section 2(a) of ESECA.

B. *Coal transportation.*—1. *Location of powerplant and coal supply.* Based on information provided by PSCC, coal for Valmont 5 will be supplied and transported from the Rosebud Coal Sales Company, which is located in Carbon County, Wyoming to Valmont 5 at Denver, Colorado and from Energy Fuels Company in Routt County, Colorado.

2. *Route of coal shipments.* Based on information provided to DOE by PSCC and the railroads, the primary route for coal delivery from the Rosebud Mine originates and is brought into the Valmont Generating Station by the Union Pacific (UP) Railroad.

The route for coal delivery from the Energy Mine originates on the Denver & Rio Grande Western (D&RGW) Railroad and later switches in Denver, Colorado to the UP, which then delivers coal into the Valmont Generating Station.

3. *Originating trunk carrier.* UP and D&RGW Railroads have indicated that they are able and willing to provide any additional capacity required for coal shipments to Valmont 5. Both railroads have stated that the rail facilities at Energy Fuels Company in Routt County, Colorado and at Rosebud Coal Sales Company in Carbon County, Wyoming are readily available to PSCC and that the UP has adequate coal handling and unloading facilities to service any required increases in coal volumes.

DOE has not found nor has it been informed of any apparent constraints to transporting coal.

4. *Powerplant facilities.* Valmont 5 presently has coal handling and unloading facilities which the railroads have advised DOE are adequate to handle the projected increased coal demand. There are no apparent obstacles to the handling and delivery of coal to Valmont 5.

5. *Conclusion.* On the basis of the information discussed above, DOE finds that coal transportation facilities will be available since no significant constraints to coal delivery over the primary routes to Valmont 5 presently exist.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that coal and coal transportation facilities will be available to this powerplant.

IV. *The prohibition of the burning of natural gas or petroleum products as its primary energy source will not impair the reliability of service in the area served by the affected powerplant.* At the public hearing and in post hearing PSCC submissions, the utility requested that DOE include in any order an expanded definition of "primary energy source" with at least as much flexibility as the definition in the "Powerplant and Industrial Fuel Use Act of 1978" Senate Conference Report No. 95-988 (Pub. L. 95-620, November 9, 1978). PSCC stated that to limit burning of gas and petroleum products to minimum amounts for start-up and flame stabilization will have a serious effect upon PSCC's ability to maintain a reliable generation system. PSCC's contention is that the ESECA "primary energy source" definition does not offer flexibility to meet the temporary conditions, such as occurrences involving labor problems, accidents or other disruptions at the coal mines supplying the coal or the railroad transporting it.

DOE interprets this voicing of concern as consituting a request for anticipatory relief, on the face of the Order, from the potential effects of the Order prior to its being made effective by issuance of a Notice of Effectiveness (NOE). Should a problem arise after receipt of an NOE, DOE is prepared to respond and work with the utility in a timely manner.

Based on an analysis of the information submitted to DOE by PSCC, DOE finds that the issuance of a Prohibition Order to Valmont will not impair the reliability of service in the area

served by this powerplant since there will be no outage as a result of a Prohibition Order.

PSCC has indicated that Valmont 5 was designed to burn natural gas and coal and is currently burning coal. Therefore, there will be no impairment of reliability of service within the meaning of ESECA in the area served by Valmont 5 as a result of this Prohibition Order.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that the prohibition of the burning of natural gas or petroleum products as the powerplant's primary energy source will not impair the reliability of service in the area served by the affected powerplant.

The prohibition of the burning of natural gas or petroleum products as the primary energy source by Valmont 5 shall not become effective (1) until either (a) the Administrator of the Environmental Protection Agency (EPA) has notified DOE, as required by Section 2(b) of ESECA, that the particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a delayed compliance order pursuant to the provisions of the Clean Air Act, as amended, (CAA), 42 U.S.C. 7413(d)(5) and the Act of August 7, 1977, Pub. L. 95-95, 112, or (b) if no such notification is given DOE by EPA, the date that the Administrator of EPA certifies is the carliest date that a particular powerplant will be able to burn coal and to comply with all applicable air pollution requirements, CAA, *supra;* Pub. L. 95-95, *supra;* and (2) until DOE has performed an analysis of the environmental impact of the issuance of a Notice of Effectiveness, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7.

The date stated in the Notice of Effectiveness shall be either (a) the date EPA determines in accordance with Section 113(d) of the CAA, *supra;* Pub. L. 95-95, *supra,* or (b) the date marking termination of the period of time that DOE determines is required by the affected powerplant to acquire or refurbish equipment or facilities necessary to comply with the CAA, *supra;* Pub. L. 95-95, *supra,* whichever date is later.

This Prohibition Order does not constitute a final agency action and is not effective prior to service of the Notice of Effectiveness. In accordance with 10 CFR 303.38, any person aggrieved by this Order may file an appeal with DOE's Office of Hearings and Appeals, in accordance with 10 CFR Part 303, Subpart H, but such appeal cannot be filed prior to service by DOE of the Notice of Effectiveness and, if filed, shall be filed within 30 days after service of such notice.

There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of Part 303 and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Application may be made for modification or rescission of this Prohibition Order in accordance with the provisions of 10 CFR Part 303, Subpart J. An application for modification or rescission of a Prohibition Order based on significantly changed circumstances, which may occur during the interval between issuance of this Order and service of the Notice of Effectiveness, shall be filed within 30 days of such service of such notice. Application for modification or rescission based on significantly changed circumstances occurring after the service of such notice may be filed at any time.

If an application for modification or rescission of this Prohibition Order is made in accordance with Subpart J of Part 303, any appeal of this Order under 10 CFR Part 303 Subpart H, shall be suspended until 30 days after an order has been issued in accordance with Subpart J or until 30 days from the date on which such application for modification or rescission may be treated as having been denied in all respects.

If made effective this Prohibition Order will be effective against any persons that, as of the date stated in the Notice of Effectiveness of this Order own, lease, operate or control the above listed powerplant and against any successors-in-interest or assignees of such persons. Any terms utilized in this Prohibition Order have the same meaning as such terms have in 10 CFR Part 303 and 305.

Any questions regarding this Prohibition Order should be directed to Mr. Robert L. Davies, Deputy Assistant Administrator for Fuels Conversion, Department of Energy, 2000 M Street NW., Washington, D.C., 20461, (202) 254-3910.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70; Federal Energy Adminsitration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E. O. 11790 (39 FR 23185); E. O. 12009 (42 FR 46267))

Issued in Washington, D. C., December 26, 1978.

BARTON R. HOUSE,
Assistance Administrator, Fuels Regulation, Economic Regulatory Administration.

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[6450-01-M]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Prohibition Order

Docket Number	Owner	Generating Station	Powerplant Number	Location
DCU-169	Public Service Company of Colorado.	Cameo	1	Palisade, Colorado
DCU-170	Public Service Company of Colorado.	Cameo	2	Palisade, Colorado

Pursuant to Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, as amended, 15 U.S.C. 791 *et seq.* (ESECA), and Chapter II, Title 10 of the Code of Federal Regulations (CFR), Parts 303 and 305, (10 CFR Parts 303 and 305, *as amended,* 42 FR 23132 (1977)), the Department of Energy (DOE) hereby orders that the above listed powerplants shall be prohibited from burning natural gas or petroleum products as their primary energy source. Such prohibition shall become effective on the date stated in the Notice of Effectiveness to be served on the powerplants, pursuant to 10 CFR 303.10(b), 303.37(b) and 305.7, subsequent to issuance of this Prohibition Order.

Section 2 of ESECA requires that DOE make certain findings prior to issuing a Prohibition Order. On July 31, 1978, DOE published a notice of "Intention to Issue Prohibition Orders to Certain Powerplants" (43 FR 33288, as amended by 43 FR 38742, August 30, 1978) that contained DOE's proposed conclusions with respect to those findings and the rationale therefor that DOE proposed to make with respect to the powerplants listed above. That notice invited interested persons to make written or oral presentation of data, views and arguments regarding the proposed findings and other matters. A public hearing was held in

Denver, Colorado on September 26, 1978, for the purpose of receiving the oral presentation of data, views and arguments. In addition, DOE provided an opportunity subsequent to the public hearing for supplemental written comments.

Based on a consideration of the data, views and arguments received by DOE at the public hearing as well as supplemental data, views and arguments received during the public comment period, and an analysis of other information submitted to or otherwise available to DOE, DOE hereby finds with respect to the above listed powerplants that:

1. On June 22, 1974, each powerplant had the capability and necessary plant equipment to burn coal;

2. The burning of coal by each powerplant, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of ESECA;

3. Coal and coal transportation facilities are expected to be available during the remaining useful actual service life of these powerplants, which is the period the orders are in effect; and

4. The prohibition of each powerplant from burning natural gas or petroleum products as its primary energy source will not impair the reliability of service by such powerplant.

Stated below is the rationale for each finding ESECA requires DOE to make prior to issuing a Prohibition Order, and an evaluation of the significant, material issues raised by interested persons in their oral or written presentations of data, views and arguments. Such presentations were made in response to the notice of "Intention to Issue Prohibition Orders to Certain Powerplants" published in the FEDERAL REGISTER on July 31, 1978 (43 FR 33288, as amended by 43 FR 38742, August 30, 1978). Where such presentations were adopted by DOE and resulted in changes in DOE's calculations these are reflected in the specific findings. After an evaluation of the data, views and arguments presented by interested persons, DOE concludes that no issues or facts were presented that render DOE unable to make the findings and therefore it must proceed with the issuance of the instant order.

Public Service Company of Colorado shall be referred to as the "utility" and as "PSCC".

I. *Capability and necessary plant equipment to burn coal.* DOE finds that, on June 22, 1974, Powerplants Number 1 and 2 at Cameo Generating Station (Cameo 1 and 2) had, or thereafter acquired or were designed with the capability and necessary plant equipment to burn coal. This finding is based on the facts and interpretations stated below:

A. Based on information supplied to the Federal Energy Regulatory Commission by PSCC and a site visit performed by PEDCo Environmental, Inc. (PEDCo) and DOE representatives, it has been determined that Cameo 1 and 2 had in place, on June 22, 1974, boilers that were capable of burning coal. The boilers had been designed and constructed or modified to burn coal as their primary energy source.

An historical profile of coal burned as a percentage of total heat input at the Cameo Generating Station is set forth below:

Percentages

Powerplant No.	1974 Coal/Oil/Gas	1975 Coal/Oil/Gas	1976 Coal/Oil/Gas	1977 Coal/Oil/Gas
1	2/0/98	6/0/94	0.4/0.2/99.4	0/1/99
2	84/0/16	91/0/9	89/0/11	88/0/12

B. Based on post hearing information submitted by PSCC, Cameo 1 lacks necessary air pollution control equipment and has burned gas or mixed-fuels on a regular basis. PSCC plans to add a new fabric filter dust collector on Cameo 1 and may modify the air pollution control equipment on Cameo 2 (such as, by installation of a new fabric filter dust collector).

C. DOE finds that on June 22, 1974, Cameo 1 and 2 had all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and the regulations promulgated pursuant thereto, absence of the facilities listed in paragraph B, above, does not constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that Cameo 1 and 2 have the capability and necessary plant equipment to burn coal as stated above.

II. *The burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* DOE finds that the burning of coal at Cameo 1 and 2 in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based upon the presumption that Cameo 1 and 2 will be operated at a 51.8 percent capacity factor (this represents a weighted average of each powerplant's projected capacity factor), have an average remaining useful life of 26 years (as of the date of this Prohibition Order), are expected to have at least 24 years of remaining useful life after conversion of the powerplants, and on the facts and interpretations stated below:

A. *The burning of coal is practicable*—1. *Costs associated with burning coal*—a. *Capital investment costs.* The total initial capital investment costs, exclusive of financing costs, that would result from the acquisition of equipment and facilities associated with the burning of coal in compliance at Cameo 1 and 2 are estimated to be approximately $4,066,000 for air pollution control equipment and coal handling equipment.

Upon completion of DOE's environmental analysis following the issuance of this Prohibition Order, should it be determined that different or additional air pollution control equipment is required other than that presently planned by PSCC and accepted by DOE for purposes of the findings of this Prohibition Order, DOE will update its statutory findings prior to the issuance of a Notice of Effectiveness to PSCC. It should be noted, however, that Cameo 1 and 2 are currently in compliance with the Clean Air Act.

b. *Annual operating and maintenance costs.* Based upon information provided by PEDCo and discussed with PSCC after the public hearing, the expected increase in operating and maintenance costs, exclusive of fuel costs, that would result from the burning of coal at Cameo 1 and 2 is estimated to be approximately $289,000 per year.

c. *Fuel costs.* (i) Based on information provided by the utility, the price of natural gas available to Cameo 1 and 2 is approximately $.95 per million BTU's. This represents $.95 per Mcf of natural gas, assuming 1,000,000 BTU's per Mcf.

(ii) Based on post hearing information supplied by the utility, the price of coal available to Cameo 1 and 2 is approximately $.90 per million BTU's. This represents $21.97 per ton of coal, assuming 24.5 million BTU's per ton or 12,250 BTU's per pound.

(iii) DOE estimates that the burning of 100% coal in lieu of natural gas by these powerplants will result in an overall reduction of approximately

$0.5 per million BTU's or $132,000 per year in fuel costs.

(iv) Based on information supplied by PSCC, DOE finds that Cameo 2 should continue to burn coal as its primary energy source, and Cameo 1 should convert from natural gas to coal as its primary energy source. It is expected that a decrease in fuel costs will result from the issuance of a Prohibition Order.

d. *Total annual costs associated with conversion.* As a result of this Prohibition Order to Cameo 1 and 2, it is estimated that the total annual increase in costs incurred, exclusive of fuel costs, is approximately $1,076,000.

2. *Reasonableness of costs of conversion.* The foregoing analysis of the costs of conversion provides the basis for deciding whether the conversion of Cameo 1 and 2 is reasonable. Financial impacts of the conversion will be felt by the utility and by the consumer.

As a result of total conversion, the utility will incur additional capital investment costs, including financial costs, of approximately $787,000 (this is based on a fixed charge rate of 19.4% of the total initial capital investment of $4,066,000), and additional annual operating and maintenance costs, exclusive of fuel costs, of approximately $289,000 (these figures are derived from the figures in paragraphs A.1.a. and b.), but will experience an annual fuel cost savings of approximately $132,000 (see paragraph A.1.c.). The estimated net annual increase in cost of producing electricity at Cameo 1 and 2 after conversion is estimated to be $944,000.

The burning of coal instead of natural gas at Cameo 1 and 2 will result in an estimated annual equivalent savings of 1,508,000 Mcf of natural gas (or approximately 246,333 barrels of oil equivalent) that would otherwise be used in providing steam for electric power generation. The cost of conversion per Mcf of natural gas is estimated to be $0.63.

Although conversion to the burning of coal would be expected to increase the cost of producing electricity at Cameo 1 and 2, DOE concludes that the cost, even using current prices per Mcf of natural gas saved, is not unreasonable. This determination is based on consideration of the substantial savings of natural gas that will result from this conversion.

DOE's determination that the costs of conversion are not unreasonable is further supported by consideration of such costs in relation to the expected 24 years remaining useful life of the powerplants after conversion, the size and resources of the utility as examined in the following analysis of financial capability, the nature of the expected operations of these powerplants, and potential future increase in the fuel cost difference in favor of coal.

3. *Financial capabilities of PSCC*—a. *Recovery of capital investment.* DOE finds that compliance with a Prohibition Order to Cameo 1 and 2 will be economically feasible. DOE's analysis took into consideration the total estimated $4,066,000 additional capital investment costs required for PSCC to comply with this Prohibition Order, as well as additional capital investment costs that would result from all other Prohibition Orders issued to date under authority of Section 2 (a) and (c) of ESECA to PSCC powerplants.

DOE related these additional capital investment costs to PSCC's estimate of its 1977 construction budget of $158,000,000, the total capitalization of the utility of $1,200,000,000 and the average remaining useful life of 24 years after conversion of Cameo 1 and 2.

DOE does not consider the effect of this added capital investment cost to represent an unreasonable burden, given the financial capabilities of PSCC to assume such costs.

b. *Total annual costs associated with conversion.* The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) that would be associated with the burning of coal, as opposed to natural gas, attributable to compliance with this Prohibition Order would be $1,076,000. (DOE also took into consideration costs to PSCC that may result from compliance with all other Prohibition Orders issued to date under authority of Section 2 (a) and (c) of ESECA to PSCC powerplants.) This estimate of $1,076,000 is based on an investment oriented analysis described in an Ultrasystems Inc. report entitled *Computer Methodology For Coal Conversion Cost Determination*, August 1976, (hereafter "Ultrasystems Computer Model").

The total estimated annual increase in costs of $1,076,000 associated with conversion ultimately will be recovered in rates. However, due to the potential offsetting aggregate value of fuel cost savings of approximately $1,522,000 attributable to compliance with this and other outstanding Prohibition Orders, the net annual revenue requirements of PSCC should decrease by approximately $446,000.

4. *Consumer impact.* The impact as a result of the Prohibition Order to Cameo 1 and 2 alone would result in a net increase of $.000079 per kilowatt hour sold. The impact of this Prohibition Order and all other Prohibition Orders would be a net decrease in revenues required from PSCC consumers of approximately $.000038 per kilowatt hour of electricity sold by the PSCC system.

These estimates are based on DOE's analysis of the "Ultrasystem Computer Model" result.

The eventual amount of the decrease would depend on the actual amount of the investment necessary to comply with these Prohibition Orders, the methods which PSCC selects to finance the increased costs associated with burning coal as a primary energy source at both Cameo 1 and 2, the extent to which the cost increase is spread among PSCC customers, the regulations or policies of the regulatory agencies with jurisdiction over PSCC regarding inclusion of such cost decrease in consumer rates, the actual amount of the fuel cost differential, and other factors.

B. *Consistency with the purposes of ESECA.* Because the issuance of a Prohibition Order to Cameo 1 and 2 will discourage the use of natural gas or petroleum products and encourage the increased use of coal, DOE concludes that this action will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels. On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of a Prohibition Order, as well as the necessity for these powerplants to comply with the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and other applicable environmental protection requirements, DOE finds that issuance of a Prohibition Order to Cameo 1 and 2 will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that the burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA as stated above.

III. *Coal and coal transportation facilities are expected to be available during the remaining actual service life of these powerplants.*—A. *Coal availability.*—1. *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the foreseeable future. United States Department of the Interior, Bureau of Mines data show a demonstrated coal reserve base of over 438 billion tons (*Demonstrated Coal Reserve Base of the United States on January 1, 1976*, Bureau of Mines (August 1977) [hereafter "BOM Survey"]). Mining experience in the United States has indicated that, on a national basis at least one-half of the

coal, 219 billion tons, in the reserves base may be technically and economically recoverable. The nation's uncommitted coal reserves are sufficient to reasonably conclude that coal is expected to be available during the remaining actual service life of these powerplants. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies, referenced herein, which together provide the best current evidence as to coal availability.

2. *National coal production and demand.* The comparison stated below of estimated national coal production, and national coal demand shows that there should be sufficient production of coal to meet the total national demand through the remaining actual service life of these powerplants.

a. *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year.	Production Potential (million tons)
1979	781
1980	818
1981	858
1982	899
1983	942
1984	987
1985	1,034

The figures shown above are derived from *Projections of Energy Supply and Demand and Their Impacts, Energy Information Administration,* (DOE/EIA 0036/2) dated April 1978 (hereafter "Energy Supply and Demand Report"). The coal production forecast was derived from analytic procedures utilizing historic coal consumption patterns, in addition to derived demand under a forecast economic and energy case. These projections of national coal production generally reflect the coal industries plans for additional increments of coal production over the next several years. Throughout the period of these projections it is expected that total national production will equal or exceed total national demand. DOE intends to fully update, for purposes of being current, its coal availability finding pertinent to Cameo 1 and 2 prior to the issuance of a Notice of Effectiveness.

b. *National demand including ESECA Prohibition Order demand.* The estimated national demand, including any increased demand resulting from DOE actions under the authority of Section 2(a) of ESECA, is projected as follows (Energy Supply and Demand Report):

Year:	Demand (million tons)
1979	758
1980	798
1981	841
1982	885
1983	932
1984	982
1985	1,034

These demand projections include the actions taken under ESECA.

C. *National ESECA Prohibition Order demand.* DOE has estimated potential demand for coal resulting from this Prohibition Order and from all other outstanding Prohibition Orders issued to date under authority of Section 2(a) of ESECA to be as follows:

Year:	Demand (million tons)
1979	15.0
1980	21.4
1981	23.6
1982	30.0
1983	30.3
1984	30.3

(The above estimated demand figures include projections for Prohibition Orders issued on June 30, 1975.)

3. *Characteristic coal production and demand*—a. *Characteristic coal requirements for these powerplants.* Based on information provided by PSCC in its written comments, DOE concludes that dry-bottom boilers, of the type used at Cameo 1 and 2, will be able to burn coal with the following characteristics and comply with all applicable air pollution control requirements:

	Approximate Values
BTU's/lb	12,250
moisture	8.77%
ash	8.66%
volatile	38.59%
ash softening temp	2130 2500 (°F)
sulfur	.48%
grindability	44-50

b. *Characteristic coal demand from these powerplants.* The potential increased annual demand for coal of the type described above, which would result from this Prohibition Order, is estimated to be as follows:

Year:	Potential Annual Demand (thousand tons)
1981	65

c. *Characteristic coal available to these powerplants.* Based on post hearing information provided by PSCC, the utility has two long-term contracts with Energy Fuels Corporation, the first of which is for 2 million tons of coal per fiscal year, ending on June 30, 1987, and a second contract for 3,650,000 tons of coal to be furnished between 1978 and 1981. This contract coal can be burned at Cameo, Arapahoe, and Valmont Generating Stations.

PSCC has a yearly contract with the Bear Coal Company for 100,000 tons through the end of 1979.

DOE has examined the quantities of coal for Cameo, Arapahoe, and Valmont Generating Stations and finds that there is sufficient characteristic coal available to satisfy the increase in demand represented by these Prohibition Orders.

4. *State and local laws.* DOE has found no state or local laws or policies limiting the extraction or untilization of coal that would adversely affect these production figures, and none have been brought to DOE's attention.

5. *Conclusion.* On the basis of PSCC's present coal contract commitments, DOE finds that coal of the characteristics required will be available to Cameo 1 and 2. Furthermore, on the basis of the Bureau on Mines Survey and the Energy Supply and Demand Report, DOE expects that national coal production potential will exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand represented by this Prohibition Order and from all other outstanding Prohibition Orders issued to date under authority of Section 2(a) of ESECA.

B. *Coal transportaton*—1. *Location of powerplants and coal supply.* Based on information provided by PSCC, coal for Cameo 1 and 2 will be supplied and transported from Energy Fuels Company, which is located in Routt County, Colorado and from the Bear Coal Company in Somerset, Colorado to Cameo 1 and 2 at Palisade, Colorado.

2. *Route of coal shipment.* Based on information provided to DOE by PSCC and the railroads, the primary route for coal deliveries from the Energy Mine and Bear Mine originates on and is brought into the Cameo Generating Stations by the Denver & Rio Grande Western Railroad (D&RGW).

3. *Originating trunk carrier.* D&RGW has indicated that it is able and willing to provide any additional capacity required for coal shipments to Cameo 1 and 2. D&RGW indicated that the rail facilities at Energy Fuels Company in Routt County, Colorado and at Bear Coal Company in Somerset, Colorado are readily available to PSCC and that the D&RGW has adequate handling and loading facilities to service any required increases in coal volumes. DOE has not found nor has it been informed of any apparent constraints to transporting coal.

4. *Powerplant facilities.* Cameo 1 and 2 presently have coal handling and unloading facilities which the railroads advised DOE are adequate to handle the projected coal demand. There are no apparent obstacles to the handling and delivery of coal to Cameo 1 and 2.

5. *Conclusion.* On the basis of the information discussed above, DOE finds that coal transportation facilities will be available since no significant constraints to coal delivery over the primary route to Cameo 1 and 2 presently exist.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's

finding that coal transportation facilities will be available to these powerplants.

IV. *The prohibition of the burning of natural gas or petroleum products as their primary energy source will not impair the reliability of service in the area served by the affected powerplants.* At the public hearing and in post hearing PSCC submissions, the utility requested that DOE include in any order an expanded definition of "primary energy source" with at least as much flexibility as the definition in the "Powerplant and Industrial Fuel Use Act of 1978" Senate Conference Report No. 95-988 (Pub L. 95-620, November 9, 1978). PSCC stated that to limit burning of gas and petroleum products to minimum amounts for start-up and flame stabilization will have a serious effect upon PSCC's ability to maintain a reliable generation system. PSCC's contention is that the ESECA "primary energy source" definition does not offer flexibility to meet the temporary conditions, such as occurrences involving labor problems, accidents or other disruptions at the coal mines supplying the coal or the railroad transporting it.

DOE interprets this voicing of concern as constituting a request for anticipatory relief, on the face of the Order, from the potential effects of the Order prior to its being made effective by issuance of a Notice of Effectiveness (NOE).

Should a problem arise after receipt of an NOE, DOE is prepared to respond and work with the utility in a timely manner.

Based on an analysis of the information submitted to DOE by PSSC, DOE finds that the issuance of a Prohibition Order to Cameo will not impair the reliability of service in the area served by these powerplants since there will be no outage as a result of a Prohibition Order.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that the prohibition of the burning of natural gas or petroleum products as the powerplant's primary energy source will not impair the reliability of service in the area served by the affected powerplants.

The prohibition of the burning of natural gas or petroleum products as the primary energy source by Cameo 1 and 2 shall not become effective (1) until either (a) the Administrator of the Environmental Protection Agency (EPA) has notified DOE, as required by Section 2(b) of ESECA, that the particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a delayed compliance order pursuant to the provisions of the Clean Air Act, as amended, (CAA), 42 U.S.C. 7413(d)(5) and the Act of August 7, 1977, Pub. L. 95-95, section 112, or (b) if no such notification is given DOE by EPA, the date that the Administrator of EPA certifies is the earliest date that a particular powerplant will be able to burn coal and to comply with all applicable air pollution requirements, CAA, *supra;* Pub. L. 95-95, *supra;* and (2) until DOE has performed an analysis of a Notice of Effectiveness, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7.

The date stated in the Notice of Effectiveness shall be either (a) the date EPA determines in accordance with 113(d) of the CAA, *supra;* Pub. L. 95-95, *supra,* or (b) the date marking termination of the period of time that DOE determines is required by the affected powerplant to acquire or refurbish equipment or facilities necessary to comply with the CAA, *supra;* Pub. L. 95-95, *supra,* whichever date is later.

This Prohibition Order does not constitute a final agency action and is not effective prior to service of the Notice of Effectiveness. In accordance with 10 CFR 303.38, any person aggrieved by this Order may file an appeal with DOE's Office of Hearings and Appeals, in accordance with 10 CFR Part 303, Subpart H, but such appeal cannot be filed prior to service by DOE of the Notice of Effectiveness and, if filed, shall be filed within 30 days after service of such notice.

There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of Part 303 and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Application may be made for modification or rescission of this Prohibition Order in accordance with the provisions of 10 CFR Part 303, Subpart J. An application for modification or rescission of a Prohibition Order based on significantly changed circumstances, which may occur during the interval between issuance of this Order and service of the Notice of Effectiveness, shall be filed within 30 days of such service of such notice. Application for modification or rescission based on significantly changed circumstances occurring after the service of such notice may be filed at any time.

If an application for modification or rescission of this Prohibtion Order is made in accordance with Subpart J of Part 303, any appeal of this Order under 10 CFR Part 303 Subpart H, shall be suspended until 30 days after an order has been issued in accordance with Subpart J or until 30 days from the date on which such application for modification or rescission may be treated as having been denied in all respects.

If made effective, this Prohibition Order will be effective against any person that, as of the date stated in the Notice of Effectiveness of this Order owns, leases, operates or controls the above listed powerplant and against any successors-in-interest or assignees of such person.

Any terms utilized in this Prohibition Order have the same meaning as such terms have in 10 CFR Part 303 and 305.

Any questions regarding this Prohibition Order should be directed to Mr. Robert L. Davies, Deputy Assistant Adminstrator for Fuels Conversion, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-3910.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et. seq.*) as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E. O. 11790 (39 FR 23185); E. O. 12009 (42 FR 46267))

Issued in Washington, D.C., December 26, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

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[6450-01-M]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Prohibition Order

Docket Number	Owner	Generating Station	Powerplant Number	Location
DCU-175	Public Service Company of Colorado.	Arapahoe	1	Denver, Colorado
DCU-176	Public Service Company of Colorado.	Arapahoe	2	Denver, Colorado
DCU-177	Public Service Company of Colorado.	Arapahoe	3	Denver, Colorado
DCU-178	Public Service Company of Colorado.	Arapahoe	4	Denver, Colorado

Pursuant to Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, as amended, 15 U.S.C. 791 *et seq.*, (ESECA), and Chapter II, Title 10 of the Code of Federal Regulations (CFR), Parts 303 and 305, [10 CFR Parts 303 and 305, *as amended*, 42 FR 23132 (1977)], the Department of Energy (DOE) hereby orders that the above listed powerplants shall be prohibited from burning natural gas or petroleum products as their primary energy source. Such prohibition shall become effective on the date stated in a Notice of Effectiveness to be served on the powerplants, pursuant to 10 CFR 303.10(b), 303.37(b) and 305.7, subsequent to issuance of this Prohibition Order.

Section 2 of ESECA requires that DOE make certain findings prior to issuing a Prohibition Order. On July 31, 1978, DOE published a notice of "Intention to Issue Prohibition Orders to Certain Powerplants" (43 FR 33300 as amended by 43 FR 38742, August 30, 1978) that contained DOE's proposed conclusions with respect to those findings and the rationale therefor that DOE proposed to make with respect to the powerplants listed above. That notice invited interested persons to make written or oral presentation of data, views and arguments regarding the proposed findings and other matters. A public hearing was held in Denver, Colorado on September 26, 1978, for the purpose of receiving the oral presentation of data, views and arguments. In addition, DOE provided an opportunity subsequent to the public hearing for supplemental written comments.

Based on a consideration of the data, views and arguments received by DOE at the public hearing as well as supplemental data, views and arguments received during the public comment period, and an analysis of other information submitted to or otherwise available to DOE, DOE hereby finds with respect to the above listed powerplants that:

1. On June 22, 1974, each powerplant had the capability and necessary plant equipment to burn coal;

2. The burning of coal by each powerplant, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of ESECA;

3. Coal and coal transportation facilities are expected to be available during the remaining actual service life of these powerplants, which is the period the orders are in effect; and

4. The prohibition of each powerplant from burning natural gas or petroleum as its primary energy source will not impair the reliability of service by such powerplant.

Stated below is the rationale for each finding ESECA requires DOE to make prior to issuing a Prohibition Order, and an evaluation of the significant, material issues raised by interested persons in their oral or written presentations of data, views and arguments. Such presentations were made in response to the notice of "Intention to Issue Prohibition Orders to Certain Powerplants" published in the FEDERAL REGISTER on July 31, 1978 (43 FR 33300 as amended by 43 FR 38742, August 30, 1978). Where such presentations were adopted by DOE and resulted in changes in DOE's calculations these are reflected in the specific findings. After an evaluation of the data, views and arguments presented by interested persons, DOE concludes that no issues or facts were presented that render DOE unable to make the findings and therefore it must proceed with the issuance of the instant order.

