

TUESDAY, AUGUST 30, 1977



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## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

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

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

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

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

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# reminders

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

## Rules Going Into Effect Today

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

## List of Public Laws

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



# presidential documents

## Title 3—The President

PROCLAMATION 4515

### Women's Equality Day, 1977

*By the President of the United States of America*

#### A Proclamation

August 26, 1977, is the 57th anniversary of the adoption of the 19th Amendment to the Constitution guaranteeing that the right of United States citizens to vote shall not be denied or abridged by the Federal Government or any state on account of sex.

This was the successful culmination of the struggle of the American Women's Suffrage movement. The right to vote, to participate in the process of framing the laws under which we all live, is fundamental. But it was only the first step in achieving full equality for women. The late Dr. Alice Paul realized this, drafted the Equal Rights Amendment in 1923 and had it introduced in Congress over a period of 49 years, until it passed on March 22, 1972.

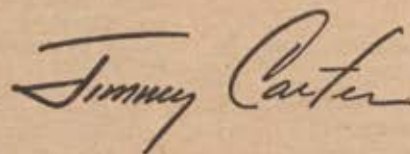
Dr. Paul and other early leaders of the movement who did not live to see their work completed were reviled and imprisoned, endured hunger strikes and force-feeding in order to further their cause. Their commitment is an inspiration to women and men today who seek to finally make their dreams a reality. Equal rights for women are an inseparable part of human rights for all.

Strong action is needed to guarantee women total equality in the areas of politics and government, education, employment and related benefits, health care, housing and justice. The needs, hopes and problems of a complex society demand the talents, imagination and dedication of all its citizens without regard to sex. As women achieve equality, men, too, are liberated from ancient prejudices and relieved of arbitrary barriers to personal fulfillment.

This is a crucial point in the struggle to achieve full equality for women under the law. Ratification of the Equal Rights Amendment must be completed by the required number of states by March 1979. The successes of the past were dearly bought, and this final effort will not be easy. Achievement of this goal is essential in order to secure meaningful equality for all our citizens.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim August 26, 1977, as Women's Equality Day and do hereby call upon the people of the United States to observe this day with appropriate ceremonies and activity. I further urge all our people to dedicate themselves anew to the goal of achieving equal rights for women under the law.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and second.



[FR Doc.77-25340 Filed 8-26-77;3:24 pm]

EDITORIAL NOTE: The President's remarks of Aug. 26, 1977, on signing Proclamation 4515, are printed in the Weekly Compilation of Presidential Documents (vol. 13, no. 35).

FEDERAL REGISTER, VOL. 42, NO. 168—TUESDAY, AUGUST 30, 1977







# rules and regulations

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

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

## Title 5—Administrative Personnel CHAPTER I—CIVIL SERVICE COMMISSION PART 213—EXCEPTED SERVICE

### Department of State

AGENCY: Civil Service Commission.

ACTION: Final rule.

**SUMMARY:** This amendment extends the period of employment for the IBC temporary and intermittent field personnel from 130 to 180 working days as it more realistically reflects the amount of time required to accomplish the tasks of the position.

**EFFECTIVE DATE:** August 30, 1977.

**FOR FURTHER INFORMATION CONTACT:**

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3104(d) (1) is amended as set out below:

§ 213.3104 Department of State.

(d) *International Boundary Commission, United States and Canada.*

(1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any 1 calendar year.

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

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

[FR Doc. 77-25157 Filed 8-29-77; 8:45 am]

## Title 9—Animal and Animal Products CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

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

### PART 113—STANDARD REQUIREMENTS CFR Correction

In Title 9 of the Code of Federal Regulations, revised as of January 1, 1977, on page 306 the following material was inadvertently omitted.

§ 113.163 Fowl Laryngotracheitis Vaccine.

(d) \* \* \*

(2) \* \* \*

(1) Twenty-five 3 to 4 week old laryngotracheitis susceptible chickens shall be injected intratracheally with 0.2 ml of vaccine rehydrated at the rate of 30 mls for 1,000 doses. Chickens shall be ob-

served each day for 14 days. Deaths shall be counted as failures. Two-stage sequential testing may be conducted if the first test (which then becomes stage one) has five, six, or seven failures.

(ii) The results shall be evaluated according to the following table:

Cumulative totals			
Stage	Number of chickens	Failures for satisfactory serials	Failures for unsatisfactory serials
1.....	25	4 or less.....	8 or more.
2.....	50	10 or less.....	11 or more.

(iii) If unfavorable reactions occur which are not attributable to the product, the test shall be declared inconclusive and repeated or in lieu thereof, the serial declared unsatisfactory.

### PART 113—STANDARD REQUIREMENTS Miscellaneous Amendments

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

ACTION: Final rule.

**SUMMARY:** Some extraneous pathogens can be detected in poultry vaccines by using a chicken embryo inoculation test, but success depends upon neutralizing the vaccine virus with a specific antiserum. The present regulations prescribe a repeat test if the first test is inconclusive although the fault may be due to the inability of the antiserum which is used to neutralize the vaccine virus. These amendments eliminate the necessity of repeating a useless and wasteful test.

**EFFECTIVE DATE:** This amendment becomes effective August 30, 1977.

**FOR FURTHER INFORMATION CONTACT:**

Dr. R. J. Price, 301-436-8245.

**SUPPLEMENTARY INFORMATION:** The present regulations in § 113.160(d) (1), § 113.162(d) (1), § 113.163(d) (1), and § 113.164(d) (1) include requirements that Avian Encephalomyelitis Vaccine, Bronchitis Vaccine, Fowl Laryngotracheitis Vaccine, and Newcastle Disease Vaccine be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37. If the test results are inconclusive because of a vaccine virus override, the chicken inoculation test in § 113.36 cannot be used as a substitute until the first test has been repeated and found inconclusive for the same reason.

A virus override occurs when the specific antiserum used in the test does not

neutralize the vaccine virus. Since the success of this test depends upon the neutralizing ability of the antiserum, repeat testing using the same antiserum is useless and wasteful.

These amendments delete the necessity for a repeat chicken embryo inoculation test and permit the use of the chicken inoculation test as a substitute for the chicken embryo inoculation test when the results of the first test are inconclusive because of a vaccine virus override without repeating the inconclusive test.

Each word in the heading for § 113.160, § 113.162, § 113.163, and § 113.164 shall be capitalized.

Sections 113.160, § 113.162, § 113.163, and § 113.164 are amended as follows:

1. In § 113.160, paragraph (d) (1) is revised to read as follows:

§ 113.160 Avian Encephalomyelitis Vaccine.

(d) \* \* \*

(1) Final container samples from each serial shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the vaccine judged accordingly.

2. In § 113.162, paragraph (d) (1) is revised to read as follows:

§ 113.162 Bronchitis Vaccine.

(d) \* \* \*

(1) Final container samples from each serial shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the vaccine judged accordingly.

3. In § 113.163 paragraph (d) (1) is revised to read as follows:

§ 113.163 Fowl Laryngotracheitis Vaccine.

(d) \* \* \*

(1) Final container samples from each serial shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the vaccine judged accordingly.



4. In § 113.164 paragraph (d) (1) is revised to read as follows:

**§ 113.164 Newcastle Disease Vaccine.**

(d) \*\*\*

(1) Final container samples from each serial shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the vaccine judged accordingly.

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

These amendments make deletions in each of four test requirements to eliminate unnecessary and useless testing. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department. Further, in order for the amendments to be of maximum benefit, they must be made effective immediately.

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

The foregoing amendment shall become effective upon issuance.

Done at Washington, DC, this 23rd day of August, 1977.

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

NORVAN L. MEYER,  
Acting Deputy Administrator,  
Veterinary Services.

[FR Doc.77-25091 Filed 8-29-77;8:45 am]

**Title 13—Business Credit and Assistance**  
**CHAPTER III—ECONOMIC DEVELOPMENT**  
**ADMINISTRATION, DEPARTMENT OF**  
**COMMERCE**

**PART 305—PUBLIC WORKS AND**  
**DEVELOPMENT FACILITIES PROGRAM**  
**Procurement Standards for State and Local**  
**Governments**

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This regulation revises certain portions of an existing regulation on procurement standards for recipients of assistance under title I of the Public Works and Economic Development Act of 1965, as amended. These changes are made to conform the existing regulation with Federal Management Circular 74-7. The implementation of these changes will clarify the scope of applica-

bility and the nature of the requirements of the present regulation.

DATES: Effective date: August 18, 1977.  
Comments by: September 29, 1977.

ADDRESSES: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

James F. Marten, U.S. Department of Commerce, Room 7009, Washington, D.C. 20230 (202-377-5441).

**SUPPLEMENTARY INFORMATION:**

The following changes are being made to § 305.95.

1. The title of this section now reads: "Procurement standards for State and local governments." This change specifies the types of recipients to whom these procurement standards apply.

2. Section 305.95(c) (3) is revised to follow more closely the language of FMC 74-7.

Because this regulation relates to the EDA grant and loan program, it is exempted from the procedures described in section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, in the spirit of the public policy set forth in that Act, interested persons may submit written suggestions regarding this regulation to the above address.

EDA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Accordingly, 13 CFR 305.95 is amended to read as follows:

**§ 305.95 Procurement standards for**  
**State and local governments.**

(c) \*\*\*

(3) "Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services."

(AUTHORITY: Sec. 701, Pub. L. 89-136, 70 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).)

Dated: August 18, 1977.

ROBERT T. HALL,  
Assistant Secretary  
for Economic Development.

[FR Doc.77-25112 Filed 8-29-77;8:45 am]

**PART 309—GENERAL REQUIREMENTS**  
**FOR FINANCIAL ASSISTANCE**

**Procurement Standards for Nonprofit**  
**Organizations**

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This regulation sets forth procurement standards to be followed by nonprofit organizations receiving as-

sistance under titles I, II, III, and IX of the Public Works and Economic Development Act of 1965, as amended. These standards have been established to comply with the requirements of OMB Circular A-110. The implementation of this regulation will promote consistency and uniformity in the administration of grants to non-profit organizations.

DATES: Effective date: August 18, 1977.  
Comments by: September 29, 1977.

ADDRESSES: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

James F. Marten, U.S. Department of Commerce, Room 7009, Washington, D.C. 20230 (202-377-5441).

**SUPPLEMENTARY INFORMATION:**

Because this regulation relates to the EDA grant and loan program, it is exempted from the procedures described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, in the spirit of the public policy set forth in that Act, interested persons may submit written suggestions regarding this regulation to the above address.

EDA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Accordingly, 13 CFR Part 309 is amended by adding a new § 309.28 to read as follows:

**§ 309.28 Procurement standards for**  
**nonprofit organizations.**

The following standards shall apply to nonprofit organizations receiving assistance under titles I, II, III and IX of the Act. Recipients may use their own procurement policies and procedures, provided that procurements made with Federal grant funds adhere to the following standards.

(a) The recipient shall maintain standards of conduct which shall govern the performance of its officers, employees or agents in awarding and administering contracts using Federal funds. Such standards shall include the following provisions.

(1) No employee, officer or agent shall participate in the selection, award or administration of a contract in which Federal funds are used, when, to his knowledge, he or his immediate family, partners, or an organization in which he or his immediate family or partners has a financial interest or with whom he is negotiating has any arrangement concerning prospective employment.

(2) The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors.

(3) The recipient's standards of conduct shall provide for disciplinary ac-



tions to be applied for violations of such standards by the recipient's officers, employees or agents.

(b) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(c) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements.

(d) Awards shall be made to the bidder/offeree whose bid/offeree is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered.

(e) Solicitations shall clearly set forth all requirements that the bidder/offeree must fulfill in order for his bid/offeree to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

(f) Procurement procedures shall meet the following minimum requirements.

(1) They shall avoid unnecessary or duplicatory items.

(2) They shall contain a clear and accurate description of requirements ("Brand Name-or-Equal" may be used).

(3) They shall utilize small business and minority-owned business sources of supplies and services.

(4) The procurement contract shall be appropriate for the particular procurement and the project. The "cost-plus-a-percentage-of-cost" contract shall not be used.

(5) All proposed sole source contracts, or contracts for which only one bid or proposal is received and for which the aggregate expenditure is expected to exceed \$5,000, shall be subject to prior approval at the discretion of the Federal sponsoring agency.

(6) Procurement records and files for purchases in excess of \$10,000 shall include the following:

(i) The basis for contractor selection;

(ii) A justification for lack of competition when competitive bids or offers are not obtained; and

(iii) The basis for the award cost or price.

(g) The recipient shall include both of the following provisions in all contracts and sub-contracts in excess of \$10,000:

(1) Provisions for administrative, contractual and legal remedies, and provisions for sanctions and penalties, as appropriate for instances in which contractors violate or breach contractual terms, and

(2) Provisions for termination by the recipient as well as provisions for termination for default and for circumstances beyond the control of the contractor.

(h) In contracts for construction or facility improvement for more than \$100,000, recipients shall observe the bonding requirements provided in Attachment B to OMB Circular A-110.

(i) Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision requiring recipients to

agree to comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Federal sponsoring agency and to the Regional Office of the Environmental Protection Agency.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).)

Dated: August 18, 1977.

ROBERT T. HALL,  
Assistant Secretary  
for Economic Development.

[FR Doc. 77-25113 Filed 8-29-77; 8:45 am]

# Title 14—Aeronautics and Space CHAPTER II—CIVIL AERONAUTICS BOARD

## SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1019, Amdt. 2]

### PART 244—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR AIR FREIGHT FORWARDERS AND INTERNATIONAL AIR FREIGHT FORWARDERS; FILING OF REPORTS BY FOREIGN AIR FREIGHT FORWARDERS AND COOPERATIVE SHIPPERS ASSOCIATIONS

#### Elimination of Schedules T-4, T-5, and T-6 of CAB Form 244

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This amendment terminates the special reports (Schedules T-4, T-5, and T-6 of CAB Form 244) prescribed for long-haul motor and railroad air freight forwarders and those affiliated with them as set forth in Section 8 of Part 244. The rule implements a part of the Board's decision in the "Long-Haul Motor/Railroad Carrier Air Freight Forwarder Authority Case", Docket 26907, decided June 27, 1977, Order 77-6-126.

DATES: Effective: August 25, 1977.  
Adopted: August 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202-673-5270).

SUPPLEMENTARY INFORMATION: In the "Motor Carrier-Air Freight Forwarder Investigation," Order 69-4-100, the Board authorized long-haul motor carriers of general commodities to engage in air freight forwarding and international air freight forwarding on a trial basis for a period of five years under a plan of monitored entry, including the submission of special reports, designed to assure that their participation would benefit rather than harm air transportation. The program was extended to railroad carriers in the "Southern Pacific-Santa Fe Air Freight Forwarder Case,"

Order 70-10-100. The program establishing the special reports was incorporated in Part 244 by ER-595 (November 12, 1969, 34 FR 19340) and ER-703 (October 12, 1971, 36 FR 20154).

In the "Long-Haul Motor/Railroad Carrier Air Freight Forwarder Authority Case," the Board reviewed the effectiveness of its experiment and decided, among other things, that the special reports called for by the program should be terminated. On page 7 of the Opinion in Order 77-6-126, the Board stated that technical amendments to Part 244 would be made in the near future to delete the special reporting requirements and that such requirements would not be enforced in the meantime. Since this amendment eliminates reporting requirements and imposes no burdens, it is being made effective immediately. Accordingly, the Civil Aeronautics Board amends Part 244 of the Economic Regulations (14 CFR Part 244) effective August 25, 1977 as follows:

#### Section 8 [Amended]

1. Amend Section 8—Reports as follows:

A. Delete the following lines from the "List of Schedules."

Schedule No.	Title	Applicability level		
		1	2	3
T-4	Originating Air Station Data.	(1)	(1)	(1)
T-5	Supplemental Operating Statistics	(1)	(1)	(1)
T-6	Analysis of Traffic by Weight Breaks.	(1)	(1)	(1)

B. Delete footnote 1 to the "List of Schedules."

2. Amend Section 8-1—General Instructions by revising paragraph (d) to read:

#### Sec. 8-1 General Instructions.

(d) The CAB Form 244 report shall be due at the Civil Aeronautics Board on February 15 of each year. If a due date falls on a Saturday, Sunday, or national holiday, the due date will change to the first following workday.

#### Sec. 8 [Amended]

3. Amend Section 8-2—Specific Instructions to delete the instructions for the following schedules in their entirety:

Schedule T-4—Originating Air Station Data. [Deleted]

Schedule T-5—Supplemental Operating Statistics—Long-Haul Motor Carriers or Railroad Carriers as Air Freight Forwarders. [Deleted]

Schedule T-6—Analysis of Traffic by Weight Breaks. [Deleted]

(Secs. 204(a), 407, Federal Aviation Act of 1958, as amended, (72 Stat. 743, 768, as amended, (49 U.S.C. 1324(a) 1377).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 77-25241 Filed 8-29-77; 8:45 am]



## RULES AND REGULATIONS

[Docket No. 26907 et al.; ER-1003, Amdt. 2]

**PART 296—CLASSIFICATION AND EXEMPTION OF AIR FREIGHT FORWARDERS, INTERNATIONAL AIR FREIGHT FORWARDERS, AND COOPERATIVE SHIPPERS ASSOCIATIONS**

**Correction**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared at page 33274 in the FEDERAL REGISTER of Thursday, June 30, 1977 (FR Doc. 77-18769).

EFFECTIVE DATE: August 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary J. Edles, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202-673-5206).

The following correction is made:

Effective: August 26, 1977.

Adopted: June 27, 1977.

A citation in the Supplementary Information on page one is incorrect. In the next to the last line the citation "ER-791 (October 12, 1970, 36 F.R. 20155)" should read "ER-701, October 12, 1971, 36 F.R. 20155)."

By the Civil Aeronautics Board.

Dated: August 25, 1977.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 77-25166 Filed 8-29-77; 8:45 am]

**SUBCHAPTER F—POLICY STATEMENTS**

[Docket No. 26907 et al.; Reg. PS-74, Amdt. 53]

**PART 399—STATEMENTS OF GENERAL POLICY PROCESSING OF APPLICATIONS OF LONG-HAUL MOTOR CARRIERS OR RAILROAD CARRIERS FOR AUTHORITY AS AIR FREIGHT FORWARDERS OR INTERNATIONAL AIR FREIGHT FORWARDERS**

**Correction**

AGENCY: Civil Aeronautics Board.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared at page 33275, in the FEDERAL REGISTER of Thursday, June 30, 1977 (FR Doc. 77-18768).

EFFECTIVE DATE: August 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary J. Edles, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202-673-5205).

The following correction is made:

Effective: August 26, 1977.

Adopted: June 27, 1977.

The words "or railroad carriers" were inadvertently omitted from § 399.20(d) following the word "carrier" in line two. The provision should read:

"(d) Applications for acquisition of control. Where a long-haul motor carrier or railroad carrier applies for Board approval to acquire control of an air freight forwarder or international air freight forwarder, the Board's policy in ordinary circumstances will be as follows: \* \* \*"

By the Civil Aeronautics Board.

Dated: August 25, 1977.

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 77-25165 Filed 8-29-77; 8:45 am]

**Title 21—Food and Drugs**

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

**SUBCHAPTER A—GENERAL**

[Docket No. 77C-0126]

**PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION**

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

**β-Carotene; Confirmation of Effective Date**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of August 2, 1977, of an order concerning the use of β-carotene in externally applied drugs and in cosmetics generally, including those drugs and cosmetics intended for use in the area of the eye.

DATE: Effective date confirmed: August 2, 1977.

FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:**

A regulation published in the FEDERAL REGISTER of July 1, 1977 (42 FR 33722) amended § 73.1095 and added § 73.2095 in Subparts B and C, respectively, of Part 73 (21 CFR Part 73) to provide for the safe use of β-carotene in externally applied drugs and in cosmetics generally, including those drugs and cosmetics intended for use in the area of the eye. The regulation also amended § 81.1(g) (21 CFR 81.1(g)), by deleting carotene from the provisionally listed colors.

Under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c),

and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), notice is given that no objections or requests for hearing were filed in response to the regulation of July 1, 1977. Accordingly, the amendments promulgated thereby became effective on August 2, 1977.

Dated: August 23, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate  
Commissioner for Compliance.

[FR Doc. 77-25046 Filed 8-29-77; 8:45 am]

[Docket No. 77C-0198]

**PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION**

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

**Carmine; Confirmation of Effective Date**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of July 26, 1977, of a regulation concerning the use of carmine in cosmetics generally, including those intended for use in the area of the eye.

DATE: Effective date confirmed: July 26, 1977.

FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:**

A regulation published in the FEDERAL REGISTER of June 24, 1977 (42 FR 32228) added § 73.2087 to Subpart C of Part 73 (21 CFR Part 73) to provide for the safe use of carmine in cosmetics generally, including those cosmetics intended for use in the area of the eye. The order also amended § 81.1(g) (21 CFR 81.1(g)), by deleting carmine from the provisionally listed colors.

Under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and under authority delegated to the Commissioner (21 CFR 5.1), notice is given that no objections or requests for hearing were filed in response to the order of June 24, 1977. Accordingly, the amendments promulgated thereby became effective on July 26, 1977.

Dated: August 23, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate  
Commissioner for Compliance.

[FR Doc. 77-25047 Filed 8-29-77; 8:45 am]



## SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 76F-0461]

## PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

## Styrene Block Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Based on a petition by Phillips Petroleum Co., the agency is amending the food additive regulations to provide for safe use of additional styrene block polymers.

DATES: Effective August 30, 1977; objections by September 29, 1977.

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

## FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-472-5690).

## SUPPLEMENTARY INFORMATION:

Notice was given in the FEDERAL REGISTER of January 4, 1977 (42 FR 855) that a petition (FAP 6B3171) had been filed by Phillips Petroleum Co., Bartlesville, OK 74004, proposing that § 177.1810 (21 CFR 177.1810) be amended to provide for the safe use of additional analogous styrene block polymers and to provide an alternate method for the determination of glass transition points of styrene block polymers.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, concludes that § 177.1810 should be amended as set forth below.

In the FEDERAL REGISTER of June 3, 1977 (42 FR 28533), subsequent to the filing of FAP 6B3171, § 177.1810 was amended in paragraph (b) (1) to provide for the safe use of additional analogous with 1,3-butadiene as a component of pressure sensitive adhesives intended to contact nonfatty foods. The Commissioner concludes that the proposed changes regarding extractable fraction, glass transition points, and analytical method are also applicable to the styrene block polymers used as a component of pressure sensitive adhesives subject to the use limitations prescribed in the text of item 1(ii) of § 177.1810(b).

Accordingly, § 177.1810 is being amended: (1) In the table in paragraph (b) by increasing the maximum extractable fraction of styrene block polymers with 1,3-butadiene in 50 percent ethanol at 150° F for 2 hours on a 0.075 inch thick sample from "0.005 mg/in<sup>2</sup> of surface" to "0.01 mg/in<sup>2</sup> of surface"; (2) in the same table by extending the ranges of glass transition points of styrene block polymers with 1,3-butadiene from "-86° C to -80° C and 92° C to 98° C" to "-98° C to -71° C and 86° C to 122° C" and of styrene block polymers with 2-methyl-1,3-butadiene from "-52° C to -47° C and 92° C to 98° C" to "-65° C to -47° C and 86° C to 122° C"; and (3) in paragraph (c) (2) by adding an alternate analytical method for the determination of glass transition points.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c) (1), 72 Stat. 1786 (21 U.S.C. 348(c) (1))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 177 is amended in § 177.1810 by revising paragraphs (b) and (c) (2) to read as follows:

## § 177.1810 Styrene block polymers.

## (b) Specifications:

Styrene block polymers	Molecular weight (minimum)	Solubility	Glass transition points	Maximum extractable fraction in distilled water at specified temperatures, times, and thicknesses	Maximum extractable fraction in 50 pct ethanol at specified temperatures, times, and thicknesses.
1. (i) Styrene block polymers with 1,3-butadiene; for use as articles or as components of articles that contact food of types I, II, IV-B, VI, VII-B, and VIII identified in table 1 in sec. 176.170 (c) of this chapter under conditions of use D, E, F, and G described in table 2 in sec. 176.170(c) of this chapter.	29,000	Completely soluble in toluene.	-98° C to -71° C and 86° C to 122° C.	0.025 mg/in <sup>2</sup> of surface at reflux temperature for 30 min on a 0.075 in thick sample.	0.01 mg/in <sup>2</sup> of surface at 150° F for 2 hr on a 0.075 in thick sample.
(ii) Styrene block polymers with 1,3-butadiene; for use as components of pressure sensitive adhesives that contact food of types I, II, IV-B, VI, VII-B, and VIII identified in table 1 in sec. 176.170(c) of this chapter under conditions of use C, D, E, F, and G described in table 2 in sec. 176.170(c) of this chapter, provided the pressure sensitive adhesives be applied only to closure tapes for sealing containers having a capacity of not less than 3.5 fluid ounces and that the area of the adhesive exposed to food shall not exceed 0.625 in <sup>2</sup> . The pressure sensitive adhesive may contain terpene resins as identified in sec. 175.125(b) (2) of this chapter.	29,000	do	do	do	Do.
2. Styrene block polymers with 2-methyl-1,3-butadiene; for use as articles or as components of articles that contact food of types I, II, IV-B, VI, VII-B, and VIII identified in table 1 in sec. 176.170(c) of this chapter under conditions of use D, E, F, and G described in table 2 in sec. 176.170(c) of this chapter.	29,000	do	-65° C to -47° C and 86° C to 122° C.	0.01 mg/in <sup>2</sup> of surface at reflux temperature for 2 hr on a 0.028 in thick sample.	0.01 mg/in <sup>2</sup> of surface at 150° F for 2 hr on a 0.028 in thick sample.
3. Styrene block polymers with 1,3-butadiene, hydrogenated; for use as articles or as components of articles that contact food of types I, II, IV-B, VI, VII-B, and VIII identified in table 1 in sec. 176.170(c) of this chapter.	18,000	do	-50° C to -30° C and 92° C to 98° C.	0.01 mg/in <sup>2</sup> of surface at reflux temperature for 2 hr on a 0.028 in thick sample.	Do.

(c) \* \* \*

(2) *Glass transition points.* The glass transition points shall be determined by either of the following methods:

(i) ASTM Method D 2236-70<sup>1</sup> modified by using a forced resonant vibration instead of a fixed vibration and by using frequencies of 25 to 40 cycles per second instead of 0.1 to 10 cycles per second.

(ii) Direct reading viscoelastometric method<sup>2</sup> by which the glass transition points are determined in the tensile mode of deformation at a frequency of 35 hertz using a Rheovibron Model DDV-II (or equivalent) Direct Reading Viscoelastometer. Take maxima in the

out-of-phase component of the complex modulus as the glass transition points. For block polymers of low styrene content or for simple block polymers, the polymer may be treated with 0.3 part per hundred dicumyl peroxide and cured for 30 minutes at 153° C to accentuate the upper transition point.

<sup>1</sup>Copies may be obtained from: American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

<sup>2</sup>Copies may be obtained from: Director, Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 29,



1977, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective August 30, 1977.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348 (c)(1)))

Dated: August 22, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate  
Commissioner for Compliance.

NOTE.—Incorporation by reference provisions approved by the Director, Office of the Federal Register on April 29, 1974 and August 19, 1977. The incorporated provisions are on file in the Federal Register Library.

[FR Doc. 77-25093 Filed 8-29-77; 8:45 am]

#### Title 24—Housing and Urban Development

#### SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-285]

#### PART 20—BOARD OF CONTRACT APPEALS

##### Rules of Procedure for Handling Appeals

AGENCY: HUD Board of Contract Appeals.

ACTION: Final rule.

SUMMARY: This rule establishes a Board of Contract Appeals and prescribes its jurisdiction, authority, and procedures. The rule adopts, with appropriate changes for HUD's requirement, the Uniform Rules of Procedure for Boards of Contract Appeals drafted by the National Conference of Boards of Contract Appeals members. The changes are primarily editorial and are intended to improve clarity and to incorporate recent developments in the Board's organization.

EFFECTIVE DATE: September 29, 1977.

#### FOR FURTHER INFORMATION CONTACT:

B. Paul Cotter, Jr., Administrative Judge, HUD Board of Contract Appeals, Washington, D.C. 20410, (202-755-6318).

SUPPLEMENTARY INFORMATION: On May 12, 1977, the Secretary of the Department of Housing and Urban Development published a proposed rule (42 FR 24200) to revise the provisions establishing the HUD Board of Contract Appeals and its procedures (24 CFR Part 20). As the Secretary stated at the time, the original provisions were adopted shortly after the inception of the Board in February, 1975. Since 1975 the Uniform Rules of Procedure were issued, the Board's membership was expanded, and problems characteristic of HUD contract appeals have been identified. The primary purpose of the proposed change was to incorporate those three developments and to make the Board's Rules more understandable to the layman who elects to present his appeal to the Board himself.

No comments were received in response to the proposed changes. However, further editorial changes have been made in the final rule to make its provisions easier to understand. None of the editorial changes are substantive.

The Department has also determined in accordance with OMB Circular A-107 that this proposal does not have an economic impact. A copy of the Economic Finding of Inapplicability is also available for inspection at the above address.

Accordingly, 24 CFR Part 20 is amended to read as follows:

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AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act; 42 U.S.C. 3535(d).

#### Subpart A—Department of Housing and Urban Development Board of Contract Appeals

##### § 20.1 Scope of part.

This part establishes a Board of Contract Appeals, sets forth policies and procedures regarding matters to be considered by the Board, and prescribes the rules of the Board.

##### § 20.2 Establishment of Board.

There is hereby established in the Office of the Secretary the Housing and Urban Development Board of Contract Appeals ("the Board").

##### § 20.3 Organization, membership and location of the Board.

(a) *Organization and membership.* The Board shall be comprised of a Chief Administrative Judge, who shall be Chairman, and such other Administrative Judges as may be appointed by the Secretary. The Board shall employ support personnel as needed. All members of the Board shall be attorneys at law admitted to practice before the highest court of the District of Columbia or any State, commonwealth, or territory of the United States. Contract appeals are assigned to a panel of at least two (2) members of the Board. However, under the optional accelerated procedure set forth in Rule 14 of Subpart B of this Part 20, a decision may be rendered by a single Administrative Judge.

(b) *Location.* The Board is located in Washington, D.C., and its mailing address is U.S. Department of Housing and Urban Development, Board of Contract Appeals, Room 7150, 451 7th Street SW., Washington, D.C. 20410.



**§ 20.4 Jurisdiction and authority of the Board.**

(a) *Contract Appeals.* The Board shall consider and determine appeals from decisions of Contracting Officers arising under contracts which contain provisions requiring the determination of appeals by the Secretary of Housing and Urban Development or the Secretary's duly authorized representative or board. The Board has authority to determine contract appeals falling within the scope of its jurisdiction as fully and finally as might the Secretary.

(b) *Other matters.* The Board or its individual members shall have jurisdiction over other matters assigned to it by the Secretary. Determinations in other matters shall have the finality provided by applicable statute, regulation or agreement.

(c) *Decisions on questions of law.* When an appeal is taken pursuant to a Disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board, in its discretion, may hear, consider, and decide all questions of law necessary for the complete adjudication of the issues. If an appeal involves a claim which is not cognizable under the terms of the contract or applicable regulation, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(d) *Board powers.* The Board shall have all powers necessary and incident to the proper performance of the duties assigned to it by this Part.

(e) *Final decision.* In each case, the Board shall make a final decision which is just and is supported by the record in the case and the law. The decision of a majority of a panel constitutes the decision of the Board. The Administrative Judge or Judges assigned to consider an appeal have authority to act for the Board in all matters with respect to such appeal. No Administrative Judge may act for the Board or participate in a decision if, prior to the time the appeal was filed, he or she has participated in the matter in any manner whatsoever.

(f) *Subpoena power.* Any Board member presiding over a contract appeal under § 20.4(a) may seek the issuance of subpoenas pursuant to 5 U.S.C. 304, for witnesses or documents relating to that appeal.

**§ 20.5 Procedure.**

(a) *Rules.* Appeals referred to the Board will be conducted in accordance with the rules of the Board set forth in Subpart B of this Part 20, unless otherwise provided by applicable statute or regulation. The provisions of the Administrative Procedure Act, 5 U.S.C. 551, et seq., as amended, shall not apply to contract appeals before the Board.

(b) *Administration and interpretation of rules.* These rules will be interpreted to secure a just and inexpensive determination of appeals without unnecessary delay. The Board shall decide procedural issues in accordance with the spirit of these rules, and, in its discretion, it may follow specific provisions of the Rules of

Civil Procedure for the United States District Courts in dealing with such issues.

(c) *Preliminary procedures.* Preliminary procedures are provided to encourage full disclosure of relevant and material facts and to discourage unwarranted surprise.

**Subpart B—Rules of the Department of Housing and Urban Development Board of Contract Appeals**

**§ 20.10 Rules.**

These rules govern the procedure in all matters before the Department of Housing and Urban Development Board of Contract Appeals unless otherwise provided by applicable law or regulation. They shall be construed to secure the just, speedy, and inexpensive determination of every matter.

**PRELIMINARY PROCEDURES**

**Rule 1. How to appeal a Contracting Officer's decision.**

Notice of an appeal must be in writing, addressed to the Secretary, and the original, together with two copies, should be filed with the Contracting Officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive, regulation or law.

**Rule 2. Contents of notice of appeal.**

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract by number, the headquarters, regional or area office cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the contractor taking the appeal ("the appellant"), or by an officer of an appellant corporation or member of an appellant firm, or by an appellant's authorized representative or attorney.

**Rule 3. Forwarding of appeals by the Contracting Officer.**

When a notice of appeal in any form has been received by the Contracting Officer, he shall endorse thereon the date of mailing of the notice by the appellant or date of receipt, if otherwise conveyed, and within 10 days shall forward the notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal, whether through the Contracting Office or otherwise, the appellant, the Contracting Officer and Government ("respondent") counsel will be promptly notified of its receipt and docketing by the Board. The Board will furnish the contractor with a copy of these rules.

**Rule 4. Preparation, contents, organization, forwarding, and status of appeal file.**

(a) *Duties of Contracting Officer.* Within 30 days of receipt of notice that an appeal has been docketed, the Contracting Officer shall file with the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The Contracting Officer's decision and findings of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments and plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent. Within the 30 days specified above, the Contracting Officer shall furnish the appellant a list of each document he transmits to the Board, with a copy of each document not already in the contractor's possession except for lengthy documents described in subparagraph (d) below.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the Contracting Officer, the appellant may supplement the same by transmitting to the Board any documents not contained therein which it considers pertinent to the appeal and shall furnish two copies of such documents to the respondent's trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file. The first two documents in every appeal file shall be the Contracting Officer's final decision and the contract.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file shall be, without further action by the parties, a part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or, in the event there is no hearing on the appeal, of settling the record. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with rules 15 and 21, hereof.

**Rule 5. Service of documents.**

A copy of every written communication submitted to the Board shall be sent to every other party to the dispute. Such communications shall be sent by delivering in person or by mailing, properly addressed with postage prepaid, to the opposing party or, where the party is represented by counsel, to its counsel. Each communication with the Board shall be accompanied by a statement, signed by the originating party, saying when, how, and the name and address of the party to whom a copy of the communication was sent.

**Rule 6. Computation and extension of time limits.**

(a) *General.* All time limitations specified for various procedural actions are computed as maximums and are not to be fully exhausted if the action described can be accomplished in a lesser period. At the discretion of the Board, these time limitations may be extended in appropriate circumstances for good cause shown.

(b) *Computation.* Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.



(c) *Extensions.* All requests for extensions of time shall be submitted to the Board in writing and shall state good cause therefor.

**Rule 7. Dismissal for lack of jurisdiction.**

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits of the appeal and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

**Rule 8. Pleadings and motions.**

(a) *Complaint.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. If the complaint is not received within the 30 days and, in the opinion of the Board, the issues before the Board are sufficiently defined, the appellant's claim and notice of appeal may be deemed to set forth its complaint, and the parties shall be so notified.

(b) *Answer.* Within 30 days from receipt of said complaint or a Rule 8(a) notice from the Board, respondent shall prepare and file with the Board an original and two copies of any answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer and shall set forth any affirmative defenses or counter-claims as appropriate. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the respondent, and the parties shall be so notified.

(c) *Motions.* (1) The Board may entertain any timely motion for an appropriate order. Application to the Board for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The Board may, on its own motion, initiate any action by notice to the parties.

(3) Unless otherwise specified by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt. The Board may require the presentation of briefs or arguments. The Board shall make an order on each motion that is appropriate and just to the parties and upon conditions that will promote efficiency in disposing of the appeal.

(4) Affidavits in support of motions shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion is made and supported as provided in this rule, a party opposing the motion who is represented by counsel may not rest upon the mere allegations or denials of his pleading; his response, by affidavits or as otherwise provided in this rule, must show that there is a genuine issue of fact or of law for decision. Should it appear from the affidavits of a party opposing the motion that for reasons stated he cannot present by affidavit facts es-

sential to justify his opposition, the Board may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

**Rule 9. Amendments of pleadings or record.**

(a) *Pleadings.* The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The application for such an order will suspend the time for responsive pleading. The Board may, in its discretion and within the proper scope of the appeal, permit either party to amend its pleading upon conditions just to both parties.

(b) *Record.* When an issue within the proper scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, is tried by consent of the parties or by permission of the Board, the issue shall be treated in all respects as if it had been raised therein. In that event a motion to amend the pleadings to conform to the proof may be made but is not required. If evidence is objected to at a hearing on the ground that it is not within an issue raised by the pleadings or the Rule 4 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, but the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

**Rule 10. Hearing election.**

Upon receipt of a respondent's answer or of the notice that the Board has entered a general denial on behalf of the Government, appellant shall advise the Board in writing whether he desires a hearing as prescribed in Rules 18 through 26, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in Rule 13. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 14.

**Rule 11. Prehearing briefs.**

The Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 10. In the absence of a Board requirement therefore, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

**Rule 12. Prehearing or presubmission order and conference.**

(a) *Prehearing Order.* Normally, in cases set for hearing, the Board will issue an order requiring that, prior to the day of the hearing, the parties will:

(1) Exchange a list of witnesses giving titles and a brief description of the subject matter of the testimony;

(2) Exchange proposed exhibits and prepare an additional set of such exhibits to be delivered to the board member at the beginning of the hearing;

(3) Exchange a list of expert witnesses with a summary of their qualifications and testimony; and

(4) Explore the possibilities of agreements on settlement, facts or issues not in dispute, or ways of disposing of portions of the appeal.

Any of the foregoing requirements may be waived by the Board if they conflict with Rule 14 governing the optional accelerated procedure or if they will cause undue hardship to the appellant.

(b) *Complex Case Order.* In appropriate cases, the Board will issue a more comprehensive pretrial order. Examples of complex cases are where it appears that the issues are confused or complex, where the dollar amount involved is very large or the hearing will be unduly long for any other reason and also, in most cases involving quantum where the Board must decide the amount of money owed by either party. In addition to items (1), (2), (3) and (4) referenced in the preceding paragraph, the complex case order will require the parties to (5) submit a stipulation of all facts not in dispute; and (6) attempt preparation of an agreed statement of factual and legal issues and, failing therein, submit separate statements. Where the issue of the amount of money owed will be heard, the Board may issue an additional pretrial order requiring the parties to state the monetary claim in detail with accounting schedules and explanations. The parties shall exchange the statements called for by this paragraph, permit audits of their respective records relating to the contract, and exchange audit reports.

(c) *Conference.* Whether the case is to be submitted pursuant to Rule 13, or heard pursuant to Rules 18 through 26, the Board, upon its own initiative or upon the application of either party, may call upon the parties to appear before an Administrative Judge of the Board for a conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses and the avoidance of similar cumulative evidence, if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be set forth in an appropriate order.

**Rule 13. Submission of appeal without a hearing.**

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 15. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested) and by briefs in accordance with Rule 24.

**Rule 14. Optional accelerated procedure.**

(a) *Application.* In appeals involving \$25,000 or less, either party may elect to have the appeal processed under a shortened and accelerated procedure. The election shall be in writing filed with the Board prior to commencement of hearing or settlement of the record. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by each party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which



each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed \$25,000. In addition, this optional accelerated procedure may be employed, at the discretion of the Board and regardless of the amount involved, for other reasons including, but not limited to financial hardship or location of appellant in an area of concentrated unemployment, underemployment, or substantial or persistent labor surplus. An accelerated case shall be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board sustains the objection. In cases proceeding under this rule, parties are encouraged, to the extent possible and consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) *Decisions.* Written decisions by the Board in cases proceeding under this rule normally will be brief and contain summary findings of fact and conclusions of law only. The Board will endeavor to render its decision within 30 days after the appeal is ready for decision. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or a designated member. However in cases involving \$5,000 or less where there has been a hearing, the single Administrative Judge presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions of law and a decision of the appeal. In the latter instance, the Board will subsequently furnish the parties a typed copy of the oral decision for record and payment purposes and to establish the date from which the period for filing a motion for reconsideration under Rule 30 commences.

(c) *Applicable rules.* Except as modified herein, these rules apply to accelerated cases in all respects.

#### Rule 15. The Record of the appeal.

(a) *Contents.* The record upon which the Board's decision will be rendered consists of the appeal file described in Rule 4 and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions and interrogatories and answers to interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) *Time of closing the record.* Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of the oral hearing of the appeal or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight of the evidence.* The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

#### Rule 16. Discovery—Depositions.

(a) *Definition.* As used in these rules, the term "discovery" shall mean the methods described in this rule and Rule 17 whereby the appellant contractor or the respondent Government may require the other party to disclose the facts, documents, papers, things,

and other information within that party's knowledge or possession prior to an oral hearing or a determination on the record.

(b) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, methods, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(c) *When depositions permitted.* After an appeal has been docketed and a complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(d) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed upon by the parties, or failing such agreement, governed by order of the Board.

(e) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Testimony by deposition will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. However, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence to supplement the record.

(f) *Expenses.* Each party shall bear its own expenses associated with discovery, unless, in the discretion of the Board, the expenses shall be apportioned otherwise.

#### Rule 17. Interrogatories to parties, admission of facts, production and inspection of documents.

(a) *General.* The scope and use of interrogatories to parties, admissions of facts and production and inspection of documents shall be controlled by Rule 16.

(b) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories (that is, questions) to be answered separately in writing, signed under oath and returned within 30 days of receipt by the answering party. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted.

(c) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a written request for the admission of specified facts. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Within 30 days after receipt of the request, the party served shall answer each requested admission of fact or file objections thereto in writing. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission within the time specified.

(d) *Production and inspection of documents.* Upon motion of any party showing good cause therefore, and upon notice, the Board may order the other party to produce and permit the inspection or photographing of any specifically identified documents or

objects, not privileged, which are shown by the moving party either to be relevant to the subject matter of the appeal or to be reasonably calculated to lead to the discovery of admissible evidence.

#### HEARINGS

#### Rule 18. Time and place of hearing.

Hearings will ordinarily be held in Washington, D.C., except that upon timely request and for good cause shown, the Board may, in its discretion, set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. At the request of either party and for good cause shown, the Board may, in its discretion, advance a hearing.

#### Rule 19. Notice of hearings.

The parties shall be given at least fifteen (15) days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for a just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

#### Rule 20. Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 13.

#### Rule 21. Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the Rules of Evidence for United States Courts and Magistrates, as amended, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presentation of such evidence. In general, admissibility will be decided on the grounds of relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the above rules of evidence, may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

#### Rule 22. Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member shall otherwise order. If the testimony of a witness is not given under oath, the Board shall warn the witness that his statements may be subject to the provisions of Title 18, United States Code, Sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in connection with any matter within the jurisdiction of any department or agency thereof.

#### Rule 23. Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be



material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

#### Rule 24. Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

#### Rule 25. Transcript of proceeding.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties without cost and to others at such rates as may be fixed by the Board.

#### Rule 26. Withdrawal of exhibits.

After a decision has become final the Board may, on its own motion or upon request and after notice to the other party, in its discretion, direct or permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of withdrawal.

#### REPRESENTATION

#### Rule 27. The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law admitted to practice before the highest court of the District of Columbia or any state, commonwealth or territory of the United States. An attorney representing an appellant shall file a written notice of appearance with the Board. The Board in its discretion may authorize the appearance of other designated individuals.

#### Rule 28. The respondent.

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board. Whenever at any time it appears that the appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

#### DECISIONS

#### Rule 29. Decisions.

Decisions of the Board will be rendered in writing, and copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 15.

#### Rule 30. Motion for reconsideration.

A motion for reconsideration by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

#### DISMISSALS

#### Rule 31. Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status, and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any case where the suspension has continued, or

it appears in the discretion of the Board that it will continue, for a period in excess of one year, the Board may dismiss the appeal from its docket without prejudice to its restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years from the date of dismissal to reinstate any appeal dismissed without prejudice, the dismissal shall automatically be converted to a dismissal with prejudice without further action by the parties or the Board.

#### Rule 32. Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

#### MISCELLANEOUS

#### Rule 33. Ex parte communications with the board.

Ex parte communications, that is, written or oral communications with the Board by or for one party only without notice to the other, shall not be permitted. No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

#### Rule 34. Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

#### Rule 35. Remand from Court.

Whenever any matter is remanded to the Board from any court for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board, recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court. To the extent the court's directive and time limitations will permit, such orders will conform to these rules.

Issued at Washington, D.C.

JAY JANIS,  
Under Secretary of Housing  
and Urban Development.

[FR Doc. 77-25077 Filed 8-29-77; 8:45 am]

#### Title 29—Labor

#### SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

#### PART 40—FARM LABOR CONTRACTOR REGISTRATION

#### Issuance by States of Certificates of Reg- istration and Employee Identification Cards

AGENCY: Department of Labor.

ACTION: Final rule.

**SUMMARY:** The Farm Labor Contractor Registration Act of 1963, as amended, authorizes the Secretary to enter into agreements with Federal and State agencies to utilize their facilities and services, and to delegate to such agencies certain authority, other than rulemaking, as the Secretary deems necessary in carrying out the provisions of the Act. Under that authority, and by this final action, the Secretary is providing the method and procedure for entering into such agreements with any State.

**DATES:** This final rule is effective September 29, 1977.

#### FOR FURTHER INFORMATION CON- TACT:

Paul E. Myerson, Counsel for Employment Standards, Division of General Legal Services, Office of the Solicitor, Room N-2464, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone No. 202-523-8244.

**SUPPLEMENTAL INFORMATION:** The authority conferred by Section 8 of the Farm Labor Contractor Registration Act of 1963, as amended (7 U.S.C. 2047), does not require the issuance of regulations to authorize the Department to enter into agreements with States involving the use of their facilities and services. However, regulations are deemed necessary to inform the various States and the public in general that the Department will consider the execution of such agreements, and to explain the provisions thereof. Accordingly, a proposed regulation was published in the May 13, 1977, FEDERAL REGISTER, 42 FR 24289, which invited comments thereon. The only comment submitted in response to the invitation suggested combining paragraphs (d) and (e) of § 40.43 in the interest of clarity and brevity. This suggestion has been adopted. This document, representing final action on the rule, was prepared under the direction and control of Donald S. Shire, Associate Solicitor for General Legal Services, Office of the Solicitor, Department of Labor.

Accordingly, there is hereby added to 29 CFR Part 40 an amended § 40.41 and a new § 40.43.

1. Section 40.41 is amended to read as follows:

#### § 40.41 Office of filing, action.

(a) Each application for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card filed at any of the offices designated in §§ 40.11 and 40.31 respectively shall be transmitted promptly to the appropriate regional office of the Wage and Hour Division, Employment Standards Administration, except as provided in paragraph (b) of this section.

(b) Each application for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card filed in a State authorized to issue such documents on behalf of the Administrator shall be processed by the appropriate State agency. See § 40.43 of this Part.



2. A new § 40.43 is added which reads as follows:

**§ 40.43 Issuance of Farm Labor Contractor Certificates of Registration and Farm Labor Contractor Employee Identification Cards by States.**

(a) Pursuant to Section 8 of the Act, the Secretary may enter into an agreement with any State authorizing that State to issue Certificates of Registration and Farm Labor Contractor Employee Identification Cards on behalf of the Administrator.

(b) Every agreement entered into pursuant to this Section shall require that Certificates of Registration and Farm Labor Contractor Employee Identification Cards be issued by the State in conformity with the provisions of the Act, and the regulations, interpretations and guidelines issued thereunder.

(c) Any agreement entered into pursuant to this Section shall be terminated, without hearing, after written notice by the Secretary, the Administrator, or the appropriate State official.

(d) Every Certificate of Registration and every Farm Labor Contractor Employee Identification Card, whether issued by a State pursuant to this Section or issued by the Administrator under § 40.42 of this Part, shall be valid in any State.

(e) The Secretary, in accordance with the provisions of this Section, has entered into an agreement with each State listed herein below:

New Jersey.

(f) Every agreement entered into pursuant to this Section is available for public inspection and copying in accordance with 29 CFR Part 70.

Signed at Washington, D.C., on this 25th day of August 1977.

RAY MARSHALL,  
Secretary of Labor,  
U.S. Department of Labor.

[FR Doc. 77-25255 Filed 8-29-77; 8:45 am]

**CHAPTER X—NATIONAL MEDIATION BOARD**

**\* PART 1208—AVAILABILITY OF INFORMATION**

**Miscellaneous Amendments**

AGENCY: National Mediation Board.

ACTION: Notice of final rulemaking.

SUMMARY: These amendments provide reference to the Chairman, National Mediation Board, for purposes of perfecting an appeal of a denied Freedom of Information Act request. An editorial change has been made to reflect the Board's current mailing address.

The amendments additionally provide revised fee schedules and procedures for the search and duplication of National Mediation Board and National Railroad Adjustment Board records which are available to the public under this part. In essence, the Board has determined that the direct cost of staff searches has increased to \$1.80 per quarter-hour for

clerical searches and \$4.10 per quarter-hour for non-clerical searches. These costs are reflected in the subject regulations, as well as a duplication charge of fifteen cents per copy. No fee shall be charged for producing records pursuant to this part where the total direct cost to the agency is less than \$5.00 or under other specified circumstances.

A notice of proposed rulemaking with respect to these amendments was published in the FEDERAL REGISTER on July 13, 1977. No comments were received from the public during the advance comment period which ended August 19, 1977. The final text reflects only minor non-substantive editorial changes from the proposed language.

DATES: The effective date of these regulations is August 29, 1977.

**FOR FURTHER INFORMATION CONTACT:**

Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board;  
Tel: 202-523-5920.

**SUPPLEMENTARY INFORMATION:** The regulations are issued pursuant to the authority of 5 U.S.C. 552(a) (4) (A) and 44 Stat. 577, as amended (45 U.S.C. 151 et seq.).

Dated: August 24, 1977.

ROWLAND K. QUINN, JR.,  
Executive Secretary.

29 CFR 1208.2 and 29 CFR 1208.6 are hereby amended to read as follows:

**§ 1208.2 Production or disclosure of material or information.**

(a) *Requests for identifiable records and copies.* (1) All requests for National Mediation Board records shall be filed in writing by mailing the request or delivering it to the Executive Secretary, National Mediation Board, Washington, D.C. 20572, except that requests for records of the National Railroad Adjustment Board shall be in writing and addressed to the Administrative Officer, National Railroad Adjustment Board, 220 South State Street, Chicago, Illinois 60604.

(2) The request shall reasonably describe the records being sought in a manner which permits identification and location of the records.

(i) If the description is insufficient to locate the records, the National Mediation Board will so notify the person making the request and indicate the additional information needed to identify the records requested.

(ii) Every reasonable effort shall be made by the Board to assist in the identification and location of the records sought.

(3) Upon receipt of a request for records the Executive Secretary shall maintain records in reference thereto which shall include the date and time received, the name and address of the requester, the nature of the records requested, the action taken, the date the determination letter is sent to the requester, appeals and action thereon, the date any records are subsequently furnished, the number of staff hours and grade levels of persons

who spent time responding to the request and the payment requested and received.

(4) All time limitations established pursuant to this section with respect to processing initial requests and appeals shall commence at the time a written request for records is received at the Board's offices in Washington, D.C., except for requests directed to the National Railroad Adjustment Board pursuant to § 1208.2(a)(1) in which case the time limit shall commence when the request is received at the NRAB's office in Chicago.

(i) An oral request for records shall not begin any time requirement.

(b) *Processing the Initial Request.* (1) Time limitations. Within 10 working days (excepting Saturdays, Sundays, and working holidays) after a request for records is received, the Executive Secretary shall determine and inform the requester by letter whether or the extent to which the request will be complied with, unless an extension is taken under paragraph (b)(3) of this section.

(2) Such reply letter shall include:

(i) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld.

(ii) The name or names and positions of the person or persons, other than the Executive Secretary, responsible for the denial.

(iii) A statement that the denial may be appealed within thirty days by writing to the Chairman, National Mediation Board, Washington, D.C. 20572, and that judicial review will thereafter be available in the district in which the requester resides, or has his principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) Extension of time. In unusual circumstances as specified in this paragraph, the Executive Secretary may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among components



of the agency having substantial subject matter interest therein.

(4) Treatment of delay as a denial. If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal, in accordance with § 1208.2c. When no determination can be dispatched within the applicable time limit, the responsible official shall nevertheless continue to process the request; on expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Chairman of the Board in accordance with § 1208.2(c) and he may ask the requester to forego appeal until a determination is made.

(c) Appeals to the Chairman of the Board. (1) When a request for records has been denied in whole or in part by the Executive Secretary or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Chairman of the Board. Appeals to the Chairman shall be in writing, addressed to the Chairman, National Mediation Board, Washington, D.C. 20572.

(2) The Chairman of the Board will act upon the appeal within twenty working days (excluding Saturdays, Sundays and legal public holidays) of its receipt unless an extension is made under paragraph (c) (3) of this section.

(3) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to § 1208.2 (b) (3). Such extension shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the appeal:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) Treatment of delay as a denial. If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of

the United States as specified in 5 U.S.C. 552(a) (4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Board records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(d) Indexes of Certain Records. (1) The National Mediation Board at its office in Washington, D.C. will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a) (2).

(i) A copy of such index shall be available at cost from the National Mediation Board, Washington, D.C. 20572.

(2) The National Railroad Adjustment Board at its offices in Chicago, Illinois will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a) (2).

#### § 1208.6 Fees—duplication costs and search.

(a) (1) Unless waived in accordance with the provisions of § 1208.62, the following fees shall be imposed for the reproduction of any record disclosed pursuant to this part.

(i) Copying of records. Fifteen cents per copy of each page.