Public Service Company of Colorado shall be referred to as the "utility" and as "PSCC".

I. *Capability and necessary plant equipment to burn coal.* DOE finds that, on June 22, 1974, Powerplants Number 1, 2, 3 and 4 at Arapahoe Generating Station (Arapahoe 1, 2, 3 and 4) had, or thereafter acquired or were designed with the capability and necessary plant equipment to burn coal. This finding is based on the facts and interpretations stated below:.

A. Based on information supplied to the Federal Energy Regulatory Commission by PSCC and a site visit performed by PEDCo Environmental, Inc. (PEDCo) and DOE representatives, it has been determined that each powerplant had in place, on June 22, 1974, boilers that were capable of burning coal. The boilers had been designed and constructed or modified to burn coal as their primary energy source.

A historical profile of coal burned, as a percentage of total heat input at the Arapahoe Generating Station is set forth below:

Percentages

Powerplant No.	1974 Coal/Gas	1975 Coal/Gas	1976 Coal/Gas	1977 Coal/Gas
1	2-98	23-77	21-79	99-1
2	48-52	62-38	72-28	99-1
3	55-45	66-34	87-13	99-1
4	59-41	80-20	79-21	87-13

Even though Arapahoe Generating Station tended to decrease gas consumption during 1977, PSCC's post hearing submission stated that the Arapahoe 3 and 4 were issued Notices of Violation and Cease and Desist Orders by the Colorado Department of Health for opacity violations. According to the utility, a hearing on PSCC's variance request was held on July 20, 1978, at which time the variance was granted to enable the affected powerplants to burn coal out of compliance until June 15, 1979, when major modifications will be completed to the air pollution control equipment.

Potentially, the relative share of the total natural gas consumed at the Arapahoe Generating Station may fluctuate signficantly since each powerplant has the capability to burn substantial amounts of natural gas. The issuance of a Prohibition Order to all the powerplants located at Arapahoe appears necessary to preclude potential increased use of natural gas by any of the powerplants which is not issued a Prohibition Order or that may have a Cease and Desist Order issued. In issuing a Prohibition Order to each powerplant at the Arapahoe Generating Station, DOE has considered and evaluated the effect of issuing an order to some of the individual powerplants and not to others and concluded that the purposes of ESECA are best accomplished by issuing a Prohibition Order to all the powerplants at Arapahoe Generating Station.

B. Based on information provided by PSCC to DOE during the above-mentioned site visit and other information available to DOE, Arapahoe 3 and 4 will require air pollution control equipment when this generating station is converted to total coal firing. Arapahoe 1 and 2 presently have adequate air pollution control equipment.

C. DOE finds that, on June 22, 1974, Arapahoe 1, 2, 3 and 4 had all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and the regulations promulgated pursuant thereto, absence of the facilities listed in paragraph B, above, does not constitute a lack of capability and nec-

cssary plant equipment to burn coal as of June 22, 1974.

DOE has not received any written or oral presentation of data, views or argumcnts that would negate DOE's finding that Arapahoe 1, 2, 3 and 4 had the capability and necessary plant equipmcnt to burn coal as stated above.

II. *The burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA.* DOE finds that the burning of coal at Arapahoe 1, 2, 3 and 4 in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based upon the presumption that Arapahoe 1, 2, 3 and 4 will be operated at a 49.3 percent capacity factor (this represents a weighted average of each powerplant's projected capacity factor), have an average remaining useful life of 20 years (as of the date of this Prohibition Order), are expected to have at least 19.25 years of remaining useful life after conversion of the powerplants, and on the facts and interpretations stated below:

A. *The burning of coal is practicable*—1. *Costs associated with burning coal*—a. *Capital investment costs.* Based upon information provided by PSCC after the public hearing, DOE finds that capital investment costs of $5,007,000 for air pollution control equipmcnt as stated in Section II.A.1.a. of the Notice of Intention (NOI) should not be included, since PSCC had made commitments for this equipment prior to the issuance of DOE's NOI. Therefore, the ordering of such equipment was not a result of DOE's order.

b. *Annual operating and maintenance costs.* The expected increase in operating and maintenance costs of $382,000 exclusive of fuel costs, as stated in Section II.A.1.b. of the Notice of Intention was based on costs related to the air pollution control equipment. Since PSCC had made commitments for this equipment prior to the issuance of DOE's NOI these costs are not incurred as a result of DOE's order. Therefore, DOE finds that any operating and maintenance costs due to the issuance of a Prohibition Order will be negligible and should be excluded.

c. *Fuel costs.* (i) Based on information provided by the utility, the price of natural gas available to Arapahoe 1, 2, 3 and 4 is approximately $1.43 per million BTU's. This represents $1.43 per Mcf of natural gas, assuming 1,000,000 BTU's per Mcf.

(ii) Based on information supplied by PSCC and the Federal Energy Regulatory Commission (FERC), the price of coal available to Arapahoe 1, 2, 3 and 4 is approximately $0.78 per million BTU's. This represents $17.25 per ton of coal, assuming 22 million BTU's per ton, or 11,000 BTU's per pound. This characterictic falls within the range stated in III.A.3.a. below.

(iii) DOE estimates that the burning of 100% coal in lieu of natural gas by these powerplants will result in an overall reduction of approximately $0.65 per million BTU's, or $574,000 per year in fuel costs.

(iv) Based on information supplied by PSCC, DOE finds that Arapahoe 1, 2, 3 and 4 should continue to burn coal as their primary energy source. It is expected that a decrease in fuel costs will result from the issuance of a Prohibition Order.

d. *Total annual costs associated with conversion.* As a result of this Prohibition Order to Arapahoe 1, 2, 3 and 4, there will be no increase in the total annual costs incurred.

2. *Reasonableness of costs of conversion.* The foregoing analysis of the cost of conversion provides the basis for deciding whether the conversion of Arapahoe 1, 2, 3 and 4 is reasonable. As a result of total conversion, the utility will not incur additional annual capital investment costs, or significant operating and maintenance costs and will experience an annual fuel cost savings of approximately $574,000. Therefore, the estimated net annual decrease in cost of producing electricity at Arapahoe 1, 2, 3 and 4 after total conversion is estimated to be $574,000.

The burning of coal instead of natural gas at Arapahoe 1, 2, 3 and 4 will result in an estimated annual equivalent savings of 887, 067 Mcf of natural gas (or approximately 147,833 barrels of oil equivalent) that would otherwise be used in providing steam for electric power generation. The cost savings of conversion per Mcf of natural gas is estimated to be $0.65.

DOE finds that since the burning of coal will not increase the cost of producing electricity at Arapahoe 1, 2, 3 and 4 and there are significant potential savings as a result of the fuel costs differential between natural gas and coal burning at the powerplant and because of potential future increases in the fuel cost differential in favor of coal, the reduced costs associated with burning coal confirm the reasonableness of conversion from the standpoint of costs.

3. *Financial capabilities of PSCC.* The utility will not incur additional capital investment costs or significant operating and maintenance costs as a result of total conversion of Arapahoe 1, 2, 3 and 4. In addition, DOE's analysis took into consideration PSCC's estimate of its 1977 construction budget of $158,000,000, the total capitalization of the utility of $1,200,000,000 and the average remaining useful life of 19.25 years after conversion of Arapahoe 1, 2, 3 and 4. Accordingly, such conversion does not create an unreasonable burden on the financial capabilities of PSCC.

Total annual costs associated with conversion. The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) that would be associated with the burning of coal, as opposed to natural gas, attributable to compliance with this and other outstanding Prohibition Orders would be $1,076,000. DOE has taken into consideration costs to PSCC that may result from compliance with all other Prohibition Orders issued to date under authority of Section 2(a) and (c) of ESECA to PSCC powerplants. This estimate of $1,076,000 is based on an investment oriented analysis described in an Ultrasystems Inc. report entitled *Computer methodology For Coal Conversion Cost Determination* August 1976, (hereafter "Ultrasystems Computer Model").

The total estimated annual increase in costs of $1,076,000 associated with conversion ultimately will be recovered in rates. However, due to the potential offsetting aggregate value of fuel cost savings of approximately $1,522,000 attributable to compliance with this and other outstanding Prohibition Orders, the net annual revenue requirements of PSCC should decrease by approximately $466,000.

4. *Consumer impact.* The impact as a result of the Prohibition Order to Arapahoe 1, 2, 3 and 4 alone would result in a net decrease of $.000048 per kilowatt hour sold. The impact of this Prohibition Order and all other outstanding Prohibition Orders would be a net decrease in revenue required from PSCC consumers of approximately $.000038 per kilowatt hour of electricity sold by the PSCC system.

These estimates are based on DOE's analysis of the "Ultrasystem Computer Model" result.

The eventual amount of the decrease would depend on the actual amount of the investment necessary to comply with this and other outstanding Prohibition Orders, the methods which PSCC selects to finance the increased costs associated with burning coal as a primary energy source at Arapahoe 1, 2, 3 and 4 and PSCC's other facilities, the extent to which the cost increase is spread among PSCC customers, the regulations or policies of the regulatory agencies with jurisdiction over PSCC regarding inclusion of such cost decrease in consumer rates, the actual amount of the fuel cost differential, and other factors.

B. *Consistency with the purposes of ESECA.* Because the issuance of a Prohibition Order to Arapahoe 1, 2, 3 and 4 will discourage the use of natural gas

or petroleum products and encourage the increased use of coal. DOE concludes that this action will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels. On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of a Prohibition Order, as well as the necessity for this powerplant to comply with the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and other applicable environmental protection requirements, DOE concludes that issuance of a Prohibition Order to Arapahoe 1, 2, 3 and 4 will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that the burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA as stated above.

III. *Coal and coal transportation facilities are expected to be available during the remaining actual service life of these powerplants.*—A. *Coal availability.*—1. *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the foreseeable future. United States Department of the Interior, Bureau of Mines data show a demonstrated coal reserve base of over approximately 438 billion tons. (*Demonstrated Coal Reserve Base of the United States on January 1, 1976*, Bureau of Mines (August 1977) (hereafter "BOM Survey")). Mining experience in the United States has indicated that on a national basis, at least one-half of the coal, 219 billion tons, in the reserve base may be technically and economically recoverable. The nation's uncommitted coal reserves are sufficient to reasonably conclude that coal is expected to be available during the remaining actual service life of these powerplants. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies, referenced herein, which together provide the best current evidence as to coal availability.

2. *National coal production and demand.* The comparison stated below of estimated national coal production, and national coal demand shows that there should be sufficient production of coal to meet the total national demand through the remaining actual service life of these powerplants.

a. *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

Year:	*Production Potential (million tons)*
1979	781
1980	818
1981	858
1982	899
1983	942
1984	987
1985	1,034

The figures shown above are derived from *Projections of Energy Supply and Demand and Their Impacts, Energy Information Administration.* (DOE/EIA 0036/2) dated April 1978 (hereafter "Energy Supply and Demand Report"). The coal production forecast was derived from analytical procedures utilizing historic coal consumption patterns, in addition to derived demand under a forecast economic and energy case. These projections of national coal production generally reflect the coal industries plans for additional increments of coal production over the next several years. Throughout the period of these projections it is expected that total national production will equal or exceed total national demand. DOE intends to fully update, for purposes of being current, its coal availability finding pertinent to Arapahoe 1, 2, 3 and 4 prior to the issuance of a Notice of Effectiveness.

b. *National demand including ESECA Prohibition Order demand.* The estimated national demand, including any increased demand resulting from DOE actions under the authority of Section 2(a) of ESECA, is as follows (Energy Supply and Demand Report):

Year:	*Demand (millions of tons)*
1979	758
1980	798
1981	841
1982	885
1983	932
1984	982
1985	1,034

These demand projections include the actions taken under ESECA.

c. *National ESECA Prohibition Order demand.* DOE has estimated potential demand for coal resulting from this Prohibition Order and from all other outstanding Prohibition Orders issued to date under authority of Section 2(a) of ESECA to be as follows:

Year:	*Demand (million tons)*
1979	15.0
1980	21.4
1981	23.6
1982	30.0
1983	30.3
1984	30.3

(The above estimated demand figures include projections for Prohibition Orders issued on June 30, 1975.)

3. *Characteristic coal production and demand*—a. *Characteristic coal requirements for these powerplants.* Based on information provided by PSCC, DOE concludes that dry-bottom boilers, of the type used at Arapahoe 1, 2, 3 and 4, will be able to burn coal with the following characteristics and comply with all applicable air pollution control requirements:

	Approximate Values
BTU's/lb	11,000.
Moisture	11.38 pct.
Ash	8.74 pct.
Volatile	33.5 pct.
Ash softening temp	2,130–2,500 (°F).
Sulfur	.47 pct.
Grindability	45–50.

b. *Characteristic coal demand from these powerplants.* The potential increased annual demand for coal, of the type described above, which would result from this Prohibition Order, is estimated to be as follows:

	Potential annual demand (thousand tons)
Year: 1980	40

c. *Characteristic coal available to these powerplants.* Based on post hearing information provided by PSCC, the utility has two long-term contracts with Energy Fuels Corporation, the first of which is for 2 million tons of coal per fiscal year, ending on June 30, 1987, and a second contract for 3,650,000 tons of coal to be furnished between 1978 and 1981. This contract coal can be burned at Arapahoe, Valmont and Cameo Generating Stations.

In addition, Colowyo Coal Company provides characteristic coal to Arapahoe and Valmont under a short term 1978 contract for 350,000 tons.

DOE has examined the quantities of coal for Arapahoe, Cameo and Valmont Generating Stations and finds that there is sufficient characteristic coal available to satisfy the increase in demand represented by these Prohibition Orders.

4. *State and local laws.* DOE has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to DOE's attention.

5. *Conclusion.* On the basis of PSCC's present coal contract commitments, DOE finds that coal of the characteristics required will be available at Arapahoe 1, 2, 3 and 4. Furthermore, on the basis of the Bureau of Mines Survey and the Energy Supply and Demand Report, DOE expects that national coal production potential will exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential demand represented by this Prohibition Order and from all other outstanding Prohibition Orders issued

to date under authority of Section 2(a) of ESECA.

B. *Coal transportation—1. Location of powerplants and coal supply.* Based on information provided by PSCC, coal for Arapahoe 1, 2, 3 and 4 will be supplied and transported from Energy Fuels Company, which is located in Routt County, Colorado to Arapahoe 1, 2, 3 and 4 in Denver, Colorado.

2. *Route of coal shipment.* Based on information provided to DOE by PSCC and the railroads, the primary route for coal delivery from the Energy Mine originates on the Denver & Rio Grande Western Railroad (D&RGW) and is transferred to the Colorado & Southern Railway (C&S) in Denver, Colorado. The C&S delivers the coal into the Arapahoe Plant.

3. *Originating trunk carrier.* D&RGW and C&S Railroads have indicated that they are able and willing to provide any additional capacity required for coal shipments to Arapahoe 1, 2, 3 and 4. The D&RGW has stated that the rail facilities at Energy Fuels Company in Routt County, Colorado are readily available to PSCC. C&S has stated that it has adequate coal handling and unloading facilities to service any required increases in coal volumes.

DOE has not found nor has it been informed of any apparent constraints to transporting coal.

4. *Powerplant facilities.* Arapahoe 1, 2, 3 and 4 presently have coal unloading facilities, which C&S indicates are adequate to handle the projected increased coal demand: *Provided,* That the utility adds the required manpower to unload the delivered coal. There are no other apparent obstacles to the handling and delivery of coal to Arapahoe 1, 2, 3 and 4.

5. *Conclusion.* On the basis of the information discussed above, DOE finds that coal transportation facilities will be available since no significant constraints to coal delivery over the primary route to Arapahoe 1, 2, 3 and 4 presently exist.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that coal transportation facilities will be available to these powerplants.

IV. *The prohibition of the burning of natural gas or petroleum products as their primary energy source will not impair the reliability of service in the area served by the affected powerplants.* At the public hearing and post hearing PSCC submissions, the utility requested that DOE include in any order an expanded definition of "primary energy source" with at least as much flexibility as the definition in the "Powerplant and Industrial Fuel Use Act of 1978" Senate Conference Report No. 95-988 (Pub. L. 95-620, November 9, 1978). PSCC stated that to limit burning of gas and petroleum products to minimum amounts for start-up and flame stabilization will have a serious effect upon PSCC's ability to maintain a reliable generation system. PSCC's contention is that the ESECA "primary energy source" definition does not offer flexibility to meet the temporary conditions, such as occurrences involving labor problems, accidents or other disruptions at the coal mines supplying the coal or the railroad transporting it.

DOE interprets this voicing of concern as constituting a request for anticipatory relief, on the face of the Orders, from the potential effects of the Orders prior to their being made effective by issuance of a Notice of Effectiveness (NOE). Should a problem arise after receipt of an NOE, DOE is prepared to respond and work with the utility in a timely manner.

Based on an analysis of the information submitted to DOE by PSCC, DOE finds that the issuance of a Prohibition Order to Arapahoe will not impair the reliability of service in the area served by this powerplant since there will be no outage as a result of a Prohibition Order.

PSCC has indicated that Arapahoe 1, 2, 3 and 4 were designed to burn natural gas and coal and are currently burning coal. Therefore, there will be no impairment of reliability of service within the meaning of ESECA in the area served by Arapahoe 1, 2, 3 and 4 as a result of this Prohibition Order.

DOE has not received any written or oral presentation of data, views or arguments that would negate DOE's finding that the prohibition of the burning of natural gas or petroleum products as the powerplant's primary energy source will not impair the reliability of service in the area served by the affected powerplant.

The prohibition of the burning of natural gas or petroleum products as the primary energy source by Arapahoe 1, 2, 3 and 4 shall not become effective (1) until either (a) the Administrator of the Environmental Protection Agency (EPA) has notified DOE, as required by Section 2(b) of ESECA, that the particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a delayed compliance order pursuant to the provisions of the Clean Air Act, as amended, (CAA), 42 U.S.C. 7413(d)(5) and the Act of August 7, 1977, Pub. L. 95-95, Section 112, or (b) if no such notification is given DOE by EPA, the date that the Administrator of EPA certifies is the earliest date that a particular powerplant will be able to burn coal and to comply with all applicable air pollution requirements, CAA, *supra*; Pub. L. 95-95, *supra*; and (2) until DOE has performed an analysis of the environmental impact of the issuance of a Notice of Effectiveness, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7.

The date stated in the Notice of Effectiveness shall be either (a) the date EPA determines in accordance with Section 113(d) of the CAA, *supra*; Pub. L. 95-95, *supra*, or (b) the date marking termination of the period of time that DOE determines is required by the affected powerplant to acquire or refurbish equipment or facilities necessary to comply with the CAA, *supra*; Pub. L. 95-95, *supra*, whichever date is later.

This Prohibition Order does not constitute a final agency action and is not effective prior to service of the Notice of Effectiveness. In accordance with 10 CFR 303.38, any person aggrieved by this order may file an appeal with DOE's Office of Hearings and Appeals, in accordance with 10 CFR Part 303, Subpart H, but such appeal cannot be filed prior to service by DOE of the Notice of Effectiveness and, if filed, shall be filed within 30 days after service of such notice.

There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of Part 303 and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Application may be made for modification or rescission of this Prohibition Order in accordance with the provisions of 10 CFR Part 303, Subpart J. An application for modification or rescission of a Prohibition Order based on significantly changed circumstances, which may occur during the interval between issuance of this Order and service of the Notice of Effectiveness, shall be filed within 30 days of such service of such notice. Application for modification or rescission based on significantly changed circumstances occurring after the service of such notice may be filed at any time.

If an application for modification or rescission of this Prohibition Order is made in accordance with Subpart J of Part 303, any appeal of this Order under 10 CFR Part 303 Subpart H, shall be suspended until 30 days after an order has been issued in accordance with Subpart J or until 30 days from the date on which such application for modification or rescission may be treated as having been denied in all respects.

If made effective this Prohibition Order will be effective against any persons that, as of the date stated in the Notice of Effectiveness of this Order

own, lease, operate or control the above listed powerplant and against any successors-in-interest or assignees of such persons.

Any terms utilized in this Prohibition Order have the same meaning as such terms have in 10 CFR Part 303 and 305.

Any questions regarding this Prohibition Order should be directed to Mr. Robert L. Davies, Deputy Assistant Administrator for Fuels Conversion, Department of Energy, 2000 M Street NW., Washington, D.C. 20461, (202) 254-3910

Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C., December 26, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-36373 Filed 12-29-78; 8:45 am]

[6450-01-M]

Southeastern Power Administration

INTENT TO REVISE RATES AND CHARGES

AGENCY: Southeastern Power Administration (SEPA), Department of Energy.

ACTION: Proposed rate revision.

SUMMARY: SEPA proposes to revise existing schedules of rates and charges applicable to the sale of power from the Georgia-Alabama System of Projects effective October 1, 1979. An increase in rates and charges of approximately 13 percent is proposed for the four year period ending September 30, 1983. It is the purpose of this notice to (1) invite interested persons to submit written comments, and to (2) advise that a public comment forum will be held to permit interested persons the opportunity to present views, data or arguments in oral and/or written form regarding the proposed rates.

DATES: Written comments are due on or before April 6, 1979. The public comment forum will be held in Atlanta, Ga., on March 20, 1979.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Ga. 30635.

The public comment forum will be held beginning at 10:00 a.m., March 20, 1979, in a conference room at the Holiday Inn, 1380 Virginia Avenue, Atlanta, Ga. 30320.

FOR FURTHER INFORMATION CONTACT:

Mr. Curtis H. Bell, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Ga. 30635, 404-283-3261.

SUPPLEMENTARY INFORMATION: Revision in rates and changes is required to provide for increased operation and maintenance expenses at the nine projects, increased marketing costs and increased costs for additions and replacements.

It is proposed that revised rate schedules applicable to customers purchasing power from the Georgia-Alabama System of Projects contain the following monthly unit rates:

Proposed unit rates

Dependable Capacity/kw	$1.02
Delivered Energy/kwh (mills)	3.65
Energy at Projects/kwh (mills)	3.00
Dump & Excess Energy/kwh (mills)	2.25
Standby Capacity/kw	$0.28
Use Charge/day	$0.035

Copies of proposed rate schedules are available upon request and studies and other information used in developing the proposed rates are available for inspection and/or copying at the headquarters' offices of Southeastern Power Administration.

Additionally, a finding has been made that the proposed revised rates will not have a significant effect upon the quality of the human environment. The finding is likewise available for inspection and/or copying at SEPA headquarters.

The public comment forum will not be adjudicative in nature. A SEPA designated official will preside, SEPA representatives will give background information and explanations supporting the proposed revised rates and charges and answer questions relevant thereto, and those making oral presentations may be questioned by the presiding official and other participating SEPA representatives. Any further procedural rules needed for the proper conduct of the forum will be announced prior to the forum by the presiding official. Forum proceedings will be transcribed. Copies of the transcript may be purchased from the reporter. Written comments, written answers to questions, and any other documents submitted to SEPA and not included in the forum transcript will be available for inspection and/or copying at the SEPA headquarters' offices in Elberton, Ga., between the hours of 8 a.m. and 5 p.m., Monday through Friday. The forum transcript will likewise be available for inspection at the SEPA headquarters' offices.

Issued in Elberton, Ga., December 20, 1978.

HARRY F. WRIGHT,
Administrator.

[FR Doc. 78-36456 Filed 12-29-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1031-5]

POLYCHLORINATED BIPHENYLS (PCBs)

Toxic Substances Control Act; Policy for Implementation and Enforcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy for implementation and enforcement of Sections 6(e)(2) and 6(e)(3) of the Toxic Substances Control Act (TSCA).

SUMMARY: EPA will not implement or enforce the prohibitions on PCB manufacturing (including importation), processing, distribution in commerce or use established by Sections 6(e)(2) and 6(e)(3) of TSCA, 15 U.S.C. 2605(e)(2) and 2605(e)(3), until thirty days after the proposed regulation implementing Sections 6(e)(2) and 6(e)(3) of TSCA (43 FR 24802-17, June 7, 1978) is promulgated in final form. With respect to PCB manufacturing activities (including importation) for which petitions for exemptions have been filed pursuant to Section 6(e)(3)(B) of TSCA, enforcement will not occur until EPA has acted on the pertinent petition.

FOR FURTHER INFORMATION CONTACT:

Peter P. Principe, Office of Toxic Substances (TS-794), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone: (202) 755-0920.

SUPPLEMENTARY INFORMATION: Section 6(e)(2) of TSCA (Pub. L. 94-469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*) prohibits PCB manufacture (including importation), processing, distribution in commerce and use on any manner other than in a totally enclosed manner on or after January 1, 1978. However, Section 6(e)(2)(B) of TSCA allows the Agency to authorize continuation of PCB activities in other than a totally enclosed manner. The final regulation for Sections 6(e)(2) and 6(e)(3) will define key terms, such as "PCB" and "totally enclosed manner", which will affect the scope of the 6(e)(2) prohibitions. The regulation is also expected to authorize some PCB activities which are not totally enclosed pursuant to Section 6(e)(2)(B). Therefore, enforcement of Section 6(e)(2) is not considered appropriate by EPA until it has promul-

gated the fortheoming regulation. EPA announced on December 30, 1977 that it is not implementing and enforcing Section 6(e)(2) until 30 days after the regulation for that seetion is promulgated by the Ageney. See 42 FR 65264, Deeember 30, 1977.

Pursuant to Section 6(e)(3) of TSCA, all PCB manufacture (including importation) is prohibited effective January 1, 1979. However, under Section 6(e)(3)(B), persons affected by the Seetion 6(e)(3) PCB prohibitions have the right to petition EPA for exemptions from the prohibitions. On November 1, 1978, EPA published interim proceedures for the filing of petitions for exemptions to the prohibition on manufacturing. (43 FR 50905). Numerous exemption petitions have been received by the Ageney. The Agency does not consider enforeement of the manufacturing prohibition of Seetion 6(e)(3) against a particular activity appropriate (1) until EPA has issued the regulation for Section 6(e)(3), and (2) if a petition for an exemption for the particular activity has been filed, until EPA has ruled on that petition.

The Ageney expects to promulgate the regulation implementing Sections 6(e)(2) and 6(e)(3) of TSCA in the near future. To aecomplish that objective, EPA published its proposed regulation on June 7, 1978 (43 FR 24802). A comment period followed, and the Agency held ten days of informal hearings and one day of eross-examination of an Agency contraetor by hearing partieipants. The Agency also provided a reply comment period which elosed on October 10, 1978.

Although EPA expects to issue the TSCA §§ 6(e)(2) and 6(e)(3) regulation shortly, the regulation will not be ready for promulgation by January 1, 1979. Therefore, EPA will not implement and enforce Sections 6(e)(2) and 6(e)(3) until thirty days after promulgation of the regulation. Persons who have filed petitions for exemptions from the forthcoming Section 6(e)(3) prohibition on PCB manufacturing (ineluding importation) may continue the aetivity for which exemption is sought until EPA has acted on the particular pending petition. The question of whether petitions may be filed on a class basis is expected to be addressed in the forthcoming Notice of Proposed Rulemaking concerning the exemption petitions.

Dated: December 26, 1978.

JOHN P. DEKANY,
Acting Assistant Administrator for Toxic Substances.

[FR Doc. 78-36361 Filed 12-29-78; 8:45 am]

[6560-01-M]

[FRL 1032-4]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to Section 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: the 45 day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30 day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from December 18, 1978 through December 22, 1978; the date of submission of comments on draft EIS's as computed from December 29, 1978 is February 12, 1979.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: December 27, 1978.

THOMAS R. SHECKELLS,
Acting Director, Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

115KV Transmission Line, Troy to Mt. Vernon Mine Lincoln County, Montana, December 19: Proposed is the construction of a 115KV transmission line from Troy to Mt. Vernon Mine, Lincoln County, Montana. The proposed line would be approximately 17 miles long and, for the most part, would run north-south along the Lake Creek Valley. The applicant proposes to upgrade an existing 12.47KV line along part of the preferred route to 29.4KV and underbuild it on the proposed 115KV line. The total right-of-way width will vary from 30 ft. or 50 ft. depending on the pole structures used. (EIS ORDER No. 81346.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, SW., Washington, D.C. 20314, 202 693-6795.

Draft

Dickey-Lincoln School Lakes Project, several counties, Maine, New Hampshire, Vermont, December 18: Proposed is a multi-purpose project on the upper reaches of the St. John River, Aroostook County, Maine. The plan consists of 2 dams with associated reservoirs and hydroelectric generating facilities, 5 dikes and transmission facilities. The transmission facilities involve 365 miles of line extending from Maine, through New Hampshire, and into Vermont. The action also includes: (1) Construction of 3 substations and 12 microwave communication stations, and (2) expansion of 3 existing substations. This revised draft EIS replaces both a COE draft, No. 71083, dated 8/31/77 and a DOE draft, No. 80337, dated 4/6/78, on the Dickey-Lincoln Project. (NEW ENGLAND DIVISION.) (EIS ORDER No. 81339.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Final Supplement

Northwest Atlantic Mackerel, FMP 1979, December 22: This statement supplements a final EIS filed in May, 1978 and concerns the management unit for the plan, which is defined as all Atlantic mackerel under U.S. jurisdiction. The objectives of the plan are to: (1) increase domestic recreational and commercial catch; (2) maximize economy contribution; (3) maintain spawning stock size at or above 1978 size, (4) provide efficient allocation of capital and labor; and (5) minimize cost of development, research, management and enforcement. Comments made by: EPA, DOS, DOI, CGD, State agency and Japan organization, university and individuals (EPA Order No. 81364).

DEPARTMENT OF DEFENSE, AIR FORCE

Contact: Col. Luis F. Dominguez, Department of the Air Force, Room 5D431, Pentagon, Washington, D.C. 20330, (202) 697 7799.

Draft

Pave Paws Radar System Operation, Otis AFB, Barnstable County, Mass., December 22: Proposed is the operation of the Pave Paws Radar System located at Otis Air Force Base, Barnstable County, Massachusetts. Pave Paws is a new surveillance and tracking radar and its primary purpose is to detect, track and provide early warning of sea-launched ballistic missiles. Also, Pave Paws will be used to assist the USAF space track system to track objects orbiting the

earth. With Pave Paws in operation, older radar systems located in Maine and North Carolina will be retired. (EIS Order No. 81363).

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Peter Cook, Acting Director, Environmental Protection Agency, Office of Federal Activities, A-104, 401 M Street NW., WT, Washington, D.C. 20460, (202) 755-0780.

Draft

Terrebonne Parish WWT Facilities, Terrebonne County, La., December 20: Proposed is the issuance of a grant to design and construct a regional sewerage system in Terrebonne Parish, Louisiana. The plan includes: (1) expansion of the north treatment plant, (2) expansion of the south treatment plant, (3) construction of a holding basin system, (4) construction of a gravity system, and (5) construction of a package wastewater treatment plant. (EIS Order No. 81348).