(ii) Copying of microfilm. Fifty cents per microfilm frame.

(iii) Clerical searches. \$1.80 for each one quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(iv) Non-clerical searches. \$4.10 for each one quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(v) Certification or authentication of records. \$1.00 per certification or authentication.

(vi) Forwarding material to destination. Postage, insurance and special fees will be charged on an actual cost basis.

(2) (i) No charge shall be assessed for time spent in resolving legal or policy questions relating to the documents or in examining records for the purpose of deleting nondisclosable portions thereof.

(ii) No charge shall be assessed for time spent in monitoring an individual

who examines documents at the Board's offices.

(3) Payment shall be made by check or money order payable to "United States Treasury."

(b) (1) No fee shall be charged for disclosure of records pursuant to this part where:

(i) The cost of providing the records is less than \$5.00.

(ii) The records are requested by a congressional committee or subcommittee, a Federal court, a Federal department or agency, or the General Accounting Office.

(2) (i) The Executive Secretary may waive payment of fees, in whole or in part, when he determines that the person making the request is indigent.

(ii) A person seeking such a determination shall petition the Executive Secretary in writing stating the reasons therefore.

(iii) Determinations made pursuant to this provision will be made within the discretion of the agency.

(3) (i) The Executive Secretary may reduce or waive payment of fees in whole or in part when he determines that such reduction or waiver is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(ii) Determinations pursuant to this provision shall be made within the discretion of the agency.

(4) No fee shall be charged if a record requested is not found or for any record that is determined to be totally exempt from disclosure.

[FR Doc. 77-20543 Filed 8-29-77; 8:45 am]

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

##### PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

###### Approval of the Puerto Rico Plan

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

ACTION: Final rule.

SUMMARY: The Puerto Rico plan for Occupational Safety and Health is hereby approved as a developmental plan under Section 18(c) of the Occupational Safety and Health Act of 1970. Under the approved plan, the Commonwealth of Puerto Rico will assume responsibility for the development and enforcement of occupational safety and health standards, with the exception of certain maritime issues, throughout the jurisdiction, with Federal enforcement continuing to the degree necessary to assure occupational safety and health protection to all employees in the Commonwealth.

EFFECTIVE DATE: August 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Mabel Stanton, Project Officer, U.S. Department of Labor, Occupational Safety and Health Administration, 200



Constitution Avenue NW., Room N-3112, Washington, D.C. 20210.

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of the Director, Federal Compliance and State Programs, Room N-3112, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway (1 Astor Plaza), New York, N.Y. 10036; Department of Labor, Occupational Safety and Health Office, 414 Barbosa Avenue, Sixth Floor, Hato Rey, Puerto Rico 00917.

# SUPPLEMENTARY INFORMATION:

## BACKGROUND

Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667, hereinafter referred to as the Act), provides that a State (under section 4(a) of the Act, Puerto Rico is defined as a State) which desires to assume responsibility for the development and enforcement of occupational safety and health standards shall submit a plan to the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) describing in detail the proposed program. The Assistant Secretary will evaluate the proposed plan to determine whether it meets the criteria of the Act and the implementing regulations at 29 CFR 1902. The criteria generally require that a State plan must provide for occupational safety and health standards, and the enforcement of those standards, as least as effective as Federal occupational safety and health standards and enforcement.

The Commonwealth of Puerto Rico submitted a plan on February 25, 1977. After review by the Regional and National Offices of the Department of Labor, notice was published in the FEDERAL REGISTER of the submission of the Puerto Rico plan and its availability for public comment (June 7, 1977, 42 FR 29024).

## ISSUES

The Puerto Rico Occupational Safety and Health Act is similar to the Federal Act and few issues were raised by either Regional or National Office review. However, the Puerto Rico Act does contain certain provisions which differ from the Federal. Among these are the administrative review of citations, abatement requirements, and proposed penalties, which is conducted by a Hearing Examiner appointed by the Puerto Rico Secretary of Labor. This differs from the comparable Federal provision which establishes a review commission, independent from the Assistant Secretary, to hear all contested cases, with appeal from the Review Commission directly to the U.S. Courts of Appeal.

An intra-agency review process has been approved in several State plans, including South Carolina (37 FR 25923), Maryland (38 FR 17837), and the Virgin Islands (38 FR 24896), with the requirement that investigative and prosecuting

functions be clearly separated from the adjudicatory functions, and the Puerto Rico procedures are essentially identical to those approved in these States. Therefore the use of an agency administrative review process does not preclude initial plan approval, but the actual operation of the procedure will be carefully evaluated.

Further, the Puerto Rico Act provides an additional requirement that the owner of premises used as a place of employment comply with all occupational safety and health standards with respect to the parts of the premises under his control and not under the control of an employer, and a separate 15 day contest period for the citation and the notice of proposed penalties, rather than a single contest period which begins after the employer's receipt of the notice of proposed penalty, as in the Federal program.

Although the Federal Act contains no provision placing a compliance obligation on the owner of premises used for employment, it was determined that this provision could make the Puerto Rico Act more effective than the Federal. Further, since the fifteen day review period for contest under the Federal Act does not begin to run until after the receipt by the employer of the notice of proposed penalty, which occurs concurrent with, or shortly after the receipt of the citation, the dual time period provided by the Puerto Rico Act, will, in actual operation, operate essentially the same as the Federal provision, with the exception that employers in some cases could not wait for the notice of proposed penalty to exercise their contest rights to the citation. Therefore, it was determined that these differences do not preclude approval.

## PUBLIC COMMENTS

In response to the June 7, 1977, notice, AIRCO, Inc., of Montvale, N.J., objected to the lack of an independent review commission, expressed concern over the use of two languages in Puerto Rico, and suggested that compliance materials and activities, as well as any notices, be in English. The Puerto Rico review system is discussed above. In addition, under the plan as approved, all significant materials, including the regulations, standards, Field Operations Manual and citations, will be available in both English and Spanish, which should alleviate AIRCO's concern.

The Puerto Rico Legal Services Unit also submitted comments objecting to the lack of an independent review commission and objected to the lack of a State advisory committee. In addition, they raised questions concerning public accessibility to hearings, pleadings and decisions of the hearing examiner and the Puerto Rico Secretary of Labor.

However, since no State has been required to have a State advisory committee as neither the Federal Act, nor the regulations require such a provision, and since Puerto Rico has provided assurances that it will adopt Federal standards and regulations essentially identical to 29 CFR Part 2200, which provide for

public accessibility to review procedures and pleadings, and given assurance that all proceedings will be open to the public, these objections also do not preclude approval.

## DECISION

After careful consideration, the Puerto Rico plan is hereby approved under section 18 of the Act and 29 CFR Part 1902.

The decision incorporates requirements of the Act and implementing regulations applicable to State plans generally. It also incorporates our intention as to continued Federal enforcement of Federal standards in areas covered by the plan and the State's developmental schedule as set out below. In addition, it incorporates our intention to continue to apply a sliding scale for "as effective as" evaluations which will require the State to continue to keep pace with improvements in all aspects of the Federal program. See 29 CFR 1902.3(d)(1), 1902.32 et seq. (40 FR 54780-86).

Pursuant to 29 CFR 1902.20(b)(1)(iii), the present level of Federal enforcement will not be diminished until the Puerto Rico plan has been determined to be operational under 29 CFR 1954.3. Thereafter, Federal enforcement activity will continue to be exercised to the degree necessary to assure occupational safety and health protection to employees in the Commonwealth of Puerto Rico.

Part 1952 is amended by adding a new Subpart FF, effective August 15, 1977, reading as follows:

### Subpart FF—Puerto Rico

#### Sec.

- 1952.380 Description of the plan.
- 1952.381 Where the plan may be inspected.
- 1952.382 Level of Federal enforcement.
- 1952.383 Developmental schedule.

AUTHORITY: Sec. 18, Pub. L. 91-596, 84 Stat. 1608; 29 U.S.C. 667.

### Subpart FF—Puerto Rico

#### § 1952.380 Description of the plan.

(a) The plan designates the Puerto Rico Department of Labor and Human Resources as the agency responsible for the administration and enforcement of the plan throughout the Commonwealth. This includes the responsibility for administration of a public employee program for which the same enforcement provisions and procedures used for the private sector will apply, with the exception of penalties. Penalties in the Commonwealth's Act for the private sector are essentially identical to those in the Federal Act, and Puerto Rico intends to adopt all Federal standards. The Commonwealth will exclude from coverage all industries included within the classifications of Marine Cargo Handling (SIC 4463) and Shipbuilding and Repairing (SIC 3713), but will adopt and enforce standards for boilers and elevators and other issues where no Federal OSHA standards exist. The plan provides that program personnel will be employed under a merit system and provides for a Management Information System. It also provides procedures for the development and promulgation of standards and procedures for the prompt restraint or elimination of imminent danger situations.



(b) The Puerto Rico Occupational Safety and Health Act was enacted on July 7, 1975, and approved by the Governor on August 5, 1975. It is similar in most respect to the Federal Act. The Puerto Rico Act provides employers the right of administrative review of citations, abatement requirements, and proposed penalties, and employee review of abatement dates, by a hearing examiner appointed by the Puerto Rico Secretary of Labor. The decision by the Secretary may be appealed by the employer or employees to the civil courts. The plan contains a statement of support by the Governor and an opinion by the Secretary of Justice that the Act is consistent with the State's Law and Constitution. Federal procedural regulations will be incorporated into the Commonwealth's regulations and the Federal Compliance Manual will be adopted to fit Puerto Rico's Law. In addition, the Puerto Rico Act requires that a Spanish language version of OSHA standards be made available within three years of plan approval.

(c) The Puerto Rico Act provides for, among other things, inspections in response to employee complaints; an opportunity for employer and employee representatives to accompany inspectors in order to aid inspections, notification of employees or their representatives when no compliance action is taken as a result of a complaint; notification of employees of their protections and obligations; protection for employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; sanctions against employers for violations of standards and orders; and review of citations by a hearing examiner, with appeal to the Secretary of Labor and the Commonwealth's courts.

(d) The plan also proposes a program of voluntary compliance by employers and employees, including a provision for on-site consultation.

(e) The Puerto Rico Plan includes the following documents as of the date of approval:

(1) The plan description documents, in two volumes.

(2) A copy of the enabling legislation as enacted on July 7, 1975, and signed by the Governor on August 5, 1975.

(3) An assurance of separability of the enforcement personnel from the hearing examiner.

(4) A letter of assurance of the authenticity of the English version of the Puerto Rico OSHA Act from John Cinque Sacarello, Assistant Secretary for Occupational Safety and Health, Puerto Rico Department of Labor, dated December 4, 1975.

#### § 1952.381 Where the plan may be inspected.

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of the Director, Federal Compliance and State Programs, Room N-3112, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway (1 Astor Plaza), New York, N.Y.

19036; Department of Labor, Occupational Safety and Health Office, 414 Barbosa Avenue, Sixth Floor, Hato Rey, Puerto Rico 00917.

#### § 1952.382 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii) of this chapter, the present level of Federal enforcement in Puerto Rico will continue to be exercised to the degree necessary to assure occupational safety and health protection to employees in Puerto Rico.

#### § 1952.383 Developmental schedule.

The Puerto Rico State plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Translation of position description for State plan personnel by December 1978;

(b) Public Information Program (private sector), one month after plan approval;

(c) Analysis for inspection scheduling (private sector), one month after plan approval;

(d) Submit administrative regulations, two weeks after plan approval;

(e) Affirmative action plan by 1978;

(f) File and promulgate standards, one month after plan approval;

(g) Adopt the Field Operations Manual, one month after plan approval;

(h) Adopt Management Information System, upon plan approval;

(i) Internal training schedule, three months after plan approval;

(j) Employer, employee training schedule, six to twelve months after plan approval;

(k) Public information program (Government sector), six months after plan approval;

(l) Analysis for inspection scheduling (Government sector), seven months after plan approval;

(m) Implementation of public employee program, eight months after plan approval.

Signed at Washington, D.C., this 15th day of August 1977.

EULA BINGHAM,  
Assistant Secretary of Labor.

[FR Doc. 77-25385 Filed 8-29-77; 8:45 am]

#### CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

SUBCHAPTER C—REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

#### PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

AGENCY: Department of Labor.

ACTION: Interim rule; corrections.

SUMMARY: This rule corrects certain headings in the interim rule, FR Doc. 76-22420 at page 32522 in the FEDERAL REGISTER of Tuesday, August 3, 1976.

EFFECTIVE DATE: August 3, 1976.

FOR FURTHER INFORMATION CONTACT:

Richard F. Aranow, Pension and Welfare Benefit Programs, U.S. Depart-

ment of Labor, Washington, D.C. 20216, area code 202-523-8639.

In FR Doc. 76-22420 appearing at page 32522 in the FEDERAL REGISTER of Tuesday, August 3, 1976, the following corrections are made:

1. On page 32529 the centered heading "Subpart C" in the index is corrected to read as follows:

#### Subpart C—Annual Report Requirements

2. On page 32529, the centered heading "Subpart C" following the "Authority" paragraph is corrected to read as follows:

#### Subpart C—Annual Report Requirements

3. On page 32533 the heading for § 2520.103-9 is corrected to read as follows:

§ 2520.103-9 Direct filing rules for bank common and collective trusts and insurance carrier pooled separate accounts.

Dated: August 24, 1977.

IAN D. LANOFF,  
Administrator of Pension  
and Welfare Benefit Programs.

[FR Doc. 77-25284 Filed 8-29-77; 8:45 am]

#### Title 42—Public Health

#### CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

#### PART 57—GRANTS FOR CONSTRUCTION OF HEALTH RESEARCH FACILITIES (INCLUDING MENTAL RETARDATION RESEARCH FACILITIES), TEACHING FACILITIES, STUDENT LOANS, EDUCATIONAL IMPROVEMENT AND SCHOLARSHIPS

#### Programs for Training of Physician Assistants

AGENCY: Public Health Service, HEW.

ACTION: Interim-final regulations.

SUMMARY: These regulations prescribe requirements for programs for the training of physician assistants pursuant to section 701(7)(B) of the Public Health Service Act (42 U.S.C. 292a(7)(B)), as amended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484). These requirements apply to all programs for the training of physician assistants supported under Title VII of the Public Health Service Act.

DATES: These regulations are effective immediately. As discussed below, comments on the regulations are invited. Comments must be received on or before October 31, 1977, in order to be considered.

ADDRESSES: Written comments preferably in triplicate, should be addressed to the Director, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, 4th Floor, Hyattsville, Md. 20782. All comments received will be available for public inspection and copying at the Office of Program Operations, Bureau of Health Manpower, at the above address, weekdays (Federal holidays excepted)



between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Daniel N. Masica, Deputy Director, Division of Medicine, Bureau of Health Manpower, Room 4-44, at the above address. Telephone: 301-436-6424.

**SUPPLEMENTARY INFORMATION:**

The Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, hereby deletes 42 CFR Part 57, Subpart I, entitled "Grants for Construction of Teaching Facilities for Allied Health Professions Personnel" and substitutes therefor a new Subpart I, as set forth below, entitled "Programs for the Training of Physician Assistants."

The purpose of this new subpart is to comply with the requirement in section 701(7)(B) of the Public Health Service Act (42 U.S.C. 292a (7) (B)) that the Secretary, after consultation with appropriate professional organizations, prescribe regulations for programs for the training of physician assistants. The statute provides that the regulations, at a minimum, must require programs for the training of physician assistants to (1) extend for at least one academic year and consist of supervised clinical practice, and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care and (2) have an enrollment of not less than eight students.

A notice of intent to issue regulations for programs for the training of physician assistants was published in the FEDERAL REGISTER on March 22, 1977 (42 FR 15433). Interested persons were invited to comment on the issues raised by the statutory provisions, and approximately 20 comments were received. The Department has taken these comments into consideration in developing the regulations set forth below. In addition, the Department has consulted with representatives of the American Academy of Physician's Assistants, the Association of Physician's Assistant Programs, the National Commission on Certification of Physician's Assistants, the American Medical Association, and the Association of American Medical Colleges.

The following is a brief summary of the major features of the regulations.

1. The regulations in this subpart will apply to all programs for the training of physician assistants supported under title VII of the Public Health Service Act. Consequently, physician assistant training programs supported in the current fiscal year under section 774(a) of the Public Health Service Act (42 U.S.C. 295-4(a)), and programs to be supported beginning in fiscal year 1978 under sec-

tion 783(a)(1) of the Act, as added by Pub. L. 94-484, must comply with the requirements in this subpart. Section 774(a) authorizes grants and contracts for Health Manpower Education Initiative Projects, while section 783(a)(1), (42 U.S.C. 295g-3(a)(1)), authorizes grants beginning in fiscal year 1978 for projects to plan, develop, and operate or maintain programs for the training of physician assistants, as defined in section 701(7). Programs for the training of physician assistants receiving grants under section 774(a) are also subject to the regulations in 42 CFR Part 57, Subpart AA, pertaining to grants for Health Manpower Education Initiative Projects. The Department is currently developing proposed regulations governing the award of grants under section 783(a)(1) of the Act to be published in the FEDERAL REGISTER at the earliest possible date.

2. The regulations in this subpart require programs for the training of physician assistants, for purposes of Title VII of the Act, to be programs which train assistants to the primary care physician. It is the Secretary's view that this policy is consistent with the concern of Congress, as expressed in the findings and declaration of policy as well as the legislative history of Pub. L. 94-484, for the availability of adequate numbers of qualified health professions personnel to deliver primary care in the United States.

3. In addition to the other requirements in this subpart, a program for the training of physician assistants must (1) be accredited by the American Medical Association's Committee on Allied Health Education and Accreditation as a program for the Assistant to the Primary Care Physician, or (2) have received a Letter of Support from the Joint Review Committee on Educational Programs for Physician's Assistants for its plans for such a program.

4. The regulations require programs for the training of physician assistants to develop and use (1) methods designed to encourage graduates of the program to work in health manpower shortage areas and (2) methods for placing graduates in positions for which they have been trained in health manpower shortage areas. The purpose of these requirements is to implement both the Department's priorities and the intent of Congress with respect to alleviating the geographic maldistribution of health professions personnel engaged in the delivery of primary care.

Although the Department was unable to prescribe regulations for programs for the training of physician assistants within 180 days after the date of enactment of the statutory provision (Oct. 12, 1976), as required by section 701(7)(B) of the Act, the Department wishes to be as responsive as possible to the desire of Congress for the timely promulgation of these regulations. In addition, issuance of these regulations is necessary in order to make them applicable to grants for programs for the training of physician assistants under section 774(a) of the Act which must be awarded prior to the

close of fiscal year 1977. For these reasons, the Secretary has determined pursuant to 5 U.S.C. 553 and Department policy that it would be impracticable and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Notwithstanding the omission of proposed rulemaking procedures, interested persons are invited to submit written comments, data, views, and arguments relating to these regulations to the Director of the Bureau of Health Manpower at the address given above. All relevant material received on or before October 31, 1977, will be considered, and following the close of the comment period the regulations will be revised as warranted by the public comments received. It is intended that any such revision will be published within 90 days of the close of the comment period.

The regulations as set forth below will be applicable and effective on August 30, 1977. Revisions thereto, although applicable to grants for physician assistant training programs awarded after publication of these regulations, will be applicable only with respect to activities conducted under such grants on or after the date that the revisions become effective.

**NOTE.**—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement Under Executive Order 11821 and OMB Circular A-107.

Accordingly, the existing Subpart I of 42 CFR Part 57 is deleted, and a new Subpart I is added to 42 CFR Part 57 and is adopted as set forth below.

Dated: August 16, 1977.

JULIUS B. RICHMOND,  
Assistant Secretary for Health.

Approved: August 19, 1977.

HALE CHAMPION,  
Acting Secretary.

**Subpart I—Programs for the Training of Physician Assistants**

- Sec.  
57.801 Purpose and scope.  
57.802 Definitions.  
57.803 Requirements.

**AUTHORITY:** Sec. 215, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 701(7)(B), 90 Stat. 2247 (42 U.S.C. 292a(7)(B)).

**Subpart I—Programs for the Training of Physician Assistants**

**§ 57.801 Purpose and scope.**

(a) Section 701(7)(B) of the Public Health Service Act (42 U.S.C. 292a(7)(B)) requires the Secretary to prescribe regulations for programs for the training of physician assistants. The purpose of this subpart is to comply with this requirement.

(b) The regulations in this subpart are applicable to all programs for the training of physician assistants supported under Title VII of the Public Health Service Act.

<sup>1</sup> The authority for making grants for construction of teaching facilities for allied health professions personnel (sec. 791, Public Health Service Act, 80 Stat. 1226, 42 U.S.C. 295h) has expired. Therefore, the regulations governing the award of such grants are deleted from the Code of Federal Regulations.



## § 57.802 Definitions.

For purposes of this subpart:

(a) "Academic year" means the approximately 9-12 month period of time during which the program is in session.

(b) "Full-time student" means a student who is enrolled in a program and pursuing a course of study which constitutes a full-time academic workload, as determined by the program, and which leads to a degree, diploma, or certificate of completion.

(c) "Health manpower shortage area" means (1) an area designated under section 332 of the Public Health Service Act or (2) prior to the designation of areas under section 332 of the Public Health Service Act, an area designated as a critical health manpower shortage area under section 329(b) of the Public Health Service Act, as in effect on September 30, 1977.

(d) "Medical director" means the individual responsible for providing competent medical direction of the program.

(e) "Physician assistant" means an individual who is qualified by academic and clinical training to provide primary care patient services under the supervision and responsibility of a doctor of medicine or osteopathy. At a minimum, the physician assistant is competent to:

(1) Do the initial and follow-up evaluation of a patient of any age group in any setting to elicit a detailed and accurate history, perform an appropriate physical examination, and record and present pertinent data, including interpretive recommendations, in a manner meaningful to the physician;

(2) Perform or assist in the performance of routine laboratory and related studies as appropriate for a specific practice setting, such as blood studies, urinalyses, and electrocardiographic tracings;

(3) Perform routine therapeutic procedures such as injections, immunizations, and the assessment, suturing, and care of wounds;

(4) Instruct and counsel patients regarding physical and mental health, including matters such as nutrition, illness, treatment, normal growth and development, and age, sex, or lifestyle risk factors;

(5) Perform the following functions in a hospital setting: patient work-ups, making patient rounds, recording patient progress notes, accurately and appropriately transcribing or executing standing orders and other specific orders at the direction of the supervising physician, and compiling and recording detailed progress reports and narrative case summaries;

(6) Deliver or assist in the delivery of services, including the review and monitoring of treatment and therapy plans, to patients requiring initial or continuing care in settings other than a hospital, such as the home, nursing homes, and extending care facilities;

(7) Evaluate and treat life-threatening emergency situations; and

(8) Interact with those community health services and other community

resources which will facilitate the patient's care and continuity of care.

(f) "Primary care" means health care which may be initiated by the patient or the provider, or both, in a variety of settings, and which consists of a broad range of personal health care services including promotion and maintenance of health, prevention of illness and disability, basic care during acute and chronic phases of illness, guidance and counseling of individuals and families, and referral to other health care providers and community resources when appropriate. In providing such services (1) The physical, emotional, social, and economic status of the patient is considered in the context of his or her cultural and environmental background, including the family and community, and (2) the patient is provided timely access to the health care system.

(g) "Supervised clinical practice" means direct participation in patient care by observation, examination, and performance of procedures as are appropriate for the assigned role of the student for the purposes of instruction, under the guidance and responsibility of a physician who holds a full and unrestricted license in the State in which the program is located.

## § 57.803 Requirements.

A program for the training of physician assistants must:

(a) (1) Be accredited by the American Medical Association's Committee on Allied Health Education and Accreditation as a program for the Assistant to the Primary Care Physician; or

(2) Have received a Letter of Support from the Joint Review Committee on Educational Programs for Physician's Assistants for its plans for a program for the Assistant to the Primary Care Physician;

(b) Have a medical director who is licensed to practice medicine or osteopathy in the State in which the program is located (or any State, if the program is conducted by a federal health facility) and who is experienced in the delivery of the type of health care services for which the program provides training;

(c) Have an enrollment of not less than eight full-time students in each class;

(d) Be a minimum of one academic year in length;

(e) Consist of supervised clinical practice and at least four months (in the aggregate) of classroom instruction;

(f) Develop and use methods designed to encourage graduates of the program to work in health manpower shortage areas, such as periods of supervised clinical practice in those areas;

(g) Develop and use methods for placing graduates in positions for which they have been trained, including methods for placing graduates in such positions in health manpower shortage areas and, to the extent possible, in the State in which the program is located;

(h) Develop and use a method for evaluating the effectiveness of the pro-

gram in training physician assistants, including:

(1) Evaluation by faculty and students of the program in relation to its objectives;

(2) Evaluation of student performance in classroom instruction and supervised clinical practice, and

(3) Evaluation of the number of graduates employed and the characteristics of their employment, such as geographical location, setting, and functions performed; and

(4) Award a degree, diploma, or certificate of completion to individuals who have successfully completed the program.

[FR Doc.77-24553 Filed 8-29-77;8:45 am]

## Title 46—Shipping

## CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

## SUBCHAPTER K—REGULATIONS UNDER PUBLIC LAW 91-469

[G.O. 109, Rev., Amdt. 6]

## PART 390—CAPITAL CONSTRUCTION FUND

## Updating of Regulations

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Final Rule.

SUMMARY: The appendices to the capital construction fund regulations contain sample documents used in the administration of the program. Since adoption of the regulations in 1976, changes have been made in the existing documents used and a new supplementary document has been developed. This document updates two of the appendices to reflect the current agency documents used in the program.

EFFECTIVE DATE: August 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Edward Uttridge, Department of Commerce, Maritime Administration, Washington, D.C. 20230, (202-377-4400).

## SUPPLEMENTARY INFORMATION:

The purpose of this action is to update two of the appendices to 46 CFR Part 390, the regulations which govern the administration of the Maritime Administration's CCF Program. Since adoption of the regulations in early 1976, changes have been made in the existing CCF documents and a new supplementary document has been developed.

To reflect these developments, the existing Appendices II and IV must be amended. Appendix II is amended by replacing the outdated sample CCF Agreement with the sample agreement presently in use. Appendix IV is amended to include the sample addendum to CCF agreements that is currently used. Prior to this amendment, Appendix IV was merely reserved and, consequently, included no sample addendum.

These amendments are being adopted without notice and opportunity for public comment because the CCF program



is exempted from the requirements of 5 USC 553. Furthermore, although it is the practice of the Maritime Administration to comply with such requirements on its own initiative, it has been determined that it is unnecessary to do so in this instance because these amendments are merely for informational purposes and do not involve changes in the substantive regulations. For these same reasons, it has also been determined that these amendments will be effective immediately.

Accordingly, Appendix II and Appendix IV of 46 CFR Part 390 are hereby amended as follows:

1. Amend Appendix II—Sample Capital Construction Fund Agreement, to read as follows:

APPENDIX II—SAMPLE CAPITAL CONSTRUCTION FUND AGREEMENT

[Contract No. MA/CCF—]

CAPITAL CONSTRUCTION FUND AGREEMENT WITH

This Capital Construction Fund Agreement ("Agreement"), made on the date hereinafter set forth, by and between the United States of America, represented by the Assistant Secretary of Commerce for Maritime Affairs ("Assistant Secretary"), and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ ("Party"), a citizen of the United States of America.