Contact: Mr. George Pence, Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (212) 597-4533.

Final

North-Central Ocean Basin Wastewater Facility, Worcester County, Md., December 18: Proposed is a regional wastewater treatment facility for the north-central ocean basin area, Maryland. The project consists of four major components: Expansion of the Ocean City sewage treatment plant (STP) from a capacity of 12 to 20.5 mgd., construction of an 8.9 mgd.-capacity mainland STP near west Ocean City, installation of a regional interceptor system, and local wastewater treatment and disposal. The Ocean City facility would receive wastewater only from Ocean City. The service area of the west Ocean City facility would include west Ocean City, Berlin, the community of Ocean Pines and extensive areas along the major highways in the proposed service area. Comments made by: COE, DOI, HEW, State and local agencies, groups, individuals and businesses (EIS Order No. 81340).

FEDERAL MARITIME COMMISSION

Contact: Mr. Paul Gonzalez, Director, Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5835.

Draft

Combi Line Joint Service Agreements, Modification, Atlantic Ocean, Gulf of Mexico, Foreign, Dec. 18: Proposed is the approval, disapproval or modification of several agreements under Combi Line Joint Service Agreement. This agreement pertains to a joint service which operates lighter-aboardship (lash) vessels and non-lash vessels between U.S. South Atlantic and Gulf Ports, including places on tributary inland waterways, and ports in the United Kingdom/Erie and Continental Europe, also including places on tributary inland waterways. Under the proposed agreement the four existing vessels will be modified to increase their TEU capacity and a fifth vessel will be added. (EIS Order No. 81344.)

FMC NO. 81336

The following Draft EIS was not officially filed with the EPA, however, distribution was made and comments have been received by the FMC. Therefore, the EPA has waived the 45-day review period. The FMC has agreed to accept comments on the DEIS until the 15th of January 1979.

Modification of Euro-Pacific Joint Service Agreement, Pacific Ocean, Foreign: Dec. 18: Proposed is the approval of the continued applicability of agreement No. 9902-3 and either approval, disapproval or modification of Agreement Nos. 9902-4, 9902-5, 9902-6, and 9902-8 of the Euro-Pacific Joint Service Agreement. This agreement pertains to the transport of cargo between the U.S. Pacific Coast and ports in Europe, Mexico, the West Indies, and Central and South America through the use of six vessels. It has been proposed that six new vessels be used which would annually transport more cargo and use less fuel. (EIS Order No. 81336.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, (202) 755-6308.

Draft

Laurel West Planned Unit Development, Monterey County, Calif.: Dec. 20: Proposed is the issuance of HUD Home Mortgage Insurance for the Laurel West Planned Unit Development located in Salinas, Monterey County, California. Proposed development of the 135 acre subdivision will consist of 468 single family units, 302 multi-family units and a 22 acre commercial center. (EIS Order No. 81350.)

Huntington Park Phase II Development, Caddo Parish, La.: Dec. 22: The proposed action is the acceptance of the Huntington Park Phase II Subdivision for HUD-FHA Home Mortgage Insurance. The Huntington Park Subdivision, located in Shreveport, Caddo Parish, Louisiana is being constructed in three phases, phase I expected to be completed in 1981. Phase II, the subject of this EIS is currently in the planning and predevelopment stages and will provide 1,000 single family dwelling units, an elementary school, a junior high school, and 30 acres will be devoted to open space and Duck Lake. Phase III is planned for sometime in the future, possibly the early 1980's. (HUD-R06-EIS-78-48D.) (EIS Order No. 81369.)

Blackhawk Park Planned Unit Development, Eagan, Dakota County, Minn.: Dec. 20: Proposed is the issuance of HUD Home Mortgage Insurance for the Blackhawk Park Planned Unit Development located in Eagan, Dakota County, Minnesota. The insurance will apply to 542 acres of the 603 acre site which will be developed to provide a mixture of land uses and housing types. (HUD-R05-EIS-78-14-(D).) (EIS Order No. 81351.)

Final

Carrollwood Meadows Subdivision, Hillsborough County, Fla.: Dec. 18: The proposed action is the issuance of mortgage insurance to the U.S. Home of Florida, Incorporated for development of Carrollwood Meadows Subdivision in Hillsborough County, Florida. The proposed site is located in the northwest. The total acreage consists of 354.4 acres and is expected to consist of approximately 955 dwelling units, including a 17.7 acre school site and a 19.5 acre park site. (HUD-R04-EIS-77-19-D). Comments made by: DOI, EPA, GSA, FERC, DOC, COE, AHP, USDA, HUD, State and local agencies. (EIS Order No. 81342.)

Countryside Subdivision, League City, Galveston County, Tex.: Dec. 18: Proposed is the issuance of HUD Home Mortgage Insurance for the countryside subdivision located in the League City area of Galveston County, Texas. The project will involve the development of approximately 1,614 single family homes on a 570 acre tract. (HUD-R06-EIS-78-41F.) Comments made by: AHP, USDA, COE, DOI, DOT, EPA, State agencies groups (EIS Order No. 81337.)

Parkway West and Westgreen Subdivision, Harris County, Tex.: Dec. 20: The proposed action is the approval by HUD of Home Mortgage Insurance for Parkway West and Westgreen Subdivisions located in Harris County, Texas. The corporations of Mischer and Homecraft propose to build two subdivisions on a 595 tract of land composed primarily of single family homes with some multifamily and commercial reserves. The subdivisions, combined, will provide housing for approximately 6,000 people. (HUD-R06-EIS-78-39F.) Comments made by: EPA, COE, AHP, DOT, DOI, USDA, State and local agencies groups. (EIS Order No. 81349.)

Keegans Glen development, Harris County, Tex., December 21: The proposed action is for HUD to accept for home mortgage insurance purposes some 345 acres of land located in the southwest section of Harris County, Tex. It is proposed that this tract of land be developed into a subdivision composed primarily of single family residences, patio homes, multifamily, and commercial reserves. The expected population of the subdivision, known as Keegans Glen, will be around 9,500. (HUD-R06-EIS-78-42F). Comments made by: AHP, DOT, COE, USDA, EPA, DOI, State agencies. (EIS Order No. 81352.)

Westbranch subdivision, Harris County, Tex., December 22: The proposed action concerns the development of the Westbranch subdivision in Northwest Harris County, Tex. by the Affiliated Capital Corporation and Center Savings Association. These businesses propose the development of 412 acres of land and the construction of approximately 1,090 single family units. Application has been made for home mortgage insurance and requires approval of HUD. (HUD-R06-EIS-78-43F). Comments made by: AHP, DOT, EPA, USDA, DOI, State and local agencies, and group. (EIS Order No. 81367.)

SECTION 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

Burlington conventional urban renewal project, Alamance County, N.C., December 19: Proposed is a conventional urban renewal program for the city of Burlington, Alamance County, N.C. The project provides for the rehabilitation, clearing, and redevelopment of 50.3 acres of blighted, predominantly nonresidential land located in the central business district area of Burlington. Approximately 77 buildings will be acquired

and cleared, 58 buildings will be rehabilitated, and 13 will receive no treatment. (EIS Order No. 81343.)

Final

Johnston Street Extension, Rock Hill, York County, S.C., December 21: Proposed is the construction of the Johnston Street Extension, a 1 mile, five-lane road passing to the west of the downtown center of Rock Hall, S.C. and connecting to a 1.3 mile, three-lane road which connects with S.C. 274 at the Village Plaza Shopping Center. The project would also involve the clearance of about 25 acres in census tract 5, near the city post office, which would be redeveloped for commercial, wholesale, and light manufacturing uses. Adverse effects include short-term relocation of displaced residents and increased levels of air and noise pollution. Comments made by: EPA, USDA, COE, HEW, State and local agencies, and groups. (EIS Order No. 81358.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

BUREAU OF SPORTS FISHERIES AND WILDLIFE

Final

Federal aid, fish/wildlife restoration program, programmatic, December 22: This proposal describes the present and proposed Federal aid in fish and wildlife restoration programs, which are implemented by recipient States and Territories, and examines the environmental impacts of the program over the next 10 years. The program is administered by the U.S. Fish and Wildlife Service (FWS) as a national effort to strengthen the ability of the States to preserve, protect, and enhance fish and wildlife, and to increase the public enjoyment of these resources. (FES-78-38). Comments made by: AHP, USDA, COE, DOC, DOI, DOT, State and local agencies, corporations, groups, and individuals. (EIS Order No. 81365.)

STATE DEPARTMENT

Contact: Mr. Cameron Sanders, Office of Environmental Affairs, Department of State, Washington, D.C. 20520, 202-632-9169.

Final

Rio Grande Boundary Preservation Hudspeth and Presidio Counties, Texas, December 19: Proposed is a joint U.S.-Mexico project which would restore and provide for the preservation of the Rio Grande River as an international boundary in accordance with the 1970 boundary treaty. The proposed action includes restoration of about 86 miles of river channel and a narrow strip of grasslands along each side of 170 miles of river channel between Fort Quitman and Presido, Hudspeth and Presidio Counties, Texas. Four alternatives are considered which include: (1) No action, (2) monument the boundary, (3) restoration and preservation of the channel of the Rio Grande as the boundary, and (4) alternative 3 with wildlife enhancement. Comments made by: EPA, STAT, HUD, USDA, DOI, State and local agencies, groups, individuals and business. (EIS ORDER No. 81345.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Final

Walker County Airport, Jasper, Walker County, Alabama, December 21: Proposed is the construction of a new Walker County Airport with a basic transport runway which will allow jets to use the airport facility. Plan implementation calls for runways and taxiways, lighting systems, parking, a service hangar, and roads. Adverse impacts include construction-related pollution; increased levels of air and noise pollution; and possible water impacts. Comments made by: HEW, HUD, DOT, EPA, DOI, USDA, State and local agencies. (EIS ORDER No. 81355.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

Chattanooga Valley Road, GA-193, Walker County, Georgia, December 22: Proposed is the upgrading of GA-193 Chattanooga Valley Road, from near its intersection with Nickajack Road northerly to a point south of the Georgia-Tennessee State line located in Walker County, Georgia. The design of the improved facility will be a four lane urban type highway constructed on a variable width of 68-150 feet of right-of-way. Several alternative designs including a no-build option have been addressed. (FHWA-GA-78-05-D.) (EIS ORDER No. 81360.)

Clairmont Road extension De Kalb County, Georgia, December 22: The proposed project located in De Kalb County, Georgia, involves two alternate plans for the junction of Clairmont Road and Buford Highway to the intersection of Peachtree Industrial Boulevard and Clairmont Road. The facility would be a four lane urban section with grade separation. Alternate A is a no-build alternate for both alternates B and alternate B includes: (1) A portion of Clairmont Road to be widened to four lanes; and, or (2) a .25 mile four lane bridge constructed over New Peachtree Road, Peachtree Road, and southern Railroad terminating at Peachtree Industrial Boulevard. (FHWA-GA-78-04-D.) (EIS ORDER No. 81361.)

I-575, Canton to Nelson, Cherokee and Pickens Counties, Ga., December 22: Propose action is the construction of I-575 located in Cherokee and Pickens Counties, Georgia. The proposed project is a limited access interstate facility approximately 10 miles in lengths of four lane highway with 400 feet minimum right-of-way. The project will begin on GA-5 just northeast of Canton, within a previously approved portion of I-575 known as the Canton Bypass, and will extend northeasterly to its intersection with the Appalachian highway located west of Nelson. Several alternatives were considered. (FHWA-GA-EIS-78-06-D) (EIS Order No. 81368).

I-510, Gulf Outlet Bridge Interstate, Orleans County, La., December 21: Proposed is the construction of the Gulf Outlet Bridge Interstate to be known as I-510, located in Orleans Parish, Louisiana. The proposed action for moving people and freight is a 2.5 mile, four-lane controlled-access highway beginning at the north end of the existing Mississippi River Gulf Outlet Bridge and ending at I-10. A six-lane roadway is provided from I-10 to Lake Forest Boulevard to accommodate weaving movements. The alternatives consider no-build, mass transit, and location alternatives. (FHWA-LA-EIS-78-2-D) (EIS Order No. 81356).

WA-20, From Bear Creek to east boundary, Whatcom and Skagit Counties, Wash., December 18: Proposed is the reconstruction of a portion of WA-20 (also known as the North Cascade Highway and WA Forest Highway 32) from Bear Creek to East Boundary within the North Cascades National Park, Ross Lake National Recreation Area, Whatcom and Skagit Counties, Washington. The project length is approximately 28.65 miles with construction following the existing alignment with only minor exceptions. The highway will be a two-lane, paved road and used for predominately recreational travel. The DOT filed a draft EIS, No. 71005, Dated August 17, 1977, which is replaced by this draft statement. (FHWA-WAFP-EIS-77-02-D) (EIS Order No. 81341).

WA-151, Chelan Station to Hugo, Chelan and Douglas Counties, Wash., December 21: Proposed are improvements to and the reconstruction of WA-151 with Chelan and Douglas Counties, Washington. The reconstruction project would begin at the South pavement seat of Beebe Bridge and follow the river for 5.3 miles to a connection with existing WA-97. Improvement would include: (1) The connection at Chelan Station; (2) Installation of signals; (3) Auxiliary stop lanes at railroad crossings; and (4) Widening of the existing roadway above Chelan Station. Alternatives considered are: (1) Location; (2) Improvement of existing facility; (3) Mass Transit; (4) No action; (5) Postponing action. (FHWA-WA-EIS-78-05-D) (EIS Order No. 81357).

West Seattle Bridge, Spokane Street corridor, King County, Wash., December 22: The proposed project located in Seattle, King County, Washington is to construct a replacement bridge system for the West Seattle Corridor. The project area would extend from the vicinity of the Alaskan Way Viaduct across Harbor Island and the east and west waterways of the Duwamish River and connect with the existing West Seattle Freeway near Puget Ridge. Depending upon the alignment of the alternative, construction will involve work along a 3,500 to 5,700-foot section of elevated and at-grade roadway. Five alternatives screened from an original 19 will be considered for a final selection. (FHWA-WA-EIS-78-06-D) (EIS Order No. 81366).

Final

DE-4, DE-2 to DE-7, New Castle County, Del., December 21: Proposed is the reconstruction and/or relocation of approximately 8.5 miles or Delaware Route 4 located in northern New Castle County, Delaware. The proposed improvements consist of a 4-lane divided road with paved shoulders and a protected bikeway/sidewalk system. Design speed will be 50 MPH. Project implementation has been divided into four sections, and four alternatives are offered. (FHWA-DE-EIS-77-01-F) Comments made by: AHP, DOI, HUD, EPA, USDA, DRBC, State and local agencies (EIS Order No. 81353).

U.S. Highway 2, Minot East to Surrey, Ward County, N. Dak., December 19: The

proposed project is located on U.S. Highway 2 from approximately 1 mile east of its junction with U.S. Highway 83 to approximately 1 mile east of Surrey, North Dakota. The project is approximately 9 miles in length, and consists of acquiring right-of-way and constructing a 4-lane facility utilizing the existing roadway as part of the 4-lane facility. Interchanges will be constructed at the junction of U.S. Highways 2 and 52 and at the intersection of the U.S. Highway 2 bypass and business loop in East Minot. Three Bridges will also be required. (FHWA-ND-EIS-76-02-F) Comments made by: DOI, USDA, HUD, EPA, HEW, COE, State and local agencies (EIS Order No. 81347).

Loop 1604, I-10 to Babcock Road, Bexar County, Tex., December 21: Proposed is the improvement of F.M. 1604 in the vicinity of the University of Texas at San Antonio by stage construction to a freeway between I.H. 10 in northwest San Antonio and Babcock Road about 2 miles to the West. Interstate Highway 10 would have its frontage roads changed to one way facilities with ramp adjustments and relocations to meet the demands of the new traffic generator, the university. A three level cloverleaf interchange would be built in stages between F.M. 1604 and I.H. 10. Adverse effects include the potential threat to pollution of the Edwards Aquifer Recharge Zone. (Region 6) (FHWA-TEX-EIS-77-02-F) Comments made by: USDA, DOI, COE, EPA, State and local agencies, groups and individuals (EIS Order No. 81359).

U.S. 60 Bridge over Big Sandy River, West Virginia and Kentucky, December 21: The proposed project is the replacement of the U.S. 60 bridge over the Big Sandy River between Catlettsburg, Kentucky, and Kenova, West Virginia. The preferred alternate will relocate 8 families and 1 business in Kentucky and 2 businesses in West Virginia. This alignment will have section 4(F) involvement with Dreamland Park. Eight alternatives including the no-build option were considered. Adoption of the no-build option was set aside due to operational and structural inadequacies of the existing structure. (FHWA-KY-EIS-75-01-F) (FHWA—WV—EIS-75-01-F). Comments made by: COE, USDA, DOT, USCG, DOI, EPA, HEW, State and local agencies, individuals and businesses. (EIS Order No. 81354).

U.S. COAST GUARD

Draft

Clearwater River Bridge, Nez Perce County, Idaho, December 18: proposed is the replacement or modification of the existing Clearwater Memorial Bridge across the Clearwater River in the city of Lewiston, Nez Perce County, Idaho. The purpose of the project is to provide a highway crossing of the river which will allow the river to be used for navigation. The USCG requires a navigable opening with 230 feet minimum clearance horizontally and 60 feet minimum clearance vertically for any structure crossing the river at this location. The alternatives include: (1) 5 bridge alternatives, (2) no build, and (3) interchange alternatives. (EIS Order No. 81338)

VETERANS ADMINISTRATION

Contact: (For housing programs). Mr. Lyman T. Miller, Assistant Director for Construction and Valuation, Veterans' Administration, 810 Vermont Avenue, Washington, D.C. 20420, (202) 389-2691. (Medicine and surgery) Mr. Jon E. Baer, Chief, Environmental Planning Division, Veterans' Administration, Washington, D.C., (202)389-3316.

Draft

National Cemetery, Indiantown Gap, Lebanon County, Pa., December 22: This action proposes the construction of a 675-acre National Cemetery to be located on land on the south perimeter of the Fort Indiantown Gap Military Reservation in Lebanon County, 22 miles northeast of Harrisburg, Pennsylvania. The proposed development will include space for approximately 313,000 gravesites, an administration building, maintenance complex, memorial center, commital service buildings and other associated cemetery facilities. The proposed National Cemetery will be an integral part of the National Cemetery System and will provide burial benefits for approximately 1,500,000 veterans living within the service range of the facility. (EIS Order No. 81362)

[FR Doc. 78-36428 Filed 12-29-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

FM BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

Adopted: December 15, 1978.

Released: December 27, 1978.

CUT-OFF DATE: January 30, 1979.

Notice is hereby given that the FM broadcast application listed below will be considered as ready and available for processing on January 31, 1979. Since the listed application is timely filed and mutually exclusive with the earlier-filed and cut-off application of Liberty Broadcasting Co., Inc. (File No. BPH-10,493), no other applications which involve conflict with these applications may be filed. Rather, the purpose of this Notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amendments as a matter of right under § 1.522(a)(2) of the Rules and pleadings to specify issues pursuant to § 1.584.

BPH-10,665, NEW, Hinesville, Georgia Hinesville Broadcasting Corporation REQ: 92.1 MHz, 221; 3 kW; 300 feet

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-36369 Filed 12-29-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 12, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done:

AGREEMENT NO.: T-3547-1.

FILING PARTY: C.P. Lambos, Esquire, Lorenz, Finn, Giardino & Lambos, The Cunard Building, 25 Broadway, New York, New York 10004.

SUMMARY: Agreement No. T-3547-1 modifies the basic Job Security Program (JSP) Agreement between (a) the International Longshoremen's Association, AFL-CIO, its Atlantic Coast district, its South Atlantic and Gulf district, and its affiliated Deepsea local unions in each port from Maine to Texas (ILA); and (b) those carriers who operate ships at Atlantic and Gulf ports and who utilize or contract for ILA labor to perform longshore and related work in connection with the deepsea longshore operations of such ships (Carriers). The purpose of Agreement No. T-3547-1 is to revise the assessment ratio to provide that break-bulk tonnage shall pay 35 percent of the assessment rate paid by automated tonnage and bulk tonnage shall pay five percent of the assessment rate paid by automated tonnage.

Dated: December 26, 1978.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-36362 Filed 12-29-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 22, 1979, in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

AGREEMENT NO. 93-19.

FILING PARTY: David C. Nolan, Graham and James, One Maritime Plaza, San Francisco, California 94111.

SUMMARY: Agreement No. 93-19 modifies the basic agreement of the North Europe-U.S. Pacific Coast Freight Conference to conform to the requirements of General Order 7, served September 14, 1978, and to require the filing of a faithful performance guarantee of $30,000.

AGREEMENT NO. 6400-19.

FILING PARTY: F. Conger Fawcett, Esquire, Graham and James, One Maritime Plaza, San Francisco, California 94111.

SUMMARY: Agreement No. 6400-19, a completely restated version of the Pacific Coast River Plate Brazil Conference, contains the following modifications: (1) Self-policing amendments in accordance with General Order 7, served September 14, 1978, (2) an amendment to provide for the establishment of financial security for Conference obligations (self-policing and otherwise); and (3) limits joint service to a single membership.

AGREEMENT NO. 8660-10.

FILING PARTY: F. Conger Fawcett, Esquire, Graham and James, One Maritime Plaza, San Francisco, California 94111.

SUMMARY: Agreement No. 8660-10 restates the entire agreement of the Latin America/Pacific Coast Steamship Conference incorporating all past amendments to the basic agreement. It also modifies the basic agreement (1) to comply with the Commission's revised General Order 7, served September 14, 1978, (2) to require the filing of a financial security guarantee in the amount of $50,000, (3) to prohibit divulgence of conference deliberations, (4) to reduce advance notice of conference meetings from 10 days to 5 days, and (5) to restrict members of a joint service to a single membership.

AGREEMENT NO. 8770-8.

FILING PARTY: Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

SUMMARY: Agreement No. 8770-8 modifies the basic agreement of the U.K./U.S.A. Gulf Westbound Rate Agreement to conform to the requirements of General Order 7, revised.

AGREEMENT NO. 9988-9.

FILING PARTY: Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

SUMMARY: Agreement No. 9988-9 modifies the basic agreement of the Continental/U.S. Gulf Freight Association to conform to the requirements of General Order 7, revised.

AGREEMENT NO. T-3748.

FILING PARTY: James N. Crumbley, General Manager, Maritime Terminals, Inc., 7737 Hampton Boulevard, Norfolk, Virginia 23505.

SUMMARY: Agreement No. T-3748, between Maritime Terminals, Inc., (MTI) and Barber Lines (Barber), is a two-year preferential berthing agreement whereby MTI grants to Barber first priority use of MTI's North Berth for Barber's ro/ro and other vessels. Barber agrees to place a minimum of thirty-six vessels per year at Norfolk International Terminals and for each vessel call less than the guaranteed number, Barber shall pay MTI the sum of $2,000.00. Barber shall be responsible for payment of all tariff charges applicable to vessels under the Norfolk Marine Terminal Association Tariff No. I-E. MTI agrees to dredge the North Berth and construct a platform to accommodate a roll on/roll off ramp for adequate berthing of Barber's vessels.

AGREEMENT NO. T-3754.

FILING PARTY: H. H. Wittren, Manager, Waterfront Real Estate, Port of Seattle, P. O. Box 1209, Seattle, Washington 98111.

SUMMARY: Agreement No. T-3754, between the Port of Seattle (Port) and Seacon Terminals, Inc. (Seacon), provides for Seacon's month-to-month lease of office space at Terminal 46, Seattle, Washington. As compensation, Seacon shall pay Port rental totalling $1,844.80 per month. This agreement supersedes FMC Agreement No. T-3052, between the Port and Kerr Steamship Company, Inc., approved by the Commission February 28, 1975.

AGREEMENT NO. T-3756.

FILING PARTY: Einar C. Petersen, Deputy City Attorney, The City Attorney of Long Beach, City Hall, 333 West Ocean Boulevard, Long Beach, California 90802.

SUMMARY: Agreement No. T-3756, between the City of Long Beach and Seamount, Inc. (Seamount), provides for Seamount's one-year lease (with renewal option's) of a portion of the Queen Mary Plaza Administration Building on Pier J, Long Beach, California, to be used for offices. As compensation, Seamount shall pay Port $850.00 per month.

Dated: December 27, 1978.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-36418 Filed 12-29-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 1586R]

DENYO TRANSPORTATION SERVICES, INC.

Order of Revocation

The bond issued in favor of Denyo Transportation Services, P.O. Box 389-D, Park Ridge, Illinois 60068, FMC No. 1586R was cancelled effective October 19, 1978.

By letter dated September 28, 1978, Denyo Transportation Services, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1586R would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Denyo Transportation Services, Inc., has failed to furnish a valid surety bond.

By virture of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) section 5.01(d) dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1586R be and is hereby revoked effective October 19, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1586R issued to Denyo Transportation Services, Inc., be returned to the Commission for cancellation.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Denyo Transportation Services, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-36417 Filed 12-29-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

FENNIMORE BANCORPORATION, INC.

Formation of Bank Holding Company

Fennimore Bancorporation, Inc., Fennimore, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First State Bank of Fennimore, Fennimore, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 21, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 21, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-36378 Filed 12-29-78; 8:45 am]

[6210-01-M]

FIRST BANCORP OF TONKAWA, INC.

Formation of Bank Holding Company

First Bancorp of Tonkawa, Inc., Tonkawa, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 87 per cent or more of the voting shares of The First National Bank in Tonkawa, Tonkawa, Oklahoma. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 16, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 26, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-36379 Filed 12-29-78; 8:45 am]

[6210-01-M]

MANUFACTURERS HANOVER CORP.

Proposed Acquisition of Manufacturers Hanover Commercial Corporation (Del.)

Manufacturers Hanover Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Manufacturers Hanover Commercial Corporation (Del.), Los Angeles, California. Subsequently, the proposed subsidiary would acquire a portion of the assets of Manufacturers Hanover Commercial Corporation (New York), New York, New York. Notice of the application was published on October 30, 1978, in newspapers of general circulation in each of the communities to be served by the offices of Manufacturers Hanover Commercial Corporation (Del.).

Applicant states that the proposed subsidiary would engage in the activities of making or acquiring, for its own account or the account of others, loans and other extensions of credit such as would be made by a factoring and commercial finance company; and arranging or servicing such loans and extensions of credit for any person. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 25, 1979.

Board of Governors of the Federal Reserve System, December 26, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-36380 Filed 12-29-78; 8:45 am]

[6210-01-M]

T.N.B. FINANCIAL CORP.

Acquisition of Bank

T.N.B. Financial Corp., Springfield, Massachusetts, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Pioneer Bancorp, Greenfield, Massachusetts. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 22, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dis-

pute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 22, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-36381 Filed 12-29-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 76N-0507]

FD&C RED NO. 40 WORKING GROUP

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces that the Working Group on FD&C Red No. 40 will meet primarily to discuss appropriate methods of statistical analysis for evaluating the time to onset of tumors that occurred during the mouse feeding studies of FD&C Red No. 40. The morning session on January 17, 1979 will be open to the public for the presentation by interested persons of data, information, and views related to statistical methodology.

DATES: January 17 and 18, 1979, beginning at 9:30 a.m.

ADDRESS: The meeting will be held in Rm. 1409 of the Food and Drug Administration Building, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Notice of the availability of the Second Interim Report of the Working Group on FD&C Red No. 40 appeared in the FEDERAL REGISTER of April 28, 1978 (43 FR 18258). In this report the Working Group concluded that the available data do not demonstrate FD&C Red No. 40 to be carcinogenic, but that a final determination should await completion of an additional and ongoing mouse feeding study. This determination was made on the basis of statistical analyses which were discussed in detail in the report.

A comment was received concerning the appropriateness of the statistical methods used by the Working Group. In response to this comment, the Commissioner of Food and Drugs in July 1978, asked three prominent statisticians, Dr. Bernard G. Greenberg, Dean of the School of Public Health, University of North Carolina, Jerome Cornfield, Professor of Statistics, George Washington University, and Dr. Frederick Mosteller, Chairman of the Department of Statistics, Harvard University, to individually review the statistical analyses used by the Working Group and the commenting party.

These statisticians have raised questions concerning the suitability of the statistical methods used by the Working Group to detect and evaluate the significance of early tumor formation. However, each suggested a different method.

The Working Group on FD&C Red No. 40 will meet at 9:30 a.m. on January 17 and 18, 1979, in Room 1409, Food and Drug Administration Building, 200 C St. SW., Washington, DC 20204, to determine the statistical method(s) most appropriate to detect and evaluate early tumor formation.

Although the Working Group is an internal government body, and not an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. Appendix 1), the Commissioner believes that it would be beneficial to provide for public contributions to the Working Group's review. Accordingly, the morning session on January 17, 1979 will be open to the public beginning at 9:30 a.m. At the commencement of the session, representatives from the Bureau of Foods will describe the issues involved. The three consulting statisticians will then present their findings. The balance of the morning session will be reserved for the presentation by interested persons of data, information, and views related to the statistical methodology to be used in analyzing time-to-tumor data from the two mouse feeding studies on FD&C Red No. 40. The Working Group, invited Federal participants, and consultants will then meet in closed session to discuss and resolve the issues related to the statistical methodology and to develop their report to the Commissioner recommending the statistical method(s) deemed most appropriate for regulatory decisions.

Persons who desire to make presentations should notify Dr. Albert C. Kolbye, Jr., Bureau of Foods, 202-245-1301, by the close of business January 12, 1979, and indicate the amount of time needed for their presentations. Persons who are unable to appear in person on January 17 and 18, 1979, may submit data, information, and views in writing to Dr. Albert C. Kolbye, Jr., Bureau of Foods (HFF-100), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, by the close of business January 12, 1979.

Dated: December 26, 1978.

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

[FR Doc. 78-36407 Filed 12-29-78; 8:45 am]

[4110-02-M]

Office of Education

GRADUATE AND UNDERGRADUATE INTERNATIONAL STUDIES PROGRAMS

Closing Date for Transmittal of Applications for Fiscal Year 1979

Applications are invited for new projects under the Graduate and Undergraduate International Studies Programs.

Authority for these programs is contained in section 601(a) of the National Defense Education Act of 1958, as amended.

(20 U.S.C. 511(a))

These programs issue awards to institutions of higher education; consortia applications are eligible but must be submitted by a member institution.

The purpose of the awards is to assist institutions to initiate or strengthen international and global components in their instructional program.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: Applications for awards must be mailed (postmarked) or hand delivered by February 20, 1979.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.435B (Undergraduate) or 13.435C (Graduate), Washington, D.C. 20202.

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted unless they have been date stamped by the U.S. Postal Service. (NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

APPLICATIONS DELIVERED BY HAND: An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional

Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

PROGRAM INFORMATION: Specific information about these programs is contained in the regulations and guidelines (published in the FEDERAL REGISTER on May 23, 1977, 45 CFR Part 146) and in the program information and application package.

AVAILABLE FUNDS: Approximately $1,325,000 is expected to be available for initial grants under the Graduate and Undergraduate International Studies Programs for Fiscal Year 1979. Initial grant refers to the first year of a 2-year commitment, continuation of which for the second year depends upon the availability of funds and satisfactory performance.

Under the Graduate International Studies Program it is estimated that seven initial grants will be awarded at an amount up to $45,000. Under the Undergraduate International Studies Program it is estimated that approximately twenty initial grants will be awarded at an average of $40,000. Under either the Graduate or the Undergraduate International Studies Programs, it is estimated that three initial consortium grants will be awarded at an amount up to $70,000.

Grants for either Graduate or Undergraduate Programs will not exceed $45,000 annually for a single institution or $70,000 for a consortium.

These estimates do not bind the U.S. Office of Education except as may be required by the applicable statute and regulations.

APPLICATION FORMS: Application forms and program packages are expected to be ready for mailing by December 22, 1978. They may be obtained by writing to the International Studies Branch of the U.S. Office of Education (Room 3671, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

APPLICABLE REGULATIONS: The regulations applicable to this program are: (a) Office of Education General Provisions Regulations (45 CFR Parts 100 and 100a), and

(b) Regulations governing the Graduate and Undergraduate International Studies Programs (45 CFR Part 146).

FURTHER INFORMATION: For further information, contact Dr. Ann I. Schneider (for Graduate International Studies Programs) or Mrs. Susanna Easton (for Undergraduate International Studies Programs), International Studies Branch, DIE, U.S. Office of Education (Room 3671, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245-9588.

(20 U.S.C. 511(a))

(Catalog of Federal Domestic Assistance Number 13.435B; Graduate and Undergraduate International Studies Programs)

Dated: December 22, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-36387 Filed 12-29-78; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

RECEIPT OF PETITION FOR FEDERAL ACKNOWLEDGMENT OF EXISTENCE AS INDIAN TRIBES

DECEMBER 26, 1978.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 DM 2.

Pursuant to 25 CFR 54.8(b), notice is hereby given that prior to October 2, 1978, the effective date of 25 CFR Part 54, the following groups filed petitions for acknowledgment by the Secretary of the Interior that they exist as Indian tribes.

Section 54.8(b) of the regulations gives each petitioning group the opportunity to review, revise or supplement its petition. Therefore, the original petition, with a copy of the guidelines, will be returned to each petitioning group. The return of the petition will not affect the priority established by the initial filing. This is a notice of receipt of petition and does not constitute notice that the petitions listed are under active consideration. Notice of active consideration will be by mail to petitioners and other interested parties at the appropriate time.

Antelope Valley Indian Community, c/o Mr. Wesley Dick, Post Office Box 35, Coleville, California 96107, 07/09/76.

Cherokee Indians of Georgia, Inc., c/o Mr. J. C. White Cloud Reynolds, 1516 14th Avenue, Columbus, Georgia 31901, 08/08/77.

Choctaw-Apache Indians, c/o Mr. Raymond L. Ebarb, Route 1, Box 168, Noble, Louisiana 71462, 07/02/78.

Clifton-Choctaw Indians, c/o Mr. Amos Tyler, Route 1, Box 51A, Mora, Louisiana 71455, 03/22/78.

Coos Tribe of Indians, c/o Mr. Russell Anderson, Box 3506, Coos Bay, Oregon 97420, 10/01/75.

Cowlitz Tribe of Indians (Lewis County), c/o Mr. Joseph E. Cloquet, 2815 Dale Lane East, Tacoma, Washington 98424, 09/17/75.

Creek Nation East of the Mississippi (Poarch, Alabama), c/o Mr. Thomas N. Tureen, Native American Rights Fund, Post Office Box 388, Calais, Maine 04106, 05/15/75.

Creeks East of the Mississippi, c/o Mr. John Wesley Thomley, Post Office Box 123, Molino, Floida 32577, 03/21/73.

Delaware-Muncie, c/o Mr. Clio Caleb Church, Box 274, Pomona, Kansas 66076, 06/19/78.

Duwamish Indian Tribe, 15614 first Avenue S., Seattle, Washington 98148, 06/07/77.

Eastern Pequot Indians of Connecticut, c/o Mr. Roy Sebastian, Lantern Hill Reservation, RFD 7, Box 941, Ledyard, Connecticut 06339, 06/28/78.

Faircloth Indians, c/o Mr. Jerry Lee Faircloth, Sr., Post Office Box 161, Atlantic, North Carolina 28511, 08/05/78.

Florida Tribe of Eastern Creek Indians, c/o Mr. James E. Waite, Post Office Box 462, Pensacola, Florida 32592, 06/02/78.

Four Hole Indian Organization—Edisto Tribal Council, c/o Mr. Robert Davidson, Route 3, Box 42F, Ridgeville, South Carolina 29472, 12/30/76.

Grand Traverse Band of Ottawa-Chippewas, c/o Eleesha M. Pastor, Michigan Indian Legal Services, 3041 N. Garfield Road, Traverse City, Michigan 49684, 05/05/35.

Hatteras Tuscarora Indians, c/o Mr. Vermon Locklear, Route 3, Box 47A, Maxton, North Carolina 28364, 06/24/78.

Huron Potawatomi Band, Mr. David Mackety, Route 1, Fulton, Michigan 48505, 03/11/72.

Ione Band, c/o Mrs. Bernice Villa, Route 1, Box 191, Ione, California 95640, 1916.

Jamestown Clallam Tribe of Indians, Route 5, Box 687, Port Angeles, Washington 98392, 01/22/76.

Lac Vieux Desert, c/o Mr. John McGeshick, Post Office Box 118, Watersmeet, Michigan 49969, 06/01/71.

Little Shell Band of North Dakota, c/o Ms. Mary Z. Wilson, Dunseith, North Dakota 58329, 11/11/75.

Little Shell Tribe of Chippewa Indians of Montana, c/o Mr. George Plummer, Star Route, Post Office Box 21, Dodson, Montana 59524, 04/28/78.

Lower Muskogee Creek Tribe East of the Mississippi, Inc., c/o Mr. Neal McCormick, Route 1, Tama Reservation, Cairo, Georgia 31728, 02/02/72.

Mashpee Wampanoag, Route 130 Mashpee, Massachusetts 02649, 07/07/75.

Mohegan Indian Group, Mr. John E. Hamilton, c/o Mr. Jerome M. Griner, Attorney and Counsellor at Law, 47 North Main Street, West Hartford, Connecticut 06107, 07/12/78.

Mono Lake Indian Community, c/o Mr. William J. Anderson, Post Office Box 237, Lee Vining, California 93541, 07/09/76.

Munsee Thames River Delaware, c/o Mr. William Lee Little Soldier, Post Office Box 587, Manitou Springs, Colorado 80911, 07/22/77.

Nanticoke Indian Association, c/o Mr. Kenneth S. Clark, Route 1, Box 107A, Millsboro, Delaware 19966, 08/08/78.

Piscataway Indians, c/o Mr. J. Hugh Proctor, General Delivery, Box 946, Waldorf, Maryland 20601, 02/22/78.

Plumas County Indians, Inc., c/o Mr. John R. Lewis, Post Office Box 833, 206 Main Street, Greenville, California 95947, 01/06/77.

Principal Creek Indian Nation, East of the Mississippi, c/o Mr. Arthur R. Turner, Post Office Box 201, Florala, Alabama 36442, 11/09/71.
Samish Tribe of Indians, c/o Mr. Robert Wooten, Samish Tribal Office, Post Office Box 217, Anacortes, Washington 98221, 06/13/75.
San Juan de Guadalupe Tiwa (Tortugas, New Mexico), c/o Diamond, Rash, Leslie & Schwartz, 1208 Southwest National Bank, El Paso, Texas 79901, 11/03/76.
Shinnecock Tribe, Post Office Box 59, Southampton, New York 11968, 02/08/78.
Snohomish Tribe of Indians, c/o Mr. Alfred Cooper, Snohomish Corresponding Secretary, 5101 27th Avenue West, Everett, Washington 98203, 03/03/75.
Snoqualmie Indian Tribe, c/o Ms. Helen C. Harvey, 20204 117th S.E., Kent, Washington 98031, 02/05/76.
Southeastern Cherokee Confederacy, Inc., c/o Mr. W. R. Jackson, Route 1, Box 111, Leesburg, Georgia 31763, 03/09/87.
Steilacoom Tribe, c/o Ms. Joan K. Marshall, 2212 A. Street, Tacoma, Washington 98402, 08/28/74.
Tsimshian Tribal Council, 1067 Woodland Avenue, Ketchikan, Alaska 99901, 07/02/78.
Tunica-Biloxi indian Tribe (Marksville, Louisiana), c/o Native American Rights Fund, 1712 N Street, N.W., Second Floor, Washington, D.C. 20036, 09/07/1826.

Petitions may be examined in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

RICK LAVIS,
Acting Assistant Secretary, Indian Affairs.

[FR Doc. 78-36364 Filed 12-29-78; 8:45 am]

[4310-84-M]

Bureau of Land Management

ARIZONA STRIP DISTRICT ADVISORY BOARD

Meeting

Notice is hereby given that the Arizona Strip District Grazing Advisory Board will hold its second annual meeting at 10:00 a.m. on February 15, 1979, at the Four Seasons Motor Inn and Convention Center, Suite No. 8, 747 East St. George Boulevard, St. George, Utah.

The purpose of the meeting is to discuss District Allotment Management Plans, the Rangeland Improvement Act; and recommend the distribution of Range Betterment Funds in Mohave and Coconino Counties.

The meeting will be open to the public. Any interested persons wishing to make a presentation to the board, or submit a written statement should contact the official listed below at least five (5) days prior to the meeting.

Further information concerning this meeting may be obtained from the District Manager, Bureau of Land Management, 196 East Tabernacle, St. George, Utah 84770 801-673-3545.

MARVIN H. WOODBURY,
Acting District Manager.

DECEMBER 29, 1978.

[FR Doc. 78-36413 Filed 12-29-78; 8:45 am]

[4310-84-M]

CALIFORNIA DESERT CONSERVATION AREA ADVISORY COMMITTEE

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that the California Desert Conservation Area Advisory Committee to the Bureau of Land Management, U.S. Department of the Interior, will meet February 1 and 2, 1979, in San Bernardino, California. The meeting Thursday evening, February 1 will be a business session devoted to election of officers for 1979, approval of minutes of the previous meeting, reports of subcommittees, and the report of the Bureau of Land Management State Director. The meeting Friday, February 2, will include public forums on potential major land exchanges in the California Desert Conservation Area, including consideration of major land holdings of the State of California and the Southern Pacific Land Company; wilderness values on public lands of the desert and the significance of desert wilderness; and the study phase of the Bureau of Land Management's wilderness review of the California Desert Conservation Area.

The meetings will be held at the San Bernardino Convention Center, 303 North E Street, San Bernardino, California 92418 from 7:30 p.m. to 10 p.m. on Thursday, February 1, 1979, and beginning at 8 a.m., Friday, February 2, 1979. All meetings of the advisory committee are open to the public and time will be made available for brief oral statements from the public on topics under discussion at the conclusion of the public forums and a discussion between the panelists and members of the advisory committee.

Further information, including the meeting agenda, may be obtained from the Chairman, California Desert Conservation Area Advisory Committee, c/o Desert Planning Staff, Bureau of Land Management, 3610 Central Avenue, Suite 402, Riverside, California 92506.

Dated: December 20, 1978.

ED HASTEY,
State Director.

[FR Doc. 78-36410 Filed 12-29-78; 8:45 am]

[4310-84-M]

[NM 35479, NM 35480, NM 35512, NM 35513]

NEW MEXICO

Applications

DECEMBER 22, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for five 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 7 W.,
Sec. 34, SE¼NW¼, NE¼SW¼ and NW¼SE¼.
T. 30 N., R. 10 W.,
Sec. 3, lot 15.
T. 31 N., R. 10 W.,
Sec. 11, lots 5 and 7;
Sec. 14, lots 2 and 6.

These pipelines will convey natural gas across 0.595 of a mile of public lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36411 Filed 12-29-78; 8:45 am]

[4310-84-M]

[NM 35504]

NEW MEXICO

Application

DECEMBER 22, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Transwestern Pipeline Company has applied for one 4-inch natural gas pipeline and appurtenant facilities right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 18 S., R. 25 E.,
Sec. 7, lot 3.

This pipeline will convey natural gas across 0.04 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36412 Filed 12-29-78; 8:45 am]

[1505-01-M]

NORTH ATLANTIC OUTER CONTINENTAL SHELF (TENTATIVE SALE NO. 52)

Call for Nominations of and Comments on Areas for Oil and Gas Leasing

Correction

In FR Doc. 78-35746, appearing at page 60237 in the issue of Tuesday, December 26, 1978, between the words "and" and "Land" in the 16th line of the second full paragraph, column three, page 60237, insert the following: "* * * to the manager, New York Outer Continental Shelf Office, Bureau of * * *"

[4310-84-M]

PUBLIC LANDS IN LYON COUNTY, NEV.

[N-20398]

Realty Action—Non-Competitive Sale

JANUARY 2, 1979.

The following described lands have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

T. 13 N., R. 25 E., Mt. Diablo Mer.
Sec. 17: Lots 5, 6, 8, 9, 10, 11, 12, SW¼SW¼NE¼, E½SW¼SE¼NW¼, SE¼SE¼NW¼, N½NE¼SW¼, E½SW¼NE¼SW¼, SE¼NE¼SW¼, NW¼NE¼SE¼SW¼, E½E½SE¼SW¼, W½W½W½SE¼, E½NW¼NW¼SE¼
Sec. 20: W½NE¼NW¼NE¼, NW¼NW¼NE¼, E½NE¼NE¼NW¼
Containing 144.12 acres.

The above described lands are being offered as a direct sale to The Anaconda Company at the appraised fair market value. The sale of the lands to The Anaconda Company will not be held until 60 days after the date of this notice.

The sale is consistent with anticipated Bureau of Land Management planning for the lands involved and has been discussed with Lyon County and Nevada state government officials. The townsite of Weed Heights is situated on the subject lands. Since all improvements in Weed Heights were made by The Anaconda Company, it is appropriate to make a direct sale to the company.

The alternative of public auction would not only increase the real property costs, but could result in a successful high bidder, other than The Anaconda Company, moving the housing improvements to another location. The Anaconda Company, in coordination with local government plans, will not remove the housing improvements. The Lyon County officials stated that the already established housing and associated buildings constitute a strong industrial relocation incentive for the area.

Detailed information concerning the sale, including the Land Report and Environmental Assessment Record, is available for review at the Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701.

On or before February 1, 1979, interested parties may submit comments to the Secretary of the Interior, LLM, 320, Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become the final determination of the Department of the Interior.

THOMAS J. OWEN,
Carson City District Manager.

[FR Doc. 78-35462 Filed 12-29-78; 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 December 22, 1978. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by January 12, 1979.

WILLIAM J. MURTAGH,
Keeper of the National Register.

CALIFORNIA

Alameda County

Livermore vicinity, *Ravenswood*, S of Livermore on Arroyo Rd.

San Bernardino County

Chino, *Moyse Building*, 13150 7th St.

FLORIDA

Leon County

Tallahassee, *Old City Waterworks*, E. Gaines and S. Gadsden Sts.
Tallahassee vicinity, *Lewis House*, N of Tallahassee at 3117 Okeeheepkee Rd.

LOUISIANA

Orleans Parish

New Orleans, *Central City Historic District*, roughly bounded by Ponchatrain Expwy., S. Claiborne, St. Charles, and Delachaise Aves.

MARYLAND

Somerset County

Smith Island, *Island Belle*, Ewell

NEBRASKA

Douglas County

Omaha, *Anheuser-Busch Beer Depot*, 1207-1215 Jones St.

Washington County

Blair, *Congregational Church of Blair*, 16th and Colfax Sts.

OKLAHOMA

Tulsa County

Tulsa, *Cosden Building*, 409 S. Boston Ave.

TEXAS

Matagorda County

Blessing, *Hotel Blessing*, Ave. B

VIRGINIA

Albemarle County

Millington vicinity, *Midway*, SE of Millington off VA 678

Bland County

Ceres vicinity, *Sharon Lutheran Church and Cemetery*, W of Ceres on VA 42

Fauquier County

Middleburg vicinity, *Waverly*, S of Middleburg on VA 626

Goochland County

Goochland vicinity, *Elk Hill*, W of Goochland off VA 6

Halifax County

South Boston vicinity, *Glennmary*, SW of South Boston on U.S. 58

Hanover County

Mechanicsville vicinity, *Clover Lea*, E of Mechanicsville off VA 629

Middlesex County

Wilton vicinity, *Wilton*, S of Wilton on VA 3

Orange County

Old Somerset, *Somerset Christian Church*, VA 20

Powhatan County

Powhatan vicinity, *Belnemus*, W of Powhatan off U.S. 60

Richmond (independent city)

Richmond, *Reveille*, 4200 Cary Street Rd.

Rockingham County

Broadway vicinity, *Sites House*, NW of Broadway off VA 617

Elkton, *Miller-Kite House*, 302 Rockingham St.

Southampton County

Courtland vicinity, *Beechwood*, NE of Courtland on VA 643

Wythe County

Speedwell vicinity, *Zion Evangelical Lutheran Church Cemetery*, NW of Speedwell

[FR Doc. 78-36266 Filed 12-29-78; 8:45 am]

[4310-09-M]

Office of the Secretary

PUBLIC PARTICIPATION IN WATER SERVICE AND REPAYMENT CONTRACT NEGOTIATIONS

Final General Notice of Procedures

It is the policy of the Department of the Interior to afford the general public an opportunity to provide input into the decisionmaking process regarding Bureau of Reclamation repayment and water service contracts.

Under the authority of the Secretary of the Interior, as provided in the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 42 U.S.C. 371), the Water Supply Act of 1958, as amended (72 Stat. 319, 43 U.S.C. 390b), the Small Reclamation Projects Act of 1956, as amended (70 Stat. 1044, 43 U.S.C. 422a) and the Federal Water Project Recreation Act, as amended (79 Stat. 213, 16 U.S.C. 4601-12), notice is given of the final procedures and guidelines for assuring public input into water service and repayment contract negotiations conducted by the Bureau of Reclamation, Department of the Interior.

Background. The repayment of reimbursable costs associated with reclamation activities requires consummation of contracts between the United States and beneficiaries of those reclamation activities. The terms and conditions of such contracts (including, but not limited to, such matters as quantities of water to be furnished, delivery schedules, construction of facilities, terms and conditions of repayment) affect a wider range of the general public than the immediate parties to the contract. In establishing the terms and conditions of the contract, the views of the general public shall be considered and ample opportunity shall be provided for review and comment on any new, amendatory, or supplemental water service or repayment contract, or amendment or supplement thereto.

Negotiations on new contracts between the United States and the Westlands Water District of the San Luis Unit, Central Valley Project, California, are now in process. These negotiations, as well as negotiations in process on any other new, amendatory, or supplemental contract, or amendment or supplement thereto, shall be conducted in accordance with these procedures to the fullest extent practicable.

It has been determined that publication and implementation of procedures to allow broader public comment on proposed contracts will not significantly affect the quality of the human environment and that no environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (83 Stat. 853, 42 U.S.C. 4332(C)) is required. For contracts that are considered to be major Federal actions, and if compliance with the National Environmental Policy Act of 1969 has not been accomplished previously, or if such environmental studies need to be updated, the public participation in the environmental statement process will be coordinated with the public comment on the proposed contract action, when possible.

Public Participation Procedures. The scope of these procedures shall apply to all new, amendatory, or supplemental water service or repayment contracts proposed to be executed through the Bureau of Reclamation. These procedures will also apply to all contracts, such as subcontracts written pursuant to a master water service contract, in which the United States is a party or for which the United States must specifically approve for execution.

Notice shall be published by the Department of the Interior in the FEDERAL REGISTER whenever any of the following is to occur:

(1) The Bureau of Reclamation intends to enter into negotiations with potential contractors for new, amendatory, or supplemental contracts, or amendments or supplements thereto, as described above. Such notice shall include a brief, general description of the proposed action; identification of the specific legislative authority for the proposed contract; a point of public contact for inquiries and comments; and the period of time in which comments on the proposed contract will be received.

(2) The Bureau of Reclamation intends to hold public hearing(s) on a given draft contract and such notice shall include the date, time, and place of any scheduled public hearing(s). Such notice shall include a concise summary of the general terms and conditions of the proposed contract.

Publication of a notice in the FEDERAL REGISTER shall not preclude the Department of the Interior from providing notice by any other appropriate means.

Public input into the contracting process shall be assured by the following:

(1) All meetings scheduled by the Bureau of Reclamation with a potential contractor for the purpose of discussing terms and conditions of a proposed contract shall be open to the general public as observers. Advance notice of such meetings shall only be furnished to those parties having previously furnished a written request for such notice to the appropriate regional office of the Bureau of Reclamation. Such notice shall be furnished at least 1 week prior to said meeting.

(2) All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383, 5 U.S.C. 552), as amended.

(3) The Commissioner of Reclamation shall determine if, when, and where public hearings will be held by the Bureau of Reclamation to receive comments on any proposed contract. All written comments received and testimony presented at any public hearing will be considered by the appropriate Regional Director and the Commissioner prior to submittal of a contract to the Secretary of the Interior for approval. A summary of all written comments received and testimony presented at any public hearing will be prepared and submitted to the Secretary for consideration prior to approval or disapproval of a given contract.

(4) The Commissioner of Reclamation shall establish a point(s) of public access to each proposed contract. Upon request, copies of each contract, and a summary thereof, shall be made available to the general public.

Dated: December 22, 1978.

CECIL D. ANDRUS,
Secretary of the Interior.

[FR Doc. 78-36366 Filed 12-29-78; 8:45 am]

[4510-28-M]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-3323]

DAVIS-LYNCH GLASS CO., STAR CITY, W. VA.

Negative Determination on Reconsideration

On October 24, 1978, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Davis-Lynch Glass Company of Star City, West Virginia. This determination was published in the FEDERAL REGISTER on October 31, 1978, (43 FR 50753).

The petitioners claimed that they had new evidence that imports, especially from Mexico, have led to reduced sales especially on the West Coast market. The petitioners further indicated that they have substantial information that Mexican imports have hurt the glass lamp and shade industry.

In its reconsideration, the Department received information from a company official that two-thirds of the decline in 1977 sales occurred in the first quarter of 1977 when production was hampered by the weather and a curtailment of gas usage was in effect.

Information obtained during the course of the reconsideration investigation revealed that very little of Davis-Lynch's production was made for the West Coast market, although company officials felt that imports from Mexico were stifling the growth of Davis-Lynch's sales on the West Coast market.

A review of the investigative file indicated that the Department's survey of customers representing about 65 percent of the subject firm's sales in 1977 revealed that imports of glass lamps and shades had virtually no effect on the subject firm's sales. Customer comments generally indicated that imports were not a factor in their purchases from the Davis-Lynch Glass Company.

CONCLUSION

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers of Davis-Lynch Glass Company of Star City, West Virginia.

Signed at Washington, D.C., this 21st of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36440 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4132]

ERIE SCIENTIFIC CO., BUFFALO, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4132: investigation regarding certification of eligibility to apply for worker adjustment assistance a prescribed in Section 222 of the Act.

The investigation was initiated on September 5, 1978 in response to a worker petition received on September 5, 1978 which was filed on behalf of workers and former workers producing microslides and cover glass at the Buffalo, New York plant of Erie Scientific Company. The investigation revealed that the plant produces microscope glass slides and micro cover glass.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43589). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Erie Scientific Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the 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 revealed that Erie Scientific Company is closing its Buffalo, New York plant and transferring production to other domestic plants.

Total sales and production by Erie Scientific and total company employment increased in 1977 from 1976 and in the first three quarters of 1978 compared to the same period in 1977. The declines in production and employment at the Buffalo plant paralleled increased output and employment at Erie Scientific's remaining two facilities in Raton, New Mexico and Portsmouth, New Hampshire. The imminent closure of the Buffalo plant is a result of a transfer of production from that plant to the remaining two plants.

CONCLUSION

After careful review, I determine that all workers of the Buffalo, New York plant of Erie Scientific 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36441 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4291]

FAIRFIELD MILLS OF CONNECTICUT, INC., STAMFORD, CONN.

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-4291: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 25, 1978 in response to a worker petition received on October 19, 1978 which was filed on behalf of workers and former workers producing men's and boys' sweaters at Fairfield Mills of Connecticut, Inc., Stamford, Conn.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51475). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Fairfield Mills of Connecticut, 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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Evidence developed during the course of the investigation revealed that Fairfield Mills' sales and production increased in the period October 1977 to September 1978 (extending back to 1 year prior to the date of petition) compared to the period October 1976 to September 1977.

CONCLUSION

After careful review, I determine that all workers of Fairfield Mills of Connecticut, Inc., Stamford, Conn. 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research

[FR Doc. 78-36442 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-3881]

MADISON WIRE COMPANY, INC., WEST SENECA, N.Y.

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a certification of eligibility to apply for adjustment assistance on September 22, 1978, applicable to workers and former workers of the West Seneca, New York, plant of Madison Wire Company, Inc. The Notice of Certification was published in the FEDERAL REGISTER on September 29, 1977, (43 FR 44939).

At the request of the petitioners, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. A review of the case revealed that several layoffs of workers occurred a few days prior to the original impact date of January 29, 1978.

The intent of the certification is to cover all workers at the West Seneca, New York, plant of the Madison Wire Company, Inc., who were affected by the decline in production of carbon and stainless steel wire related to import competition. The certification, therefore, is revised providing a new impact date of January 20, 1978.

The revised certification applicable to TA-W-3881 is hereby issued as follows:

"All workers at the West Seneca, New York, plant of the Madison Wire Company, Inc., who became totally or partially separated from employment on or after January 20, 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36443 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4385]

MARIO'S SPORTSWEAR, BOSTON, MASS.

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-4385: 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 on behalf of workers and former workers producing sportswear at Mario's Sportswear, Boston, Massachusetts. The investigation revealed that the plant primarily produces ladies' slacks and skirts.

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 Mario's Sportswear, 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.

Sales equal production at Mario's Sportswear. Quantity and dollar value of sales increased in the last quarter of 1977 compared to the same period of 1976 and increased in the January to October period of 1978 compared to the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of Mario's Sportswear, Boston, Massachusetts 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36444 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4311]

NAZARETH STEEL FABRICATORS, DIVISION OF UNITED INDUSTRIAL SYNDICATE, NAZARETH, 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-4311: 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 26, 1978 which was filed by Local 666 of the International Association of Bridge, Structural, and Ornamental Workers on behalf of workers and former workers producing fabricated steel at the Nazareth Steel Fabricators, Division of United Industrial Syndicate, Nazareth, Pennsylvania. The investigation revealed that the plant produces fabricated steel platework.

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 Nazareth Steel Fabricators, 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 of production.

Evidence developed during the course of the investigation indicated that United States imports of fabricated platework are insignificant.

Imports of fabricated platework have consistantly been under 1.0 percent of domestic shipments during the past five years. Import penetration in this industry has traditionally been insignificant due to the heavy, bulky nature of the products, their relatively low value, requirements for fast completion, and because they often must be custom engineered.

CONCLUSION

After careful review, I determine that all workers of Nazareth Steel Fabricators, Division of United Industrial Syndicate, Nazareth, Pennsylvania, producing fabricated steel platework 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36445 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4114 and 4114A]

NIPACK, INC., KERENS, TEX., LITTLEFIELD, TEX.

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-4114: 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 24, 1978 in response to a worker petition received on August 22, 1978 which was filed by the Oil, Chemical and Atomic Workers International Union on behalf of workers and former workers producing fertilizer, nitrate, ammonia phosphate, nitric acid, urea and anhydrous ammonia gas at the Kerens, Texas Trinity River Complex of Nipak, Incorporated. The investigation was expanded to include the Littlefield, Texas plant of Nipak, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on September 5, 1978 (43 FR 39457). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Nipak, Incorporated, Enserch Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the major customers of Nipak. The survey indicated that respondents which purchased imported fertilizer increased purchases from Nipak from 1976 to 1977. The survey also indicated customers did not purchase imported fertilizer in 1978.

CONCLUSION

After careful review, I determine that all workers of the Kerens, Texas and Littlefield, Texas plants of Nipak, Incorporated 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36446 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4147]

NIPAK, INC., PRYOR, OKLAHOMA

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-4147: 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 13, 1978 in response to a worker petition received on September 7, 1978 which was filed by the Oil, Chemical and Atomic Workers International Union on behalf of workers and former workers producing nitrogen based fertilizer products at the Pryor, Oklahoma plant of Nipak, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43588). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Nipak, Incorporated, Enserch Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the major customers of Nipak. The survey indicated that respondents which purchased imported fertilizer increased purchases from Nipak from 1976 to 1977. The survey also indicated customers did not purchase imported fertilizer in 1978.

CONCLUSION

After careful review, I determine that all workers of the Pryor, Oklahoma plant of Nipak, Incorporated 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36447 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-3387]

QUALITY GLASS CO., MORGANTOWN, WEST VIRGINIA

Negative Determination on Reconsideration

On October 30, 1978, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Quality Glass Company of Morgantown, West Virginia. This determination was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51481).

With her application for reconsideration, the petitioner provided an additional list of customers since in her view few customers responded to the Department's original survey.

In its reconsideration, the Department conducted an additional customer survey which revealed that of those customers purchasing illuminating glassware from Quality Glass in the 1976-1978 survey period, none of the survey respondents imported. The Department could find no evidence that imports from Poland and Mexico affected purchases of illuminating glassware from Quality Glass Company by its customers.

CONCLUSION

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers of the Quality

Glass Company of Morgantown, West Virginia.

Signed at Washington, D.C., this 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36448 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4302]

ROTARY MACHINE COMPANY, INC., NASHVILLE, TENN.

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-4302: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 26, 1978 in response to a worker petition received on October 25, 1978, which was filed on behalf of workers and former workers producing french cord binding and vinyl binding for shoes at the Nashville, Tennessee plant of the Rotary Machine Company, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51475-76). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Rotary Machine Company, 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 eligiblity 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.

Industry sources indicated that U.S. imports of shoe trimmings, a category which includes shoe bindings, were negligible in 1976, 1977 and the first six months of 1978. Imports of footwear which incorporate shoe bindings are not considered to be like or directly competitive with shoe bindings within the meaning of Section 222(3) of the Trade Act of 1974.

CONCLUSION

After careful review, I determine that all workers of the Nashville, Tennessee plant of the Rotary Machine Company, Incorporated 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 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36449 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4225]

S & H COMPANY, INC., BOSTON, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4225: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 29, 1978 in response to a worker petition received on September 27, 1978 which was filed on behalf of workers and former workers producing handbags at S & H Company, Incorporated, Boston, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on October 17, 1978 (43 FR 44795). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of S & H Company, 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.

Imports of handbags increased from 90.2 million units in 1976 to 92.8 million units in 1977, and increased from 67.2 million units in the first three quarters of 1977 to 104.9 million units in the first three quarters of 1978.

The Department conducted a survey of customers of S & H Company who had reduced their purchases of handbags from that firm in the first three quarters of 1978 compared with the same period in 1977. Most of the respondents reported having increased their purchases of imported handbags during that period.

Customers purchasing imports commented that they would continue to rely on foreign sources for handbags in the future.