Whereas: 1. The Party has applied for the establishment of a Capital Construction Fund ("Fund") under section 607 of the Merchant Marine Act, 1936, as amended ("Act");

2. The Party is the owner or lessee or has contracted for the construction of one or more eligible vessels as defined in section 607(k) of the Act, which vessels are listed in Schedule A hereof;

3. The Party has a program for the construction or acquisition of qualified agreement vessels as defined in section 607(k) of the Act, which program is described in Schedule B hereof;

4. The Assistant Secretary and the Party desire to enter into an Agreement for the purpose of providing replacement vessels, additional vessels, or reconstruction vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade;

5. The Assistant Secretary has determined that the Party qualifies for an Agreement under the Act; and

6. The Assistant Secretary has authorized the award of an Agreement upon the terms and conditions set forth herein subject to the Act, as it may be amended from time to time, and such rules and regulations as shall be prescribed by the Secretary of Commerce or his delegate, either alone or jointly with the Secretary of the Treasury, as necessary to carry out the powers, duties, and functions vested in them by the Act ("rules and regulations").

Now, therefore, in consideration of the premises the Assistant Secretary and the Party hereby agree as follows:

1. **Establishment of a Fund:** (A) A fund is hereby established for the purposes set forth in Article 2 hereof, pursuant to such terms and conditions as shall be prescribed in this Agreement, the Act, or the rules and regulations.

(B) The Fund shall be established in the depositories listed in Schedule C hereof.

2. **Purpose of the Fund:** The Fund established hereunder shall be utilized to provide for replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade, and to provide for qualified withdrawals to achieve the program set forth in Schedule B hereof.

3. **Term of the Agreement:** This Agreement shall be effective on the date of execution by the Assistant Secretary and shall continue until terminated under Article 4.

4. **Termination of Agreement:** (A) This Agreement may be terminated at any time under any of the following circumstances:

(1) Upon written mutual agreement by the parties;

(2) Upon written notice by the Party that a change has been made in the rules and regulations which would have a substantial effect upon the rights or obligations of the Party.

(B) This Agreement shall terminate upon completion of the program as set forth in Schedule B hereof.

(C) Upon termination of this Agreement pursuant to paragraphs (A) and/or (B) hereof all amounts remaining in the Fund shall be treated as if withdrawn in a non-qualified withdrawal (as that term is defined in the Act and the rules and regulations) on the date of termination of this Agreement.

5. **Deposits to be made into the Fund:** (A) Subject to any restrictions contained in the Act, the rules and regulations, or this Agreement, the Party may deposit, for each taxable year to which this Agreement applies, amounts representing:

(1) Taxable income attributable to the operation of the vessels listed in Schedule A or B hereof;

(2) The depreciation allowable under section 167 of the Internal Revenue Code of 1954 on the vessels listed in Schedule A or B hereof;

(3) The net proceeds from the sale or other disposition of any of the vessels listed in Schedule A or B hereof; and

(4) The net proceeds from insurance or indemnity attributable to the vessels listed in Schedule A or B hereof.

(B) The Party shall deposit for each taxable year to which this Agreement applies:

(1) All receipts from the investment or reinvestment of amounts held in the Fund, except that the Party shall not be permitted to deposit more than is necessary to complete its program set out in Schedule B hereof; and

(2) The net proceeds from the mortgage of any vessel listed in Schedule B hereof for which qualified withdrawals from the Fund have been made.

(C) Notwithstanding anything in paragraphs (A) or (B) hereof to the contrary, the Party shall make the minimum deposits set forth in Schedule D hereof at the time and in such amounts as may be set forth therein. The Party specifically agrees to deposit up to one hundred percent of allowable taxable income attributable to the operation of agreement vessels in order to meet its obligations under this paragraph.

(D) In the event that any leased vessel listed in Schedule A hereof is included in another capital construction fund agreement, the maximum amount of depreciation which the Party may deposit in respect to that vessel shall be calculated by using the allowable percentage of the depreciation ceiling listed for that vessel in Schedule A hereof.

6. **Withdrawals from the Fund:** (A) The Party may make such qualified withdrawals (as that term is defined in the Act and the rules and regulations) as shall be necessary

to fulfill the obligations set forth in Schedule B hereof. Any such qualified withdrawal may be made without the consent of the Assistant Secretary, except as required by the rules and regulations.

(B) Any other withdrawal from the Fund shall be made only upon the prior written consent of the Assistant Secretary, as required by the rules and regulations.

7. **Investment of the Fund:** (A) The Party, at its discretion, may invest assets held in the Fund in accordance with the Act and the rules and regulations.

(B) The Party agrees, when investing assets held in the Fund, to make such investments as will insure that sufficient cash is available at the time qualified withdrawals are required in accordance with the program described in Schedule B hereof.

8. **Pledges, Assignments, and Transfers:**

(A) The Party agrees not to assign, pledge, or otherwise encumber, either directly or indirectly or through any reorganization, merger, or consolidation, all or any part of this Agreement, the Fund, or any assets in the Fund without the prior written consent of the Assistant Secretary; provided, however, the Party may transfer the assets of the Fund, in whole or in part, to an investment trustee, as provided in the rules and regulations.

(B) The Party shall not obligate any assets in the Fund as a compensating balance.

(C) The Party may not sell, transfer, or otherwise dispose of any vessel, or part thereof, described in Schedule B hereof without the prior written consent of the Assistant Secretary.

9. **Records and Reports:** (A) The Party and each affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by the Party shall keep its books, records, and accounts relating to the maintenance, operation, and servicing of the vessel(s) and/or service(s) covered by this Agreement in such form as may be prescribed by the Assistant Secretary under the rules and regulations.

(B) The Assistant Secretary agrees not to require the duplication of books, records and accounts required to be kept in some other form by the Interstate Commerce Commission or the Secretary of the Treasury, so long as the information required in paragraph (A) hereof is made available to the Assistant Secretary.

(C) The Party agrees to file, upon notice from the Assistant Secretary, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, charters, ships' logs, memoranda of facts and transactions, as in the opinion of the Assistant Secretary may affect the Party's performance under this Agreement.

(D) The Assistant Secretary may require by regulation that any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Assistant Secretary.

(E) The Assistant Secretary may require the Party to establish and maintain systems of control of expenses and revenues in connection with the operation of the agreement vessel(s).

(F) The Party agrees to submit promptly to the Assistant Secretary any contract executed in connection with the program described in Schedule B hereof.

(G) The Assistant Secretary is hereby authorized to examine and audit the books, records, and accounts of all persons referred to in this Article whenever he may deem it necessary or desirable.

10. **Modification and Amendment:** This Agreement may be modified or amended at any time by mutual written consent.

11. **Incorporation of Schedules:** The attached Schedules A, B, C, and D are incor-



porated into and made a part of this Agreement.

12. **Liquidated Damages:** (A) In the event that the Party operates any qualified agreement vessel described in Schedule B hereof in geographic trades other than those permitted by section 607 of the Act, this Agreement, and/or the rules and regulations, the Party shall pay to the United States an amount of liquidated damages for each day of such impermissible geographic trading which shall constitute the time value of the deferral of Federal income tax which the Party has received. The amount shall be calculated in accordance with the rules and regulations.

(B) The Party agrees to pay the daily rate of liquidated damages to the Assistant Secretary, for deposit in the Treasury of the United States, within the time limits provided for in the rules and regulations.

(C) Nothing in this Article shall in any way be construed to diminish or waive any of the Assistant Secretary's other remedies for breach under the Act, the Agreement, or the rules and regulations.

(D) Notwithstanding the fact that the Agreement may be terminated pursuant to the provisions of Article 4 hereof, or otherwise, the provisions of this Article 12 shall continue in effect as follows:

(1) In the case of a vessel constructed or acquired within one year of final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of twenty (20) years from the date of such vessel's final delivery;

(2) In the case of a vessel reconstructed or acquired more than one year after final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of ten (10) years from the date of such vessel's final delivery from the shipyard after reconstruction or the date of such vessel's acquisition; and

(3) In the case of a vessel included in Schedule B hereof as a qualified agreement vessel in regard to which qualified withdrawals from the Fund have been made to pay existing indebtedness, for a period of ten (10) years from the date of the first qualified withdrawal in regard to such vessel, provided, however, that if such vessel was more than fifteen (15) years old on the date of the first qualified withdrawal in regard thereto, such conditions shall continue for a period of five (5) years in regard to such vessel.

13. **Warranties and Representations by the Party:** The Party hereby warrants and represents that:

(A) The Party is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended, and will continue to be so for the term of this Agreement. The Party agrees that, each year, within thirty (30) days after the annual meeting of its stockholders, it shall file a supplemental affidavit as evidence of its continuing United States citizenship, provided that any changes in data last furnished with respect to officers, directors, and stockholders holding five percent or more of the issued and outstanding stock of each class

or series which would result in a loss of the Party's status as a United States citizen shall be promptly reported to the Assistant Secretary.

(B) The Party owns, is the lessee, or has contracted for the construction of one or more eligible vessels (within the meaning of section 607(k) of the Act) as listed in Schedule A hereof.

(C) The qualified vessels described in Schedule B hereof: (1) Were or will be constructed or reconstructed in the United States, except as provided in the Act and the rules and regulations;

(2) Are or will be documented under the laws of the United States and will continue to remain so documented; and

(3) Will be operated in the foreign, Great Lakes or noncontiguous domestic trade of the United States within the meaning of the Act and the rules and regulations.

(D) The Party will meet its deposit obligations as agreed upon in Article 5 of this Agreement.

(E) The Party will promptly inform the Assistant Secretary, in writing, of any change in circumstances which would tend to adversely affect the ability of the Party to carry out its obligations under the Agreement.

(F) The Party will faithfully conform to all rules and regulations governing the Agreement and the Fund.

(G) Nothing of monetary value has been improperly given, promised, or implied for entering into this Agreement. The Party further warrants that no improper personal, political or other activities have been used or attempted in an effort to influence the outcome of the discussions or negotiations leading to the award of this Agreement. Breach of this warranty shall constitute an event of default for which the Assistant Secretary shall have the right, notwithstanding Article 4, to terminate this Agreement without liability to the United States.

14. **Default in Obligations:** (A) If the Assistant Secretary determines that any substantial obligation under this Agreement is not being fulfilled by the Party, he may, under the rules and regulations and after the Party has been given notice and an opportunity to be heard, declare a breach and treat the entire Fund, or any portion thereof, as an amount withdrawn in a nonqualified withdrawal.

(B) The Assistant Secretary shall provide an opportunity for the Party to cure a breach declared pursuant to Paragraph (A) of this Article 14.

(C) Events of breach by the Party shall include, but shall not be limited to: (1) Failure in any respect to use due diligence in performing the program set forth in Schedule B hereof;

(2) Obligorating the assets in the Fund as a compensating balance;

(3) Failure to make deposits required in Schedule D hereof;

(4) Failure to secure written permission from the Assistant Secretary when such permission is required by the rules and regulations;

(5) Failure to submit reports and/or records on a timely basis as provided in Article 9 hereof;

(6) Any material misrepresentation made by the Party or any failure by the Party to disclose material information in connection with this Agreement whether before or after execution hereof and whether made in an application, report, affidavit, or otherwise; or

(7) Failure by the Party to comply with any provisions of section 607 of the Act, the rules and regulations, or this Agreement.

15. **Extension of Federal Income Tax Benefits:** The Assistant Secretary agrees that the Federal income tax benefits provided in the Act and the rules and regulations shall be available to the Party if the Party shall carry out its obligations under this Agreement.

(SEAL)	UNITED STATES OF AMERICA, ASSISTANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS
Attest:	
By _____	(Secretary)
(SEAL)	
Attest:	
By _____	(Contracting Officer)
(Secretary)	
Approved as to form:	(Date of Execution)
(Assistant General Counsel, Maritime Administration)	By _____ (President)

2. Delete "(Reserved)" from Appendix IV—Sample addendum to Maritime Administration Capital Construction Fund Agreement, and add the following:

#### APPENDIX IV—SAMPLE ADDENDUM TO MARITIME ADMINISTRATION CAPITAL CONSTRUCTION FUND AGREEMENT

This Agreement, made by the Assistant Secretary of Commerce for Maritime Affairs ("Assistant Secretary") and \_\_\_\_\_ ("Party"), a citizen of the United States of America, as an Addendum to that certain agreement, Contract No. MA/CCF—

Whereas: 1. On \_\_\_\_\_, the parties hereto entered into a Capital Construction Fund Agreement ("Agreement") under section 607 of the Merchant Marine Act, 1936, as amended ("Act");

2. The parties hereto desire to modify that Agreement in the manner hereinafter set forth;

3. The parties hereto have agreed to said amendment and desire to incorporate the same into the Agreement.

Now, therefore, in consideration of the premises the Assistant Secretary and the Party agree as follows:

Notwithstanding the provisions of Article 4(A)(2) of the Agreement, the Party may, within sixty (60) days after notice appears in the FEDERAL REGISTER that the Regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Commerce have been finalized, terminate the Agreement, if such Regulations have a substantial effect on the rights or obligations of the Party. Upon termination of the Agreement pursuant to this Addendum No. \_\_\_\_\_ the provisions of the Internal Revenue Code of 1954, the Act, and the rules and regulations shall apply to all funds remaining in the Fund as if such funds were withdrawn in a non-qualified withdrawal, as that term is defined in the Act and the rules and regulations.



In witness whereof, the Secretary and the Party have executed this addendum, in quadruplicate, effective as of the date indicated below.

UNITED STATES OF AMERICA,  
Secretary of Commerce,  
Assistant Secretary of Commerce  
for Maritime Affairs

By \_\_\_\_\_  
(Contracting Officer)

Date \_\_\_\_\_  
Attest: \_\_\_\_\_

By \_\_\_\_\_  
(Secretary)

(SEAL)  
Approved as to form:

\_\_\_\_\_  
(Assistant General Counsel  
Maritime Administration)

(Sec. 204(b), 49 Stat. 1987, as amended, 46 U.S.C. 1114; Sec. 21(a), 84 Stat. 1026, 46 U.S.C. 1177.)

Dated: August 19, 1977.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,  
Secretary.

[FR Doc.77-25285 Filed 8-29-77;8:45 am]

Title 47—Telecommunication  
CHAPTER I—FEDERAL  
COMMUNICATIONS COMMISSION  
[Docket No. 21237; RM-2538]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Wrens, Ga.;  
Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This action assigns FM Channel 244A to provide a first local aural broadcast service to Wrens, Georgia, at the request of the Mayor of that city, J.J. Rabun. The assignment is based on a finding of first aural service, first FM service, need for an assignment, availability of a transmitter site, and statement of intention to construct and operate an FM station on the channel.

EFFECTIVE DATE: September 30, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

James J. Gross, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast stations. (Wrens, Georgia).

REPORT AND ORDER

(PROCEEDING TERMINATED)

Adopted: August 16, 1977.

Released: August 22, 1977.

1. The Commission has before it the Notice of proposed rulemaking, 42 FR 26666 (pub. May 25, 1977) in this proceeding, proposing the assignment of FM Channel 244A to Wrens, Ga. (1970 pop. 2,204), as requested by Mayor J.J. Rabun (petitioner). Mayor Rabun states that

this assignment would provide a first local aural service to Wrens, and a first FM service and first nighttime aural service to over 2,000 persons.

2. Wrens is located in Jefferson County (pop. 17,174) in eastern Georgia, about 24 kilometers (15 miles) north of Louisville, Ga. It is represented to be a manufacturing and industrial community which the petitioner informs us is increasing in population (a 35 percent increase between 1960 and 1970). The petitioner has also submitted demographic information on the businesses and institutions at Wrens to support his assertion of need for an assignment.

3. The petitioner has restated his intention to apply for a construction permit on Channel 244A if it is assigned to Wrens, and upon authorization to promptly construct and operate an FM broadcast station.

4. Because spacing limitations require use of a transmitter site at least 8 kilometers (5 miles) northwest of Wrens, the Notice requested a showing of the availability of such a transmitter site, free from obstructions from which a facility could serve Wrens. Petitioner has submitted an engineering study which indicates that there are several available sites meeting the Commission's spacing requirements which would permit a facility to provide an unobstructed principal city signal over the entire community of Wrens. Topographical maps confirm the fact that this area on the edge of the coastal plain of Georgia, is characterized by low hills and gentle slopes with no obstructions likely to interfere with FM transmission. The area is also primarily farm land and we are informed that several sites are available for purchase or lease for a broadcast station.

5. In consideration of the above showings, we find that it would be in the public interest to assign Channel 244A to Wrens, Georgia. This is consistent with our FM assignment priorities which place great importance on providing first

aural service and first local FM assignments to small communities, where the need for such assignment is shown.

6. Authority for this action is contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules and regulations.

7. Accordingly, it is ordered, That effective September 30, 1977, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended, regarding the city named below, to read as follows:

§ 73.202 [Amended]

City: \_\_\_\_\_ Channel  
Wrens, Georgia \_\_\_\_\_ 244A

8. It is further ordered, That this proceeding is terminated.

FEDERAL COMMUNICATIONS  
COMMISSION,  
WALLACE E. JOHNSON,  
Chief, Broadcast Bureau.

[FR Doc.77-25160 Filed 8-29-77;8:45 am]

PART 74—EXPERIMENTAL, AUXILIARY,  
AND SPECIAL BROADCAST, AND  
OTHER PROGRAM DISTRIBUTIONAL  
SERVICES

Deferral of Effective Dates; Use of Type  
Accepted Equipment

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Order was issued to defer effective dates contained in Federal Communications Commission's Rules concerning the remote pickup broadcast and low power auxiliary stations. The affected rules were amended to provide an additional three months before the type acceptance requirements specified therein take effect. This action was taken to insure that sufficient time has been provided for manufacturers to receive Commission action on applications for transmitter type acceptance.

EFFECTIVE DATE: September 1, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Wilson A. LaFollette, Broadcast Bureau (202-632-9660).

SUPPLEMENTARY INFORMATION:

Adopted: August 19, 1977.

Released: August 24, 1977.

ORDER

Order. In the matter of deferral of effective dates set forth in Part 74, Subparts D and H, §§ 74.451(a), 74.451(d), 74.451(e), 74.452(d), 74.851(a), 74.851(d), 74.851(f), 74.852(c), and 74.861(b) of the Commission's rules concerning the use of type accepted equipment.

1. The above captioned rules all set forth dates concerning the use of type accepted equipment in the Remote Pickup Broadcast and Low Power Auxiliary



## RULES AND REGULATIONS

Radio Services. For remote pickup broadcast stations, §§ 74.451(a), 74.451(d), 74.451(e), and 74.452(d) presently state:

Section 74.451 *Type acceptance of equipment.* (a) Applications for new remote pickup broadcast stations or systems or for changing equipment which are tendered after September 1, 1977, will not be accepted unless the equipment specified therein has been type accepted for use pursuant to provisions of this subpart, or which has been type accepted for licensing under Parts 21, 89, 91, or 93 of this chapter and which does not exceed the output power limits specified in § 74.461(b).

(d) All transmitters marketed after August 31, 1977, shall be type accepted by the Federal Communications Commission for use under this subpart. (Refer to Subpart I of Part 2 of the Commission's rules and regulations.)

(e) Remote pickup broadcast station equipment authorized to be used pursuant to an application accepted for filing prior to September 1, 1977, may continue to be used by the licensee or its successors or assignees: *Provided, however,* If operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart, the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

Section 74.452 *Equipment changes.*

(d) All transmitters installed after August 31, 1977, must be type accepted for use in this service or other services as specified in § 74.451(a).

NOTE: Prior to September 1, 1977, Commission approval must be obtained before replacing an authorized transmitter with a transmitter which has not been type accepted for use in the remote pickup broadcast service or other services as specified in § 74.451(a).

2. Similar rules for low power auxiliary stations are contained in §§ 74.851(a), 74.851(d), 74.851(f), 74.852(c), and 74.861(b) as follows:

Section 74.851 *Type acceptance of equipment.* (a) Applications for new low power auxiliary stations tendered after August 31, 1977, will not be accepted unless the equipment specified therein has been type accepted for use pursuant to provisions of this subpart. However, all applications specifying the use of the 174-216 MHz band must specify type accepted equipment.

(d) Low power auxiliary station equipment authorized to be used pursuant to an application accepted for filing prior to September 1, 1977, may continue to be used by the licensee or its successors or assignees: *Provided, however,* If operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this Subpart, the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(f) All transmitters marketed after August 31, 1977, shall be type accepted by the Federal Communications Commission for use under this subpart. (Refer to Subpart I of Part 2 of the Commission's rules and regulations.)

Section 74.852 *Equipment changes.*

(e) Prior to September 1, 1977, Commission approval must be obtained before replacing an authorized transmitter with a transmitter which has not been type accepted

for use in the low power auxiliary broadcast service. Transmitters initially installed after August 31, 1977, must be type accepted for use in this service.

Section 74.861 *Technical requirements.*

(b) Each authorization for a new low power auxiliary station issued pursuant to an application accepted after August 31, 1977, shall require the use of type accepted equipment. Such equipment shall be operated in accordance with the emission specifications included in the type acceptance grant and as prescribed in paragraphs (c) through (k) of this section. However, all authorizations issued for the use of the 174-216 MHz band shall require the use of type accepted equipment.

3. The type-acceptance requirements set forth in §§ 74.451 and 74.452 as noted above for remote pickup stations were promulgated in the *Report and Order of Docket 20189 (FCC 76-624)* adopted June 29, 1976. The rules which were adopted therein had an effective date of August 31, 1976, and it was the Commission's intent to specify dates in the rules concerning type acceptance of equipment which would become effective one year from this date. Among other things, a year was deemed necessary to insure timely action by the Commission upon applications for type acceptance. However, due to a Petition for Reconsideration and a Motion for Stay of this Report and Order, the effective date of the new rules was postponed until November 22, 1976. As a result of this delay, the time frame has been insufficient for equipment manufacturers to design and build equipment, prepare type acceptance applications and receive Commission action on them by August 31, 1977. Therefore, there are no transmitters specifically type accepted pursuant to Part 74, Subpart D of the rules.

4. The type-acceptance requirements set forth in §§ 74.851, 74.852, and 74.861 as noted above for low power auxiliary broadcast stations were promulgated in the *Report, Memorandum and Order of Docket 20195 (FCC 77-119)*, adopted February 10, 1977; the rules adopted in this proceeding became effective April 18, 1977. Also in this case, the Commission has not had sufficient time to act on applications for type acceptance which have been received, and, therefore, at this time there are no transmitters specifically type accepted pursuant to Subpart H, Part 74 of the rules.

5. To avoid hardship and inconvenience to applicants in the Remote Pickup and Low Power Auxiliary Radio Services, it is appropriate that the dates in these rules concerning type accepted equipment be deferred to provide additional time for Commission action. Prior notice of rulemaking and public participation thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. (b) (3) (B), inasmuch as the amendments contained below impose no additional burdens and raise no issue upon which additional comments would serve any useful purpose.

6. Since the action herein modifies a procedural rule in a manner which relieves a restriction, the rule amendments may be made effective with less than 30

days notice (see 5 U.S.C. 533(d)). Therefore, it is ordered, That pursuant to sections 4(i), and 303 (g) and (r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, Part 74 of the Commission's rules and regulations is amended as set forth below, effective September 1, 1977.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS  
COMMISSION,  
WALLACE E. JOHNSON,  
Chief, Broadcast Bureau.

1. Section 74.451, paragraphs (a), (d), and (e) are amended to change the dates contained therein as follows:

EQUIPMENT

§ 74.451 *Type acceptance of equipment.*

(a) Applications for new remote pickup broadcast stations or systems or for changing transmitting equipment which are tendered after November 30, 1977, will not be accepted unless the equipment specified therein has been type accepted for use pursuant to provisions of this subpart or has been type accepted for licensing under Parts 21, 89, 91, or 93 of this chapter and does not exceed the output power limits specified in § 74.461(b).

(d) All transmitters marketed after November 30, 1977, for use under this Subpart shall be type accepted by the Federal Communications Commission. (Refer to Subpart I of Part 2 of the Commission's rules and regulations.)

(e) Remote pickup broadcast station transmitting equipment authorized to be used pursuant to an application accepted for filing prior to December 1, 1977, may continue to be used by the licensee or its successors or assignees: *Provided, however,* If operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

2. Section 74.452(d) and the Note is amended to change the dates contained therein as follows:

§ 74.452 *Equipment changes.*

(d) All transmitters initially installed after November 30, 1977, must be type accepted for use in this service or other services as specified in § 74.451(a).

NOTE.—Prior to December 1, 1977, Commission approval must be obtained before replacing an authorized transmitter with a transmitter which has not been type accepted for use in the remote pickup broadcast service or other services as specified in § 74.451(a).

3. Section 74.851, paragraphs (a), (d), and (f) are amended to change the dates contained therein as follows:



EQUIPMENT

§ 74.851 Type acceptance of equipment.

(a) Applications for new lower power auxiliary stations tendered after November 30, 1977, will not be accepted unless the transmitting equipment specified therein has been type accepted for use pursuant to provisions of this Subpart. However, all applications specifying the use of the 174-216 MHz band must specify transmitting equipment type accepted for licensing under Part 74 in this band.

(d) Low power auxiliary station equipment authorized to be used pursuant to an application accepted for filing prior to December 1, 1977, may continue to be used by the licensee or its successors or assignees: *Provided, however*, If operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this Subpart, the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(f) All transmitters marketed after November 30, 1977, for use under this Subpart shall be type accepted by the Federal Communications Commission for this purpose. (Refer to Subpart I of Part 2 of the Commission's rules and regulations.)

4. Section 74.852(c) is amended to change the date therein as follows:

§ 74.852 Equipment changes.

(c) Prior to December 1, 1977, Commission approval must be obtained before replacing an authorized transmitter with a transmitter which has not been type accepted for use in the low power auxiliary broadcast service. Transmitters initially installed after November 30, 1977, must be type accepted for use in this service.

5. Section 74.861(b) is amended to change the date therein as follows:

TECHNICAL OPERATION AND OPERATORS

§ 74.861 Technical requirements.

(b) Each authorization for a new low power auxiliary station issued pursuant to an application accepted after November 30, 1977, shall require the use of type accepted transmitting equipment. Such equipment shall be operated in accordance with the emission specifications included in the type acceptance grant and as prescribed in paragraphs (c) through (k) of this section. However, all authorizations issued for the use of the 174-216 MHz band shall require the use of type accepted transmitting equipment.

[FR Doc.77-25242 Filed 8-29-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1262; Amdt. 1]

PART 1033—CAR SERVICE

North Stratford Railroad Corp. Authorized to Operate Over Certain Tracks Owned by State of New Hampshire

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amendment to Service Order).

SUMMARY: Service Order No. 1262 authorizes the North Stratford Railroad Corporation to operate a line of railroad between North Stratford, New Hampshire, and Beecher Falls, Vermont, owned by the State of New Hampshire. Resumption of operation over this line restores rail service to shippers affected by its abandonment by the Maine Central, its former owner. Amendment No. 1 to Service Order No. 1262 extends for six months the emergency authority granted to the North Stratford Railroad for operation of this line.

DATES: *Effective:* August 31, 1977. *Expires:* October 31, 1977.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

This order is printed in full below.  
At a Session of the INTERSTATE COMMERCE COMMISSION, Railroad Service Board, held in Washington, D.C., on the 22nd day of August, 1977.

Upon further consideration of Service Order No. 1262 (42 FR 16780), and good cause appearing therefor:

It is ordered, That: Service Order No. 1262 be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

§ 1033.1262 Service Order 1262.