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 S & H Company, Incorporated, Boston, 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 S & H Company, Incorporated, Boston, Massachusetts who became totally or partitially separated from employment on or after September 25, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36450 Filed 12-29-78; 8:45 am]

[4510-28-M]

[TA-W-4355]

TENNESSEE LEATHER PRODUCTS, INC., LA FOLLETTE, TENN.

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-4355: 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 on belalf of workers formerly producing women's and girls' leather and suede coats at Tennessee Leather Products, Incorporated, La Follette, Tennessee. The investigation revealed that the company primarily produced women's and girls' leather and suede coats and jackets, but also produced a small number of leather slacks.

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 Tennessee Leather Products, Incorporated, its major customer, the U.S. Department of Commerce, the U.S. International Trade Commis-

sion, 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 leather coats and jackets increased from 115.5 million dollars in 1975 to 177.8 million dollars in 1976, and to 186.4 million dollars in 1977. U.S. imports increased from 115.6 million dollars in the first three quarters of 1977 to 205.1 million dollars during the same period of 1978.

Tennessee Leather Products' major customer, which represented nearly 100% of the subject firm's sales, indicated that its sales of women's and girls' leather apparel had declined from 1976 to 1977 and in the first quarter of 1978 compared to the same quarter of 1977, necessitating major reductions in its contract work with Tennessee Leather Products during this period. The decline in sales, and thus the decline in contract work with the subject firm, was directly attributable to the loss of the firm's largest customers to foreign sources. By late 1977 the company could no longer expect to compete if it continued to rely solely on domestic contractors; consequently, the company further reduced its business with Tennessee Leather Products after September 1977 and then turned completely to foreign sources when the subject firm closed in February 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's and girls' leather and suede coats and jackets produced at Tennessee Leather Products, Incorporated, La Follette, Tennessee 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 Tennessee Leather Products, Incorporated, La Follette, Tennessee, who becaome totally or partially separated from employment on or after November 3, 1977 and before February 19, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. Workers separated on or after February 19, 1978 are denied eligibility.

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36451 Filed 12-29-78; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (79-1)]

NASA ADVISORY COUNCIL (NAC) AERONAUTICS ADVISORY COMMITTEE

Meeting

A meeting of the Informal Executive Subcommittee of the NAC Aeronautics Advisory Committee will be held January 23, 1979, from 9 a.m. to 4 p.m. in room 625, NASA Headquarters, 600 Independence Avenue, SW. Washington, D.C. 20546. The meeting will be open to the public up to the seating capacity of the room (about 45 persons including committee members and participants).

The Aeronautics Advisory Committee was established to advise NASA senior management through the NASA Advisory Council in the area of aeronautical research and technology. The purpose of the Executive Subcommittee meeting is to review and discuss recent and planned activities of the informal ad hoc subcommittees, identify future ad hoc activities and to formulate plans for the June/July 1979 meeting of the Aeronautics Advisory Committee. The Chairperson is Dr. Robert C. Loewy. There are six members on the Informal Executive Subcommittee.

AGENDA

JANUARY 23, 1979

9:00 a.m. Reports from the Informal Ad Hoc Subcommittees' Chairpersons
1:00 p.m. Future Activities of the Informal Ad Hoc Subcommittees
3:00 p.m. Planning for the June/July 1979 Meeting of the Aeronautics Advisory Committee

For further information, contact Mr. C. Robert Nysmith, Executive Secretary, (202) 755-3252, NASA Headquarters, Code RP, Washington, D.C. 20546.

FRANK J. SIMOKAITIS,
Acting Associate Administrator for External Relations.

DECEMBER 26, 1978.

[FR Doc. 78-36408 Filed 12-29-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on the William H. Zimmer Nuclear Power Station

Meeting

The ACRS Subcommittee on the William H. Zimmer Nuclear Power Station will hold a meeting on January 17, 1979, in Room 1046, 1717 H Street, NW., Washington, DC 20555 to review the application of the Cincinnati Gas and Electric Company for a permit to operate Unit 1 of this station. Notice of this meeting was published on October 20, November 20, and December 20, 1978 (43 FR 49080, 54147, and 59447, respectively).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, January 17, 1979—10:00 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Cincinnati Gas and Electric Company, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Richard P. Savio, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Clermont County Library, Third and Broadway Streets, Batavia, Ohio 45103.

Dated: December 26, 1978.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-36424 Filed 12-29-78; 8:45 am]

[7590-01-M]

[Docket No. 50-382]

LOUISIANA POWER & LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3)

Receipt of Application for Facility Operating License; Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License; and Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application for a facility operating license from Louisiana Power & Light Company (the applicant) to possess, use, and operate the Waterford Steam Electric Station, Unit 3, a pressurized water nuclear reactor (the facility), located on the applicant's site in St. Charles Parish, Louisiana. The reactor is designed to operate at a core power level of 3390 megawatts thermal, with an equivalent net electrical output of approximately 1104 megawatts.

The applicant has also filed an environmental report, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51. The report, which discusses environmental considerations related to the proposed operation of the facility, is being made available at the office of State Clearinghouse, Department of Urban and Community Affairs, P.O. Box 44455, Capitol Stations, Baton Rouge, Lousiana 70804, and at the Teche Regional Clearinghouse, c/o South Central Planning and Development Commission, P.O. Box 846, Thibodaux, Louisiana 70301.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will cause to be published, in the FEDERAL REGISTER, a notice of availability of the draft statement, requesting comments on the draft statement from interested people. The notice will also contain a statement to the effect that any comments of Federal agencies and of State or local officials will be made available when received. The draft environmental statement will focus only on those matters that differ from those previously discussed in the final environmental statement that was prepared in connection with the issuance of the construction permit. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

The Commission will consider the issuance of a facility operating license to Louisiana Power and Light Company which would authorize the applicant to possess, use and operate the Waterford Steam Electric Station, Unit 3, in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Commission's staff: (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicant's application for a facility operating license by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter 1. Construction of the facility was authorized by Construction Permit No. CPPR-103, issued by the Commission on November 14, 1974. Construction of Unit 3 is anticipated to be completed by May 1981.

Prior to issuance of any operating license, the Commission will inspect the facility to determine whether it has been constructed in accordance with the application, as amended, and the provisions of the construction permit. In addition, the license will not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the license, the applicant will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By Feburary 1, 1979, the applicant may file a request for a hearing with respect to issuance of the facility operating license and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission, or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the Commission, or the designated Atomic Safety and Licensing Board, will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Anyone who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satify the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene. The petition must include a list of contentions that are sought to be litigated in the matter, and the bases for each contention, all set forth with reasonable specificity. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by February 1, 1979. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to Mr. E. Blake,

Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the applicant. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and requests for hearing will not be entertained without a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)-(v) and 2.714(d).

For further details, see the application for the facility operating license and the applicant's environmental report, both transmitted by letter dated December 15, 1978, all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122. As they become available, the following documents may be inspected at the above locations: (1) The safety evaluation report prepared by the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards on the application for facility operating license; (5) the proposed facility operating license; and (6) the technical specifications, which will be attached to the proposed facility operating license.

Copies of the proposed operating license and the Advisory Committee on Reactor Safeguards report, when available, may be obtained by request to the Director, Division of Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 19th day of December, 1978.

ROBERT L. BAER,
Chief, Light Water Reactors Branch No. 2, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 78-36289 Filed 12-29-78; 8:45 am]

[7590-01-M]

[Docket No. 50-293]

BOSTON EDISON CO.

Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Facility Operating License No. DPR-35 issued to Boston Edison Company, which revised the Technical Specifications for operation of the Pilgrim Nuclear Power Station, Unit No. 1, located near Plymouth, Massachusetts. The amendment is effective as of the date of its issuance.

This amendment adds license conditions relating to the completion of facility modifications for fire protection and the implementation of administrative controls, and modifies the Technical Specifications to include additional limiting conditions for operation and surveillance requirments for existing fire protection systems.

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 determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 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 licensee's submittals dated March 6, May 4, July 10, and September 22, 1978, (2) Amendment No. 29 to License No. DPR-35, dated March 3, 1978, (3) Amendment No. 35 to license No. DPR-35 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 Plymouth Public Library, on North Street in Plymouth, Massachusetts 02360. A single 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 Reators.

Dated at Bethesda, Maryland, this 21 day of December 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-36425 Filed 12-29-78; 8:45 am]

[7590-01-M]

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 44 to Facility Operating License No. DPR-59, issued to Power Authority of the State of New York, which revised Technical Specifications for operation of the James A. FitzPatrick Nuclear Power Plant (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications on an interim basis to allow plant operation with higher than allowable leakage of the outboard Main Steam Isolation Valve for a main steam line.

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 determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR section 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 12, 1978, (2) Amendment No. 44 to License No. DPR-59, 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 NW., Washington, D.C. and at the Oswego County Office Building, 46 E. Bridge Street, Oswego, New York 13126. 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 20th day of December 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-36426 Filed 12-29-78; 8:45 am]

[7590-01-M]

[Docket No. 50-312]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 25 to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District, which revised the license for operation of the Rancho Seco Nuclear Generating Station (the facility) located in Sacramento County, California. The amendment is effective as of its date of issuance.

The amendment revises the completion date for certain modifications intended to imporve the level of fire protection at the facility.

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 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 1, 1978, (2) Amendment No. 25 to License No. DPR-54, and (3) the Commission's related Supplement No. 1 to the 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. and at the Business and Municipal Department, Sacramento City-County Library, 828 I Street, Sacramento, California. 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 14th day of December 1978.

For the Nuclear Regulatory Commission.

GERALD B. ZWETZIG,
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-36427 Filed 12-29-78; 8:45 am]

[6820-97-M]

PRESIDENTIAL COMMISSION ON WORLD HUNGER

Subcommittee Meetings

Subcommittees of the Presidential Commission on World Hunger have scheduled meetings as follows:

The Domestic, Argiculture Policy, Consumer and Nutrition subcommittee will meet on January 19, 1979 in Washington, D.C. The Public Participation and Communication subcommittee will meet on January 23, 1979 in Washington, D.C. The International Policy subcommittee will meet on January 26, 1979 in New York.

The full Presidential Commission on Work Hunger will meet on January 31, 1979 in Washington, D.C.

The meetings will be open to observation by the public. Details as to locations and times of meetings are being developed and may be obtained by calling Area Code 202-395-3505 after January 2, 1979. Persons interested in attending such meetings should address a letter to the Commission or visit in person the Presidental Commission on World Hunger, 734 Jackson Place, N.W., Washington, D.C. 20006. Admission of observers will be on the basis of earliest postmark date or date of visit and to the extent space is available.

DANIEL E. SHAUGHNESSY,
Acting Executive Director, Presidential Commission on World Hunger.

[FR Doc. 78-36431 Filed 12-29-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Administrative Proceeding File No. 3-5574, File No. 81-423]

ADOBE BUILDING CENTERS, INC.

Application and Opportunity for Hearing

DECEMBER 20, 1978.

Notice is hereby given that Adobe Building Centers, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Section 15(d) of the 1934 Act.

The Applicant states in part:

1. Applicant is incorporated under the laws of the State of Delaware.

2. Prior to the merger with Imperial Industries, Inc. ("Imperial"), the Applicant had one class of equity securities registered under the Securities Act of 1933.

3. Prior to the merger with Imperial, Applicant's common stock was registered pursuant to Section 12(g) of the 1934 Act.

4. As a result of the merger, Applicant became a wholly owned subsidiary of Imperial on September 29, 1978.

In the absence of an exemption, Applicant is required to file a report on Form 8-K as well as an annual report on Form 10-K for the current fiscal year ending December 31, 1978. The applicant believes that its request for an order exempting it from the provisions of Section 15(d) of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort and expense involved in compliance with such provisions would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C.

Notice is further given that any interested person not later than January 15, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Com-

mission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-36393 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5587; File No. 81-412]

ASPEN SYSTEMS CORP.

Applicotion ond Opportunity for Heoring

DECEMBER 20, 1978.

Notice is hereby given that Aspen Systems Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicant an exemption from filing a Form 10-K required by the provisions of Section 15(d) of the 1934 Act.

The Applicant states, in part:

1. On September 12, 1978, Applicant was merged into USICU, Inc., a wholly-owned subsidiary of American ICU, Inc. As a result of the merger, Applicant no longer has any publicly traded common stock.

2. Preparation and filing of a Form 10-Q for the fiscal quarter ended November 15, 1978 and Form 10-K for the fiscal year ended December 31, 1978 would serve no useful purpose.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549

Notice is further given that any interested persons not later than Jan. 15, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting th application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-36394 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Rel. No. 20831; 70-6233]

BROCKTON EDISON CO.

Proposed Extension of Existing Borrowing by Subsidiary From Bonk, ond Proposol for New Borrowing

DECEMBER 15, 1978.

Notice is hereby given that Brockton Edison Company ("Brockton"), 36 Main Street, Brockton, Mass. 02403, an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12(c) of the Act and Rules 42(b)(2) and 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order dated October 13, 1976 (HCAR No. 19713), this Commission authorized Brockton to purchase from its associate company Blackstone Valley Electric Company ("Blackstone") all of the securities of its associate company Montaup Electric Company ("Montaup") owned by Blackstone. As a part of the consideration for that purchase, Brockton assumed Blackstone's obligations with respect to a $15,000,000 borrowing which Blackstone had made from Citibank. The Montaup securities so purchased are pledged to Citibank to secure those obligations. The note evidencing those borrowings matures October 21, 1979.

Brockton now proposes to enter into an amendment to the loan agreement with Citibank, effecting modifications whereby the borrowing will be payable in three installments of $5,000,000 each on December 1, 1984, June 1, 1985, and December 1, 1985. The interest rate for such loans shall be at a fluctuating interest rate equal to 109% of the higher of the base rate (the "Alternate base rate") of Citibank on 90-day loans to substantial commercial borrowers in effect from time to time or to ½ of one percent above the latest three-week moving average interest rate payable on 90 to 119 day dealer placed commercial paper. From January 1, 1981, to but not including January 1, 1983, the interest rate shall be 111% of the Alternate base rate and thereafter unitl payment in full the interest rate shall be 112% of the Alternate base rate. This new note will be repayable in whole or in part at any time without penalty.

Brockton also proposes to enter into a Term Loan Agreement with Citibank providing, on an unsecured basis, an additional $5,000,000, such borrowing to mature June 1, 1984. The interest on such note shall be the same as the previously described secured note. The note will be pre-payable, in whole or in any part not less than $500,000 at any time without penalty, and prepayments will be required under certain circumstances. The proposed Term Loan Agreement contains a representation by Citibank that it is acquiring the note in the ordinary commercial banking business and not with a view to the public distribution thereof.

The proceeds of the $5,000,000 unsecured borrowing will be used by Brockton to prepay a short-term $4,000,000 indebtedness to Citibank, bearing interest at Citibank's Base Rate and due March 1, 1979, and to prepay other short-term bank indebtedness.

No commitment fee, closing fee or similar charge, and no compensating balance will be required in connection with either of the transactions herein proposed. Assuming that the applicable basic rate used in each interest calculation is at all relevant times 10.75% per annum, the effective annual interest rate to be paid by Brockton will be (a) for the secured borrowing, 11.7175% for the period from the date of the new note to but not including January 1, 1981, 11.9325% from January 1, 1981, to but not including January 1, 1983, and 12.04% thereafter, and (b) for the unsecured borrowing, 11.266% for the period from the date of the note to but not including January 1, 1980, 11.395% from January 1, 1980, to but not including January 1, 1981, 11.5025% from January 1, 1981, to but not including January 1, 1983, and 11.7175% thereafter.

It is stated that the Department of Public Utilities of the Commonwealth of Massachusetts has jurisdiction over the proposed transactions and that no other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. Any fees or ex-

penses to be incurred in connection with the transactions will be supplied by amendment.

Notice is further given that any interested person may, not later than January 8, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-36395 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Rel. No. 15413; SR-CSE-78-2]

CINCINNATI STOCK EXCHANGE

Order Approving Rule Change

DECEMBER 15, 1978.

I. BACKGROUND

On April 18, 1978, the Commission, pursuant to Sections 11A and 19(b)(2) of the Securities Exchange Act (the "Act"), issued an order [1] approving a proposed rule change of the Cincinnati Stock Exchange ("CSE") Dixie Terminal Building, Cincinnati, Ohio 45202,[2] to establish the CSE Multiple Dealer Trading System ("CSE System") as a 9-month pilot program. The initial authorization for the CSE System will expire on January 31, 1979 unless an extension is approved by the Commission.

The CSE System, through an electronic communications network maintained by the CSE, enables CSE members, without the necessity of maintaining a presence on the floor of the CSE or any other exchange, to participate in a market conducted in accordance with certain auction-type trading principles by entering bids and offers for securities for their own account and as agents for their customers' accounts. In addition, the CSE System rules permit a specialist on any national securities exchange, without becoming a member of the CSE, to enter bids and offers in the System as principal or as agent in any security in which that specialist is registered on another exchange. Orders entered into the CSE System are stored and queued in the CSE's computer facilities and executions occur in the CSE System, pursuant to CSE Rule 9D3 (Temporary), according to certain priorities. Priority is governed first by price (*i.e.*, the highest bid and lowest offer) and, as to orders at the same price, by time of entry. However, "public agency orders," regardless of time entry, are granted priority over other orders at the same price.[3]

In approving the CSE System pilot program, the Commission noted its responsibilities under the Act to insure the development and maintenance of a "fair field of competition" among brokers and dealers and among securities markets and concluded that the CSE System pilot was the type of "competition enhancing" development that should be permitted in light of the national market system mandate of the Act.[4] At the same time, the Commission noted that the CSE System was the private initiative of the CSE, that it was purely voluntary for those who chose to use it, and that, by its approval, the Commission was not thereby altering its previously articulated position that it did not intend "to force all auction trading into an electronic system with automatic execution capabilities."[5]

While the CSE System proposal was initially approved by the Commission in April 1978, trading in the System did not commence until June 6, 1978. On that date, the CSE designated for use in the CSE System the computer facilities formerly employed in the Regional Market System ("RMS"), a predecessor market linkage system in which the Boston, Midwest and Pacific Stock Exchanges, in addition to the CSE, participated.[6] Since the start-up of the CSE System, the number of broker-dealers participating in the System has been limited. On June 13, 1978, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") became a CSE member and an approved dealer in the CSE System and commenced market making in two securities designated for trading in the CSE System.[7] Weeden & Co. and American Securities Corp. (both CSE members) and certain specialists on the floors of the Boston, Pacific and Midwest Stock Exchanges have also participated as approved dealers in the CSE System. On September 25, 1978, Prescott, Ball & Turben, Inc. joined the CSE and became an approved dealer in the CSE System.

II. THE CURRENT CSE PROPOSED RULE CHANGE

On September 25, 1978, the CSE filed with the Commission a proposed rule change, pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder,[8] to extend the CSE System for 1 year. Accordingly, if the proposed rule change is approved, the CSE System pilot program would be continued until January 31, 1980.

The CSE states that its proposed rule change is consistent with the purposes of the Act, in that, among other

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[1] Securities Exchange Act Release No. 14674 (April 18, 1978); 14 SEC Docket 817 (May 2, 1978); 43 FR 17894 (April 26, 1978) ("April Order").

[2] CSE Rule 9D3 (Temporary).

[3] A "public agency order" is defined under CSE Rule 9D3(c) (Temporary) as "any order for the account of a person other than an approved dealer [in the CSE System], a member, or a person who could become an approved dealer by complying with * * * Rule [9D3 (Temporary)] with respect to his use of the System, which order is represented, as agent, by a user."

"Approved dealers" in the CSE System, in turn, include CSE members who undertake certain market making responsibilities and meet certain minimum capital requirements and specialists on national securities exchanges who enter bids and offers in the CSE System in securities in which they are registered as specialists.

For a more detailed discussion of the trading priorities in the CSE System and other characteristics of the System, *see* April Order at 9-10, 14 SEC Docket 821-22 (May 2, 1978).

[4] April Order at 12, 14 SEC Docket at 823.

[5] *Id.* at 4, 14 SEC Docket 819.

[6] One reason for the delayed start-up of the CSE System is attributable to the time required to make certain programing changes in the computer system formerly used in the RMS experiment.

[7] Those securities were the common stock of American Home Products Corp. and Westinghouse Electric Corp. Since June, Merrill Lynch has become a market maker in the CSE System in six additional securities. Under CSE Rule 9D3 (Temporary), up to 200 securities which are listed on or admitted to unlisted trading privileges on the CSE may be designated for trading in the CSE System. To date, 38 securities have been so designated.

[8] The proposed rule change (SR-CSE-78-2) was noticed in Securities Exchange Act Release No. 15190 (Sept. 25, 1978) and published in the FEDERAL REGISTER, 43 FR 44951 (Sept. 29, 1978). Interested persons were invited to submit data, views, and arguments concerning the proposed rule change on or before October 29, 1978.

things, extension of the CSE System would facilitate removal of impediments to and perfection of the mechanism of a free and open market, in accordance with Section 6(b)(5) of the Act, and would foster fair competition among brokers and dealers and among exchange markets, in furtherance of Section 11A(a)(1)(c)(ii) of the Act. The CSE further states that the value of the CSE System, as a national market system experiment, would be enhanced, if extended, by providing a more extensive data base with which to analyze trading in a computerized trading environment.

The Commission has received a number of comments from self-regulatory organizations and from interested brokers and dealers concerning the CSE System, both in response to the Commission's solicitation of views following its approval of CSE's initial rule filing [9] and in response to the publication of CSE's proposal to extend its pilot program.[10] With the exception of the NYSE, the Amex and the BSE, all commentators generally favored Commission approval of the extension of the CSE System experiment. These commentators shared the belief that the CSE System had not yet been given an adequate trial period and that additional experience with the CSE System would assist in understanding the national market system implications of trading in the System.

The NYSE and the Amex, in their comments, raised questions concerning the opportunity afforded CSE approved dealers to trade against their own retail order flow without exposing those orders to other buying or selling interest. The two exchanges contended that this "internalization" of order flow creates opportunities for overreaching by CSE System participants, may lead to market fragmentation, and is otherwise inconsistent with national market system objectives. The BSE also expressed concern with respect to the potential for "internalization" posed by the CSE System. In addition, the NYSE and the Amex, in their comments, questioned the adequacy of surveillance of trading in the CSE System and the ability of that System to permit a reconstruction of the market (*i.e.*, an "audit trail") at any given point in time.

III. Discussion

In its order initially approving the CSE System experiment, the Commission emphasized its responsibility to ensure the maintenance of a fair field of competition among brokers and dealers and among markets and to encourage initiatives of the securities industry to conduct experiments designed to further the national market system objectives of the Act. For those reasons, the Commission gave its initial authorization to the CSE System experiment and, for the same reasons, the Commission now approves the CSE's proposal for a one-year extension of its experiment.[11]

The CSE System, in order to prove a useful and instructive experiment, needs additional time to permit additional brokers and dealers who wish to participate in the pilot program an opportunity to do so. An extension of the CSE System for one year, should provide a more meaningful opportunity for participation in the experiment and for an appropriate assessment of trading securities in a computerized system and its relation to other markets.

In approving the initial phase of the CSE System experiments, the Commission noted, concern over the potential for internalization and market fragmentation posed by the CSE System, concerns which have been reiterated by the NYSE and the Amex in their comments on the proposed extension of the experiment. On the basis of the data available at this stage of the experiment, however, the Commission has not been able to discern any adverse impact upon the securities markets or upon investors with respect to securities traded in the CSE System. The Commission believes that an extension of the CSE experiment may permit greater participation in the CSE System [12] and provide additional data which may assist the Commission in analyzing trading in the System and the market structure implications, if any, of "internalization" which may occur in the System. Further, as the Commission has previously noted, the CSE System experiment appears to provide at least one means by which a linking of geographically desparate securities markets can be achieved.[13]

In addition, given the current dissemination of transaction and quotation information, the accessibility of the CSE System, and the communications linkage of exchange markets and upstairs market makers offered by the System, the Commission believes that the requested extension of the CSE System experiment poses no significant risk of harm to investors or to the maintenance of fair and orderly markets. In this connection, the Commission notes that brokers and dealers may obtain current and reliable market information concerning CSE System trading and may take this into account in their trading on the CSE or in another market. CSE System trans-

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[9] The Commission has received the following written comments from self-regulatory organizations: Letter from Robert J. Birnbaum, President, American Stock Exchange, Inc. ("Amex") to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, August 9, 1978; Letter from James E. Buck, Secretary, New York Stock Exchange, Inc. ("NYSE") to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, June 26, 1978; Letter from James E. Dowd, President, Boston Stock Exchange ("BSE") to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, September 27, 1978; Letter from Charles J. Henry, President, Pacific Stock Exchange, Inc. ("PSE") to Andrew M. Klein, Director, Division of Market Regulation, October 23, 1978; Letter from Gordon S. Macklin, President, National Association of Securities Dealers ("NASD"), to Andrew M. Klein, Director, Division of Market Regulation, November 3, 1978.

The Commission has received the following written comments from interested broker-dealers and others: Letter from William M. Bannard, President, American Securities Corp., to Andrew M. Klein, Director, Division of Market Regulation, September 22, 1978; Letter from Bache Halsey Stuart Shields *et al.* to George A. Fitzsimmons, Secretary, Securities and Exchange Company, August 1, 1978; Letter from Robert H.B. Baldwin, Chairman, Edward I. O'Brien, President, and Ralph D. DeNunzio, Chairman, National Market System Committee, Securities Industry Association, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, August 4, 1978; Letter from John F. Curley, Jr., President, Paine Webber Jackson & Curtis, Inc. to Andrew M. Klein, Director, Division of Market Regulation, October 3, 1978; Letter from William A. Schreyer, President, Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill Lynch"), to Andrew M. Klein, Director, Division of Market Regulation, November 8, 1978; and Letter from Donald E. Weeden, President, Weeden & Co., to Andrew M. Klein, Director, Division of Market Regulation, October 20, 1978.

All written comments received are available for public inspection in the Commission's public reference room, 1100 "L" Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-CSE-78-2.

[10] Letter from William M. Batten, Chairman NYSE, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, October 30, 1978; Letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, October 27, 1978; Letter from William A. Schreyer, president, Merrill Lynch, to Andrew M. Klein, Director, Division of Market Regulation, October 27, 1978. *See* File No. SR-CSE-78-2.

[11] As the Commission noted in its April order

> . . . the opportunity to experiment and to add to the body of knowledge and understanding of novel trading mechanisms and market linkages and of the interest of the industry in utilizing such a facility, and to assess the possible contribution of the CSE linkage . . . to the national market system, is worthy of further exploration.

April Order at 3, 14 SEC Docket at 818.

[12] In this regard, the Commission notes that the CSE has offered to provide CSE System terminals on the floors of the New York and Philadelphia Stock Exchanges, at CSE expense, in order to permit members on those floors to participate in the CSE experiment.

[13] *See, e.g.*, the April Order at 1-2 and 7, 14 SEC Docket at 818, 820.

actions are included in the consolidated transaction reporting system and CSE System quotations, in addition to their display on CSE terminals in the offices of CSE approved dealers and on the floors of the BSE, MSE and PSE, are made available to vendors in accordance with the requirements of Securities Exchange Act Rule 11Ac1-1 (17 CFR 240.11Ac1-1). Moreover, access to the CSE System under CSE Rule 9D3 (Temporary), permitting direct and efficient interaction with bids and offers entered in the CSE System, is available to or through any CSE member, or may be obtained by or through any exchange specialist who makes a market in any security designated for trading in the System.

With respect to the integrity of the trading process in the CSE System and adherence by participants to the rules governing trading in the CSE, the Commission believes that extension of the CSE experiment is consistent with the protection of investors and the public interest. The CSE, in July, 1978, retained an independent auditing firm to test the operation of the CSE System, particularly with respect to the price, time, and public agency order priorities of the System. The report of that firm concludes that the CSE System operates in a manner which "[a]dheres to the Rules of the Cincinnati Stock Exchange [and] [c]onforms to all substantial representations as to its capabilities." [14]

Moreover, in its own monitoring of trading in the CSE System, and its review of reports and data submitted by the CSE, the Commission has found no reason to reach a different conclusion.[15] In addition, the Commission through its monitoring efforts believes that daily computer prints-outs by the CSE System provide sufficient information to enable the construction of an "audit trail" necessary for regulation and surveillance of trading in the CSE System. Finally, the CSE entered into an agreement with the NASD pursuant to which the NASD conducted an examination of CSE members acting as "upstairs" approved dealers in the System to determine compliance with applicable CSE rules. The NASD report, which the Commission has reviewed, presents no reason to find any significant risks to investor protection posed by an extension of the CSE System. The Commission does note, however, that the CSE and the NASD have not yet formalized any arrangement by which the NASD would continue regularly to conduct on-site examinations of CSE approved dealers. In the event the CSE decides to rely uon the NASD for the performance of these self-regulatory responsibilities during the extension period, the Commission would expect both parties to move expeditiously to formalize this arrangement.

IV. Conclusion

The Commission finds that the CSE proposal to extend authorization of the CSE System for an additional one-year period, until January 31, 1980, is consistent with the requirements of the Act, particularly the requirements of Sections 6(b) and 11A. In so approving, the Commission is mindful that a fundamental objective of the Act, as amended by the Securities Acts Amendments of 1975, is "to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services." [16] The Commission believes that the CSE System experiment represents one positive response to the Act's mandate for the development of a national market system and to the Commission's January 1978 statement [17] calling upon the securities industry to pursue particular facilities initiatives in furtherance of the national market system objectives of the Act.

It is therefore ordered, pursuant to the Commission's authority under the Act, and particularly Sections 11A and 19(b)(2) thereof, that the above-referenced rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons,
Secretary.

[FR Doc. 78-36396 Filed 12-29-78; 8:45 am]

[14] Deloitte, Haskins & Sells, "Evaluation of the Multiple Dealer Trading Facility (Cincinnati/NMS)" (November 14, 1978) at p. 4.

[15] The Commission is, of course, mindful that the very nature of the CSE System as a pilot program subject to Commission study and further Commission approval encourages compliance during the "pilot" period.

[16] *Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249*, Sen. Rep. No. 94-75, 94th Cong., 1st Sess. 8 (1975).

[17] Securities Exchange Act Release No. 14416 (Jan. 26, 1978), 43 FR 4354 (Feb. 1, 1978).

[8010-01-M]

[Rel. No. 20840; 31-765]

ERIE MINING CO.

Application for Exemption

December 20, 1978.

Notice is hereby given that Erie Mining Company ("Erie") c/o Pickands, Mather & Co., 1100 Superior Avenue, Cleveland, Ohio 44114, an electric utility company, has filed an application for exemption on behalf of itself and any successor to substantially all of its assets and business, pursuant to Section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935 ("Act"). All interested persons are referred to the application, which is summarized below, for a complete description of Erie and of its request for exemption.

Erie, a Minnesota corporation is engaged in the mining and beneficiating of iron ore derived from mining operations in Minnesota. The capital stock of Erie is owned by four United States corporations which take all of the iron ore produced by Erie. The stockholders of Erie and their applicable ownership percentages are as follows:

Name of Stockholder and Percentage of Stock Ownership

Bethlehem Steel Corporation, 45%.
Youngstown Sheet and Tube Company, 35%.
Interlake, Inc., 10%.
Stelco Coal Company (a wholly-owned subsidiary of the Steel Company of Canada, Limited, a Canadian Corporation), 10%.

In 1977, Erie produced and delivered to its parent companies iron ore pellets with a gross market value of $138,115,750.

In connection with its mining and beneficiation operations, Erie owns and operates various electric utility facilities, including three generator units with a capacity of 75,000 kilowatts each and approximately 75 miles of 138 k.v transmissions lines. It is stated that these facilities were constructed by Erie to supply its own power needs. Any surplus power generated by Erie is sold to Minnesota Power & Light Company ("MP&L"), a Minnesota electric utility company, pursuant to an interchange agreement with MP&L. The agreement permits Erie to deliver surplus power to MP&L at MP&L's Aurora substation or, alternatively, to receive needed power in addition to that generated by its own facilities. The power is delivered for the emergency use of the party receiving the power or to permit such party to overhaul or repair any of its generation or transmission facilities. It is stated that Erie and MP&L have sought to balance power exchanges out to zero on an annual basis, and since 1973 have treated the deliveries as exchanges rather than as purchases and sales.

During the period 1973-1977, the amount of power delivered by Erie to MP&L averaged 4.4% of the its total output. The gross deliveries of power to MP&L in that period would have averaged less than .6% of the Erie's gross revenues per year, had such deliveries of power been treated as sales at the agreed power exchange rate. Net deliveries of power to MP&L occurred in 1974 and 1976 only and, if treated as sales at the agreement rate, would be valued at $13,482 and $584,982, respectively.

The application states that Erie and its parent corporations are planning to transfer all of Erie's assets, property and business to a successor company, which will assume all of Erie's obligations and liabilities. It is presently contemplated that the successor will be organized as a limited partnership under Minnesota law, and that the general partners will be wholly-owned subsidiaries of the present parent stockholders. The present stockholders will continue to purchase all of the iron ore produced by the successor company.

Under Section 2(a)(3)(A) of the Act, the Commission may declare a company owning electric utility facilities not to be an "electric utility company" if it finds that "such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company." Rule 10(a)(1) of the rules under the Act exempts from the duties and obligations imposed upon a "holding company," as defined Section 2(a)(7) of the Act, any company which has as a subsidiary a company declared not to be an electric utility company pursuant to Section 2(a)(3).

Notice is further given that any interested person may, not later than January 10, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted in the manner provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including notice of the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-36397 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Rel. No. 10533; 812-4389]

MUNICIPAL EXEMPT TRUST, N.Y.

Filing of Application

DECEMBER 18, 1978.

In the matter of Municipal Exempt Trust, New York, Exempt Series 1 and other State, National, Similar and Subsequent Series, c/o Glickenhaus & Co., 522 Fifth Avenue, New York, New York 10036 (812-4389).

Notice is hereby given that Municipal Exempt Trust, New York Exempt Series 1 and Other State, National, Similar and Subsequent Series ("Fund"), a unit investment trust registered under the Investment Company Act of 1940 (the "Act"), filed an application on November 7, 1978, and amendments thereto on December 6, 1978, and December 15, 1978, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Fund from the provisions of Section 22(d) of the Act to the extent necessary to permit the investment pursuant to an automatic accumulation account of income and capital gains distributions made to unitholders of a predecessor series of the Fund into units of a subsequent series of the Fund, or into units of a previously formed series which have been purchased in the secondary market, at a reduced sales charge. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Fund is composed of a series of similar but separate trusts (each such Trust herein called a "Trust" and collectively called the "Trusts"). The Fund is sponsored by Glickenhaus & Co. It registered with the Commission under the Act as a unit investment trust on May 23, 1978, and has commenced distribution of Fund units pursuant to a series of registration statements under the Securities Act of 1933 which have been declared effective.

The Fund states that the objectives of each Trust are tax-exempt income and conservation of capital through an investment in a diversified portfolio of municipal bonds. The Securities deposited in the initial three Series were long-term bonds, issued primarily on behalf of the State of New York and counties, municipalities, authorities or political subdivisions thereof or issued by certain United States territories or possessions or the public authorities thereof. It is anticipated that subsequent Series may contain bonds of other states, counties, territories, possessions and municipalities of the United States and authorities or political subdivisions thereof. Any Series which is comprised of more than one Trust may contain Trusts with portfolios selected on different bases.

Interest and principal received by each Trust will be distributed on each monthy or semi-annual distribution date on a pro rata basis to unitholders of record as of the preceding record date as specified in the Trust Agreement. The unitholder selects the distribution plan for his units. The distribution dates for the Trusts are the first day of each month for the monthly plan and June 1 and December 1 for the semi-annual plan. All distributions will be net of applicable expenses and funds required for the redemption of units.

The Sponsor proposes to offer an automatic reinvestment program entitled the Automatic Accumulation Account (the "Account") to unitholders of the various present and future Series of the Fund. The Account will be described in printed matter to be distributed to current unitholders and inserted in the current prospectus for each Trust being hereinafter offered. the Account will operate in the following manner.

Unitholders of the Fund (except Texas residents) who select the semi-annual distribution plan will have the option to automatically reinvest both interest income earned on his units, and principal, if any, distributed in connection with such units. Under the Account, a semi-annual unitholder may elect to have all regular semi-annual interest and principal distributions with respect to his units reinvested either in units of various series of the Fund which will have been created shortly before each semi-annual Payment Date (a "Primary Series") or, if units of a Primary Series are not available, in units of a previously formed series of the Fund which have been repurchased by the Sponsor in the secondary market (a "Secondary Series"). (Primary Series and Secondary Series are hereafter collectively referred to as "Reinvestment Series".) The first interest distribution to semi-annual unitholders cannot be reinvested unless the Account is operating on the date of such semi-annual interest distributions (the "Account Reinvestment Dates").

Under the Account (subject to compliance with applicable blue sky laws), fractional units ("Account Units") will be purchased from the Sponsor at a price equal to the aggregate offering

price per Unit of the debt obligations in the Reinvestment Series portfolio, plus a sales charge equal to 3.627% of the net amount invested in the debt obligations in the Reinvestment Series portfolio (the "Reinvestment Price per Account Unit") or 3½% of the Reinvestment Price per Account Unit, plus accrued interest. All Account Units will be sold at this reduced sales charge of 3½% in comparison to the 4½% sales charge for primary and secondary purchases of units in any series of the Fund. Participants in the Account will have the opportunity to designate, in the Authorization Form for the Account, the name of a broker to whom the Sponsor will allocate a sales commission of 1½% per Account Unit, payable out of the 3½% sales charge. Under the Account, the entire amount of a participant's income and principal distributions will be reinvested in whole or fractional Account Units, such fractional Account Units to be calculated to four or five decimal places.

A semi-annual unitholder may join the Account at the time he invests in units of the Fund or any time thereafter by delivering to the Fund's Trustee (Bradford Trust Company) an Authorization Form which is available from brokers, any Underwriter of the units or the Sponsor. In order that distributions may be reinvested on a particular Account Reinvestment Date, the Authorization Form must be received by the Trustee not later than the 15th day of the month preceding such date. Authorization Forms not received in time for a particular Account Reinvestment Date will be valid only for the second succeeding Account Reinvestment Date. Similarly, a participant may withdraw from the Account at any time by notifying the Trustee in the manner set forth below. However, if written confirmation of withdrawal is not given to the Trustee prior to a particular semi-annual distribution the participant will be deemed to have elected to participate in the Account with respect to that particular distribution and his withdrawal will become effective for the next succeeding distribution.

Once delivered to the Trustee, an Authorization Form will constitute a valid election to participate in the Account with respect to units purchased in the Fund (and with respect to Account Units purchased with the distributions from units purchased in the Fund) for each subsequent distribution as long as the unitholder continues to participate in the Account. However, if a Reinvestment Series should materially differ from the Trust in the opinion of the Sponsor, the authorization will be voided and participants will be provided both a notice of the material change and a new Authorization Form which would have to be returned to the Trustee before the unitholder would again be able to participate in the Account. The Sponsor anticipates that a material difference which would result in a voided authorization would include such facts as (i) the inclusion of bonds in the Reinvestment Series portfolio the interest income on which was not in the opinion of counsel to the issuer exempt from all Federal income tax or (ii) the inclusion of debt obligations in the Reinvestment Series portfolio which were not rated "A" or better by Standard & Poor's Corporation or Moody's Investors Service, Inc. or had, in the opinion of the Sponsor, similar credit characteritics, on the date such debt obligations were initially deposited in the Reinvestment Series portfolio and on the date of purchase for reinvestment.

The Sponsor has the option at any time to use units of a Secondary Series to fulfill the requirements of the Account in the event units of a Primary Series are not available either because a Primary Series is not then in existence or because the registration statement relating thereto is not declared effective in sufficient time to distribute final prospectuses to Account participants (see below). There is not assurance that the quality and diversification of the bonds in any Reinvestment Series or the estimated current return thereon will be similar to that of the Trust in which the Account participant originally invested. However, if a unitholder purchases units of a Trust which is comprised of bonds of only one state and such unitholder joins the Account, his reinvestment purchases will only be in units of Trusts of such state, unless he requests otherwise.

It is the Sponsor's intention that units in each Reinvestment Series will be offered on or about each semi-annual Record Date for determining who is eligible to receive distributions on the related Payment Date. Such Record Dates are May 15 and November 15 of each year. The Sponsor will send a current prospectus relating to the Reinvestment Series being offered for a particular Account Reinvestment Date along with a letter which reminds each participant that Account Units are being purchased for him as part of the Account unless he notifies the Trustee in writing by that Account Reinvestment Date that he no longer wishes to participate in the Account. The Sponsor intends to provide participants with such current prospectus at least two weeks prior to the related Account Reinvestment Date in order that participants have enough time to review such prospectus. In the event a Primary Series has not been declared effective in sufficent time to distribute a final prosepectus relating thereto and there is no Secondary Series as to which a registration statement is currently effective, it is the Sponsor's intention to suspend the Account and distribute to each participant his regular semi-annual distribution in cash. If the Account is so suspended, it will resume in effect with the next Account Reinvestment Date assuming units of a Reinvestment Series are then being offered.

To aid a participant who might desire to withdraw either from the Account or from a particular distribution, the Trustee has established a toll free telephone number for participants to use for notification of withdrawal, which must be confirmed in writing prior to the Account Reinvestment Date (see below). Should the Trustee be so notified, it will make the appropriate cash disbursement. Unless the withdrawing participant specifically indicates in his written confirmation that (a) he wishes to withdraw from the Account for that particular distribution only, or (b) he wishes to withdraw from the Account for less than all units of each series of Fund which he might then own (and specifically identifies which series are to continue in the Account), he will be deemed to have withdrawn completely from the Account in all respects. Once a participant withdraws completely, he will only be allowed to again participate in the Account by submitting a new Authorization Form. A sale or redemption of a portion of a participant's Account Units will not constitute a withdrawal from the Account with respect to the remaining Account Units owned by such participant.

Unless a unitholder notifies the Trustee in writing to the contrary, any unitholder who has acquired Account Units will be deemed to have elected the semi-annual plan of distribution and to participate in the Account with respect to distributions made in connection with such Account Units. A participant who subsequently desires to have distributions made with respect to Account Units delivered to him in cash may withdraw from the Account with respect to such Units and remain in the Account with respect to units acquired other than through the Account. Assuming a participant has his distributions made with respect to Account Units reinvested, all such distributions will be accumulated with distributions generated from the units of the Fund used to purchase such additional Account Units. In addition, if a person owns units in more than one Series of the Fund and has elected to participate in the Account with respect to one or more such Series, all distributions with respect to the Series for which such election has been made will be

aggregated for purposes of making reinvestment purchases under the Account. Even if interest income and principal distributions should be reinvested, they will still be treated as distributions for income tax purposes.

Participants in the Account will not receive individual certificates for their Account Units unless the amount of Account Units accumulated for a particular Reinvestment Series represents $1,000 principal amount of bonds underlying such units and, in such case a written request for certificates is made to the Trustee. All Account Units will be accounted for by the Trustee on a book entry system. Each time Account Units are purchased under the Account, a participant will receive a confirmation stating his cost, number of units purchased and current return. Questions regarding a participant's statement should be directed to the Trustee at a toll free telephone number to be established.

All expenses relating to the operation of the Account will be borne by the Sponsor. Both the Sponsor and the Trustee reserve the right to suspend, modify or terminate the Account at any time for any reason, including the right to suspend the Account if the Sponsor is unable or unwilling to establish a Primary Series or is unable to provide Secondary Series units. All participants will receive notice of any such suspension, modification or termination.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person, except a dealer, a principal underwriter or the issuer except at a current public offering price described in the prospectus. Rule 22d-1 under the Act permits certain variations in sales load, none of which it is alleged are applicable to the proposed Account.

In support of its request, the Fund asserts that it believes that there is little or no additional sales cost that could be allocated to the purchase of Reinvestment Units by such persons through reinvestment of distributions from the Trusts. Accordingly, the Fund believes that such investors, rather than the Sponsor, should receive the benefit of lower sales costs to the Sponsor through reinvestments at the public offering price rather than payment of a sales charge.

The fund also asserts that reducing the sales charge on the sale of Reinvestment Units is warrented because of related cost savings. The Fund states that the customary 4½ percent sales charge is attributable basically to brokerage efforts to make the initial customer solicitation, to ascertain the customer's financial requirements and to counsel him on the Fund's specific product. The Fund represents that each Reinvestment Series will be substantially similar to the Trusts into which an Account participant initially purchased with the exception of the composition of the bond portfolio and certain portfolio related information. Consequently, the support for that portion of the sales charge attributable to counselling the participant on the Fund's product is reduced, as is the selling component relating to initial solicitations. It is the Fund's belief that cost savings related thereto should be passed on to the Account participants.

However, the fund states that an Account participant may seek professional advice with respect to participation in any particular Reinvestment Series, and thus a reduced sales charge for such financial services is warranted. It is the Fund's belief that a charge of 1½ percent of the net asset value of the underlying bonds in each Reinvestment Series is a reasonable and justifiable expense to be allocated to the soliciting broker for his professional assistance in connection with each Reinvestment Series. The Fund argues that this 1½ percent sales charge compares favorably to the 4½ percent charge which is currently allocated to underwriters in the sale of units of each Series of the Fund in the primary distribution.

The Fund also states that in addition to the foregoing, implementation of the Account will create certain special costs which reasonably should be borne by the Account participants. It is the Sponsor's belief that the special out-of-pocket expenses related to the Account (including such items as (a) maintaining separate Trustee records on participants, (b) mailing, shipping and miscellaneous delivery charges, (c) maintaining a toll free telephone number with knowledgeable operators, and (d) separate printing charges) will amount to at least 1 percent per $1,000 unit. Finally, prior experience indicates that the normal out-of-pocket costs for establishing each Series of the Fund approximates 1 percent of the underlying net asset value of the Fund's portfolio. The fund argues that because Account participants will have units purchased on their behalf in each Reinvestment Series prior to any offer to the general public, it is reasonable and justifiable that any purchases made under the Account should bear the allocable costs of establishing the Reinvestment Series. Thus, the Sponsor submits that a sales charge of 3½ percent of underlying net asset value is warranted in that such charges should cover expenses related to the creation and sale of units under the Account and yet give participants an opportunity to share in cost savings.

Section 6(c) of the Act provides, in pertinent part, that the Commission may, upon application, conditionally or unconditionally, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 8, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-36398 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Rel. No. 15414; File No. SR-NASD-78-12]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

DECEMBER 15, 1978.

On September 25, 1978, the National Association of Securities Dealers, Inc., 1735 K Street NW., Washington, D.C. 20006 ("NSDF"or "Association") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, copies of a proposal (the "Proposal") to impose a late fee on all NASDAQ subscribers whose payments of NASDAQ service charges are past due for 60 days or more. The late fee would be 10 percent of such past due service charges. According to the NASD, the purpose of the Proposal is to cover the Association's costs for the collection efforts required when NASDAQ subscribers fail to make timely payment of fees.

Notice of the Proposal, together with the terms of substance thereof, was given by publication of a Commission Release (Securities Exchange Act Release No. 15258, October 20, 1978) and by publication in the FEDERAL REGISTER (43 FR 50528, October 30, 1978).

The Commission finds that the Proposal is consistent with the requirements of the Act and the applicable rules and regulations thereunder, and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the Proposal be, and it hereby is, approved.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-36399 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5585; File No. 81-410]

NATIONAL STARCH AND CHEMICAL CORP. AND NATIONAL STARCH AND CHEMICAL HOLDING CORP.

Application and Opportunity for Hearing

DECEMBER 20, 1978.

Notice is hereby given that National Starch and Chemical Corporation ("National") and National Starch and Chemical Holding Corporation ("Holding") (both collectively referred to as "Applicants") have filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicants an exemption from filing Forms 10-K and Forms 10-Q required by the provisions of Sections and 15(d) of the 1934 Act.

The Applicants state, in part:

1. On August 15, 1978, National was merged into Holding, a wholly-owned subsidiary of Unilever, N.V. As a result of the merger, National no longer has any publicly traded stock.

2. Holding has only approximately 180 public shareholders of its preferred stock, and there are strong transfer restrictions and tax incentives against any future public trading of this stock. Moreover, those present preferred shareholders are already guaranteed by the terms of the preferred shares to receive certain financial information, including audited financial statements on an annual basis.

Applicants argue that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549

Notice is further given that any interested person not later than Jan. 15, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-36400 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5570; File No. 81-422]

PC LIQUIDATING CORP.

Application and Opportunity for Hearing

DECEMBER 20, 1978.

Notice is hereby given that PC Liquidating Corporation (the "Applicant"), formerly Progressive Corporation, has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from the periodic reporting requirements under Section 15(d) of the 1934 Act.

The Applicant states:

1. On May 17, 1978, the Applicant sold all of its assets and the business of its subsidiaries to Franke Holding AG, a Swiss corporation pursuant to a Plan of Complete Liquidation and Distribution;

2. The shareholders of the Applicant approved the Plan at a special meeting on that date, proxies for which were solicited in accordance with Regulation 14A under the 1934 Act;

3. The Plan was described in the Applicant's Form 10-K for the fiscal year ending May 31, 1978.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than Jan. 15, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desireability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-36401 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5572; File No. 81-425]

ROYAL ZENITH CORP.

Application and Opportunity for Hearing

DECEMBER 20, 1978.

Notice is hereby given that Royal Zenith Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting Ap-

plicant an exemption from the provisions of Section 15(d) of the 1934 Act.

Applicant states that on November 3, 1978, a Plan of Dissolution and Complete Liquidation and an Agreement to Sell its assets to an unaffiliated private entity was consummated. Accordingly, Applicant no longer has any operations, and there is no trading market for Applicant's securities.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C.

NOTICE IS FURTHER GIVEN that any interested person not later than Jan. 15, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, Corporation Finance, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-36402 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Rel. No. 10529; 812-4376]

SECURITY BENEFIT LIFE INSURANCE CO. AND SBL VARIABLE ANNUITY ACCOUNT II

Application to Permit Offers of Exchange and for Exemptions

DECEMBER 15, 1978.

Notice is hereby given that Security Benefit Life Insurance Company ("SBL"), a mutual life insurance company organized under the laws of the State of Kansas, and SBL Variable Annuity Account II ("VAA-II") 700 Harrison Street, Topeka, Kans. 66636, a unit investment trust registered under the Investment Company Act of 1940 ("Act") (hereinafter called "Applicants"), have filed an application on October 16, 1978, and an amendment thereto on December 11, 1978, pursuant to Section 11 of the Act for an order permitting offers of exchange and pursuant to Section 6(c) of the Act exempting Applicants from Sections 26(a) and 27(c)(2) of the Act, to the extent noted below. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below.

VAA-II was established by SBL on August 2, 1977. VAA-II contracts ("Variable Contracts") are designed for personal use and for use with plans and trusts not qualifying under the Internal Revenue Code for tax-benefited treatment. The Variable Contract owner makes payments to SBL, and after deduction of sales and administrative expenses, the balance of such payments are allocated to VAA-II. Payments allocated to VAA-II are invested in shares of SBL Fund, Inc., an open-end diversified management investment company which issues its shares in three separate series ("SBL Fund"). The owner may elect Series A (a diversified portfolio of common stocks), Series B (a portfolio seeking income with secondary emphasis on capital appreciation), or Series C (a portfolio seeking to preserve capital while generating interest income).

SECTION 11

Section 11(a) of the Act provides, in effect, that it shall be unlawful for any registered open-end investment company or any principal underwriter for such company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company, to exchange his security for a security in the same or another company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that irrespective of the basis of exchange, the provisions of subsection (a) of Section 11 shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Net purchase payments received pursuant to the Variable Contracts will be allocated to VAA-II and invested as designated in shares of Series A, Series B, or Series C of SBL Fund, Inc. It is proposed that owners of any one of the three series of Variable Contracts will have the right to exchange all or any part of their units for units of any of the other two series of Variable Contracts at any time during the accumulation period, but not more often than once every 30 days with one additional election permitted within not less than 30 days prior to the maturity date of the Variable Contract. VAA-II will not make an additional sales charge with respect to the proposed exchange of units of one series of Variable Contract to another during the accumulation period since the price described in the Prospectus of VAA-II with respect to the Variable Contract has already been paid. It is intended, however, that an administrative fee of $10.00 per exchange will be assessed against the new units for all exchanges other than the first such exchange elected in each contract year and the additional exchange permitted not less than 30 days prior to the maturity date. All such exchanges will be on the basis of the relative net asset value of the units which are equal to the net asset values of their underlying SBL Fund shares, with an adjustment for the administrative fee if applicable.

It is also proposed that the owners of one of the three series of Variable Contracts will have the right to elect to exchange all or any part of their units for units of either of the other two series at any time after Variable Contract annuity payments have commenced, but not more often than once each calendar year.

Any such exchange would not be permitted during the five-day interval prior to and including any annuity payment date. VAA-II does not intend to make an additional sales charge with respect to the proposed exchanges after commencement of annuity payments, and all such exchanges will be on the basis of the relative net asset values of the units which are equal to the net asset values of the underlying SBL Fund shares. No administrative fee will be charged on exchanges after the commencement of annuity payments.

It is submitted that the proposed exchanges during the accumulation period and after commencement of annuity payments will privide Variable Contract owners with the opportunity to choose between the shares of the underlying series of SBL Fund, which have different investment objectives. This will provide Variable Contract owners with increased flexibility to change their retirement programs as their needs and circumstances change from time to time, without additional sales charge and in some instances without any administrative charge.

An order is therefore requested under Section 11 of the Act permitting offers of exchange as above described.

SECTIONS 26(a) AND 27(c)(2)

Section 27(c)(2) of the Act prohibits a registered investment company, or a depositor or underwriter for such company, from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a trustee or a custodian having the qualifications prescribed in Section 26(a)(1) and held under an indenture or agreement containing, in substance, the provisions

required by Sections 26(a)(2) and 26(a)(3) of the Act for a unit investment trust. Section 26(a)(2) requires the trustee or custodian to segregate and hold in trust all securities and cash of the trust, places certain restrictions on charges which may be made against the trust income and corpus, and excludes from expenses which the trustee or custodian may charge against the trust any payments to the depositor or principal underwriter other than a fee, not exceeding such reasonable amount as the commission may prescribe, for providing bookkeeping and other administrative services delegated to them by the trustee or custodian. Section 26(a)(3) governs the circumstances under which the trustee or custodian may resign.

Applicants request an exemption from the provisions of Sections 26(a) and 27(c)(2) so that the proceeds of all payments under the Variable Contracts may be held by SBL rather than by a custodian or trustee as required under the Act and so that VAA-II may be administered directly by SBL in the manner described in VAA-II prospectus. SBL, as a life insurance company, must retain ownership of and control of the disposition of its property under Kansas law. Applicants represent that the custodianship is unnecessary in this instance because of the manner in which the Variable Contracts will be administered and extensive state regulation of SBL. Net purchase payments under the Variable Contracts will be invested only in shares of SBL Fund, whose assets are held by a custodian meeting the requirements of Section 26(a) of the Act. The ownership of Fund shares by VAA-II will be held in an open account so that such ownership will only be indicated on the books of the Fund and VAA-II and will not be evidenced by transferable stock certificates. SBL is subject to extensive supervision and control by the Kansas Commissioner of Insurance and the Insurance Commissioners of each state in which the Variable Contracts are sold. Under Kansas law and the terms of the Variable Contracts, the assets of VAA-II are not chargeable with liabilities arising out of any other business conducted by SBL. Obligations arising under the Variable Contracts are legally binding obligations of SBL. SBL has combined capital and surplus in excess of $450 million, and its officers and employees are covered by a fidelity bond in the amount of $2,000,000. For these various reasons, Applicants assert that such existing regulation of SBL affords substantially the same protection contemplated by the provisions of Section 26(a) and Section 27(c)(2) of the Act and such existing regulation assures that all obligations under the Contracts issued by VAA-II will be performed.

Applicants have consented that the requested exemption from Sections 26(a) and 27(c)(2) be subject to the conditions (1) that the charges to investors for administrative services shall not exceed such reasonable amounts as the Commission may prescribe, jurisdiction being reserved to the Commission for such purpose, and (2) that the payment of sums and charges out of the assets of VAA-II shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right, in any proceeding before the Commission or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

SECTION 6(c)

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security or transaction of any class or classes of persons, securities or transactions, from any provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 9, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or in the case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, purusant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-36403 Filed 12-29-78; 8:45 am]

[8010-01-M]

(Administrative Proceeding file No. 3-5555; file No. 81-400)

SEMITROPIC DISTRIBUTING CO.

Application and Opportunity for Hearing

DECEMBER 20, 1978.

Notice is hereby given that Semitropic Distributing Company, formerly Santa Ana Valley Irrigation Company, ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicant an exemption from filing various reports required by the provisions of Section 13 of the 1934 Act.

The Applicant states, in part:

1. On November 15, 1977, Applicant's shareholders approved the sale of substantially all of Applicant's assets to unrelated third party and adopted a plan of complete liquidation pursuant to which the Company's net assets will be distributed to its shareholders. There has not been, nor is there presently, an active market for the Company's Capital Stock.

2. Expenses to be incurred in preparing and filing 1934 Act reports would reduce the amount of cash available for distribution to Applicant's shareholders.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than Jan. 15, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly

the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-36404 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Release No. 34-15422; File No. SR-DTC-78-15]

DEPOSITORY TRUST CO.

Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 11, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED RULE CHANGE

(a) Surcharges for services in securities issues which carry transfer agent fees:

Deposits—$.67 per deposit
Withdrawals—
$3.36 per withdrawal by Transfer-Transfer Control Form (W/T-TCF);
$3.38 per Urgent Withdrawal Request (COD)

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to pass along to Participants with activity in securities issues which carry transfer agent fees the costs incurred by The Depository Trust Company (DTC) because of such fees.

The proposed rule change relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 (the Act) by equitably allocating charges other than dues or fees among DTC Participants.

DTC's present billing system charges by activity performed rather than by certificates processed. There were three alternatives for handling the pass through of transfer agent fees to Participants.

1. Revise the present automated billing system.—This would require a substantial number of development staff man-months to program this change and would have an adverse effect on other planned development work. Also, data entry requirements would be increased thereafter, adding to personnel costs. Out of 13,000 DTC-eligible issues, about 325 initially would be eligible.

2. Capture the data manually—Substantial clerical effort would be required in the absence of automation since:

Transfer agent fees vary depending upon the issue involved.

The bases for transfer fees vary. Certain transfer agent fees are based on the number of certificates issued while others are based on the number of certificates received for transfer.

Each Participant contributing certificates to a daily DTC shipment sent for transfer would have to be tracked since its share of the fee would depend upon the number of Participants involved in that particular shipment.

The number of certificates requested by each Participant for withdrawal by transfer (W/T) and urgent certificate withdrawal requests (COD) would also have to be tracked resulting in numerous mathematical calculations for DTC certificate shipments to transfer agents.

3. Utilize the current billing system—The present billing system could pass along these transfer agent fees in the form of a surcharge to those Participants having activity in these issues. The surcharge would be based on an average transfer agent fee for those activities which generate transfer activity. Thus, the amount of the surcharge developed would be based initially on estimated recent deposit, W/T and COD activity in other OTC issues so as to equal DTC's costs associated with these transfers. The case for utilizing the current billing system is (a) the insignificant incremental costs (b) the larger incremental costs of the other alternatives that would ultimately be borne by all Participants whether or not they had activity in these issues, and (c) the ease of implementation. The planned procedure allocates fee recovery only among those Participants who deal in fee-bearing issues. Of necessity, the planned surcharges have been derived from estimates, because there is no history of DTC activity in those issues to draw upon. The actual activity, when it begins, will represent a small portion of DTC's overall processing which can and will be monitored closely. DTC intends to review these pass through surcharges based on experience to determine their adequacy and to insure a balance between total fees collected from Participants and paid to transfer agents.

Comments were not and are not to be solicited from Participants. All participants have been notified of proposed surcharges by a DTC Important Notice (Exhibit 2 to DTC's filing on Form 19B-4A, SR-DTC-78-15).

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by January 23, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 20, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-36405 Filed 12-29-78; 8:45 am]

[8010-01-M]

[Release No. 34-15419; File No. SR-MSRB-78-16]

MUNICIPAL SECURITIES RULEMAKING BOARD

Proposed Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule changes as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The Municipal Securities Rulemaking Board (the "Board") is filing proposed amendments (hereafter sometimes referred to as the "proposed rule changes") to Board rule G-3 relating

to the qualification requirements for municipal securities professionals. The proposed rule changes change the date on which the examination requirement for financial and operations principals becomes effective from January 1, 1979 to April 1, 1979, and modify paragraph (g) of rule G-3 to permit an associated person of a municipal securities broker or municipal securities dealer to retake the examination during this period even if the person has failed to pass the examination three times in succession. The text of the proposed rule changes is as follows:

Rule G-3. Classification of Principals and Representatives; Numerical Requirements; Testing*

(a) through (c) No change.

(d) Qualification Requirements for Financial and Operations Principals.

(i) through (iv) No change.

(v) The requirements of paragraph (d)(i) shall become effective on *April 1, 1979* [January 1, 1979].

(e) and (f) No change.

(g) Retaking of Qualification Examinations.

Any associated person of a municipal securities broker or municipal securities dealer who fails to pass a qualification examination prescribed by the Board shall be permitted to take the examination again after a period of 30 days has elapsed from the date of the prior examination, provided that any person who fails to pass an examination three time in succession shall be prohibited from again taking the examination until a period of six months has elapsed from the date of the third examination. *Notwithstanding the foregoing, the requirement in this paragraph for a person to wait six months before again taking an examination which the person has failed to pass three times in succession, shall not apply to persons subject to the requirements of subparagraph (d)(i) during the period from January 1, 1979 to April 1, 1979.*

(h) No change.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule changes are as follows:

Purpose of Proposed Rule Changes

The purpose of extending the date from January 1, 1979 to April 1, 1979 is to provide persons required to take and pass the Municipal Securities Rulemaking Board Financial and Operations Principal Qualification Examination (the "Examination") additional time to do so. Although the board believes that the Examinaton is a fair and valid test of the knowledge which persons should have to be qualified as financial and operations principals, the results of the Examinations indicate that candidates are experiencing some difficulty with it. In view of the potential serious consequences for a securities firm if no associated person passes the Examination within the prescribed time, the Board is of the view that an extension of three months is necessary and appropriate. Such an extension will provide persons who have failed the Examination additional time to study and prepare for retaking it, and permit firms with no qualified financial and operations principals to continue to function in the interim. The Board does not intend to consider a further extension of the time period.