(a) North Stratford Railroad Corporation authorized to operate over certain tracks owned by the State of New Hampshire \* \* \*

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 31, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., August 31, 1977.

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

It is further ordered, That a copy of this amendment shall be served upon the

Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc.77-25161 Filed 8-29-77;8:45 am]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. MC-19 (Sub. No. 30)]

PART 1100—GENERAL RULES OF PRACTICE

SUBCHAPTER D—TARIFFS AND SCHEDULES

PART 1307—FREIGHT RATE TARIFFS, SCHEDULES AND CLASSIFICATIONS OF MOTOR CARRIERS

Special Procedures for Tariffs Governing Rates and Charges on Household Goods

Correction

In FR Doc. 77-24465, appearing at page 42689 in the issue of Wednesday, August 24, 1977, the effective date should read, "October 25, 1977".

Title 50—Wildlife and Fisheries

CHAPTER 1—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of Seney National Wildlife Refuge, Mich., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to big game hunting of Seney National Wildlife Refuge, Michigan is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1, 1977 through December 31, 1977.

FOR FURTHER INFORMATION CONTACT:

John R. Frye, Refuge Manager, Seney National Wildlife Refuge, Seney, Michigan 49883, (906-586-9851).

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game hunting; for individual wildlife refuge areas.

Big game hunting is permitted on the Seney National Wildlife Refuge, Michigan, only on the areas designated by signs as being open to hunting. These



## RULES AND REGULATIONS

areas comprising 85,200 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Bow and arrow hunting is permitted only on 33,525 acres of the refuge designated as Area B, from October 1 through November 14; and on the 85,200 acres of the refuge designated as Area A and Area B from December 1 through December 31.

2. Bear may be taken by archers only from October 1 through November 14 and by gun hunters only from November 15 through November 30. Bear may not be taken with the aid of dogs.

3. Camping is permitted only west of the Driggs River except in designated Wilderness Area during the gun season. A Camp Registration Permit, obtainable at refuge headquarters, is required.

4. All motorized conveyances are prohibited from traveling on dikes or off established roads and trails. Motorized bikes, All-Terrain Vehicles and Snowmobiles are not permitted on the refuge.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 22, 1977.

JOHN R. FRYE,  
Refuge Manager.

[FR Doc. 77-25068 Filed 8-29-77; 8:45 am]

## PART 32—HUNTING

## Opening of Seney National Wildlife Refuge, Michigan to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to upland game hunting of Seney National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: September 15, 1977 through February 28, 1978.

FOR FURTHER INFORMATION CONTACT:

John R. Frye, Refuge Manager,  
Seney National Wildlife Refuge, Seney,  
Michigan 49883, (906-586-9851).

SUPPLEMENTARY INFORMATION:

## § 32.22 Special Regulations; upland game hunting; for individual wildlife refuge areas.

Upland game hunting is permitted on the Seney National Wildlife Refuge, Michigan, only on the areas designated by signs as being open to hunting. These areas comprising 33,525 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. That portion of the refuge designated as Area A is closed to all hunting until November 15.

2. All motorized conveyances are prohibited from traveling on dikes or off established roads and trails. Motorized bikes, All-Terrain Vehicles and Snowmobiles are not permitted on the refuge.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 22, 1977.

JOHN R. FRYE,  
Refuge Manager.

[FR Doc. 77-25069 Filed 8-29-77; 8:45 am]



# proposed rules

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

## DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[ 7 CFR Part 910 ]

### LEMONS GROWN IN CALIFORNIA AND ARIZONA

#### Proposed Minimum Size Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This notice invites written comment on a proposed minimum size regulation of 1.82 inches in diameter for shipments of lemons grown in California and Arizona to become effective September 25, 1977. This proposed regulation is the same as the one currently in effect, and is needed to provide for orderly marketing in the interest of producers and consumers.

**DATES:** Comments must be received on or before September 14, 1977. Proposed effective dates: September 25, 1977, through September 23, 1978.

**ADDRESSES:** Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Comments will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

#### FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:** The proposed regulation was recommended by the Lemon Administrative Committee, established under 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), as the agency to administer its terms and provisions.

Shipments of lemons from the production area are now in progress, and such shipments are regulated by size through September 24, 1977, under Lemon Regulation 57 (41 FR 41918), which requires such lemons to be at least 1.82 inches in diameter. The proposed regulation, which would become effective September 25, 1977, would continue in effect this size requirement. The volume and size composition of the lemon crop in California and Arizona is such that

ample supplies of the more desirable sizes are available to satisfy the demand in domestic fresh markets. The proposed regulation is designed to permit shipment of ample supplies of lemons of acceptable sizes, maturity, and juice content in the interest of both growers and consumers, and is necessary to maintain orderly marketing conditions and provide consumer satisfaction. Sales opportunities for very small fresh lemons in domestic markets are quite limited, as they have relatively low juice yields. Lemons failing to meet this minimum size requirement could be shipped to fresh export markets, left on the trees to attain further growth, or utilized in processing. The proposed regulation is consistent with the objective of the act of promoting orderly marketing and protecting the interest of consumers.

The proposed regulation reads as follows:

**Order.** (a) From September 25, 1977, through September 23, 1978, no handler shall handle any lemons grown in District 1, District 2, or District 3, which are of a size smaller than 1.82 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the lemons in any type of container may measure smaller than 1.82 inches in diameter.

(b) As used in this section "handle", "handler", "District 1", "District 2", and "District 3" each shall have the same meaning as when used in said amended marketing agreement and order.

Dated: August 24, 1977.

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

[FR Doc. 77-25088 Filed 8-29-77; 8:45 am]

#### [ 7 CFR Part 926 ]

### TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

#### Proposed Extension of Effective Period for Regulation of the Grade and Container Markings

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This notice proposes to continue through December 31, 1977, the currently effective minimum grade requirements for Tokay grapes and the marking requirements for the containers in which the grapes are shipped. These requirements are necessary to en-

sure that the grapes shipped will be of suitable quality in the interest of consumers and producers.

**EFFECTIVE DATE:** Written comments must be received by September 16, 1977. Proposed effective dates: August 20, 1977, through December 31, 1977.

**ADDRESSES:** Comments may be addressed to: Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all written comments should be submitted, and they will be made available for public inspection from the office of the Hearing Clerk during regular business hours (7 CFR 1.27 (b)).

#### FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:** Tokay Grape Regulation 13 (§ 926.314; 42 FR 40678) sets forth the currently effective grade requirements on the handling of Tokay grapes and the marking requirements for the containers in which the grapes are shipped. This proposal would continue those requirements through December 31, 1977. Unless so continued, the regulation would end September 30, 1977. Under the regulation, Tokay grapes must meet the grade and size specifications of U.S. No. 1 Table grapes and at least 30 percent, by count, of the berries in the lower 25 percent, by count, of each bunch shall show characteristic color; and each container of such grapes must bear a Federal-State Inspection Service lot number in plain letters and figures on one outside end.

The proposed regulation was recommended by the Industry Committee under § 926.50 of the marketing agreement, as amended, and Order No. 926, as amended (7 CFR Part 926), regulating the handling of Tokay grapes grown in San Joaquin County, Calif. This program is effective under the Agriculture Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposal is to amend § 926.314 (42 FR 40678) to read as follows:

#### § 926.314 Tokay Grape Regulation 13.

(a) During the period August 20, 1977, through December 31, 1977, no handler shall ship:

(1) Any Tokay grapes, grown in the production area, which do not meet the grade and size specifications of U.S. No. 1 Table Grapes and the following addi-



tional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

(2) Any container of Tokay grapes, grown in the production area, unless such container bears, in plain letters and figures on one outside end, a Federal-State Inspection Service lot stamp number showing that such grapes have been inspected in accordance with the established grade set forth in this section.

(b) *Definition.* As used herein, the terms "handler", "ship", and "production area" shall have the same meaning as when used in the amended marketing agreement and order; "U.S. No. 1 Table Grapes" and "characteristic color" shall have the same meaning as when used in the United States Standards for Table Grapes (7 CFR 51.880-51.912).

Dated: August 24, 1977.

FLOYD F. HEDLUND,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[FR Doc.77-25089 Filed 8-29-77;8:45 am]

#### [ 7 CFR Part 932 ]

##### OLIVES GROWN IN CALIFORNIA

##### Proposed Expenses, Rate of Assessment and Carryover of Unexpended Funds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on proposed expenses of \$675,000, a rate of assessment of \$12.00 per ton of olives for the functioning of the Olive Administrative Committee for the 1977-78 fiscal year, and approval to carryover unexpended funds from the previous fiscal year as a reserve. The Committee locally administers a Federal marketing order regulating the handling of olives grown in California. The regulation would enable the Committee to collect assessments from handlers of all assessable olives handled and to use the resulting funds for its expenses.

DATES: Comments must be received by September 14, 1977. Proposed effective dates: September 1, 1977, through August 31, 1978.

ADDRESSES: Comments may be addressed to: Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all written comments should be submitted, and they will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricul-

tural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-3545.

**SUPPLEMENTARY INFORMATION:** The proposal was submitted by the Olive Administrative Committee, established under marketing order No. 932 (7 CFR Part 932), regulating the handling of olives grown in California, under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer its terms and provisions.

The proposal would add a new section reading as follows:

§ 932.212 Expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Olive Administrative Committee during the period September 1, 1977, through August 31, 1978, will amount to \$675,000.

(b) *Rate of assessment.* The rate of assessment for that period, payable by each first handler in accordance with § 932.39, is fixed at \$12.00 per ton of olives.

(c) *Reserve.* Unexpended assessment funds in excess of expenses incurred during the fiscal period ending August 31, 1977, shall be carried over as a reserve in accordance with the applicable provisions of § 932.40.

Dated: August 24, 1977.

FLOYD F. HEDLUND,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[FR Doc.77-25087 Filed 8-29-77;8:45 am]

##### Rural Electrification Administration

#### [ 7 CFR Part 1701 ]

[REA Bulletin 183-1]

##### RURAL ELECTRIC PROGRAM

##### Depreciation Rates and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule

SUMMARY: This action concerns the revision of REA Bulletin 183-1, Depreciation Rates and Procedures. A recent review of current industry depreciation rates and practices indicated that certain rates and procedures prescribed by REA were in need of revision. The revised bulletin provides current depreciation rates and procedures to be used by REA borrowers.

DATE: Comments on or before September 16, 1977.

ADDRESS: Submit written comments to the Director, Accounting and Auditing Division, Rural Electrification Administration, Room 4307, South Building, U.S. Department of Agriculture, Washington, D.C. 20250; submissions are available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Sheldon Chazin, Director, Accounting and Auditing Division, Rural Electrification Administration, Room 4307, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-7221.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to revise REA Bulletin 183-1, Depreciation Rates and Procedures. Accordingly, REA proposes to amend 7 CFR Part 1701 as follows:

#### REVISED REA BULLETIN 183-1

A complete revision of Bulletin 183-1, was last issued in November 1969. The proposed revision incorporates changes announced since that time plus the following additional changes:

1. The prescribed rate for steam production plant is changed from 2.82 percent to 3.10 percent.

2. The prescribed rate for transmission lines is changed from 2.60 percent to 2.75 percent.

3. The prescribed range of rates for Account 364, Poles, Towers and Fixtures is changed from a range of 3.0 to 3.5 percent to a range of 3.0 to 4.0 percent.

The revised bulletin requires REA Electric Borrowers to analyze, on an annual basis, the adequacy of the accumulated provision for depreciation of distribution plant.

The revision also requires that a proposed composite depreciation rate for nuclear production plant be submitted to REA for approval. For joint participation projects in which the borrower is a minor participant, the rate being used by the other participant(s), shall be used. Justification, including supporting studies and regulatory commission's order, for the proposed rate, shall be submitted to REA.

Dated: August 22, 1977.

JOSEPH VELLONE,  
Acting Administrator.

[FR Doc.77-25025 Filed 8-29-77;8:45 am]

##### Animal and Plant Health Inspection Service

#### [ 9 CFR Part 95 ]

##### UNRESTRICTED ENTRY OF WOOL, HAIR AND BRISTLES

##### Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would delete certain restrictions applicable to the importation of wool, hair, or bristles taken from animals at the time of slaughter and would permit the importation of wool and hair removed from live animals if such products are free from animal manure. This action is needed to clarify the regulations and to achieve uniform



interpretation of requirements for entry of such products into the United States. The effect of this proposal is to update and clarify the regulations by deleting terms and provisions in the regulations which may be confusing and may no longer be necessary.

DATE: Comments on or before September 29, 1977.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 824, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:**

Dr. B. T. Deal, USDA, APHIS, VS, Room 824, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301-436-8379).

**SUPPLEMENTARY INFORMATION:** The regulations now state in 9 CFR 95.7 (b) that wool or hair clipped from live animals or pulled wool or hair may be imported without restrictions provided the said wool or hair is reasonably free from animal manure in the form of dung locks or otherwise. Use of the term "reasonably" has caused confusion and lack of uniformity in interpretation of requirements. To clarify the intent of the regulation and to eliminate questions as to what constitutes "reasonably" the term "reasonably" would be deleted. Further, the terms "clipped" and "pulled" would be changed to "removed" and the phrase "in the form of dung locks or otherwise" have been deleted for the purposes of simplification. Additionally, the regulations in 9 CFR 95.7(c) requires for the importation of wool, hair, or bristles taken from sheep, goats, cattle or swine that such animals were slaughtered in a specified abattoir and were free from anthrax, foot-and-mouth disease, and rinderpest at the time of slaughter and that a certificate accompany such products certifying that such requirements have been met. Wool, hair, or bristles reported to have been removed from animals at the time of slaughter have not been imported into the United States for several years. Therefore, it is believed that these requirements for such wool, hair, or bristles has questionable value and serves no useful purpose, and that section (c) should be deleted from the regulations.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to sec. 2, 32 Stat. 794, as amended (21 U.S.C. 111), the Animal and Plant Health Inspection Service is considering amending Part 95, Title 9, Code of Federal Regulations, in the following respects:

In § 95.7, paragraph (c) would be deleted; paragraph (d) would be redesignated as paragraph (c); in the introductory paragraph the reference to paragraph (d) would be amended to refer to paragraph (c); and paragraph (b) would be amended to read:

§ 95.7 Wool, hair, and bristles; requirements for unrestricted entry.

(a) \* \* \*

(b) Wool or hair removed from live animals may be imported without other restrictions if it is free from animal manure.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 824, Hyattsville, MD, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

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

Done at Washington, D.C., this 24th day of August 1977.

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

NORVAN L. MEYER,  
Acting Deputy Administrator,  
Veterinary Services.

[FR Doc.77-25090 Filed 8-29-77;8:45 am]

**DEPARTMENT OF COMMERCE**

[ 15 CFR Part 16 ]

**PROCEDURES FOR A VOLUNTARY CONSUMER PRODUCT INFORMATION LABELING PROGRAM**

Proposed Amendment to Authorize the Secretary to Suspend Fees and Charges

AGENCY: Assistant Secretary of Commerce for Science and Technology, Commerce.

ACTION: Proposed amendment to rule.

SUMMARY: The proposed amendment to the Procedures for the Voluntary Consumer Product Information Labeling Program will authorize the Secretary at any time to suspend for any length of time the requirement for her to establish fees and charges for participation in the program. Accordingly, and in order to encourage participation by manufacturers and others in the program, it is the Secretary's intention to suspend such fees and charges at least for the duration of the program's pilot project.

DATES: Comments must be received on or before September 29, 1977.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-3221).

**SUPPLEMENTARY INFORMATION:** On May 25, 1977, the Department of Commerce announced in the FEDERAL REGISTER (42 FR 26647) procedures under which a Voluntary Consumer Product Information Labeling Program administered by the Department will function. The Department determined that the program would be instituted on a

limited pilot project basis. Subsection 16.6(a) of the procedures provides that the Secretary shall establish fees and charges for use of the Department of Commerce Label and Mark on each product.

Upon further study of the need to establish such fees and charges, it has been determined that it is in the public interest to dispense with all fees and charges at least for the duration of the limited pilot project in order to encourage participation by manufacturers in the program.

Accordingly, in order to provide the Secretary with authority to suspend the fees and charges required by §16.6(a) of the procedures, it is proposed to amend the procedures by adding a new paragraph (d) to §16.6 as set forth below.

Interested persons are invited to submit written comments in four copies to the Assistant Secretary for Science and Technology, Room 3862, U.S. Department of Commerce, Washington, D.C. 20230 on or before September 29, 1977.

Dated: August 24, 1977.

JORDAN J. BARUCH,  
Assistant Secretary  
for Science and Technology.

15 CFR Section 16.6 is proposed to be amended by adding a new paragraph (d) to read as follows:

§ 16.6 Establishment of fees and charges.

(d) The establishment of fees and charges under this section may, at any time, be suspended by the Secretary for any length of time.

[FR Doc.77-25156 Filed 8-29-77;8:45 am]

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Food and Drug Administration

[ 21 CFR Part 155 ]

[Docket No. 75P-0322]

**CANNED VEGETABLES**

Canned Peas; Standards of Identity, Quality, and Fill of Container; Extension of Time for Comment

AGENCY: Food and Drug Administration.

ACTION: Extension of time for comment.

SUMMARY: The Food and Drug Administration (FDA), based upon a request for extension of time submitted by National Canners Association, is extending to November 8, 1977 the time for comment on the proposed amendments to the canned pea standards of identity, quality, and fill of container.

DATE: New deadline for comments, November 8, 1977.

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



## FOR FURTHER INFORMATION CONTACT:

Prince G. Harrill, Bureau of Foods (HFF-411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, (202-245-1164).

## SUPPLEMENTARY INFORMATION:

In the FEDERAL REGISTER of June 7, 1977 (42 FR 29014), the Commissioner of Food and Drugs proposed amendments to the standards of identity, quality, and fill of container for canned peas. Comments were to be filed by August 8, 1977.

The Commissioner has received a request for an extension of the comment period from the National Canners Association to provide time for the gathering of data to study the impact on the canning industry of the proposed reduction in the maximum level of alcohol-insoluble solids from 23.5 percent to 21 percent for early peas. The Commissioner concludes that the request for the extension should be granted and hereby extends the comment period on the proposal to November 8, 1977.

Interested persons may submit to the Hearing Clerk, Food and Drug Administration, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and comments shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

(Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) under authority delegated to the Commissioner (21 CFR 5.1).)

Dated: August 23, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate  
Commissioner for Compliance.

[FR Doc. 77-25045 Filed 8-29-77; 8:45 am]

## [ 21 CFR Parts 182 and 184 ]

[Docket No. 77N-0035]

## ACONITIC ACID

## Proposed Affirmation of Grasp Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to affirm as generally recognized as safe (GRAS) aconitic acid as a direct human food ingredient. The safety of this ingredient has been evaluated pursuant to the comprehensive safety review being conducted by the agency. The proposal would list the ingredient as a direct food substance affirmed as GRAS.

DATES: Comments by October 31, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, (202-472-4750).

## SUPPLEMENTARY INFORMATION:

The Food and Drug Administration is conducting a comprehensive safety review of direct and indirect human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposed regulations, published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20040), initiating this review. Pursuant to this review, the safety of aconitic acid has been evaluated. In accordance with the provisions of § 170.35 (formerly § 121.40, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), the Commissioner proposes to affirm the GRAS status of this ingredient.

Aconitic acid, 1,2,3-propenetricarboxylic acid, occurs in the leaves and tubers of *Aconitum napellus* L. and other Ranunculaceae. It is also found in yarrow (*Achillea* sp.) and horsetails (*Equisetum* sp.) as well as in other plants such as beets and sugarcane. Depending on the natural source, aconitic acid is also called achillic acid, citridic acid and equisetetic acid.

Trans-aconitic acid can be isolated during the processing of sugarcane by precipitating it as the calcium salt from cane syrup or molasses. The concentration in molasses ranges from 1.8 to 2.5 percent. Aconitic acid may be synthesized from citric acid by dehydration with sulfuric acid, or by catalytic dehydration. The cis form is somewhat unstable and is easily rearranged to the trans form by heating.

Aconitic acid is listed in § 182.60 (formerly § 121.101(g), prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), as GRAS for use in food as a synthetic flavoring agent and adjuvant, pursuant to a regulation published in the FEDERAL REGISTER of May 9, 1961 (26 FR 3991), and subsequently recodified.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which aconitic acid was used and at what levels. Information from surveys of consumer consumption was obtained and combined with the manufacturing information to obtain an estimate of consumer exposure to this substance. It was reported that the amount of aconitic acid used in food in 1970 was 229 pounds. Also, the data indicate that the use of this substance in

nonalcoholic beverages, baked goods, and frozen dairy products may have increased from 1964 to 1970.

Aconitic acid has been the subject of a search of the scientific literature from 1920 to the present. The parameters used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 79 abstracts was reviewed and 10 particularly pertinent reports have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (hereinafter referred to as the Select Committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

The form of aconitic acid used in foods is trans-aconitic acid; its isomer, cis-aconitic acid, is an intermediate in the tricarboxylic acid cycle of cellular metabolism. The conversion of the trans to the cis form is an endothermic reaction and does not occur spontaneously. While an isomerase for the interconversion has been detected in *Pseudomonas* sp. and sugar cane, the enzyme has not been identified in mammalian tissues.

There are few definitive studies on possible toxicity of trans-aconitic acid. For many years aconitic acid has been implicated in the ruminant syndrome, grass tetany, because the acid is present in *Equisetum arvense*, the common horsetail, as well as several grasses and other plants. Grass tetany results in toxic symptoms in cattle, sheep, and horses. However, Camp et al. were not able to produce the syndrome in six pregnant ewes by oral administration of either the free acid or potassium aconitate as a 25 percent solution in water. The dose of potassium salt was 1.0 g per kg body weight per day for 7 days and subsequently increased in increments of 0.5 g per kg body weight for each week until a level of 4.5 g per kg was reached. In sheep receiving potassium aconitate, there was a decrease in serum magnesium level and an increase in the serum phosphate level. There was a significant decrease in the average serum potassium level of sheep similarly treated with trans-aconitic acid, but no significant changes in serum levels of magnesium or phosphate occurred. Animals killed by lethal doses of either the free acid or salt (4 g per kg) showed non-specific changes in kidneys, liver, heart and lungs.

In another study, Kennedy fed sheep diets containing 0.1 and 0.2 mole per day (about 387 to 774 mg per kg of body weight) of partially neutralized trans-aconitic acid for five days. Experimental animals appeared healthy and exhibited normal levels of blood citrate, ketones, and aconitate but increased urinary citrate. Kennedy also injected 1.0 millimole per kg doses of neutralized trans-aconitic, cis-aconitic, and citric acid into the jugular vein of sheep. The intravenous injection of 1.0 millimole (192 mg per kg) of citric acid was lethal to one of the five experi-



mental animals. No adverse reaction followed the intravenous injection of 1.0 millimole (174 mg per kg) of trans-aconitic acid. It rapidly disappeared from the serum; 40 percent of the injected material was recovered in the urine in 24 hours. Subsequent experiments indicated that injection of 57.6 mg per kg of citric acid (0.3 millimole) over a 20 minute period was "close to the toxic dose", and resulted in excessive urinary calcium and citrate excretion without marked change in urinary magnesium excretion. Metabolic changes or toxic reactions to cis-aconitic acid were not mentioned. In another experiment, Kennedy noted that trans-aconitate was not affected by incubation with rumen fluid in vitro, but disappeared from the rumen following intra-ruminal administration in vivo.

Metabolic studies with other animals are less extensive. Lomba et al. perfused rabbits intravenously with a number of organic acids. They observed that trans-aconitic acid had approximately one-tenth the toxicity of citric acid and was less active in disturbing electrolyte balance of the blood. Wright and Wolff reported that single oral doses of sodium trans-aconitate slightly reduced the blood serum magnesium levels of guinea pigs dosed at 666 mg per kg, but did not reduce serum magnesium of sheep given 0.29 moles of the salt by stomach tube (equivalent to about 2.1 g per kg). No other effects were observed. In other experiments, guinea pigs fed a diet containing 6.8 percent trans-aconitate did not show any ill effects after 13 days of feeding. Weight gains were comparable to controls. Labeled citrate injected into guinea pigs previously dosed with trans-aconitate (560 mg per kg) did not effect release of radioactive  $CO_2$ .

Trans-aconitic acid competitively inhibits the enzyme aconitase in vitro and thus blocks the conversion of citric acid to isocitric acid by way of the intermediary formation of cis-aconitic acid. Wright and Wolff indicate that this effect has not been observed in vivo although increases in citric acid excretion have been observed occasionally.

Sodium trans-aconitate, in vitro, markedly increased the clotting time of blood although the increase was less than that produced by citrate.

No reports are available to the Select Committee that contain information on possible carcinogenic, mutagenic, reproductive or teratogenic effects from feeding aconitic acid to animals or man.

All of the available safety information on aconitic acid has been carefully evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

The limited data on trans-aconitic acid indicate it to be less toxic than citric acid. Trans-aconitate salts appear to be excreted readily by the kidneys. There is no direct evidence that trans-aconitic acid is utilized as is the cis-aconitic acid isomer in mammalian metabolism although non-specific oxidation probably occurs.

It is the conclusion of the Select Committee that there is no evidence in the available information on aconitic acid that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future. Based upon his own evaluation of all available information on aconitic acid, the Commissioner concurs with this conclusion. The Commissioner therefore concludes that

no change in the current GRAS status of aconitic acid is justified.

Copies of the scientific literature review on aconitic acid, and the report of the Select Committee are available for review at the office of the Hearing Clerk,

Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151, as follows:

Title	Order No.	Price code	Price <sup>1</sup>
Aconitic Acid (scientific literature review)	PB-223-847/AS	A02	\$3.50
Aconitic Acid (select committee report)	PB-254-534/AS	A02	2.50

<sup>1</sup> Price subject to change.

This proposed action does not affect the present use of aconitic acid for pet food or animal feed.

Therefore, under the Federal Food, Drug and Cosmetic Act (sec. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371 (a))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Parts 182 and 184 be amend as follows:

#### PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

##### § 182.60 [Amended]

1. In § 18260 *Synthetic flavoring substances and adjuvants* by deleting the entry for "Aconitic acid (equisetum acid, citric acid, achilleic acid)".

#### PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. By adding new § 184.1007 to read as follows:

##### § 184.1007 Aconitic acid.

(a) Aconitic acid [1,2,3-propenetricarboxylic acid ( $C_6H_6O_6$ ), CAS Reg. No. 000499-12-7] occurs in the leaves and tubers of *Aconitum napellus* L. and other *Ranunculaceae*. Trans-aconitic acid can be isolated during sugarcane processing, by precipitation as the calcium salt from cane sugar or molasses. It may be synthesized by sulfuric acid dehydration of citric acid, but not by the methanesulfonic acid method.

(b) The ingredient meets the following specifications:

(1) *Assay*. Not less than 98.0 percent of  $C_6H_6(COOH)_3$ , using the Food Chemicals Codex, 2d Ed. (1972)<sup>1</sup> test for citric acid and a molecular weight of 174.11.

(2) *Melting point*. Not less than 195° C and the determination results in decomposition of aconitic acid.

(3) *Heavy metals (as Pb)*. Not more than 10 ppm.

(4) *Arsenic (as As)*. Not more than 3 ppm.

(5) *Oxalate*. Passes test.

(6) *Readily carbonizable substances*. Passes Food Chemicals Codex, 2d Ed. (1972)<sup>1</sup> test for citric acid.