For the reasons noted above, the Board also proposes to modify rule G-3 to permit a person to retake the Examination during the extended period, even if the person has failed to pass the Examination three times in succession.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule changes pursuant to the provisions of section 15B(b)(2)(A) of the Securities Exchange Act of 1934, as amended (the "Act"), which directs the Board to propose and adopt rules to provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless . . . such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standard, of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Comments Received From Members, Participants or Others on Proposed Rule Changes

The Board has neither solicited nor received written comment concerning the proposed rule changes. However, the Board has received comments from several persons who have taken the Examination concerning the difficulty of the Examinations, and has continuously monitored the statistical results of the Examination.

Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition.

By February 6, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by January 23, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 19, 1978.

George A. Fitzsimmons,
Secretary.

[FR Doc. 78-36406 Filed 12-29-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0110]

INVESAT CORP.

Filing of Application for Transfer of Control of a Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.701 of the Regulations governing small business investment companies (13 C.F.R. 107.701 (1978)), for the transfer of control of Invesat Corportion, 1441 Deposit Guaranty Plaza, Jackson, Mississippi 39201, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.).

Invesat Corporation was licensed on September 14, 1974, with authorized capital stock of 300,000 shares at $1.00 par value of which 90,706 (December 31, 1977) shares are issued and outstanding. At the present time, Mississippi Economic Development Corporation is the only person or entity owning more than 10 percent of the outstanding stock.

* Italics indicate new language; [brackets] indicate deletions.

The Applicants, Lamar Life Corporation and VGS Corporation, each propose to purchase up to 52,979 shares of stock or 27 percent of the stock after issue. Messrs. Charles W. Else and Robert M. Hearin own, control or have the power to control VGS Corporation which is the controlling stockholder of Lamar Life Corporation.

The amount of stock to be issued will be 54 percent of the total outstanding shares of stock after issue and would increase Invesat Corporation's private capital to $3,000,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the new owners and management, and the probability of successful operations of Invesat Corporation under their control and management, including adequate profitability and financial soundness, in accordance with the Act, and Regulations.

Notice is hereby given that any person may, not later than (15 days from the date of publication of this Notice), submit to SBA, in writing, comments on the transfer of control.

Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in the newspaper of general circulation in Jackson, Mississippi.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 20, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-36389 Filed 12-29-78; 8:45 am]

[8025-01-M]

[License No. 04/04-5131]

R.P.B. INVESTMENT ENTERPRISES, INC.

Issuance of License to Operate as a Small Business Investment Company

On October 21, 1977, a notice was published in the FEDERAL REGISTER (42 FR 56175), stating that R.P.B. Investment Enterprises, Inc., located in the Falls Building, 22 North Front Street, Memphis, Tennessee 38103, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1977), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business November 7, 1977, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 04/04-5131 to R.P.B. Investment Enterprises, Inc. on November 27, 1978, to operate as a small business investment company, pursuant to Section 301(d) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

DECEMBER 20, 1978.

[FR Doc. 78-36390 Filed 12-29-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area #1521; Amendment #4]

TEXAS

Declaration of Disaster Loan Area

The above number Declaration (See 43 FR 40583), Amendment #1 (See 43 FR 43593, Amendment #2 (See 43 FR 48750), Amendment #3 (See 43 FR 59453) are amended by adding the following counties and adjacent counties within the State of Texas as a result of natural disaster as indicated:

County	Natural Disaster(s)	Date(s)
Dickens	Drought	5/20/78-9/30/78
Kaufmann	Drought	5/01/78-9/30/78
Motley	Drought	5/20/78-9/30/78
Nueces	Drought	2/01/78-9/30/78
San Patricio	Drought	2/01/78-9/30/78
Yoakum	Drought	5/01/78-9/30/78
Do.	Hail	8/28/78
Hansford	Drought	6/01/78-9/24/78
Hidalgo	Drought	5/18/78-9/30/78
Hutchinson	Drought	6/01/78-9/24/78
Lamb	Drought	1/01/78-9/20/78
Lipscomb	Drought	6/01/78-9/24/78
Ochiltree	Drought	6/01/78-9/24/78
Parmer	Drought	1/01/78-9/30/78
Trinity	Drought	5/01/78-9/30/78
Cochran	Drought	1/01/78-9/30/78

All other information remains the same; i.e., the termination dates for filing applications for physical damage are close of business on March 6, 1979, and for economic injury until the close of business on June 6, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 13, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-36391 Filed 12-29-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area #1553]

WEST VIRGINIA

Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Cabell, Jackson, Lincoln, Mingo and Wayne counties, and adjacent counties within the State of West Virginia constitute a disaster area, because of damage resulting from severe storms and flooding beginning about December 7, 1978. Eligible persons, firms and organizations may file applications for physical damage until the close of business on February 14, 1979, and for economic injury until the close of business on July 14, 1979, at:

Small Business Administration, District Office, 109 North Third Street, Clarksburg, West Virginia 26301.
Small Business Administration, Branch Office, Charleston National Plaza, Suite 628, Charleston, West Virginia 25301.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 20, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-36392 Filed 12-29-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RELEASE OF HOME ADDRESSES OF CERTIFIED AIRMEN AND OF HOLDERS OF CERTIFICATES OF AIRCRAFT REGISTRATION

Notice of Intent

Pursuant to 5 U.S. Code, § 552(a)(1), notice is given that the Federal Aviation Administration (FAA) Airmen and Aircraft Registry at Oklahoma City intends to revise long-standing procedures affecting the release of

such data as may contain home addresses of certificated airmen and of holders of aircraft registration certificates ("registrants").

Over past years Registry practice has been to release at prescribed fees to any member of the public various copies of listings of registrants and certificated airmen, even though some home addresses appeared in this official data. It has also been the normal procedure to release home addresses of specific airmen and aircraft owners requested on an individual basis. Copies of multiple airmen and aircraft owners have been in various formats, including magnetic tapes, microfiche, and computer printouts. Concurrently there has been available for public purchase a complete listing of registered civil aircraft, entitled "United States Civil Aircraft Register." It is published twice each year by the Government Printing Office (GPO), utilizing computerized Registry data, and contains the names of each registrant, together with the address of each registrant, tabulated under columns of "street," "city," and "State."

The FAA has recently determined that disclosure of home addresses of registrants and certificated airmen could in some instances constitute a "clearly unwarranted invasion of personal privacy," as that phrase appears in the sixth exemption of the Freedom of Information Act, 5 U.S.C. 552(b)(6). In those cases the addresses are exempt from mandatory disclosure under the FOIA, and their disclosure is, therefore, controlled by the Privacy Act, 5 U.S.C. 552a. The FAA has further determined that the Privacy Act prohibits disclosure of the FOIA-exempt addresses without the prior written consent of the individuals concerned. In this connection, the FAA will soon publish in the FEDERAL REGISTER revisions to its Privacy Act Systems of Records DOT/FAA 801 and 802, Aircraft Registration System and Airman Certification System, respectively, to amend the published "routine uses" applicable to those systems by deleting reference to public disclosure. Thereafter home addresses from those systems of records will be released to the public only after the agency has determined that they are not exempt under FOIA; i.e., when there is reasonable assurance that the privacy invasion involved is justified by the public interest to be served by disclosure, unless the disclosure is with written consent or pursuant to another "routine use."

Accordingly, notice is given of the intention of the FAA Airmen and Aircraft Registry, which is a component of the Mike Monroney Aeronautical Center, to make the following procedural changes:

The Registry will review each request for disclosure of registrant's home address (including requests for copies of the United States Civil Aircraft Register) and weigh the public interest purposes to be served against the seriousness of the intrusion into personal privacy that may result from disclosure. The weighing process will be:

a. A request from the member of the public will be considered for disclosure only if it is submitted in writing and states the purposes for which the information is requested and how those purposes reflect a public interest.

b. Each request will be evaluated on the basis of the stated public use versus invasion of privacy that would result from disclosure.

c. If the seriousness of the intrusion outweighs the public interest purpose, the material will be withheld. If the public interest purpose outweighs the seriousness of the intrusion, the material will be released for use only as stated by the requester.

Dated: December 19, 1978.

CALVIN H. DAVENPORT,
Acting Director,
Aeronautical Center.

[FR Doc. 78-36376 Filed 12-29-78; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

SUSPENSION OF LIQUIDATION UPON EXPIRATION OF THE COUNTERVAILING DUTY WAIVER AUTHORITY

AGENCY: U. S. Customs Service, Treasury Department.

ACTION: Suspension of liquidation.

SUMMARY: This notice is to advise the public that when the authority conferred upon the Secretary of the Treasury by the Trade Act of 1974 to waive the imposition of countervailing duties expires January 3, 1979, the liquidations of merchandise subject to those countervailing duty waivers, entered on or after that date, will be suspended until further notice. Unless actual deposits of estimated additional duties are made, to guarantee the payment of potential countervailing duties, security must be posted in the form of bonds or letters of credit at the time of entry of such merchandise.

EFFECTIVE DATE: January 3, 1979.

FOR FURTHER INFORMATION CONTACT:

Theodore Hume, Office of the Chief Counsel, U. S. Customs Service, Washington, D. C. 20229 (202-566-5476).

SUPPLEMENTARY INFORMATION: Section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (Pub. L. 93-618, January 3, 1975), authorizes the Secretary of the Treasury to waive the imposition of countervailing duties on any article or merchandise during the four-year period beginning on the date of enactment of the Trade Act of 1974 if he determines that:

"(A) Adequate steps have been taken to resuce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

"(B) There is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

"(C) The imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations * * *" (19 U.S.C. 1303(d)(2), as amended).

Under the authority of this provision, waivers which are currently in effect have been granted with respect to the merchandise described in the Appendix to this notice. When the four-year period for waiving countervailing duties expires January 3, 1979, such merchandise which is entered, or withdrawn from warehouse, for consumption on or after that date will be subject to the assessment of countervailing duties.

In accordance with section 303(a)(5) of the Tarrif Act of 1930, as amended (19 U.S.C. 1303(a)(5)), the net amount of the bounty or grant paid or bestowed, directly or indirectly, upon the manufacture, production or exportation of the merchandise set forth in

the Appendix to this notice has been ascertained and determined, or estimated, and the net amount for each of the products (or goods) is as shown in the Appendix. Accordingly, effective on January 3, 1979, and until further notice, such dutiable merchandise, imported directly or indirectly from the country where manufactured or produced, which benefits from bounties or grants and which is entered, or withdrawn from warehouse, for consumption on or after January 3, 1979, shall be subject, in addition to any other duties determined or estimated to be due, to payment of countervailing duties. Any merchandise subject to the terms of this order shall be deemed to have benefitted from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of such merchandise.

Several bills were introduced and considered during the 95th Session of Congress which contained provisions for extending waivers in effect on January 3, 1979. Although both Houses of Congress passed separate bills containing such extension provisions, the bills did not become law for reasons unrelated to the merits of the waiver provision. Comparable legislation may be enacted during the next Session of Congress, retroactive to January 3, 1979, making it uncertain that liability for countervailing duties regarding merchandise for which waivers currently are in effect will finally be assessed. It is, therefore, deemed appropriate at this time to suspend final liquidations of such entries. Accordingly, effective January 3, 1979, and until further notice, the liquidation shall be suspended on all entries, or withdrawals from warehouse, for consumption of the merchandise set forth in the Appendix, imported directly or indirectly from the country where manufactured or produced, which benefit from bounties or grants and which are subject to this notice.

In lieu of requiring the deposit of estimated countervailing duties, the posting of bonds or irrevocable letters of credit in an amount sufficient to cover potential liability for countervailing duties will be considered sufficient to meet the obligations of the Secretary for protecting the revenue pursuant to section 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1623). Accordingly, the appropriate Customs officers are hereby directed to require such bonds or irrevocable letters of credit as they may deem necessary for the protection of the revenue.

LEONARD LEHMAN,
Commissioner of Customs.

Approved: December 27, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

APPENDIX

Country	Product	Estimated duty
Korea	Rubber footwear	0.7% *ad valorem.*
Austria	Cheese	Zero.
Switzerland	Certain cheese	Emmenthaler: Wheels—69.5¢/lb. Cuts—60.9¢/lb. Slices—58.3¢/lb. Gruyere: Wheels—96.4¢/lb. Cuts—95.0¢/lb. Slices—90.9¢/lb.
Brazil	Leather handbags	Zero.
Norway	Cheese	Jarlsberg: Zero. Other types: 20¢/lb.
Finland	Certain cheese	Emmenthaler: Cuts—18.6¢/lb. Blocks—22.3¢/lb. Wheels—42.6¢/lb. Lappi: $1.14/lb. Turunamaa: $1.36/lb. Kreivi: $1.66/lb. Other processed cheeses: $1.53/lb.
Sweden	Certain cheese	Fontina: 50.8¢/lb. Blue: 53.4¢/lb. Edam: 45.4¢/lb. Farmer: 40.1¢/lb. Gradd (½ lb.): 51.1¢/lb. Gradd (9 lb.): 40.9¢/lb. Parte (½ lb.): 64.5¢/lb. Tilel: 47.6¢/lb. Drabant: 49.9¢/lb. Ambrosia: 40.1¢/lb. Riddar: 50.5¢/lb. Vasterbotten: 55.5¢/lb. Kribille special: 53.8¢/lb.
Canada	Certain fish	Groundfish: From Atlantic region (i.e., Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, and Quebec), 1.23% *ad valorem.* From the rest of Canada, zero.
Denmark	Butter cookies	30% *ad valorem.*
Colombia	Leather handbags	Zero.
Brazil	Textiles and certain textile mill products.	18.6% *ad valorem.*
EEC	Canned hams	From Denmark: Hams—21.9¢/lb. Shoulders—18.2¢/lb. From the Netherlands: Hams—27.5¢/lb. Shoulders—22.9¢/lb.
EEC	Dairy products	Cheese*: From Germany—60¢/lb. From Belgium—50¢/lb. From the Netherlands—50¢/lb. From Denmark—60¢/lb. From U.K.—20¢/lb. From Ireland—40¢/lb. From Italy—40¢/lb. From France—50¢/lb. From Luxembourg—zero. Nonfat, dry milk: Zero. Butter: Zero.

*These amounts will subsequently be adjusted to reflect the precise amount of all cheese categories upon which export restitution payments are made for each member country.

[FR Doc. 78-36434 Filed 12-29-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 274 (Sub-No. 2C]

ABANDONMENT OF RAILROAD LINES AND DISCONTINUANCE OF SERVICE

Petition To Eliminate Category II of System Diagram Classifications

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petition of the New York State Department of Transportation.

SUMMARY: The New York State Department of Transportation had filed a petition with the Commission seeking to amend the regulations promulgated at 49 CFR 1121, *Abandonment of Railroad Lines And Discontinuance of Service.* Specifically, it sought to eliminate or revise Category II of the system diagram classification describing lines potentially subject to abandonment. The petition was denied because the arguments had been considered and discussed before or were unsubstantiated.

DATE: The decision will be effective on the date it is served.[1]

FOR FURTHER INFORMATION CONTACT:

[1] Service Date: December 26, 1978.

Gerald M. Bober, 202-275-7564.

SUPPLEMENTARY INFORMATION: On August 9, 1978, the New York State Department of Transportation, by William C. Hennessy, its Commissioner, filed a petition to eliminate Category II of the System Diagram Classifications contained in the regulations promulgated at 49 CFR Part 1121, enacted November 10, 1976. See 41 FR 48520. This classification is used for grouping lines which are potentially subject to abandonment. Petitioner argues that the regulation is vague, confusing, and inconsistently applied.

Petitioner maintains that a line placed in this category becomes stigmatized both to shippers presently located on the line and those considering locating on the line in the future. The uncertain status of continued service is not conducive to profitable operation. In this manner the line is effectively doomed when it is placed in this category.

Petitioner protests that railroads may presently place lines in Category II at their own discretion. It argues that objective standards are necessary to determine which lines are "potentially subject to abandonment." Petitioner alleges that the recently enacted *Local Rail Service Assistance Act of 1978*, Pub. L. 95-611, creates an incentive for abuse of the Category II designation by computing state subsidy allocations using Category II mileage.

DISCUSSION AND CONCLUSION

Sub Part B of 49 CFR 1121 implements section 1a(5) (a) and (b) of the Interstate Commerce Act, as enacted in the *Railroad Revitalization and Regulatory Reform Act of 1976*, Pub. L. 94-210, (recodified at 49 U.S.C. 10904). This provision requires each rail carrier to publish annually a diagram of its transportation system. Each diagram must identify any line for which a carrier plans to submit an application for abandonment or discontinuance, as well as each line which is "potentially subject to abandonment."

In Ex Parte No. 274 (Sub-No. 2), we adopted rules defining these terms. We considered whether or not objective standards should be established for identifying lines "potentially subject to abandonment" (Category II). These standards would necessarily involve formulas designed to demonstrate that the line is an economic loser. By setting such standards, we would definitely be placing a stigma on those lines and discouraging future business on lines which may never be subject to an abandonment effort. See *Abandonment of R. Lines & Discontinuance of Serv.*, 354 I.C.C. 129, 136-139 (1976).

The Category II designation has a two-fold purpose. It notifies users that they are likely to face an attempt by the carrier to abandon the line. Secondly, the designation gives the Commission, other federal agencies, the States, local communities, and carriers themselves an opportunity to plan effectively to develop and maintain an integrated transportation system. Since the ultimate decision whether or not to file an abandonment application rests with the carrier, its intentions should be the focus of the system diagram classifications. An objective test for Category II might place in jeopardy certain lines which have a good potential for profitable operation and which the carrier is seeking to preserve.

We recognized that any labeling of a line as "potentially subject to abandonment" could be detrimental. However, the amended Interstate Commerce Act mandated regulations which include a category of lines "potentially subject to abandonment" (in addition to those for which the carrier plans to submit an abandonment application).

Certain regulations safeguard against abuse of this category. The carrier is required to maintain precise revenue and cost data for any line in Category II. Also, a system diagram map containing Category II lines must be revised annually to reflect whether there is any change in the categorization of those lines.

Petitioner has argued that many more lines will be placed in Category II as a result of the recently enacted subsidy legislation. It alleges that this will magnify the problem of lines becoming stigmatized. However, petitioner has presented no evidence that Category II is presently destructive or that the new legislation will cause the alleged harmful results. If abuses do occur, petitioner may refile its request.

Petitioner's argument that the use of "lines potentially subject to abandonment" in the subsidy allocations will defeat the intent of the legislation which led to the establishment of Category II is unfounded. There is no evidence that Congress failed to consider the interrelationship of the two statutes.

This is not a major regulatory action under the Energy Policy and Conservation Act of 1975.

It is ordered:

(1) The petition of the New York State Department of Transportation is denied.

(2) The decision shall be effective on the date it is served.

Dated December 18, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-36415 Filed 12-29-78; 8:45 am]

[7035-01-M]

[Volume No. 130]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

DECEMBER 20, 1978.

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission on or before February 1, 1979. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) [1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 8310 (Subs 6 and 7) (M1F) (notice of filing of petition to modify certificates), filed October 16, 1978. Petitioner: JEFF'S TRUCKING, INC., 22½ North Madison Street, P.O. Box 282, Waupun, WI 53963. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53703. Petitioner holds a motor *common carrier* Certificate in MC-8310 (lead certificate) issued September 27, 1972, authorizing transportation, as pertinent, over irregular routes, of: *canned and preserved foodstuffs* and *materials, equipment and supplies* used in the canning industry (except commodities in bulk, in tank or hopper-type vehicles), from points in the Township of Lomira, Dodge County, Wisconsin to points in Wisconsin, *RESTRICTION:* The service authorized under the commodity description next above is restricted to the transportation of traf-

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

fic destined to points in Wisconsin. Petitioner also holds a motor *common carrier* Certificate in MC-8310 (Sub No. 6), issued June 20, 1973, authorizing transportation, over irregular routes, of: *canned and preserved foodstuffs*, and *materials, equipment and supplies* used in the canning industry (except commodities in bulk, in tank or hopper-type vehicles), from points in Columbia and Fond du Lac Counties, Wisconsin to points in Wisconsin, *RESTRICTION:* The authority granted herein is restricted to the transportation of traffic destined to points in Wisconsin. Petitioner also holds a motor *common carrier* Certificate in MC-8310 (Sub No. 7), issued February 21, 1974, authorizing transportation, over irregular routes, of : *canned and preserved foodstuffs*, and *materials, equipment and supplies* used in the canning industry (except commodities in bulk, in tank or hopper-type vehicles), from points in Washington, Dodge (except Lomira), Dane, Green Lake, and Trempealeau Counties, Wisconsin, to points in Wisconsin, *RESTRICTION:* The operations authorized herein are restricted to the transportation of traffic (1) destined to points in Wisconsin, and (2) having an immediately prior movement by rail. By the instant Petition, petitioner seeks to remove the above-stated restrictions.

MC 64600 (Sub-47) (MIF) (notice of filing of petition to modify commodity description), filed October 10, 1978. Petitioner: WILSON TRUCKING CORPORATION, P.O. Drawer 2, Fishersville, Virginia 22939. Representative: Francis W. McInerny, 1000 sixteenth Street, NW, Washington, DC 20036. Petitioner holds a motor *common carrier* Certificate, MC-64600 (Sub-47) issued September 7, 1978, authorizing transportation, over regular routes of: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, gasoline, scrap iron, commodities in bulk, and those requiring refrigeration or special equipment), between Washington, DC and Baltimore, MD, serving the intermediate point of Laurel, MD. By the instant petition, petitioner seeks authority to modify the commodity description to read: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment).

MC 95540 (Sub-733) (MIF) (notice of filing of petition to modify certificate), October 18, 1978. Petitioner: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, FL 33801. Representative: Paul M. Daniell, Suite 1200, Atlanta Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds a motor *common carrier* certificate in MC 95540 sub 733 issued April 4, 1977, authorizing transportation, over regular routes of: *General commodities* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, articles of unusual value, and commodities the transportation of which by reason of size or weight require the use of special equipment, motor vehicles and boats) (1) Between Savannah, GA, and San Diego, CA.: From Savannah over US Hwy 80 to San Diego, and return over the same route, (2) between Jacksonville, FL, and Los Angeles, CA: From Jacksonville over U.S. Hwy 90 to Van Horn, TX, then over US Hwy 80 to Las Cruces, NM, then over US Hwy 70 to Globe, AZ, then over US Hwy 60 to Los Angeles, and return over the same route, and (b) from Jacksonville over Interstate Hwy 10 to Los Angeles, and return over the same route, (3) Between Savannah, GA, and Key West, FL.: From Savannah over US Hwy 17 to Jacksonville, FL, then over US Hwy 1 to Key West, and return over the same route, (4) Between Columbus, GA, and Miami, FL.: From Columbus over US Hwy 27 to Miami, and return over the same route, (5) Between Savannah, GA, and Miami, FL.: From Savannah over Interstate Hwy 95 to Miami, and return over the same route, (6) Between Macon, GA, and Miami, FL.: From Macon over US Hwy 41 to Miami, and return over the same route, (b) From Macon over Interstate Hwy 75 to Wildwood, FL, then over the Sunshine State Parkway to Miami, and return over the same route, (7) Between Wildwood, FL, and Tampa, FL.: From Wildwood over Interstate Hwy 75 to Tampa, and return over the same route, (8) Between Daytona Beach, FL, and St. Petersburg, FL.: From Daytona Beach over Interstate Hwy 4 to St. Petersburg, and return over the same route, (9) Between Statesboro, GA, and Ocala, FL.: From Statesboro over US Hwy 301 to Ocala, and return over the same route, (10) Between Bainbridge, GA, and Brunswick, GA.; From Bainbridge over US Hwy 84 to Brunswick, and return over the same route, (11) Between Cusseta, GA, and Blitchton, GA.: From Cusseta over US Hwy 280 to Blitchton, and return over the same route, (12) Between Cuthbert, GA, and Midway, GA.: From Cuthbert over US Hwy 82 through Enigma, GA, to Midway and return over the same route, (13) Between Macon, GA, and Folkston, GA.: From Macon over US Hwy 23 to Folkston, and return over the same route, (14) Between junction US Hwys 80 and 19 north of Butler, GA, and St. Petersburg, FL.: From junction US Hwys 80 and 19 over US Hwy 19 to St. Petersburg, and return over the same route, (15) Between Lebanon Station, FL, and Dunnellon, FL.: From Lebanon Station over FL Hwy 335 to Dunnellon, and return over the same route, (16) Between Perry, FL, and Pensacola, FL.: From Perry, over US Hwy 98 to Pensacola, and return over the same route, (17) Between Panama City, FL, and Cottondale, FL.: From Panama City over US Hwy 231 to Cottondale, and return over the same route, (18) Between Lakeland, FL, and Punta Gorda, FL.: From Lakeland over US Hwy 98 to Bartow, then over US Hwy 17 to Punta Gorda, and return over the same route, (19) Between Fort Myers, FL, and West Palm Beach, FL.: From Fort Myers over FL Hwy 80 to junctions US Hwy 27, then over US Hwy 27 by South Bay and Belle glade to junction US Hwy 441, then over US Hwy 441 to West Palm Beach, and return over the same route, (20) Between Tampa, FL, and Vero Beach, FL.: From Tampa over FL Hwy 60 to Vero Beach, and return over the same route, (21) Between Bradenton, FL, and West Palm Beach, FL.: From Bradenton, FL, and West Palm Beach, FL.: From Bradenton over FL Hwy 64 to junction FL Hwy 675, then over FL Hwy 675 to junction FL Hwy 70, then over FL Hwy 70 to junction FL Hwy 710, then over FL Hwy 710 to West Palm Beach, and return over the same route, (22) Between Ocala, FL, and Ormond Beach, FL.: From Ocala over FL Hwy 40 to Ormond Beach, and return over the same route, (23) Between San Diego, CA, and Crescent City, CA.: From San Diego over US Hwy 101 to Crescent City, and return over the same route, (24) Between Los Angeles, CA, and Weed, CA.: From Los Angeles over CA Hwy 99 and Interstate Hwy 5 to Weed, and return over the same route, (25) Between San Diego over US Hwy 395 to Alturas, and return over the same route, (26) Between San Francisco, CA, and San Bernardino, CA.: From Blythe over US Hwy 95 to Needles, CA, then over US Hwy 66 to San Bernardino, and return over the same route, (28) Between Santa Maria, CA, and Bakersfield, CA.: From Santa Maria over CA Hwy 166 to junction CA Hwy 33, then over CA Hwy 33 to junction CA Hwy 119, then over CA Hwy 119 to junction CA Hwy 99, then over CA Hwy 99 to Bakersfield, and return over the same route, (29) Between Bakersfield, CA, and Barstow, CA.: From Bakersfield over CA Hwy 58 to Barstow, and return over the same route, (30) Between Gilroy, CA, and Fairmead, CA.: From Gilroy over CA Hwy 152 to Fairmead, and return over the same route, (31) Between Ventura, CA, and junction CA Hwys 33 and 152: From Ventura over CA

Hwy 33 to junction CA Hwy 152, and return over the same route, (32) Between San Jose, CA, and Stockton, CA.: from San Jose over Interstate Hwy 680 to junction US Hwy 50, then over US Hwy 50 to Stockton, and return over the same route, (33) Between Mobile, AL, and Jackson, MS, serving Mobile, AL, and Jackson, MS, for purpose of joinder only: From Mobile over US Hwy 98 to junction US Hwy 49 near Hattiesburg, MS, then over US Hwy 49 to Jackson, and return over the same route. Serving all intermediate points on the above specified routes in GA, FL, and CA, and serving all other points in FL, CA, and that part of GA on and south of US Hwy 80, as off-route points. RESTRICTION: The authority granted herein is restricted to the transportation of traffic moving between points in the United States on and west of US Hwy 89, on the one hand, and, on the other, points in the United States on and east of US Hwy 61. By the instant petition, petitioner seeks to modify the above restriction to read: Service at Reno, NV and points in CA is restricted to the transportation of traffic originating at or destined to points in the United States on and east of US Hwy 61.

MC 135691 (Subs 11 and 17), (MIF) (notice of filing of petition to modify permits), filed October 18, 1978. Petitioner: DALLAS CARRIERS CORP., P.O. Box 34080, Dallas, TX 75234. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Petitioner holds motor *contract carrier* permits in MC 135691 Sub 11, and 17, issued January 5, 1977 and May 18, 1978 respectively. MC 135691 Sub 11 authorized transportation, over irregular routes, of (1) *Automotive parts and accessories, automotive hand, electric, and pneumatic tools*, from the facilities of the Walker Manufacturing Company at Greenville, TX, to points in the United States (except AK, HI, and TX), and (2) *Materials, supplies, and equipment* used in the manufacture, sale, and distribution of the commodities described in (1) above, from points in the United States (except AK, HI, and TX) to the facilities of Walker Manufacturing Company at Greenville, TX, restricted in (1) and (2) above against the transportation of commodities in bulk, in tank vehicles, and against the transportation of commodities which because of size or weight require the use of special equipment, and limited in (1) and (2) above to a transportation service to be performed under a continuing contract, or contracts, with Walker Manufacturing Company of Racine, WI. MC 135691 Sub 17 authorizes transportation, over irregular routes, of (1) *Automotive parts and accessories* (except commodities in bulk and those requiring special equipment), from the facilities of Walker Manufacturing Company at or near Arden, NC, to points in the United States (except AK, NC, and HI); and (2) *Materials, supplies, and equipment* used in the manufacture, sale and distribution of the commodities in (1) (except commodities in bulk and those requiring special equipment), from points in the United States (except AK, NC, and HI), to the facilities of Walker Manufacturing Company at or near Arden, NC, under a continuing contract(s) in (1) and (2) above with Walker Manufacturing Company, of Racine, WI, and restricted in (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Walker Manufacturing Company, at or near Arden, NC. By the instant petition, petitioner seeks to modify the above permits by adding the language "and shock absorbers" in Sub 17, Part (2) of the commodity description, and in Sub 11, Part (2) after the word "above".

MC 139579 (Sub-2) (MIF) (notice of filing of petition to modify permit), filed October 19, 1978. Petitioner: GEORGE H. GOLDING, INC., 5879 Marion Drive, Lockport, NY 14094. Representative: William J. Hirsch, 43 Court Street, Suite 1125, Buffalo, NY 14202. Petitioner holds a motor *contract carrier* permit in MC 139579 Sub 2 issued June 20, 1978 authorizing transportation, over irregular routes, of (1) *Salad dressing and tartar sauce* (except in bulk), from Wilson, NY, to points in NH, MA, CT, NY, PA, NJ, MD, OH, MI, IL, FL, GA, SC, ME, VT, RI, WV, KY, WI, NC, and DC, and (2) *Materials, supplies, and equipment* used in the manufacture or distribution of salad dressing and tartar sauce (except in bulk), from DC and points in the above-named States, to Wilson, NY. RESTRICTION: (a) The operations authorized herein are subject to the following conditions: Said operations are restricted against transportation of glass products from Brockway, PA, to Wilson, NY, and (b) Said operations are limited to a transportation service to be performed under a continuing contract, or contracts with Pfeiffer Foods, Inc., of Wilson, NY. By the instant petition, petitioner seeks to modify the above authority by deleting the word "tartar" in the above commodity descriptions and pluralizing the word "sauce."