(7) *Residue on ignition*. Not more than 0.1 percent as determined by Food Chemicals Codex, 2d Ed. (1972)<sup>1</sup> test for citric acid.

<sup>1</sup> Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW, Washington, DC 20037.

The substance should have infrared absorption bands at 3030, 2630, 1720, 1430, 1300, 1240, 910, 860, 780, and 750  $cm^{-1}$ . Also, an aqueous solution of the substance should have major absorption peaks at 411 and 432 nm with little or no absorption at 389 nm.

(c) The ingredient is used as a flavoring substance and adjuvant as defined in § 170.3(o) (12) of this chapter.

(d) The ingredient is used in food at levels not to exceed good manufacturing practices. Current good manufacturing practice results in a maximum level, as served, of 0.003 percent for baked goods as defined in § 170.3(n) (1) of this chapter, 0.002 percent for beverages and beverage bases, nonalcoholic as defined in § 170.3(n) (3) of this chapter, 0.0015 percent for frozen dairy products as defined in § 170.3(n) (20) of this chapter, 0.0035 percent for soft candy as defined in § 170.3(n) (38) of this chapter, and 0.0005 percent or less for all other food categories.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of this ingredient in food under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act, and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before October 31, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments (preferably in quadruplicate) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under



Executive Order 11821 and OMB Circular A-107.

Dated: August 23, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate  
Commissioner for Compliance.

[FR Doc. 77-25049 Filed 8-12-77; 8:45 am]

# [ 21 CFR Parts 182, 184 ]

[Docket No. 77N-0178]

## MALIC ACID

### Proposed Affirmation of GRAS Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposal.

SUMMARY: This is a proposal to affirm as generally recognized as safe (GRAS) malic acid as a direct human food ingredient. The safety of this ingredient has been evaluated pursuant to a comprehensive safety review being conducted by the agency. The proposal would list the ingredient as a direct food substance affirmed as GRAS.

DATE: Comments by October 31, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-472-4750).

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of direct and indirect human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposed regulations, published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20040), initiating this review. Pursuant to this review, the safety of malic acid has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35, formerly 21 CFR 121.40 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), the Commissioner proposes to affirm the GRAS status of this ingredient.

Malic acid, 1-hydroxy-1,2-ethanedicarboxylic acid, is a white crystalline substance, the molecular structure of which (HOOC-CHOH-CH<sub>2</sub>-COOH) contains one asymmetric carbon atom. The naturally occurring isomer, L-(+)-malic acid, referred to as L-malic acid, occurs in many common fruits, berries, and vegetables. L-malic acid also occurs in animal tissues and body fluids where it is an intermediary metabolite in the citric acid cycle. Racemic DL-malic acid does

not occur naturally. Essentially all the malic acid added to foods in the United States is the synthetic racemic DL-malic acid, which is made commercially from fumaric acid or malic acid.

Malic acid is listed in § 182.1069 (21 CFR 182.1069, formerly listed in 21 CFR 121.101(c)) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), as FRAS for use as a miscellaneous or general purpose food additive, pursuant to a regulation published in the FEDERAL REGISTER of January 31, 1961 (26 FR 938) where the isomeric form is not specified. In addition L-malic acid is listed as GRAS in § 182.60 (21 CFR 182.60), formerly listed in 21 CFR 121.101(g) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), for use as a synthetic flavoring substance, pursuant to a regulation published in the FEDERAL REGISTER of May 9, 1961 (26 FR 3991).

A representative cross section of food manufacturers was surveyed to determine the specific foods in which malic acid was used and the levels of usage. Information from surveys of consumer consumption was obtained and combined with the manufacturing information to obtain an estimate of consumer exposure to this substance. It was reported that the amount of DL-malic acid used in food in 1970 was about 7 million pounds. Also, the data indicate that the annual use of this substance in all foods increased about eightfold from 1960 to 1970.

Malic acid has been the subject of a search of the scientific literature from 1920 to the present. The parameters used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 698 abstracts was reviewed and 62 particularly pertinent reports have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (hereinafter referred to as the Select Committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

The metabolism of L-malic acid has been extensively investigated and is well documented in the biochemical literature. L-malic acid is synthesized via condensation of acetyl-CoA and glyoxylate and is oxidized to oxaloacetate in the Krebs cycle. Malic dehydrogenase, malic oxidase, and certain other enzymes of intermediary metabolism are specific for L-malic acid. However when grown on media containing D-malate, *Escherichia coli* can be induced to develop a D-malic acid enzyme which catalyzes an oxidative decarboxylation of D-malate to pyruvate and car-

bon dioxide. D-malic acid inhibits the soluble (non-mitochondrial) L-malic dehydrogenase, but a high D-malate/L-malate ratio is needed for a pronounced effect.

The fate of D-malic acid in mammals is not known. DL-malic acid given parenterally to rabbits and dogs resulted in the urinary excretion of D-malic acid. Incubation of DL-malic acid with muscle preparations in vitro showed that the L-isomer was preferentially metabolized. Although DL-malic acid added to diets low in carbohydrates resulted in increased liver glycogen of rats, the contribution of the D-isomer was not determined.

Relatively few studies are available in which the biological effects and toxicity of the D- and L-isomers of malic acid were compared, and unfortunately, in many studies of malic acid, the authors do not specify whether L-malic or DL-malic acid was used. Malic acid as a 0.25 N solution given intravenously to rabbits in a dose of 2.49 g per kg was acutely lethal. Intraperitoneal L-malic acid in rats at 1 g per kg was not lethal, but the same dose of D-malic acid killed rats within 20 to 25 minutes. DL-malic acid given subcutaneously to one rabbit in large amounts (3 g followed the next day by 1.5 g, and 1.5 g two days later with sacrifice four hours after the last dose) produced small areas of hemorrhage in the renal cortex, limited tubular degeneration, and some glomerular obliteration. Two other rabbits receiving similar subcutaneous doses showed increases in blood nonprotein nitrogen and decreases in phenolsulphonethalein elimination rate. The authors considered that DL-malic acid was slightly nephropathic to rabbits. In view of the known nephrotoxicity of maleic acid, it is possible that the renal pathology could have been due to maleic acid residual from the preparation of DL-malic acid employed in these studies.

Rabbits receiving cholesterol, 70 mg per kg daily, were given malic acid intraperitoneally, 300 mg twice a week for five months. Animals receiving both malic acid and cholesterol developed twice as high blood cholesterol levels as did those receiving only cholesterol. No hypercholesterolemia resulted in a control group given malic acid without added dietary cholesterol, but degeneration of elastic fibers and the accumulation of acid mucopolysaccharides in the aorta, with atherosclerotic changes in the aortic wall, were noted. Similar pathological changes were noted in rabbit aortas when cholesterol feeding was combined with citric or fumaric acids, suggesting that these agents had similar deleterious effects.

When albino rats of the Charles River strain were fed DL-malic acid in the diet for 104 weeks at levels of 0.05, 0.5 and 5.0 percent, no significant pathology was noted. Beagle dogs fed diets with the same levels of added DL-malic acid for 104 weeks also showed no gross or microscopic pathological changes due to the consumption of DL-malic acid. The malic acid intake levels from these diets would be approximately 2, 20, and 200 mg per kg per day for rats after the eighth week, and 14, 140, and 1,400 mg per kg per day for the dogs. There were significant reductions in food consumption and weight gain in both male and female rats during the first year of receiving the highest malic acid diets, but no significant differences during the second year. Hematological, blood chemistry, and urine analyses did not show any compound-related effects in either rats or dogs. Male and female rats from all experimental and control groups primarily among those receiving the highest dosage of malic acid, exhibited hunched appearance and/or alopecia during the first year. In the second year, these signs were observed in most animals from all groups. Protruding eyes were noted in six male rats in the high-



est dosage group during the second year, but not in males of any other group. A few females from each test group and the controls also showed protruding eyes during the second year. Some organ weight and organ/body weight ratio variations of thyroid gland, heart, liver, spleen, kidneys, and testes were observed in male and female rats of the 5 percent dietary level groups. None of these changes was considered clearly related to malic acid intake and the gross and microscopic examinations revealed no histopathology or trends suggesting a direct relationship to the dose of malic acid ingested.

After either oral or intraperitoneal administration of doses of 2.5 mg per kg of L- or [C] DL-malic acid to rats, both forms were largely oxidized to carbon dioxide and less than 10 percent of the radioactivity was excreted in the urine. The author concluded that there should be no justification for discriminating against the use of D-malic acid as a food additive because the two preparations were metabolized at the same rate. However, the doses used were relatively low, and it is possible that a limited capacity to metabolize D-malic acid might not have been detected by these experiments.

The injection of 1 mg of L- or DL-malic acid into the yolks of chicken eggs showed a small but statistically significant increase in rumplessness (4.3±1.0 percent with L-malic acid and 3.9±1.0 percent with DL-malic acid) over the controls (1.3±0.5 percent). Injection of the D-isomer had no significant effect on the occurrence of rumplessness.

The permeability of mouse embryos to L-malic acid was studied by Wales and Biggers. Uniformly labeled [C] L-malic acid did not enter 2-cell embryos; the 8-cell embryos accumulated the labeled substrate and were able to convert some to CO<sub>2</sub>. The data also suggested that the uptake of L-malic acid was by an active transport process.

In a reproduction study in rats, DL-malic acid added at levels of 0.1 and 1.0 percent of the diet (estimated intakes approximately 4 and 40 mg per kg per day) was fed for nine weeks before mating of the F<sub>1</sub> generation and continued through the sacrifice of the F<sub>1</sub> pups at weaning. The appearance and behavior of the parental animals and their pups were generally comparable with the controls throughout the study. Reproduction indices of the test animals were similar to those of the controls. The F<sub>1</sub> fetuses delivered by Caesarean section showed no significant differences between the test and control groups in the number and placement of implantation and resorption sites, or the number, length and weight of the live fetuses. There were no dead fetuses, and no skeletal abnormalities or differences in skeletal development between the test and control fetuses.

Teratologic studies have been made on pregnant mice and rats following the oral administration of DL-malic acid. Commencing on day 6 of gestation, daily doses by intubation of up to 266 mg per kg for 10 days in mice, and up to 350 mg per kg for 10 days in rats had no clearly discernible effect on nidation or on maternal or fetal survival. The number of abnormalities in either soft or skeletal tissues of test animals did not differ from those occurring spontaneously in vehicle-treated controls.

Malic acid (isomeric form not indicated) did not show teratogenic activity when aqueous solutions were injected at levels of 100 to 200 mg per kg into the air cells or yolks of unincubated eggs and eggs after 96 hours of incubation. The LD<sub>50</sub> of malic acid was estimated to be 230 mg per kg upon air cell injection in unincubated eggs; 8 mg per kg upon air cell injection after 96 hours of incubation.

Mutagenicity tests of DL-malic acid were conducted using *Salmonella typhimurium* and *Saccharomyces cerevisiae* microbial assays with and without the addition of mammalian metabolic enzyme preparation. DL-malic acid did not exhibit any mutagenic activity under the conditions employed in this invitro evaluation.

No information on possible carcinogenicity of L-, D-, or DL-malic acid was available to the Select Committee.

All the available safety information on malic acid has been carefully evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

In view of the natural occurrence of L-malic acid in a variety of fruits, vegetables, and certain other foods, its important role in intermediary metabolism as a component of the Krebs cycle, rather detailed knowledge of its formation and metabolism in animals and plants, its relatively low toxicity when given orally to animals, and its specialized uses in foods and nonalcoholic beverages as an acidulant or flavoring agent, there is no scientific basis for suspecting that the amounts of L-malic acid now added to foods would be hazardous. There is no indication that malic acid is added to any foods specifically designed for infant feeding.

The scientific literature is less satisfactory on D-malic acid, the unnatural isomer, and a co-constituent of the racemic DL-malic acid, which is the form now used as a food additive.

Very little is known about the metabolism, absorption, excretion, and biological effects of D-malic acid, or whether animal species differ in the way they can utilize and tolerate this compound. DL-malic acid was employed in several of the toxicological, reproductive, and teratological studies; results suggest that D-malic acid, as a component of DL-malic acid, is not likely to have adverse effects. Some concern has been expressed about the ability of young infants to metabolize D-malic acid, but fortunately, in current practice, this does not pose a problem since DL-malic acid is not now added to infant foods.

It is the conclusion of the Select Committee that for individuals beyond the age of infancy, there is no evidence in the available information on L-malic acid and DL-malic acid that demonstrates or suggests reasonable grounds to suspect a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future. Based upon his own evaluation of all available information on malic acid, the Commissioner concurs with this conclusion. The Commissioner therefore proposes to affirm the GRAS status of malic acid.

On the other hand, the Commissioner shares the concern of the Select Committee and the Food and Agriculture Organization/World Health Organization Expert Committee on Food Additives about the possible toxicity of D-malic acid as a component of DL-racemic malic acid when ingested by infants. It was reported that the enzyme responsible for converting D-malic acid to L-malic acid is deficient in infants. It was also reported, in a survey of food manufacturers on the use of GRAS ingredients in food, that DL-malic acid is not now added to infant foods. However, because DL-malic acid is being affirmed as GRAS for direct use in food, the Commissioner believes that he should emphasize that this GRAS affirmation does not apply to the addition of D- or DL-malic acid to infant foods.

Copies of the scientific literature review, mutagenic and teratogenic evaluations, and the report of the Select Committee on malic acid are available for review at the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, Va. 22151, as follows:

Document	Order No.	Price code	Price <sup>1</sup>
Malic acid (scientific literature review).....	PB-223-865/AS	A05	\$5.00
Malic acid (teratogenic evaluation).....	PB-224-872/AS	A03	4.00
Malic acid (mutagenic evaluation).....	PB-245-440/AS	A03	4.00
Malic acid (select committee report).....	PB-262-662/AS	A02	3.50

<sup>1</sup> Price subject to change.

This proposed action does not affect the present use of malic acid for pet food or animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 182 and 184 be amended as follows:

#### PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

##### 1. In Part 182, as follows:

##### § 182.60 [Amended]

a. In § 182.60 *Synthetic flavoring substances and adjuvants*, by deleting the entry for "1-Malic acid."

##### § 182.1069 [Deleted]

b. By deleting § 182.1069 *Malic acid*.

#### PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In Part 184, by adding new § 184.1069, to read as follows:

##### § 184.1069 *Malic acid*.

(a) Malic acid (C<sub>4</sub>H<sub>6</sub>O<sub>5</sub>, CAS Reg. No. of L-Form 97-67-6, CAS Reg. No. of DL-Form 617-48-1) is the common name for 1-hydroxy-1,2-ethanedicarboxylic acid. L-(+)-malic acid, referred to as L-malic acid, occurs naturally in various foods. Racemic DL-malic acid does not occur naturally, and it is made commercially by hydration of fumaric acid or maleic acid.

(b) The ingredients meet the specifications of the Food Chemicals Codex,



2d Ed. (1972), as amended by the Second Supplement (1975).<sup>1</sup>

(c) The ingredients are used as a flavor enhancer as defined in § 170.3(o) (11) of this chapter, flavoring agent and adjuvant as defined in § 170.3(o) (12) of this chapter, and pH control agent as defined in § 170.3(o) (23) of this chapter.

(d) The ingredients are used in food, except baby food, at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 3.4 percent for nonalcoholic beverages as defined in § 170.3(n) (3) of this chapter; 0.8 percent for gelatins, puddings, and fillings as defined in § 170.3(n) (22) of this chapter; 0.9 percent for hard candy as defined in § 170.3(n) (25) of this chapter; 2.6 percent for jams and jellies as defined in § 170.3(n) (28) of this chapter; 3.5 percent for processed fruits and fruit juices as defined in § 170.3(n) (35) of this chapter; 3.0 percent for soft candy as defined in § 170.3(n) (38) of this chapter; and 0.7 percent for all other food categories.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of these ingredients in food under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act, and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before October 31, 1977 submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under

<sup>1</sup> Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW., Washington, D.C. 20037.

Executive Order 11821 and OMB Circular A-107.

NOTE.—Incorporations by reference approved by the Director of the Office of the Federal Register on July 10, 1973 and June 20, 1977. Referenced materials are on file at the Federal Register's library.

Dated: August 23, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate  
Commissioner for Compliance.

[FR Doc.77-25048 Filed 8-29-77; 8:45 am]

#### Center for Disease Control

[ 30 CFR Parts 70 and 71 ]

#### COAL MINE HEALTH NOISE STANDARD

##### Public Hearing

AGENCY: National Institute for Occupational Safety and Health (NIOSH).

ACTION: Notice of public hearing.

SUMMARY: This notice announces that a public hearing will be held under the provisions of section 101(g) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 811(g)). The hearing is in response to objections filed concerning amendments to 30 CFR Parts 70 and 71 which propose to permit the use of noise dosimeters for determining noise exposure in coal mines.

DATES: The hearing will be held on September 29, 1977, beginning at 9 a.m. Requests to participate in the hearing must be received by September 22, 1977.

ADDRESSES: The hearing will be held in Conference Room "G" of the Department of Health, Education, and Welfare's Parklawn Building, 5600 Fishers Lane, Rockville, Md.

Those persons wishing to make statements at the hearing should apply in writing to Regulations Assistant, NIOSH, Room 8-11, 5600 Fishers Lane, Rockville, Md. 20857, stating the issues upon which the person wishes to be heard and the time requested.

FOR FURTHER INFORMATION CONTACT:

Ms. Mary L. Hough, Regulations Assistant, NIOSH, Phone: 301-443-6268.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 2, 1977 (42 FR 28151), the Secretary of the Interior published proposed amendments to permit the use of noise dosimeters to meet the noise measurement requirements in Parts 70 and 71 of Title 30, Code of Federal Regulations. The proposed amendments had been transmitted to the Department of the Interior by the Secretary of Health, Education, and Welfare under section 101(d) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 811(d)).

Interested persons were afforded a period of 45 days within which to submit comments, suggestions, objections, and requests for public hearing. On August 23, 1977, the Secretary of the Interior published a notice specifying

that prior to the last day of the period fixed for the submission of comments, he received written objections to the amendments, stating the grounds for such objections with sufficient particularity and requesting a public hearing on such objections (42 FR 42362).

Therefore, under section 101(g) of the Act, a public hearing will be held for the purpose of receiving relevant evidence on the following issues:

(1) Whether the proposed changes in the Coal Mine Health Noise Standard should not be promulgated until after the draft American National Standards Institute (ANSI) Standard Specification for Personal Noise Dosimeters S1.25 is finalized and approved;

(2) Whether the requirement in § 70.505, that sound level meters meet ANSI, "Specification for Sound Level Meters", S1.4-1971 (Type S2A) should be revised to require that only sound level meters certified by NIOSH be permitted to be used;

(3) Whether the noise dosimeter is a reliable and accurate instrument and whether its use in underground and surface coal mines is desirable; and

(4) Whether the cost of using noise dosimeters to determine noise exposure in coal mines would be prohibitive.

The hearing will be conducted in an informal manner by a panel comprised of representatives from the National Institute for Occupational Safety and Health. The hearing will be chaired by Mr. B. Thomas Scheib, Acting Chief, Coal Mine Standards Activity, Division of Criteria Documentation and Standards Development, NIOSH.

Persons making statements need not be sworn or make affirmation. Each party shall be given an opportunity to make a statement concerning the issues under consideration, an opportunity to make supplementary statements which may include comments on or rebuttal of other parties' views, and an opportunity to make recommendations concerning the issues in any of his/her statements.

A verbatim transcript of the hearing proceedings will be maintained. All written statements, charts, tabulations, and other data shall be received in the record. The Chairman shall submit to the Secretary of Health, Education, and Welfare the verbatim transcript, including all charts, tabulations, and other exhibits that are part of the hearing record, together with recommended findings of fact. Within 60 days after the completion of the hearings, findings of fact concerning the issues presented at the hearing will be made public. Thereafter, amendments to 30 CFR Part 70, with such modifications as are appropriate, will be transmitted to the Secretary of the Interior for promulgation.

Dated: August 26, 1977.

WILLIAM A. FELSING, Jr.,  
Acting Director, National Institute  
for Occupational Safety  
and Health.

[FR Doc.77-25293 Filed 8-29-77; 8:45 am]



## DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety  
Administration

[ 30 CFR Parts 70 and 71 ]

## COAL MINE HEALTH NOISE STANDARD

Public Hearing

CROSS REFERENCE: For a document relating to the above subject see FR Doc. 77-25293 appearing in the Proposed Rules section of this issue of the FEDERAL REGISTER.

## POSTAL SERVICE

[ 39 CFR Part 259 ]

SERVICES PERFORMED FOR OTHER  
GOVERNMENT AGENCIESReimbursement of Postal Service for  
Nonpostal Services Performed

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Under this proposed rule the Postal Service would elaborate in its regulations the policy it expects to follow in establishing reasonable fees and charges for nonpostal services performed for agencies of the Federal as well as state governments. Examples of these nonpostal services are the sale of food stamps, the sale of migratory bird stamps, the receipt of passport applications, performance of housing vacancy surveys for the Federal Home Loan Bank Board, etc. Our basic purpose in this matter is to devise a policy which will result in prices reasonably related to the services performed and in consistency of treatment among the various agencies for which services are provided.

DATE: Comments must be received on or before September 29, 1977.

ADDRESS: Written comments should be directed to Director, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Mr. Stuart J. Winston, (202-245-4422).

SUPPLEMENTAL INFORMATION: The proposed rule states that in establishing reasonable fees and charges for nonpostal services, the Postal Service "considers the value of the time of the personnel directly involved in the performance of the service, including direct supervision and supporting functions, plus the costs of materials and supplies specifically sold, used, or consumed." The Postal Service considers that the salaries, fringe benefits and expenses of the person performing the service would be encompassed by the phrase "value of the time of the personnel directly involved". We also consider that the time of these persons which is applicable to the service being priced would include any time spent preparing for and closing out after actual transactions. As to supervision, a portion of the time of only the first level of supervision would be included. However, a portion of the time of other per-

sonnel who are involved less directly in the service would be included, such as the time spent maintaining accounting or other records.

In accordance with standard principles of postal ratemaking, fees and charges for nonpostal services would also include a reasonable contribution to Postal Service overhead costs.

To carry out the above purposes the Postal Service proposes to delete the last sentence of 39 CFR 259.1(a), to add a new paragraph (b) describing the proposed procedure to be used for reimbursement of the Postal Service for services performed, and to redesignate existing paragraphs (b), (c) and (d).

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions of title 39, Code of Federal Regulations:

In § 259.1 the last sentence of paragraph (a) is deleted; paragraphs (b), (c), and (d) are redesignated (c), (d), and (e) respectively; and new paragraph (b) is added reading as follows:

## § 259.1 Government.

(b) *Reimbursement.* The Postal Service establishes reasonable fees and charges for nonpostal services performed for agencies of the Federal as well as State governments. In establishing such fees and charges, the Postal Service considers the value of time of the personnel directly involved in the performance of the service, including direct supervision and supporting functions, plus the cost of materials and supplies specifically sold, used or consumed. Also included is an element representing a reasonable share of Postal Service general overhead costs which are not attributable or assignable specifically to any product or service. The establishment of such fees and charges shall be reasonably consistent with the methods employed in establishing rates and fees for postal services then in effect.

(39 U.S.C. 401(2), 404(6), 411.)

ROGER P. CRAIG,  
Deputy General Counsel.

[FR Doc. 77-25072 Filed 8-29-77; 8:45 am]

## DEPARTMENT OF THE INTERIOR

Office of the Secretary

[ 41 CFR Parts 14-1, 14-7 ]

INDIAN PREFERENCE IN EMPLOYMENT,  
TRAINING, AND SUBCONTRACTING

Proposed Policies and Procedures

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule prescribes policies and procedures to be added to the Interior Procurement Regulations to implement Sec. 7(b) of the Indian Self-Determination and Education Assistance Act. The rule proposed

requires that preferences be given to Indians in employment, training, and subcontracting under certain types of contracts.

DATES: Comments on the proposed rule must be received in writing on or before September 29, 1977.

ADDRESS: Division of Procurement and Grants, Office of Administrative and Management Policy, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

William Opdyke (202-343-5914).

SUPPLEMENTARY INFORMATION: The primary author of this document is William Opdyke, Division of Procurement and Grants, Office of Administrative and Management Policy (202-343-5914).

Section 7(b) of the Indian Self-Determination and Education Assistance Act (Sec. 7(b), Pub. L. 93-638, 88 Stat. 2205, 25 U.S.C. 450e(b)), requires that any contract or subcontract entered into pursuant to certain specified Acts or Acts authorizing contracts with Indian organizations or for the benefit of Indians shall, to the greatest extent feasible, require that preferences and opportunities be given for training and employment of Indians in connection with such contracts and that preference be given in the award of subcontracts to Indian organizations and Indian-owned economic enterprises under such contracts. The proposed rule amends Parts 14-1 and 14-7 of 41 CFR Chapter 14 (Interior Procurement Regulations) by adding implementing regulations.

Proposed regulations were sent to approximately 250 tribal leaders for review and comment. Comments were received from four tribes and one law firm. In general, the comments received recommended a broad interpretation of the applicability of Section 7(b); addition of record, reporting, and sanction requirements to the Indian Preference clause; revision of employment notice requirements to Tribes; addition of complaint procedures; strengthening of reporting requirements under the Indian Preference Program clause and lowering the originally proposed \$100,000 threshold for inclusion of the clause in certain contracts; and recognition of Tribal preference requirements in certain types of contracts. All comments received were thoroughly reviewed and considered, and all significant recommendations were taken into account in these proposed regulations.

NOTE.—The Department of the Interior has determined that this document does not contain a major rule requiring preparation of an Inflation Impact Statement under Executive Order 11821 or OMB Circular A-107.

Dated: August 19, 1977.

RICHARD R. HITE,  
Deputy Assistant  
Secretary of the Interior.

Accordingly, pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, proposed amendments to



41 CFR Parts 14-1 and 14-7 are as follows:

1. The Table of Contents of Part 14-1 is amended by adding a new § 14-1.354 as follows:

**Subpart 14-1.3—General Policies**

Sec.

14-1.354 Indian Preference in employment, training, and subcontracting opportunities.

2. Subpart 14-1.3 is amended by adding a new § 14-1.354 as follows:

**Subpart 14-1.3—General Policies**

§ 14-1.354 Indian preference in employment, training, and subcontracting opportunities.

(a) **Statutory requirements.** Section 7(b) of the Indian Self-Determination and Education Assistance Act (Sec. 7(b), Pub. L. 93-838, 88 Stat. 2205 (25 U.S.C. 450e(b))) requires that any contract or subcontract entered into pursuant to the Act; the Act of April 16, 1934 (48 Stat. 596, 25 U.S.C. 452), as amended, the Johnson-O'Malley Act; or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible: (1) Preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians; and, (2) Preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93-262, 88 Stat. 77, 25 U.S.C. 1452).

(b) **Applicability.** (1) The Indian Preference clause, set forth in § 14-7.5002 of this chapter, shall be included in all solicitations issued and contracts awarded by: (i) The Bureau of Indian Affairs, (ii) a procuring activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations and, (iii) a procuring activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public. (2) The Indian Preference Program clause, set forth in § 14-7.5003 of this chapter, should be included in all solicitations issued and contracts awarded by a procuring activity which may exceed \$50,000, which contain the clause required by paragraph (b) (1) of this § 14-1.354 and where the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a procuring activity which may not exceed \$50,000, but which contain the clause required by paragraph (b) (1) of this § 14-1.354 and which, in the opinion of the procuring activity, offer substantial opportunities

for Indian employment, training and subcontracting.

(c) **Definitions.** For purposes of this § 14-1.354, the following definitions shall apply:

(1) "Indian" means a person who is a member of an Indian Tribe; the contractor shall be responsible for determining whether a person is an Indian after coordination with the officials of the Indian Tribe concerned.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(5) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(6) "On or near an Indian reservation" means on a reservation or the distance within that area surrounding an Indian reservation(s) that a person seeking employment could reasonably be expected to commute in the course of a work day.

(d) **Compliance enforcement.** (1) The procuring activity concerned shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of the clauses prescribed by §§ 14-7.5002 and 14-7.5003 of this chapter. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned. (2) Complaints of noncompliance with the requirements of the clauses prescribed by §§ 14-7.5002 and 14-7.5003 which are filed in writing with the procuring activity shall be investigated and resolved by the contracting officer.

(e) **Tribal preference requirements.** Where the work under a contract is to be performed on an Indian reservation(s), the procuring activity may supplement the clause prescribed by § 14-7.5003 of this chapter by adding specific employment preference requirements of a Tribe or Tribes developed jointly between the procuring activity and the Tribe(s) to the extent such requirements are consistent with Federal laws and regulations. Any supplemental preference re-

quirements to be added to the clause in § 14-7.5003 of this chapter shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

3. The Table of Contents of Part 14-7 is amended by deleting and reserving § 14-7.650-6 and by adding new §§ 14-7.5002 and 14-7.5003 as follows:

**Subpart 14-7.6—Fixed Price Construction Contracts**

Sec.

14-7.650-6 [Reserved]

**Subpart 14-7.50—Special Contract Clauses**

14-7.5002 Indian preference.

14-7.5003 Indian preference programs.

4. Subpart 14-7.6 is amended by deleting and reserving § 14-7.650-6 as follows:

**Subpart 14-7.6—Fixed Price Construction Contracts**

§ 14-7.650 Additional Interior contract clauses.

§ 14-7.650-6 [Reserved]

5. Subpart 14-7.50 is amended by adding new §§ 14-7.5002 and 14-7.5003 as follows:

**Subpart 14-7.50—Special Contract Clauses**

§ 14-7.5002 Indian preference.

The following clause shall be used as prescribed in § 14-1.354(b) (1) of this chapter:

**INDIAN PREFERENCE**

(a) The contractor agrees to give preferences to Indians who can perform the work required regardless of age, sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age, sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient operation of this contract. The contractor shall maintain such records as are necessary to indicate compliance with this paragraph (a).

(b) In connection with the Indian employment preference requirements of this clause, the contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."



(d) If no Indian organization or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the contractor agrees to comply with the provisions of this contract involving utilization of small business, labor surplus area, and minority business firms.

(e) As used in this clause: (1) "Indian" means a person who is a member of an Indian Tribe; the contractor shall be responsible for determining whether a person is an Indian after coordination with officials of the Indian Tribe concerned.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451; and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(f) The contractor agrees to include the provisions of this clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the contractor's right to proceed may be terminated in whole or in part by the contracting officer and the work completed in a manner determined by the contracting officer to be in the best interests of the Government.

#### § 14-7.5003 Indian preference program.

The following clause shall be used as prescribed in § 14-1.354(b) (2) of this chapter:

##### INDIAN PREFERENCE PROGRAM

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preferences for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) maintain liaison with the Government and the Tribe(s) on Indian preference matters, (ii) supervise compliance with the provisions of this clause, and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian

applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice, in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the contractor in filling its employment needs and training opportunities. The contracting officer will advise the contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Give public notice of subcontracting opportunities and request the Tribe(s) on or near whose reservation(s) the work under this contract is to be performed to provide assistance and information on Indian organizations and Indian-owned economic enterprises which may serve as potential sources for subcontracted work. The contracting officer shall advise the contractor of the name, location, and phone number of Tribal officials to contact in regard to requests for Tribal assistance and information.

(5) Maintain written records under this contract which indicate: (a) The names and addresses of all Indians seeking employment for each employment position available under this contract; (b) the number and types of positions filled by (i) Indians and (ii) non-Indians, and the name, address and position of each Indian employed under this contract; (c) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (d) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for all subcontracting opportunities which exist under this contract; and (e) the names and addresses of all Indian organizations and Indian-owned economic enterprises (i) contacted, and (ii) receiving subcontract awards under this contract.

(6) The contractor shall submit to the contracting officer for approval a quarterly report which summarizes the contractor's Indian preference program and indicates (a) the number and types of available positions filled by (i) Indians and (ii) non-Indians and (b) the number and dollar amounts of all subcontracts awarded to (i) Indian organizations and Indian-owned economic enterprises and (ii) all other firms.

(7) The contracting officer or his authorized representative shall have access to the written records required by this clause during the period of this contract and up to one year after the completion of this contract.

(b) For purposes of this clause: the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village

corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) The contractor agrees to insert in any subcontracts hereunder which may exceed \$50,000 provisions which conform substantially to the language of this clause and to notify the contracting officer of such subcontracts.

(d) In the event of noncompliance with this clause, the contractor's right to proceed may be terminated in whole or in part by the contracting officer and the work completed in a manner determined by the contracting officer to be in the best interest of the Government.

[FR Doc. 77-25084 Filed 8-29-77; 8:45 am]

## FEDERAL COMMUNICATIONS COMMISSION

[ 47 CFR Parts 2, 81, and 83 ]

[Docket No. 21370; FCC 77-580]

### COAST GUARD DESIGNATED VESSEL TRAFFIC SERVICES RADIO PROTECTION AREAS

Making Frequency 156.250 Available for Port Operations Purposes

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: Proposed amendment of the rules to make the frequency 156.250 MHz available for port operations purposes in certain Coast Guard designated Vessel Traffic Services (VTS) radio protection areas. As a result of the assignment of maritime mobile frequencies for exclusive use for VTS purposes in certain designated areas, this proposed amendment is deemed necessary to help alleviate the growing congestion on the remaining frequencies available.

DATES: Comments must be received on or before October 7, 1977, and Reply Comments must be received on or before October 17, 1977. Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Robert McNamara, Safety and Special Radio Services Bureau, 202-632-7197.

### SUPPLEMENTARY INFORMATION:

In the Matter of amendment of Parts 2, 81, and 83 of the rules to make the frequency 156.250 MHz available for port operations purposes in certain Coast Guard designated Vessel Traffic Services radio protection areas.

Adopted: August 22, 1977.

Released: August 30, 1977.

1. Notice of Proposed Rulemaking is hereby given in the above-captioned matter.

2. As part of a program to implement the provisions of Title I of the "Ports and



Waterways Act of 1972" (Pub. L. 92-340, 86 Stat. 424, 46 U.S.C. 1551) the U.S. Coast Guard is establishing Vessel Traffic Services (VTS) systems for a number of the largest and busiest port areas in the United States. At the request of the Commandant, U.S. Coast Guard, the Commission amended the rules to make up to three frequencies available for exclusive use for VTS purposes within designated VTS radio protection areas (Docket No. 20444, FCC 75-1316). Due to the scarcity of suitable frequencies, it was necessary to assign frequencies previously authorized for commercial (156.550 MHz) and port operations (156.600 and 156.700 MHz) purposes in the maritime mobile services. Although the subject frequencies were apparently extensively utilized, particularly in certain crowded navigational waters, the Commission believed it was expected by law, and in the public interest, to assist the Coast Guard in implementing the new legislation.

3. As traffic has shifted from the specified VTS frequencies to the remaining port operations and/or commercial frequencies in the designated VTS areas, usage of these remaining frequencies has been increasing. Therefore, as an initial step in providing some relief to licensees, we are proposing to make the frequency 156.250 MHz available for port operations purposes in designated VTS radio protection areas, other than New York, San Francisco, and Seattle, which are described in §§ 81.357 and 83.361 of the rules.

4. The frequency 156.250 MHz has not been previously assigned because of its band edge location and the resultant potential harmful interference with land mobile assignments on the adjacent highway maintenance service frequency 156.240 MHz. However, after carefully reviewing assignments in the various VTS areas (proposed as well as operational) it appears that the frequency 156.250 MHz can be utilized without harmful interference in some of the locations. In the port areas of New York, San Francisco, and Seattle, the use of the subject frequency is prohibited by possible interference problems. In the remaining VTS areas (presently New Orleans and Houston) the frequency 156.240 MHz is not assigned for highway maintenance purposes. Prior to such assignments in the future, coordination can be effected to ameliorate potential problems. Therefore, we believe it is in the public interest to provide in the rules for the use of this additional frequency where possible, to alleviate the communications burden imposed on licensees operating in VTS radio protection areas.

5. Accordingly, we propose to amend §§ 2.106, 81.356, 83.351, and 83.359 of the Commission's rules to indicate that the frequency 156.250 MHz (VHF Channel 5) is available for use for port operations purposes in the Coast Guard designated VTS radio protection areas, other than New York, San Francisco, and Seattle,

which are described in §§ 81.357 and 83.361 of the rules.

6. The proposed amendments to the Commission's rules as set forth in the attached Appendix, are issued pursuant to the authority contained in Sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended.

7. Pursuant to the applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before October 7, 1977, and reply comments on or before October 17, 1977. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

8. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs, or comments shall be furnished to the Commission. All comments received in response to this Notice of Proposed Rulemaking, will be available for public inspection in the Docket Reference Room in the Commission's Offices in Washington, D.C.

FEDERAL COMMUNICATIONS  
COMMISSION,  
VINCENT J. MULLINS,  
Secretary.

Parts 2, 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

1. In § 2.106 the table is amended by adding in the band 156.250-157.0375 MHz, the frequency 156.250 MHz in column 10, and Maritime Mobile in Column 11, and further the NG footnotes and the table in the band 154.6375-156.250 MHz in Column 8, and the band 156.250-157.0375 MHz in column 11, are amended by adding NG ---- to read as follows:

### § 2.106 Table of frequency allocations.

Band (Megahertz)	Service	Frequency (Megahertz)	Nature (of services of stations)
7	8	10	11
154.6375 to 156.250	Land mobile (NG....), <sup>1</sup>	156.250	Public safety.
156.250 to 157.0375	Maritime mobile.	156.250	Maritime Mobile. (NG....), <sup>1</sup>
		156.275	Do.
		156.300	Do.
NG FOOTNOTES			
<sup>1</sup> NG.... The frequency 156.250 MHz may be assigned to stations in the maritime mobile service for port operations within U.S. Coast Guard designated vessel traffic services (VTS) radio protection areas, other than New York, San Francisco, and Seattle areas.			

## PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

2. In § 81.356, paragraph (a) table under "Port Operations" is amended and (b) (2) is added to read as follows:

### § 81.356 Assignable frequencies in the band 156-162 MHz.

(a) \* \* \*

Port operations			
05....	156.250	156.250	Coast to ship.....
85....	156.275	156.275	.....do.

(b) \* \* \*

(2) Available for use within U.S. Coast Guard designated Vessel Traffic Services (VTS) radio protection areas described in § 81.357 other than the New York, San Francisco, and Seattle.

## PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

3. In § 83.351, paragraph (a) table is amended and (b) (12) is added to read as follows:

### § 83.351 Frequencies available.

(a) \* \* \*

Carrier frequency (Kilohertz)	Conditions of use	
	Section	Limitations
(Megahertz)		
156.250.....	83.359	12

(b) \* \* \*

(12) Available for use within U.S. Coast Guard designated Vessel Traffic Services (VTS) radio protection areas described in § 83.361 other than the New York, San Francisco, and Seattle areas.

4. Section 83.359 is amended to read as follows:

### § 83.359 Frequencies in the band 156-162 MHz available for assignment.

Channel designator	Frequency (Megahertz)		Points of communication
	Ship	Coast	
Port Operations			
05.....	156.250	156.250	Inter-ship and ship to coast.
85.....	156.275	156.275	Do.

[FR Doc. 77-25159 Filed 8-29-77; 8:45 am]



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Applications for emergency loans must be received by this Department no later than October 11, 1977, for physical losses and May 11, 1978, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 23rd day of August 1977.

GORDON CAVANAUGH,  
Administrator, Farmers  
Home Administration.

[FR Doc. 77-25086 Filed 8-29-77; 8:45 am]

### CIVIL AERONAUTICS BOARD

[Docket No. 29123; Agreement C.A.B. 26083  
R-1 through R-19; Agreement C.A.B. 26232  
R-4; Order 77-119]

#### IATA

#### Agreements Adopted Relating to South Pacific Passenger Fares; Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of August, 1977.

By Order 77-2-32, February 4, 1977, the Board disapproved, for the most part, agreements among the carrier members of the International Air Transport Association (IATA) which proposed South Pacific passenger fares for effect January 1, 1977. The Board's disapproval was based on findings that the proposed increases were not warranted in that, with appropriate adjustments in passenger load factors, elasticity and fuel costs, Pan American World Airways, Inc. (Pan American), the only United States carrier providing service in the area, would realize earnings significantly in excess of the Board's 12-percent guideline. Pan American has filed a petition for reconsideration of that decision.

Pan American alleges that the Board's disapproval of the proposed fare increases was based on a mistaken application of a rate-of-return standard, contending that, implicit in the Board's findings, was the conclusion that the 12-percent rate-of-return standard for domestic passenger fares is equally applicable to South Pacific fares. Pan American states that this standard has no applicability to international operations because, *inter alia*, the risks associated with international operations are greater than those involved in domestic operations, and because the historical data upon which the cost of debt and equity capital were determined for purposes of developing that standard are now outdated. Pan American further claims that the standard was misapplied in the instant case because it was used as a maximum return rather than as a standard to be achieved on an average basis over the long run.

Pan American also contends that the Board's treatment of demand elasticity

is incorrect. The carrier states that the Board permitted use of an elasticity factor in evaluating international fare agreements up to 1976 and has used, and continues to use, an elasticity factor in its consideration of domestic fare proposals. Pan American alleges that it properly applied the concept in the instant case by applying a -0.5 elasticity factor to expected earnings under the proposed fares despite the Board's conclusion that no elasticity adjustment should be recognized. It states that the Board's reasoning to the effect that elasticity estimates are not acceptable because they involve a great deal of speculation could equally be applied to other aspects of the carrier's forecasts which the Board routinely accepts.

Pan American takes issue with the Board's treatment of its forecast fuel expense and capacity, as well as the Board's treatment of its results on the domestic sectors of its mainland-South Pacific through services. The carrier claims that the Board's estimate of its fuel consumption and the downward adjustment made in its fuel prices were based on meaningless historical data. With respect to the Board's observations on its forecast capacity level, Pan American claims that the traffic-generating effect of planned additional capacity was ignored. Lastly, Pan American argues that its financial results on the domestic sectors of its through South Pacific flights should be included in evaluating the reasonableness of South Pacific fares, since the Board requires that through fares should not be higher than the sum of the local fares via Hawaii (west coast-Hawaii plus Hawaii-South Pacific). Since west coast-Hawaii fares are alleged to be unreasonably low, the fares beyond Hawaii must be relatively high to afford a reasonable overall return from its South Pacific service.

Upon consideration of the petition and all other relevant matters, the Board finds that, with one exception, the petition raises no issues not adequately dealt with in our previous decision or that warrant reconsideration, and consequently the petition will be denied. The exception concerns our adjustment of Pan American's fuel expense. Based upon information contained in the petition, we are now persuaded that Pan American's forecast fuel expense as originally set forth in its justification should be accepted. The estimate of 3,050 gallons per block-hour for fuel consumption of B-747SP aircraft used by Pan American in its original justification in support of the agreement appears reasonable in the light of Form 41 data now available, which show a 3,090 gallons per block-hour rate for Pan American's Pacific division for calendar year 1976. Acceptance of Pan American's forecast fuel expense would reduce the forecast return for its South Pacific international operations from 17.47 to 15.33 percent. This adjustment, however, does not alter the Board's decision to disapprove the proposed fare increases.

The Board employed the 12-percent rate-of-return standard developed in the

Domestic Passenger-Fare Investigation (DPFI), Docket 21866, as a guideline in evaluating the South Pacific fare agreement, just as it has done in evaluating all international rate and fare agreements since 1972. Pan American apparently does not take issue with the concept of a rate-of-return guideline in evaluating international rate agreements but argues, rather, that 12 percent is not the correct level and that it should be higher, primarily to account for the greater risks allegedly involved in international operations. However, no showing has been made here which would justify an alternative, for present purposes, to the 12-percent return found reasonable in Phase 8 of the DPFI. The carriers incur debt and raise equity on a system or corporate basis and the data studied by the Board in Phase 8 therefore reflect international as well as domestic operations. Application of the 12-percent return as a benchmark in evaluating international operations therefore appears reasonable, based on information currently available. In any event, the Board has specifically requested the carrier parties to the North Atlantic Fare Investigation, Docket 27918, to address this issue in Order 77-7-4, July 1, 1977.

Pan American's conclusion that the Board applied the 12-percent rate-of-return guideline as a ceiling is both erroneous and unsubstantiated. The Board noted that Pan American's unadjusted data showed an expected 12.8-percent return, with the proposed higher fares, which supported the conclusion that a fare increase of the magnitude proposed was not warranted. The Board went on to point out that, with an adjustment to eliminate demand elasticity, the expected return would increase to 15.3 percent, and to 17.5 percent with the fuel-cost adjustment. Disapproval of a fare increase that would produce a return in the 15-17 percent range clearly does not reflect a rigid application of a 12-percent return ceiling.

Pan American's interpretation of the Board's position on price elasticity of demand appears to miss the central point.<sup>1</sup> In the Board's view, the case for a specific elasticity coefficient in any given international market has not been made to date. Given the complex international fare structure, with its myriad cross-elasticities, the differing mix of business and discretionary travel in the various markets, and the difficulty in forecasting economic and demographic variables for a large number of foreign countries, to cite some of the more obvious problems, it is not surprising that there is a lack of persuasive evidence on elasticity co-

<sup>1</sup> In Order 77-2-32 the Board stated that there was no evidence that the carriers perform all the steps required for the proper application of an elasticity coefficient. In the instant petition, Pan American has provided information, in addition to that contained in its original justification, which indicates that the carrier has, in fact, followed the correct procedure in applying elasticity.



efficient in the international arena.<sup>2</sup> The Board does not deny the existence of demand elasticity, but we find the entire subject of forecasting so speculative that the type of refinement involved in an elasticity adjustment, which is highly speculative in itself, is simply not acceptable.<sup>3</sup>

Pan American takes issue with the concern expressed by the Board over the capacity level the carrier intends to operate on its South Pacific route. Pan American claims that a portion of the traffic increase it forecasts is a result of the capacity increase it intends to introduce. The Board has never implied that there is no relationship between traffic volume and capacity offered. The Board merely pointed out that Pan American chose to maintain its existing 50-percent load factor despite a sharp increase in traffic (49-percent increase in revenue passenger-miles) through an equivalent increase in capacity. It is not apparent to us that such a capacity increase is necessary to achieve a significant increase in traffic on this route, particularly in view of the relatively low load factor currently prevailing in this market. Moreover, we see no basis for concluding that introduction of the B-747SP in this market requires a net increase in capacity, at least in the amount contemplated by Pan American.

Finally, Pan American argues that South Pacific fare agreements should be evaluated in the context of results on both the international and domestic sectors of its South Pacific through service, since the Board requires that through fares be no higher than the sum of the local sector fares.<sup>4</sup> Pan American claims

that, since west coast-Hawaii fares are unreasonably low, fares beyond Hawaii must be relatively high in order to allow a reasonable through fare and return from the service. The carrier argues that the evening departure time of its flights from the mainland to Hawaii is determined by the requirements of its South Pacific service and is not optimum for the domestic market. Despite these scheduling difficulties, however, Pan American has not presented a persuasive case that it does not have a reasonable opportunity to earn a 12-percent return on its mainland-Hawaii services. The carrier has not satisfactorily explained why it cannot achieve load factors above 50 percent in this market through more careful management of capacity. For example, since almost one-third of its forecast international operations will be conducted with B-747SP aircraft which overfly Hawaii, it is reasonable to expect that the already high percentage of through passengers who travel via Hawaii because they wish to stop over there will increase further. This suggests that one option Pan American may have is to operate more turnaround services between the mainland and Hawaii and to institute turnaround operations between Hawaii and points in the South Pacific. An operation of this type would allow the carrier to improve the timing of its mainland-Hawaii flights thereby increasing load factors on these segments while, at the same time, reducing capacity on the thinner, Hawaii-South Pacific routes with a consequent load-factor improvement on these routes. This option is raised merely to underscore the fact that Pan American has not put forth a convincing case that it has explored all the available options in an attempt to improve the profitability of these services. We do not agree with Pan American that the Board's requirement that through fares be no higher than the sum of the local sector fares necessarily implies that through fares should be set to cover any earnings shortfall from mainland-Hawaii operations. It remains for Pan American to clearly demonstrate that its domestic sector results cannot be improved because they are inextricably entwined with through services in such a way that the carrier cannot be competitive with the other mainland-Hawaii carriers. In the absence of such a demonstration we are unable to conclude that mainland-Hawaii sector costs and revenues should be included in any evaluation of IATA agreements establishing international fares for the South Pacific.

We therefore find that the issues presented by Pan American are not sufficient to warrant reversal of our disapproval of fare increases in Order 77-2-32, and Pan American's petition will therefore be denied.

Accordingly, it is ordered that:

Except to the extent granted here, the petition of Pan American World Airways, Inc., for reconsideration of Order 77-2-32 be denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.<sup>5</sup>

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 77-25167 Filed 8-29-77; 8:45 am]

[Docket 27813; Agreement C.A.B. 25711;  
Order 77-8-120]

#### IATA

#### Agreement Adopted Relating to South Pacific Passenger Fares; Order Denying Petition for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of August, 1977.

By Order 77-5-133, May 24, 1977, the Board reaffirmed its approval of an agreement reached by the International Air Transport Association (IATA) which established first- and economy-class fares, between the U.S. mainland/Hawaii, on the one hand, and Australia/New Zealand, on the other, which exceeded the combination of the local sector U.S.-Pago Pago and Pago Pago-Australia/New Zealand fares. The Board conditioned its approval, however, to require that, where through travel involves a stopover at American Samoa, the applicable through fare will not exceed the sum of the local sector fares over Pago Pago. To this end, Pan American was directed to file appropriate tariff changes within 30 days.

Qantas Airways, Ltd. (Qantas) has petitioned for reconsideration of the Board's order, requesting reversal of that tariff filing requirement, or at least a delay in its implementation, until certain points raised in its petition can be reviewed by the Board. Mr. Donald L. Pevsner has filed in opposition to the petition.

Qantas contends that the Board's condition is contrary to its previously stated principle that an appropriate charge for stopovers should be imposed; and that if a stopover is made at Pago Pago, a charge should apply.<sup>6</sup> It also contends that, despite the Board's belief that little traffic and revenue diversion would occur, the fact that no stopover charge will apply, the substantial dollar savings from the higher through international fare, salubrious Samoan climate, and the opportunity to break an otherwise tedious journey make significant diversion to Pan American's Pago Pago services probable. Qantas estimates its annual loss at \$10.2 million, and urges that the Board fully explore traffic and revenue drains on other carriers before implementation of its condition. Qantas states that this loss of traffic would be bearable if Qantas and Air New Zealand had traffic rights at Pago Pago, but argues that, since Pan American is the sole beneficiary, great violence is done to Qantas' ability to enjoy a "fair and equal opportunity to compete" under the terms of the United States-Australia bilateral agreement and that, while the

<sup>5</sup> All Members concurred except Chairman Kahn and Member Bailey who did not participate.

<sup>6</sup> Qantas cites Orders 73-1-76 and 73-4-77.

<sup>2</sup> The difficulties of producing reliable estimates of elasticity in international markets are stressed by most authors who attempt it. For a general discussion of these problems, see, for example, Guy Orcutt, "Measurement of Price Elasticities in International Trade," *The Review of Economics and Statistics* (May 1950), pp. 118-127. Furthermore, studies of the North Atlantic market indicate that the demand curve is relatively elastic within the range of observed prices. See, for example, M. Straszheim, *The International Airline Industry* (Washington: The Brookings Institution, 1969), M. H. Cooper and A. K. Maynard, *The Price of Air Travel* (London: The Institute of Economic Affairs, 1971), and W. Watkins and D. Kaylor, *Forecast of Scheduled International Air Travel of U.S. Flag Carriers, 1971-1980* (Washington: Civil Aeronautics Board, 1971). The fact that the carriers use coefficients in the relatively inelastic range to adjust their traffic forecasts in this market and that they do not make corresponding adjustments to their forecast load factors, tends to support the Board's contention that the carriers' use of elasticity is somewhat self-serving.

<sup>3</sup> Although the Board employs an elasticity coefficient of -0.7 for domestic fares, which was developed pursuant to a full investigation in Phase 7 of the DPFI, it has virtually no effect on fares as long as the load factor adjustment is made.

<sup>4</sup> Pan American correctly points out that the Board erred in stating that the carrier enjoys a return well in excess of 12 percent on South Pacific sectors beyond Hawaii. The statement should have read that the carrier would earn such a return under the proposed increases.



Board has recognized the principle that international fares require the mutual consent of nations, the Board's tariffing requirement does little to maintain this principle.

Mr. Pevsner argues that grant of the petition would penalize passengers stopping over at Samoa by causing their payment of the higher through fare or a punitive stopover charge; that the number of passengers affected by the Board's condition is small since most South Pacific flights overfly Pago Pago; that any increased traffic to Pago Pago benefits both the local economy and the traveler; that if Qantas wishes to participate in this stopover traffic it may apply to serve the Australia-Pago Pago market or lower its through fare to the sum of the local sector fares. Mr. Pevsner contends that it seems hypocritical for a carrier to condone, or at least ignore for years, this long-standing undercut situation simply because the anomaly was unpublicized and then press strenuously for an arbitrary stop-over charge once the anomaly is publicized; and that both components of the double ticketing device are lawful and contained in legally filed tariffs in foreign air transportation.<sup>1</sup>

Upon full consideration of the petition, the answer and all other relevant matters, the Board has concluded that the petition is without merit and it will be denied.

Qantas has misconstrued the Board's position on charges for stopovers. The Board has advocated imposition of cost-related stopover charges on promotional fares.<sup>2</sup> However, the Board has disapproved application of stopover charges on normal first- and economy-class fares in the Pacific area, in view of the extremely high level of Pacific normal economy fares and the premium level of first-class fares which already reflect availability of unlimited free stopover privileges.<sup>3</sup> In any event, Qantas has not shown that one free stopover at Pago Pago at the lower fare level is uneconomical, nor has it suggested or justified what an appropriate stopover charge might be. Instead, the carrier appears to want a stopover charge solely to stem alleged diversion to the Pago Pago routing. Assuming, arguendo, that a stopover charge could be justified, we do not believe that it would meet Qantas' objective. The undercuts range up to several hundred dollars and to achieve Qantas' objective the charge would need to be extremely high—much higher than could be justified on cost alone.

Qantas also misconstrues the Board's statements in the May order on its concept of mutuality in international rate-making. Ordinarily, a through fare which exceeds the sum of the local sec-

tor fares over an intermediate point is considered unreasonable per se. The Board could have required that the IATA through fares over a Pago Pago routing be no higher than the combination of local fares, as has been done in the case of Hawaii.<sup>4</sup> However, for a number of special reasons, and considering the mutuality of international ratemaking, the Board chose a more limited approach specifically directed at removing any possibility of unjust discrimination against the small number of passengers who genuinely desire a Samoan stopover. In any event, the combination of sector fares filed with the Board in the carriers' tariffs are valid for through transportation even though the IATA fare is undercut.