Republications of Grants of Operating Rights, Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 94201 (Sub-159F) (republication), filed March 13, 1978, published in the Federal Register issue of May 4, 1978, and republished this issue. Applicant: BOWMAN TRANSPORTATION INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Maurice F. Bishop, 601-09 Frank Nelson Building, Birmingham, AL 35203. A Decision of the Commission, Review Board Number 1, decided November 30, 1978, and served December 11, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *Battery boxes, battery covers, and battery vents*, from the facilities of The Richardson Company, at or near Philadelphia, MS, to points in AL, AR, FL, GA, LA, NC, SC, TN, and TX, restricted to the transportation of traffic originating at the named origin, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MC 113678 (Sub-669) (republication), filed May 17, 1977, published in the Federal Register issue of June 23, 1977, and republished this issue. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. A Decision of the Commission, Review Board Number 2, decided October 13, 1978, and served October 25, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *Foodstuffs;* (2) *pharmaceutical materials, supplies, and prod-*

ucts; (3) *chemicals;* (4) *alcoholic beverages;* (5) *tobacco products;* and (6) *pet foods*, in vehicles equipped with mechanical refrigeration, (A) from Denver, CO, to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), restricted to the transportation of traffic originating at (or moving from storage-in-transit at) Denver, CO, and destined to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI); and (B) from points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), to Denver, CO, restricted to the transportation of traffic originating at points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), and destined to (or moving to storage-in-transit at) Denver, CO, and restricted in Parts (A) and (B) against the transportation of commodities in bulk, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the applicant's actual grant of authority, and to impose a condition that the certificate authorized to be issued in No. MC 113678 (Sub-No. 669) will expire at the end of a 3-year term unless prior to its expiration date, but not less than 2 years from its date of issuance, Curtis files a petition for the extension of such certificate and demonstrates that it has been in full compliance with the terms and conditions of its certificates and with the requirements of the Interstate Commerce Act and our governing regulations.

MC 118838 (Sub-18F) (corrected republication), filed February 9, 1978, published in the FEDERAL REGISTER issues of March 16, 1978 and December 7, 1978, and republished this issue. Applicant: GABOR TRUCKING, INC., Rural Route 4, Detroit Lakes, MN 56501. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. A Decision of the Commission, Review Board Number 2, decided September 26, 1978, and served November 2, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *Lumber, lumber mill products, and wood products*, from the facilities of Potlatch Corporation, at or near Couer d'Alene, Jaype, Kamiah, Lewiston, Post Falls, Potlatch, Santa, St. Maries, and Spalding, ID, to points in IL, IN, IA, MI, MN, OH, and WI, restricted to the transportation of traffic originating at the named origins, that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the deletion of MO, PA, and WV as destination points; and the deletion of "and destined to the indicated destination States" from the restriction.

MC 126118 (Sub-65F) (republication), filed February 27, 1978, published in the FEDERAL REGISTER issue of April 6, 1978, and republished this issue. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). A Decision of the Commission, by the Initial Decision of Administrative Law Judge Harold J. Sarbacher, served October 10, 1978, becomes effective December 8, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *Wine and alcoholic beverages* (except commodities in bulk, in tank vehicles); and (2) *non-alcoholic beverages* when moving in mixed loads with (1) above (except commodities in bulk, in tank vehicles), from points in CA, to points in CT, DE, IL, IN, IA, KS, KY, MA, MD, MI, MN, MO, NE, NH, NJ, NY, OH, OK, PA, RI, TN, VA, WV, WI, and the District of Columbia, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 135684 (Sub-80F) (republication), filed March 30, 1978, published in the FEDERAL REGISTER issue of May 25, 1978, and republished this issue. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Old Croton Road, Flemington, NJ 08822. Representative: Herbert Alan Dubin, 1320 Fensick Lane, Silver Spring, MD 20910. A Decision of the Commission, by the Initial Decision of Administrative Law Judge Isabelle R. Cappelo, served October 10, 1978, becomes effective December 8, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *Foam* (except in bulk, in tank vehicles), from the facilities of Tenneco Chemicals, at East Rutherford, NJ, to Stoughton, MA, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description.

MC 143264 (Sub-4F) (republication), filed February 22, 1978, published in the FEDERAL REGISTER issue of April 6, 1978, and republished this issue. Applicant: DAIRY LEASING SERVICE, INC., 803 Herring Avenue, Wilson, NC 27893. Representative: Thomas N. Willess, 1000 Sixteenth St. NW., Washington, D.C. 20036. A Decision of the Commission, Review Board Number 4, decided November 1, 1978, and served November 20, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *Dairy products* (except in bulk), (a) from Charlotte, Wilson, and Winston-Salem, NC, to points in FL, GA, LA, MD, PA, SC, TN, and VA; (b) from Chambersburg, PA, to points in FL, GA, MD, NC, SC, and VA; (c) from Atlanta, GA, to points in FL, MD, NC, PA, SC, and VA, and (d) from Edmeston and Walton, NY, to points in FL, GA, NC, and VA; (2) (a) *frozen juice concentrate*, from Dade City, Dunedin, Ocala, and Plymouth, FL, to points in NC and VA; (b) *fruit juice*, from Bradenton, FL, to points in NC and VA; and (c) *citrus juice*, from Lakeland, FL, to points in GA, MD, NY, PA, SC, VA, NC, and WV; and (3) *foodstuffs* (except in bulk), from Allentown, PA, to points in GA, MD, NC, SC, and VA; under a continuing contract or contracts with Kraft, Inc., of Glenview, IL, will be consistent with the public interest and the national transportation policy, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49

CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC-F-13776F (republication). The October 26, 1978 FEDERAL REGISTER Notice (pp. 50101-50102) of the application filed by CRST, INC., 3930 16th Avenue, SW, P.O. Box 68, Cedar Rapids, IA 52403 to purchase a portion of the operating rights of BURGMEYER BROS., INC., 1342 North Howard Street, Philadelphia, PA 19122, contained various errors and omissions. (1) The correct spelling of Vendor's name is BURGMEYER BROS., INC. (2) The prior Notice omitted reference to that portion of the authority sought to be purchased authorizing intermediate and off-route point service in and around Pittsburgh, PA, Chicago, IL, New York, NY and Baltimore, MD. (3) The prior Notice omitted reference to CRST, INC.'S request to tack the authority sought to be purchased with its existing authority at Chicago, IL. Representatives: Robert E. Konchar, Esq., 2720 First Avenue, NE, P.O. Box 1943, Cedar Rapids, IA 52406, and A. David Millner, Esq., 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006.

MC-F-13820. Authority sought for purchase by FRUIT-BELT TRUCKING INC., 12 Smith Street, St. Catherines, Province of Ontario, CD L2T 3H9, of a portion of the operating rights of MOTEK TRANSPORT, INC., P.O. Box 239, 2250 Maple Avenue, Hatfield, PA 19440, and for acquisition by CATHERINE FABELLO and VICTOR BARANUIK, both of St. Catherines, Province of Ontario, CD L2T 3H9, of control of such rights through the transaction. Applicant's attorney: Robert Gunderman, Suite 710 Statler Hilton, Buffalo, NY 14202. Operating rights sought to be purchased: *Packinghouse products* as described in paragraphs A, B and C of the appendix Ex Parte No. MC-38, *Modification of Motor Contract Carriers of Packing-House Products*, 46 M.C.C. 23, as a *common carrier*, over irregular routes from ports of entry on the United States-Canada Boundary line at Buffalo and Niagara Falls, NY to New York, NY, and points within 50 miles thereof, with no transportation for compensation on return except as otherwise authorized. RESTRICTION: The operations authorized under the commodity description next above are restricted to foreign commerce only. *Fresh fruits, fresh vegetables*, and the *commodities* described in paragraphs A, B and C, in the appendix to the report in *Modification of Permits Packing-House Products*, 48 M.C.C. 628, between the ports of entry on the United States-Canada Boundary line at Alexandria Bay, Buffalo, and Niagara Falls, NY, on the one hand, and, on the other, points in CT, DE, MD, MA, NJ, NY, OH, PA, RI, and DC. Transferee presently holds authority from the Commission in Docket No. MC-117993 and Subs thereunder to operate as a *common carrier* in the States of CT, DE, DC, FL, GA, IL, IA, MD, MA, MI, MO, ND, NY, NC, OH, PA, RI, SC, VA, and W.VA. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13838F. Authority sought for purchase by COHEY TRUCKING COMPANY, INC., 3015 Vermont Avenue, Baltimore, MD 21227, of a portion of the operating rights of ELLIOTT BROTHERS TRUCKING COMPANY, INC., P.O. Box 719, Easton, MD 21610, and for acquisition by WILLIAM R. COHEY, of Baltimore, MD 21227, of control of such rights through the transaction. Applicants' attorneys: John R. Sims, Jr. and John L. Boyd, Jr., 425 13th Street, N.W., Suite 915, Washington, D.C. 20004. Operating rights sought to be purchased: *General commodities*, except Class A and B explosives other than small arms ammunition, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, as a *common carrier* over regular routes, between Alexandria, VA and Baltimore, MD, via Priests Bridge and Glen Burnie, MD, serving various intermediate and off-route points. Vendee is authorized to operate as a *common carrier* in MD, PA, DE, VA, NJ, NY, and DC. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13843F. Authority sought for purchase by SUNDERMAN TRANSFER, INC., P.O. Box 63, Windom, MN 56101, of a portion of the operating rights of REDFEATHER FAST FREIGHT, INC., (Merle J. Nicola, Trustee in Bankruptcy), 2606 North 11th St., Omaha, NE 68110, and for acquisition by L. E. SUNDERMAN and EUGENE SUNDERMAN, both of Windom, MN 56101, of control of such rights sought to be acquired through the purchase. Applicants' attorneys: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108 and Donald L. Stern, 7171 Mercy Road, Omaha, NE 68106. Operating rights sought to be purchased: *Cheese*, as a *common carrier* over regular routes, from Marshfield, Monroe, and Portage, WI, to Kansas City and St. Joseph, MO, Omaha, NE, and Sioux City, IA, as described in No. MC-13999. Vendee is authorized to operate as a *contract carrier* pursuant to No. MC-125103 within that part of the United States in and east of ND, SD, NE, CO, OK, and TX, but holds no authority to operate as a common carrier. Dual operations are involved. Application has not been filed for temporary authority under section 210a(b).

MC-F-13845F. Authority sought for purchase by GEORGE W. KUGLER, INC., 2800 East Waterloo Road, Akron, OH 44312, of a portion of the operating rights of Rubber City Express, Inc., 1805 East Market Street, Akron, OH 44305, and for control of such rights by George W. Kugler, Inc. through the acquisition. Applicants' attorney: David A. Turano, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, OH 43215. Operating rights sought to be purchased: Permit MC-136470 (1) petroleum and petroleum products (except in bulk) and (2) materials and supplies normally dealt in by retail gasoline service stations in mixed loads with commodities in (1) above from Paulsboro, NJ, to points in OH and PA, under a continuing contract or contracts with Mobil Oil Corporation of New York, NY; Permit MC-136470 Sub 3 silica gel and silica gel catalysts (except commodities in bulk) from Paulsboro, NJ, to points in OH and a designated portion of western PA under a continuing contract or contracts with Mobil Oil Corporation of New York, NY. Vendee is authorized to operate as a common carrier of specified commodities in all states in and east of ND, SD, NE, KS, OK, and TX. Application has been filed for temporary authority under Section 210a(b).

NOTE.—MC 125533 (Sub-29F) is a directly related matter.

MC-F-13846F. Authority sought for THE MASON AND DIXON LINES, INCORPORATED, Eastman Road, P.O. Box 969, Kingsport, TN, 37662, to purchase the operating rights of MOAN BROS. EXPRESS, INC., 30 Brown Avenue, North Providence, RI, 02904, and for acquisition by E. William King, P.O. Box 969, Kingsport, TN, 37662, John R. King, P.O. Box 969, Kingsport, TN, 37662, and M. K. Norris, 1400 Belmeade Place, Kingsport, TN, 37660, of control of such rights through the transaction. Applicants' representatives: Kim D. Mann, Esquire, 7101 Wisconsin Avenue, Washington, DC, 20014; and Frank J. Weiner, Esquire, 15 Court Square, Boston, MA, 02108. Operating rights sought to be acquired: (i) *General commodities*, with exceptions, (A) regular routes between Hope, RI and Boston, MA and between Providence and

Wakefield, RI, serving named intermediate and off-route points in RI and MA, and (B) irregular routes from Westerly, RI to points in a portion of New London County, CN, and between West Warwick, RI, on the one hand, and, on the other, points in RI; (ii) *Household goods* over irregular routes between West Warwick, RI and Stonington, CN, on the one hand, and, on the other, points in CN and RI and between Westerly, RI, on the one hand, and, on the other, points in CN, MA, and NY; (iii) *Coffee and tea* from Boston, MA to points in Bristol, Kent, Providence, and Washington Counties, RI; (iv) *Laundry supplies* from Cambridge, MA to Johnston, South Kingston, Newport, and Westerly, RI; (v) *Meat* from Boston, MA to South Kingston, RI; and (vi) *School supplies* from Boston, MA to North Kingston, RI. Vendee is authorized to operate as a common carrier in AL, AR, CN, DE, DC, GA, IL, IN, IA, KA, LA, ME, MD, MA, MI, MS, MO, NE, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VA, and WV. Application has been filed for temporary authority under section 210a(b) of the Act. (Hearing Site: Providence, RI or Boston, MA.)

MC-F-13849F. Transferee: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, Grand Island, NE 68801. Transferor: JBH & ASSOCIATES, INC., P.O. Box 250, Route 2, Elwood, NE 68937. Representative: Richard A. Peterson, Peterson, Bowman, Larsen & Swanson, 521 South 14th St., Suite 500, P.O. Box 81849, Lincoln, NE 68501. Authority sought to purchase by Grand Island Moving & Storage Co., Inc., P.O. Box 2122, Grand Island, NE 68801, of the operating rights of JBH & Associates, Inc., P.O. Box 250, Route 2, Elwood, NE 68937, of control of such rights through the transaction. Applicant's attorney: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Operating rights, as a *common carrier*, of *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and commodities in bulk), sought to be transferred: REGULAR ROUTES: (1) Between Grand Island, NE, and Omaha, NE, serving no intermediate points: From Grand Island over U.S. Hwy 30 to junction U.S. Hwy 275, then over U.S. Hwy 275 to Omaha, and return over the same route. From Grand Island over U.S. Hwy 30 to junction U.S. Hwy 275, then over U.S. Hwy 275 to junction NE Hwy 8, then over NE Hwy 8 to Omaha, and return over the same route. (2) Between Kearney, NE, and Grand Island, NE, serving all intermediate points: From Kearney over U.S. Hwy 30 to Grand Island, and return over the same route. (3) Between Grand Island, NE, and Beatrice, NE, serving all intermediate points, and serving the off-route points of McCool Junction, Harvard, Henderson, and Hastings, NE: From Grand Island over U.S. Hwy 281 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Lincoln, NE, then over U.S. Hwy 77 to Beatrice; and return from Beatrice over U.S. Hwy 77 to junction NE Hwy 33, then over NE Hwy 33 to Dorchester, NE, then over U.S. Hwy 6 to Fairmont, NE, then over U.S. Hwy 81 to junction U.S. Hwy 34, then over U.S. Hwy 34 to junction U.S. Hwy 281, and then over U.S. Hwy 281 to Grand Island. (4) Between Kearney, NE, and Omaha, NE, serving all intermediate points and serving the Cornhusker Ordnance Plant as an off-route point: From Kearney over U.S. Hwy 30 to junction U.S. Hwy 275, then over U.S. Hwy 275 to Omaha, and return over the same route. (5) Between Grand Island, NE, and Beatrice, NE, serving all intermediate points, those off-route points within 10 miles of the described route and the off-route points of Harvard and Henderson, NE: From Grand Island over NE Hwy 2 to Lincoln, NE, then over U.S. Hwy 77 to Beatrice, and return over the same route. (6) Between junction U.S. Hwy 77 and NE Hwy 33, and junction NE Hwy 2 and U.S. Hwy 81 north of York, NE, serving all intermediate points, those off-route points within 10 miles of the described route, and the off-route points of Harvard and Henderson, NE: From junction U.S. Hwy 77 and NE Hwy 33 over NE Hwy 33 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction U.S. Hwy 81, then over U.S. Hwy 81 to junction NE Hwy 2, and return over the same route. (7) Serving the facilities of Western Electric Company, Incorporated, at or near Underwood, IA, in connection with carrier's otherwise authorized regular-route operations from and to Omaha, NE. IRREGULAR ROUTE: (1) Between points in Hall County, NE, those in that part of Hamilton County, NE, west of NE Hwy 14 and those in that part of Howard and Merrick Counties, NE, south of NE Hwy 92. (2) Between points in Hall County, NE, those in that part of Hamilton County, NE, west of NE Hwy 14 and those in that part of Howard and Merrick Counties, NE, south of NE Hwy 92, on the one hand, and, on the other, points in that part of NE east of NE Hwy 61 (except Omaha), points on U.S. Hwy 30 between Omaha and Grand Island, and points in Sherman, Valley, Howard and Custer Counties, NE. RESTRICTION: the operations authorized herein are restricted to the performance of service solely within Nebraska. Grand Island Moving & Storage Co., Inc., holds authority as a common carrier conducting operations under docket No. MC-135283 and Subs thereto, within the states of NE, IA, IL, MO, MN, WI, VT, PA, IN, MI, OH, CO, KS, MS, AL, TX, DE, CT, NY, KY, MD, WV, ME, NH, MA, RI, NJ, and VA. Application has been filed for temporary authority under section 210a(b).

MC-F-13853F. Transferee: TIGGES TRUCKING INC., 5071 JFK Road, Dubuque, IA 52001. Transferor: KATUIN BROS. INC., Highway 61 South, P.O. Box 311, Fort Madison, IA 52627. Representative: Carl E. Munson, Registered Practitioner, 469 Fischer Building, Dubuque, IA 52001. Authority sought to purchase by Tigges Trucking Inc., 5071 JFK Road, Dubuque, IA 52001, of a portion of the operating rights of Katuin Bros. Inc., Highway 61 South, P.O. Box 311, Fort Madison, IA 52627, and for the acquisition by Kenneth H. Tigges and Janice M. Tigges, 5071 JFK Road, Dubuque, IA 52001, of control of such rights through the transaction. Applicants' representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. Operating rights as a *common carrier*, over irregular routes, sought to be transferred: (1) Fertilizer, from Dubuque, IA, to points in IL on and north of Illinois Highway 9; and (2) Liquid fertilizer and liquid fertilizer ingredients, from Dubuque, IA, to points in MN, WI, and IL (except Depue and East St. Louis and points in their respective commercial zones as defined by the Commission). Tigges Trucking Inc. holds authority as a common carrier conducting operations to transport said gravel, stone and asphalt mix in dump vehicles, from Prairie du Chien, WI, to counties in northern portion of IA. Application has been filed for temporary authority under Section 210a(b). Hearing site: Madison, WI.

MC-F-13855F. Authority sought for purchase by THOMAS O. CARTMEL, 9135 North Meridian Street, Indianapolis, IN, of the operating rights of O.D. Thompson d.b.a. T & S Company, 5726 West 79th Street, Indianapolis, IN, and control of such rights through the transaction. Representative: Orville G. Lynch, P.O. Box 364, Westfield, IN 46074. Operating rights sought to be transferred: *Paper Bags, on pallets*, as a contract carrier, from the facilities of Samson-Midamerica, Inc., at Indianapolis, IN, to Minneapolis, MN, and points in IL, the Lower Peninsula of MI, OH, and PA. Restriction: The authority granted herein is limited to a transportation service to be performed under a continuing contract(s) with Samson-Midamerica, Inc., of Indianapolis, IN. Vendee presently holds no authority from this Commission but is affiliated with Jasper Furniture Forwarding, Inc., which is authorized to operate, pursu-

ant to Certificate MC 129701, as a motor common carrier of New Furniture, crated, from certain points in IN and KY, to points in IL, IN, IA, KN, KY, MD, MI, MN, MO, NB, NY, OH, PA, TN, VA, WV, WI, and the D.C. Application has been filed for temporary authority under Section 210a(b).

MC-F-13856F. Authority sought to purchase by TFS, INC., Box 126, Rural Route 2, Grand Island, NE 68801, of a portion of the operating rights of Katuin Bros., Inc., Highway 61 South, P.O. Box 311, Fort Madison, IA 52627, and for acquisition by Robert Wenzl, Box 126, Rural Route 2, Grand Island, NE 68801, of control of such rights through the transaction. Applicants' representatives: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501, and Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. Operating rights, as a *common carrier*, over irregular routes, sought to be transferred: (1) Soy products, from Gladbrook and Marshalltown, IA, to points in IL, KS, MN, MO, OH, and WI, with no transportation for compensation on return except as otherwise authorized; (2) Pelletized limestone and gypsum from points in Marion County, IA, to points in IL, KS, MN, MO, NE, ND, SD, and WI; and (3) Animal feed, feed ingredients, additives, and materials, and supplies used in the manufacture and distribution of animal feeds (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL. TFS, Inc. holds authority as a contract carrier conducting operations between various points in the United States for the account of Oxford Cheese Corporation, Ag Service, Inc., Morgen Manufacturing Co., Bonsail Pool Co., and Endicott Clay Products Co. Application has been filed for temporary authority under Section 210a(b).

Operating Rights Application(s) Directly Related to Finance Proceedings

NOTICE

The following operating rights application(s) are filed in connection with pending finance applications under Section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 212(b) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 125533 (Sub-29F), filed December 6, 1978. Applicant: GEORGE W. KUGLER, INC., 2800 East Waterloo Road, Akron, Ohio 44312. Representative: David A. Turano, 100 East Broad Street, Columbus, Ohio 43215. Authority sought as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Silica gel* and *silica gel catalysts* (except commodities in bulk), from Paulsboro, NJ, to points in OH and points in that part of PA on and west of a line beginning at junction U.S. Hwy 219 and the New York-Pennsylvania State line, then south along U.S. Hwy 219 to junction U.S. Hwy 119, and then south along U.S. Hwy 119 to junction with the Pennsylvania-West Virginia State line; and (2) *Petroleum* and *petroleum products* (except in bulk) and *materials* and *supplies* normally dealt in by retail gasoline service stations in mixed loads with petroleum and petroleum products (except in bulk), from Paulsboro, NJ, to points in OH and PA. (Hearing site: Columbus, OH.)

NOTE.—The purpose of this application is to convert a permit to a certificate of public convenience and necessity and is a directly related application to MC-F-13845F published in a previous section of this Federal Register issue.

Motor Carrier Intrastate Application(s)

NOTICE

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

Montana Docket T-4188, filed December 5, 1978. Applicant: TOM O. HIGLE, d/b/a HIGLE TRUCKING, 1112 O'Neil, Deer Lodge, MT 59722. Representative: William E. O'Leary, Suite 4G, Arcade Building, Helena, MT 59601. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment for loading and unloading), within the City of Deer Lodge, MT, and a twenty-five (25) mile radius thereof. Intrastate, interstate and foreign commerce authority sought. HEARING: Deer Lodge, MT; date and time not yet fixed. Requests for procedural information should be addressed to Montana Public Service Commission, 1227 11th Avenue, Helena, MT 59601, and should not be directed to the Interstate Commerce Commission.

New York Docket T-2237, filed November 28, 1978. Applicant: TEAL'S EXPRESS, INC., Laura Street, Lyons Falls, NY 13368. Representative: Roy D. Pinsky, 345 So. Warren Street, Syracuse, NY 13202. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities*, between the Cities of Syracuse and Watertown, NY. Intrastate, interstate and foreign commerce authority sought. HEARING: Date, time and place not yet fixed. Requests for procedural information should be addressed to New York State Department of Transportation, 1220 Washington Avenue, State Campus, Building #4, Room G-21, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

Tennessee Docket MC 3079 (sub-8), filed November 20, 1978. Applicant: McMINNVILLE FREIGHT LINE, INC., P.O. Box 790, Morrison Road, McMinnville, TN 37110. Representative: James Clarence Evans, 1800 Third National Bank Bldg., Nashville, TN 37219. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities* (except used household goods, and articles which because of size or weight require specialized equipment), (1) Between Manchester, TN and Chattanooga, TN, and that part of the Commercial Zone of Chattanooga lying

within the State of TN, via U.S. Hwy 41, using various segments of that part of Interstate 24 lying within TN and between Chattanooga and Manchester as alternate route segments. (2) Between McMinnville and Chattanooga, TN and that portion of its Commercial Zone lying within the State of TN over the following route: From McMinnville via TN Hwy 56 to junction TN Hwy 108, thence via TN Hwy 108 to its junction with TN Hwy 27, and thence via Hwy 27 to Chattanooga, and return over the same route. Each of the above routes is to be used in conjunction with all other authority presently held or hereafter acquired by applicant, the authority sought is restricted against the handling of traffic moving between Chattanooga and Nashville and their respective Commercial Zones. Co-extensive interstate authority is also sought. Intrastate, interstate and foreign commerce authority sought. HEARING: February 15, 1979, at 9:30 A.M., at C1-110 Cordell Hull Bldg, Nashville, TN 37219. Requests for procedural information should be addresed to Tennessee Public Service Commission, C1-102 Cordell Hull Bldg., Nashville, TN 37219, and should not be directed to the Interstate Commerce Commission.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-36455 Filed 12-29-78; 8:45 am]

[6820-23-M]

GENERAL SERVICES ADMINISTRATION

TASK FORCE ON HISTORIC PRESERVATION

Meeting

Pursuant to Public Law 92-463. notice is hereby given of a three day meeting of the Task Force on Historic Preservation. The meeting will be convened Tuesday, January 16 through Thursday, January 18, 1979, at 9:00 a.m., Room 5141, General Services Administration, 18th and F Streets, N.W., Washington, D.C. 20405. The Task Force on Historic Preservation will review methods by which GSA fulfills its mandate regarding historic preservation, and make recommendations for changes as appropriate. The meeting will be open to the public.

Dated: December 28, 1978.

ROBERT L. JONES,
Acting Commissioner,
Public Buildings Service.

[FR Doc. 78-36471 Filed 12-29-78; 10:15 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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Securities and Exchange Commission	4

[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., January 5, 1979.

PLACE: 2033 K Street NW., Washington, D.C., Eighth floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2619-78 Filed 12-28-78; 2:17 pm]

[6720-01-M]

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., January 4, 1979.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Consideration of proposed revision of charges for printed copies and magnetic tapes of Insured Institution Financial Data.

Consideration of Association request to participate in check verification/guarantee systems—Winter Hill Federal Savings & Loan Association, Sommerville, Mass. and Freedom Federal Savings & Loan Association, Worcester, Mass.

Consideration of application for bank membership—Marble Savings Bank, Rutland, Vt.

Application for permission to organize a new Federal—B. B. Saunders et al., Slidell, La.

Branch Office Application—Westchester Federal Savings and Loan Association, New Rochelle, New York.

Branch office application—Mid-State Federal Savings & Loan Association, Ocala, Fla.

Branch office application—Local Federal Savings & Loan Association, Oklahoma City, Okla.

Concurrent consideration of branch office applications—(1) First Federal Savings & Loan Association of Lake Worth, Lake Worth, Fla.; and, (2) Washington Federal Savings & Loan Association, Miami, Fla.

Bank membership and insurance of accounts applications—Great Western Savings & Loan Association, Herminston, Oreg.

Concurrent consideration of—(1) Limited facility application—Heritage Federal Savings & Loan Association, Daytona Beach, Fla.; and, (2) Branch office application—First Federal Savings & Loan Association of Lake Worth, Lake Worth, Fla.

Dated: December 28, 1978.

RONALD A. SNIDER,
Assistant Secretary.

[S-2620-78 Filed 12-28-78; 3:30 pm]

[7590-01-M]

3

NUCLEAR REGULATORY COMMISSION.

DATE: December 28, 1978.

PLACE: Chairman's Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

THURSDAY, DECEMBER 28

1:30 p.m.—Discussion of senior executive service positions and executive budget request (approximately 1 hour, closed—exemption 6).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

Dated: December 27, 1978.

WALTER MAGEE,
Office of the Secretary.

[S-2618-78 Filed 12-28-78; 2:12 pm]

[8010-01-M]

4

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 2, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Wednesday, January 3, 1979 at 10:00 a.m. and on Thursday, January 4, 1979, at 2:30 p.m. An open meeting will be held on Thursday, January 4, 1979 at 9:30 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Commissioners Loomis, Pollack and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, January 3, 1979, will be:

1. Formal orders of investigation.
2. Settlement of injunctive action.
3. Request for testimony of staff members.
4. Access to investigative files by Federal, state or self-regulatory authorities.
5. Litigation matters.
6. Institution of injunctive actions.
7. Settlement of administrative proceedings of an enforcement nature.
8. Institution of administrative proceedings of an enforcement nature.
9. Subpoena enforcement actions.
10. Regulatory matter bearing enforcement implications.

The subject matter of the closed meeting scheduled for Thursday, January 4, 1979, at 2:30 p.m., will be: Reports of investigation.

The subject matter of the open meeting scheduled for Thursday, January 4, 1979 at 9:30 a.m. will be:

(1) Consideration of whether to amend Rule 13f-1 under the Securities Exchange

Act of 1934, the reporting requirements under the institutional investment disclosure program, to require that reports on Form 13F be filed on a quarterly basis rather than annually.

(2) Consideration of whether to propose for public comment rules providing for "start up" exemptions necessary to organize unit investment trusts which operate under the Investment Company Act of 1940. These proposals relate to provisions and rules pertaining to minimum net worth requirements (Section 14(a)), frequency of capital gains distributions (Rule 19b-1), and forward pricing (Rule 22c-1).

(3) Consideration of the adoption of a proposed rule delegating to the Comptroller the function of compromise and collection of Federal claims as required by the Federal Claims Collection Act of 1966, 31 U.S.C. 951 *et seq.*

(4) Consideration of the establishment of an Advisory Committee on Oil and Gas Accounting.

FOR FURTHER INFORMATION PLEASE CONTACT:

John Ketels at (202) 755-1129.

DECEMBER 27, 1978.

[S-2617-78 Filed 12-28-78; 11:06 am]

Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of April 1, 1978)

Quantity	Volume	Price	Amount
_____	Title 19—Customs Duties	$6.00	$_____
_____	Title 24—Housing and Urban Development (Part 500 to End)	9.00	_____
_____	Title 26—Internal Revenue (Part 1, §§ 1.851 to 1.1200)	6.00	_____
_____	Title 26—Internal Revenue (Parts 30 to 39)	5.50	_____
		Total Order	$_____

[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

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Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

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