Accordingly, it is ordered, that: the petition of Qantas Airways, Ltd. for reconsideration of Order 77-5-133, May 24, 1977, in Docket 27813 be denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.\*

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 77-25168 Filed 8-29-77; 8:45 am]

[Docket 30256; Order 77-8-127]

#### JUGOSLOVENSKI AEROTRANSPORT

##### Application for Renewal of Foreign Air Carrier Permit; Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 25th day of August, 1977.

Pursuant to Order 70-6-118, approved by the President on June 19, 1970, Jugoslovenski Aerotransport (JAT) was granted a permit authorizing the carrier, for a period terminating on June 19, 1973, to perform certain charter foreign air transportation between Yugoslavia and the United States and between certain European countries and the United States, the latter limited to charters originating in such countries. The permit was renewed pursuant to Order 74-9-23, approved by the President on September 5, 1974, for the period ending on December 31, 1976. JAT has timely filed for renewal of its permit.

JAT also holds a permit authorizing scheduled service between Belgrade and Zagreb, Yugoslavia, and New York, issued pursuant to Order 76-6-165 and renewed pursuant to Order 77-5-51. The JAT scheduled-service permit is based on provisional arrangements between the United States and Yugoslav governments concerning both scheduled and charter services contained in the exchange of Notes of May 14, 1976, and extended on June 30, 1977, until March 31, 1978. The provisional arrangements provided for inauguration of twice-weekly scheduled service to New York by JAT. In addition they imposed an

annual limit of 80 charter movements by JAT under the Nonscheduled Air Service Agreement of September 27, 1973, which continues in effect. Accordingly, the annual limit of 80 charter movements by JAT is incorporated in the attached specimen form of permit.

The provisional arrangements were extended by the United States and Yugoslav governments until March 31, 1978, with the understanding that consultations will be held on a scheduled air transport services agreement during this period. It is expected that consultations will be held in the near future. In accordance with the request in JAT's application that the permit be renewed for one year or until a date agreed by the governments of the United States and Yugoslavia, it is proposed that the JAT permit be renewed with an expiration on March 31, 1978, the date on which JAT's scheduled permit and Pan American's operating permit from the Yugoslav government will expire. No answers have been filed to JAT's application.

On four occasions (Dockets 25581, 26078, 28732 and 30594), the Board found that JAT was substantially owned and effectively controlled by citizens of Yugoslavia, that it was financially and operationally fit, and that it was in the public interest to grant JAT's requests for renewed or new authority. We are aware of no changes in JAT's structure or operations which would require us to modify those findings. The Board finds, therefore, that it is in the public interest to direct all interested persons to show cause why JAT's charter foreign air carrier permit should not be renewed in the form indicated by the attached specimen permit.<sup>1</sup> Our tentative findings and conclusions in this regard are that:

(a) JAT is fit, willing, and able to properly perform the foreign air transportation proposed herein and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder;

(b) JAT is substantially owned and effectively controlled by citizens of Yugoslavia;

(c) It is in the public interest to renew in the form indicated by the attached specimen permit, the foreign air carrier permit issued to JAT pursuant to Order 74-9-23 for a period terminating on March 31, 1978, or such earlier date as the governments of the United States and Yugoslavia may provide by agreement;

(d) The public interest requires that the exercise of the privileges granted by

<sup>1</sup> Upon the last renewal of JAT's charter permit, Order 74-9-23, Dockets 25581, 26078, Pan American World Airways, Inc. filed a Petition for Reconsideration urging that Condition 2(c) of the permit precluding commingling of U.S. originating charters (paragraph 1) with foreign originating charters under paragraphs 1, 2, and 5, should also apply to foreign originating charters under paragraph 4. Pan American's point is well taken. Accordingly, we tentatively find that its Petition for Reconsideration should be granted and the attached specimen form of permit be revised accordingly.

\* As a consequence of a condition placed by Order 72-10-1, October 1, 1972, on IATA Resolution 001 (Permanent Effectiveness Resolution) the combination of sector fares filed with the Board in the carriers' tariffs are valid for transportation even though the IATA through fare is undercut.

<sup>2</sup> See e.g., Order 73-1-76, January 26, 1973.

<sup>3</sup> Order 77-3-63, March 11, 1977.

\* Order 74-4-92, April 17, 1974.

\* All Members concurred except Chairman Kahn and Member Bailey who did not participate.



said permit be subject to the terms, conditions and limitations contained in the attached specimen form of permit, and to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board; and

(e) A hearing on the application of Jugoslovenski Aerotransport is not required in the public interest.

We further find, pursuant to the environmental evaluation attached to JAT's application, that renewal of JAT's scheduled foreign air carrier permit would not be a major Federal action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, and will not be inconsistent with the policy objectives of the Energy Policy and Conservation Act of 1975.<sup>2</sup>

All interested persons will be given 15 days following the service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific issues and to support such objections with detailed analyses. If an evidentiary hearing is requested, each objector should name the specific markets or other issues about which a hearing is requested and should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing. Vague, general, or unsupported objections will not be entertained.

Accordingly, it is ordered That:

1. All interested persons be directed to show cause why the Board should not make final the tentative findings and conclusions set forth here and why an order should not be issued, subject to approval by the President pursuant to section 801 of the Act, renewing, in the form indicated by the attached specimen permit, the foreign air carrier permit issued to Jugoslovenski Aerotransport by Order 74-9-23 for a period terminating on March 31, 1978, or such earlier date as the governments of the United States and Yugoslavia may provide by agreement;

2. Any interested persons having objections to the issuance of an order making final these tentative findings and conclusions or to the issuance of the proposed foreign air carrier permit shall, within 15 days after service of this order, file with the Board and serve on the persons named in paragraph 5 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 such evidence expected to be relied upon to support the statement of objections;

3. If timely and properly supported objections hereto are filed, full consideration will be accorded the matters or

issues raised therein before further action is taken by the Board: *Provided*, That the Board may proceed to enter an order in accordance with the tentative findings and conclusions here if it determines that there are no factual issues presented that warrant the holding of an evidentiary hearing;<sup>3</sup>

4. In the event no objections are filed to this order, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions; and

5. This order shall be served upon Jugoslovenski Aerotransport, Pan American World Airways, Inc., the Ambassador of the Socialist Federal Republic of Yugoslavia, and the Department of State.

This order shall be published in the FEDERAL REGISTER and transmitted to the President.

By the Civil Aeronautics Board.<sup>4</sup>

PHYLLIS T. KAYLOR,  
Secretary.

SPECIMEN

PERMIT TO FOREIGN AIR CARRIER  
(AS AMENDED)

Jugoslovenski Aerotransport is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations issued thereunder, to engage in charter foreign air transportation as follows:

1. Charter flights with respect to persons and their accompanied baggage between any point or points in Yugoslavia and any point or points in the United States.<sup>5</sup>

2. Charter flights with respect to persons and their accompanied baggage which originate at a point or points in any country other than the United States or Yugoslavia, and serve a point or points in the United States, provided that such flights include a stopover or stopovers in Yugoslavia.<sup>6</sup>

3. Planeload charter flights with respect to property between any point or points in Yugoslavia and any point or points in the United States, limited to ten one-way flights within any calendar year.

4. Charter flights (including inclusive tour charters with respect to persons and their

<sup>2</sup>Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

<sup>3</sup>All members concurred.

<sup>4</sup>The holder shall be authorized to perform those types of charters as are now, or may hereafter be, prescribed in Annex B of the Nonscheduled Air Service Agreement between the Government of the United States of America and the Government of the Socialist Federal Republic of Yugoslavia. Annex B currently authorizes those types of charters authorized pursuant to Parts 214 and 378 of the Board's Regulations, i.e., Single Entity Passenger, Pro Rata Affinity, Mixed (Entity/Pro Rata), Inclusive Tour, Study Group, Overseas Military Personnel, and Travel Group; and split passenger charters of the types set forth. In addition, for Yugoslavia-originating charters, and third country-originating charters with a stopover in Yugoslavia, Common Purpose, Advance Booking, and Inclusive Tour charters performed pursuant to Yugoslavia charter regulations, are also authorized.

accompanied baggage between any point or points in Austria, Belgium, Cyprus, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, and Switzerland, and any point or points in the United States, limited to charter flights which originate in a named European country.

5. Circle tour charter flights (including inclusive tour charters) with respect to persons and their accompanied baggage which originate and terminate at the same point in Austria, Belgium, Cyprus, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, or Switzerland, and serve a point or points in the United States and also provide a stopover or stopovers en route at a point or points in any country other than a named European country, the United States, or Yugoslavia.

The holder may, with respect to Yugoslavia-originating charter flights authorized in paragraph 1, and flights authorized in paragraphs 2 and 5, above, grant stopover privileges en route in any country other than the United States or Yugoslavia: *Provided*, That "stopover" shall mean a lapse of at least 36 hours between any deboarding and the next reboarding by the holder of the same passengers and their accompanied baggage, whether the reboarding shall be pursuant to the same or separate group contracts.

This permit shall be subject to the following terms, conditions, limitations:

(1) With respect to passenger and property charter flights between the United States and Yugoslavia, authorized in paragraphs 1 and 3, above, the holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Yugoslavia (authorized stopovers excepted), or transport any person whose journey is under contract for a group movement by the holder to or from a point not in the United States or Yugoslavia: *Provided*, That this condition shall not prevent the holder under the authorization contained in paragraph 1 above, from separately contracting for movement of United States-originating inclusive tour charter, travel group charter, or study group charter traffic as a group or as groups on its scheduled air services between a point or points in Yugoslavia and a point or points beyond Yugoslavia, provided that at least 96 hours in total are spent by the group or groups in Yugoslavia before, or after, or before and after, such movements to and/or from the point or points beyond Yugoslavia.

(2) The holder shall not perform United States-originating passenger charter flights which at the end of any calendar quarter would result in the number of United States-originating passenger charter flights performed in the preceding 12 months exceeding by more than one-third (but in no event by more than 15) the number of passenger charter flights originating outside the United States performed in that 12-month period: *Provided*, That (a) A charter shall be considered to originate in the United States (or Yugoslavia, or elsewhere) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter be one-way, round-trip, circle-tour, or open-jaw, even if a separate contract is entered into for a return portion of the charter trip from Yugoslavia (or the United States, or elsewhere);

(b) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the holder is the lessee, and shall not be included if the holder is the lessor;

<sup>2</sup>Since no new services are to be performed, there will be no material increase in the utilization of fuel.



(c) United States-originating charter groups on flights authorized in paragraph 1 shall not be commingled on the same aircraft at the same time with groups originating outside the United States authorized in paragraphs 1, 2, 4, and 5, above;

(d) Any inadvertent excess in United States-originating flights operated pursuant to the authorization contained in paragraph 1 above which might occur shall be corrected by contracting for sufficient flights originating outside, the United States pursuant to the authorizations contained in paragraphs 1, 2, 4, and 5 above, and/or reducing contracting for United States-originating flights pursuant to the authorization contained in paragraph 1 above, in the first or first and second quarter years immediately following the period of excess so as to achieve conformity in the expanded five or six quarter year period;

(e) Condition (2) shall not apply to flights which originate exclusively at Detroit;

(f) Condition (2) shall not apply to flights which originate exclusively at Los Angeles for such time as no Yugoslav airline operates a scheduled air service to the United States and a United States airline operates a scheduled air service between the United States and Yugoslavia;

(g) Condition (2) shall not apply to flights utilizing the same aircraft which originate exclusively at both Los Angeles and Detroit for such time as no Yugoslav airline operates a scheduled air service to the United States and a United States airline operates a scheduled air service between the United States and Yugoslavia;

(h) The Board may by order, and without hearing, permit the applicability of (f) and (g) above, during periods when no United States airline operates a scheduled service between the United States and Yugoslavia.

(3) The exercise of the privileges granted by this permit, except with respect to third country-originating inclusive tour charters performed under the authorizations contained in paragraphs 4 and 5 above, shall be subject to the provisions of Parts 214 and 378 of the Board's Regulations, and all amendments and revisions thereof as the Board, by order or regulation and without hearing, may adopt: *Provided, however, That advance booking charters, common purpose charters, and inclusive tour charters originating in Yugoslavia and performed under the authorization contained in paragraph 1 above, and such charters originating in third countries with a stopover in Yugoslavia performed under the authorization contained in paragraph 2 above, may be operated pursuant to the terms, conditions, and limitations contained in licenses issued by the Yugoslav Directorate of Civil Aviation in accordance with Yugoslav charter regulations, in which event compliance with Parts 214 and 378 shall not be required. The authority of the holder to perform third country-originating inclusive tour charters performed under the authorizations contained in paragraphs 4 and 5 above shall be subject to the following conditions:*

(a) Each tour shall provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other.

(b) If more than one group is carried, each of the groups shall consist of 40 or more tour participants.

(c) The Board by order or regulation and without hearing, may waive conditions (a) and (b) in whole or in part.

(4) The holder shall operate no more than 80 revenue charter aircraft movements to or from the United States during the 12-month period expiring March 31, 1978, or for any 12-month period thereafter unless prior approval to operate a specific higher

number of revenue charter aircraft movements is obtained from the Board.

(5) The Board, by order or regulation and without hearing, may require advance approval of any individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required.

(6) The holder shall not operate charters for or on behalf of air freight forwarders.

(7) The holder shall keep on deposit with the Board a signed counterpart of Agreement C.A.B. 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.

(8) 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 addresses of the member insurers.

(9) 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.

(10) 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 the Socialist Federal Republic of Yugoslavia shall be parties.

(11) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the Socialist Federal Republic of Yugoslavia for Yugoslav international air service.

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 become effective on \_\_\_\_\_ Unless otherwise terminated, at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate on March 31, 1978: *Provided, however, That if prior to March 31, 1978, the operation of the charter foreign air transportation herein authorized becomes the subject of a renewed or revised Annex A to the Nonscheduled Air Service Agreement between the United States and Yugoslavia (or otherwise becomes the subject of a treaty, convention or agreement to which the United States and Yugoslavia are or shall become parties), then this permit shall terminate (1) upon the effective date*

of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the charter foreign air transportation hereby authorized from the transportation which may be operated by carriers designated by the Government of Yugoslavia (or in the event of the elimination of part of the charter foreign air transportation hereby authorized, the authority granted herein shall terminate to the extent of such elimination), (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Yugoslavia in lieu of the holder hereof, or (3) upon the termination or expiration of the Nonscheduled Air Service Agreement between the United States and Yugoslavia, effective September 27, 1973: *Provided, further, That 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 herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Yugoslavia are or shall become parties.*

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the \_\_\_\_\_

Secretary.

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on \_\_\_\_\_, in \_\_\_\_\_

[FR Doc.77-25169 Filed 8-29-77;8:45 am]

## CIVIL SERVICE COMMISSION

### ADVISORY COMMITTEE ON ADMINISTRATIVE LAW JUDGES

#### Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the U.S. Civil Service Commission announces the following meeting:

NAME: Advisory Committee on Administrative Law Judges.

DATE AND TIME: September 23, 1977, 9:00 a.m., 4:00 p.m.

PLACE: U.S. Civil Service Commission, 1900 E Street, NW., Washington, D.C., Room: 5323.

TYPE OF MEETING: Open.

CONTACT PERSON:

Arthur L. Burnett, Assistant General Counsel, U.S. Civil Service Commission, 1900 E Street, NW., Washington, D.C., telephone 202-632-5421.

PURPOSE OF COMMITTEE: To address the future direction that the Committee will take in connection with governmental reorganization plans as they may affect Administrative Law Judges, continue its discussion of the overjudicialization of the administrative process, and consider adopting recommendations for legislative change relating to APA coverage of certain categories of cases.

Dated: August 30, 1977.

JAMES C. SPRY,  
Executive Assistant  
to the Commissioners.

[FR Doc.77-25165 Filed 8-19-77;8:45 am]



**COMMERCE DEPARTMENT****Title Change in Noncareer Executive Assignment**

By notice of December 13, 1973, FR Doc. 73-26383 the Civil Service Commission authorized the Department of Commerce to make a change in title for the position of Assistant Director for National Programs, Office of Minority Business Enterprise, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Assistant Director for Program Resources, Office of Minority Business Enterprise.

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

[FR Doc.77-25036 Filed 8-29-77;8:45 am]

**COMMUNITY SERVICES ADMINISTRATION****Grant of Authority To Make Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Community Services Administration to fill by noncareer executive assignment in the excepted service the position of Director, Office of Program Development, Office of Community Action.

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

[FR Doc.77-25027 Filed 8-29-77;8:45 am]

**COMMUNITY SERVICES ADMINISTRATION****Grant of Authority To Make Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Community Services Administration to fill by noncareer executive assignment in the excepted service the position of Director, Office of Regional Operations, Office of Community Action.

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

[FR Doc.77-25028 Filed 8-29-77;8:45 am]

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT****Grant of Authority To Make Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment

in the excepted service the position of Deputy General Counsel for Regulation Review, Office of Regulation Review, Immediate Office, Office of the General Counsel, Office of the Secretary.

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

[FR Doc.77-25030 Filed 8-29-77;8:45 am]

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT****Revocation of Authority To Make Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Director, Facilities Engineering and Construction Agency, Office of the Secretary.

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

[FR Doc.77-25033 Filed 8-29-77;8:45 am]

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT****Revocation of Authority To Make Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Director, Office of Regulatory Review, Immediate Office of the Secretary, Office of the Secretary.

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

[FR Doc.77-25034 Filed 8-29-77;8:45 am]

**INTERIOR DEPARTMENT****Revocation of Authority To Make Noncareer Executive Assignment**

Under the authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Director, Office of Congressional Liaison, Office of the Secretary.

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

[FR Doc.77-25035 Filed 8-29-77;8:45 am]

**INTERIOR DEPARTMENT****Grant of Authority To Make Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant to the Secretary and Director, Office of Congressional and Legislative Affairs, Office of the Secretary.

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

[FR Doc.77-25031 Filed 8-29-77;8:45 am]

**LABOR DEPARTMENT****Grant of Authority To Make a Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Labor to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Secretary, Office of the Secretary.

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

[FR Doc.77-25032 Filed 8-29-77;8:45 am]

**NAVY DEPARTMENT****Grant of Authority To Make Noncareer Executive Assignment**

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Navy to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Assistant Secretary of the Navy (Manpower, Research Affairs and Logistics), Office of the Assistant Secretary of the Navy (MRA&L).

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

[FR Doc.77-25029 Filed 8-29-77;8:45 am]

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

[Docket No. 7-77]

**CITY OF GALVESTON, TEXAS, BY THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES****Application and Public Hearing**

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Galveston (the City), Galveston County, Tex., a municipal corporation, through the Board of Trustees



of the Galveston Wharves (Galveston Wharves), requesting a grant authority for the establishment of two foreign-trade zone sites on the Galveston Ship Channel in Galveston, within the Galveston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 19, 1977. The City of Galveston is a municipal corporation under a Charter filed with the Texas Secretary of State on July 22, 1960. It was given authority, together with the Board of Trustees of the Galveston Wharves, to apply for and to establish and operate foreign-trade zones in the City of Galveston under Senate Bill 203 of the 65th Texas Legislature, dated April 25, 1977. By resolution, the City authorized the Galveston Wharves to make the application in its behalf.

The proposal calls for a zone consisting of two sites with a total area of 884 acres. One site is owned by the applicant and situated on an 8 acre tract on Galveston Island on which are three existing warehouses presently operated as Customs bonded facilities. The other site, just across the Galveston Ship Channel on Pelican Island, covers some 876 acres, most of which is owned by the Mitchell Development Corporation of the Southwest (Mitchell). The applicant owns some 50 acres of this site and has a leasing agreement with Mitchell for the remaining area. Both sites are served by all modes of transportation. The zone is intended to serve firms engaged in international trade-related activities.

The application includes economic data and information concerning the need for zone services. Among the anticipated zone tenants are firms dealing in metal products, refined petroleum products, chemicals, oil and gas production systems, automobile imports, agricultural and construction machinery, marine conversions and refurbishing, biomedical products and pollution control systems. These firms would use the zone for storage, inspection, light manufacture, processing, or assembly.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The committee consists of: Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, 14th and E Streets, NW., Washington, D.C. 20230; Ernest J. Gonsoulin, Director (Inspection and Control), Region VI, U.S. Customs Service, 500 Dallas Street, Suite 1240, Houston, Tex. 77002; and Colonel Jon C. Vanden Bosch, Army District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, Tex. 77553.

In connection with its investigation of the proposal, the Examiners Committee will hold a public hearing on September 21, 1977, beginning at 9:00 a.m., in the 2nd floor Courtroom, U.S. Federal Building, 20th and Postoffice Streets, Galveston, Tex. The purpose of the hearing is

to help inform interested persons about the proposal, to provide an opportunity for their expression of views and to obtain information useful to the Examiners Committee.

Interested persons or their representatives will be given the opportunity to present their views at the hearing. Such persons should, by September 14, notify the Board's Executive Secretary, in writing at the address below, of their desire to be heard. In lieu of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the Executive Secretary, at any time from the date of this notice through October 21, 1977. Any material submitted during the post-hearing period cannot be made part of the record unless it is new evidence. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, Room 411, Post Office Building, 601 Rosenberg, Galveston, Tex. 77550.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886-B, 14th and E Streets NW., Washington, D.C. 20230.

Dated: August 23, 1977.

JOHN J. DA PONTE, JR.,  
Executive Secretary,  
Foreign-Trade Zones Board.

[FR Doc. 77-25117 Filed 8-29-77; 8:45 am]

#### National Oceanic and Atmospheric Administration

#### CARIBBEAN FISHERY MANAGEMENT COUNCIL AND ITS SCIENTIFIC AND STATISTICAL COMMITTEE

##### Public Meeting

Notice is hereby given of a meeting of the Caribbean Fishery Management Council established by Section 302 and its Scientific and Statistical Committee established by Section 302(g) of the Fishery Conservation and Management Act of 1976 (P.L. 94-265).

The Caribbean Fishery Management Council has authority over fisheries within the fishery conservation zone adjacent to Puerto Rico and the Virgin Islands. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fisheries within its area of authority, prepare comments on foreign fishing applications, and conduct public hearings.

The Scientific and Statistical Committee assists the Council in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of fishery management plans.

The meeting will be held Tuesday through Thursday, September 20-22, 1977, at the Hotel Pierre, 105 De Diego Avenue, Santurce, Puerto Rico. The meeting will convene at 9:00 a.m. on September 20, and adjourn at about noon on September 22, 1977. Daily sessions

will normally start at 9:00 a.m. and adjourn at 5:00 p.m., except as otherwise noted. The meeting may be extended or shortened depending upon progress on the agenda.

#### PROPOSED AGENDA

1. Progress report on draft fishery management plan (FMP) preparation for Spiny Lobster and Swallow Water Reef Fishes.
2. Status of Scientific and Statistical Committee and Advisory Panel Membership Appointment of new member.
3. Report of Council Chairmen meeting in Portland, Oregon.
4. SSC Report on the initiation of work on New FMP's.
5. NOAA General Counsel Report on the legality of the Council's visit to St. Maarten to observe tuna long-line fisheries operations of the Curacao Pioneering Company.
6. Status of the Virgin Islands office of the Caribbean Fishery Management Council.
7. Reactions to the proposed plan by the Council to monitor the Entry of U.S. Commercial Fishing Boats into the Limited British Virgin Island waters.
8. Status of previous request by the Council that certain Coastal Pelagics not be considered highly migratory.
9. Administrative matters.
10. Other Council/Committee Business.

This meeting is open to the public, and there will be seating for a limited number of public members available on a first-come first-served basis.

Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meetings. To receive information on changes, if any, made to the agenda, interested members of the public should contact, on or about September 12, 1977:

Mr. Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, P.O. Box 1001, Hato Rey, Puerto Rico 00919 (809-753-4926).

At the discretion of the Chairman interested members of the public may be permitted to speak at times which will allow the orderly conduct of official business. Interested members of the public who wish to submit written comments should do so by addressing the Executive Director at the above address. To receive due consideration and to facilitate inclusion of these comments in the record of the meetings, typewritten statements should be received within 10 days after the close of the meetings.

Dated August 24, 1977.

WINFRED H. MEIBOHM,  
Associate Director,  
National Marine Fisheries Service.

[FR Doc. 77-25078 Filed 8-29-77; 8:45 am]

#### NEW ENGLAND FISHERY MANAGEMENT COUNCIL'S SCIENTIFIC AND STATISTICAL COMMITTEE

##### Three Public Meetings

Notice is hereby given of three meetings of the Scientific and Statistical Committee of the New England Fishery Management Council, established by Section 302(g) of the Fishery Conservation and Management Act of 1976 (P.L. 94-265).



The New England Fishery Management Council has authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the states of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fishery management plans with respect to fisheries within its area of authority, prepare comments on foreign fishing applications, and conduct public hearings.

The Scientific and Statistical Committee assists the Council in the development, collection and evaluation of such statistical, biological, economic, social and other scientific information as is relevant to the Council's development and amendment of fishery management plans.

The first of the three Committee meetings will be held on November 15, 1977, from 9:00 a.m. to 4:00 p.m., at the Holiday Inn, Junction of Route 1 and 128, Peabody, Mass. The meeting may be extended or shortened depending on progress on the agenda.

#### PROPOSED AGENDA

Development of Silver Hake, Red Hake, Ocean Perch Plans.

The second of these Committee meetings will be held on December 20, 1977, from 9:00 a.m. to 4:30 p.m., at the JFK Building, Room 1112, Government Center, Boston, Mass. This meeting may be extended or shortened depending on progress on the agenda.

#### PROPOSED AGENDA

Development of Ocean Perch, Red Hake, Red Crab Plans.

The third in this series of Committee meetings will be held on January 17, 1978, from 9:00 a.m. to 4:00 p.m., at the Holiday Inn, Junction of Route 1 and 128, Peabody, Mass. The meeting may be extended or shortened depending on progress on the agenda.

#### PROPOSED AGENDA

Development of Ocean Perch, Red Hake, Red Crab Plans.

These meetings are open to the public and there will be seating at each meeting for approximately 20 public members available on a first-come first-served basis.

Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agendas, interested members of the public should contact on or about 10 days before each of these meetings:

Mr. Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Mass. 01960.

At the discretion of the Committee, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Committee business. Interested members of the pub-

lic who wish to provide written comments should do so by submitting them to Mr. Apollonio at the above address. To receive due consideration and to facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of each Committee meeting.

Dated: August 25, 1977.

WINFRED H. MEIBOHM,  
Associate Director,  
National Marine Fisheries Service.  
[FR Doc.77-25079 Filed 8-29-77;8:45 am]

### COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SE- VERELY HANDICAPPED

#### PROCUREMENT LIST 1977

##### Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1977 a commodity to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 30, 1977.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, (703-557-1145).

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1977, November 18, 1976 (41 FR 50975):

Class 6645

Clock, Wall, 6645-00-935-4244.

C. W. FLETCHER,  
Executive Director.

[FR Doc.77-25118 Filed 8-29-77;8:45 am]

### DEPARTMENT OF DEFENSE

#### Department of the Air Force

#### USAF SCIENTIFIC ADVISORY BOARD Meeting Date Change

AUGUST 19, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Cruise Missile Technology scheduled to be held on September 23, 1977 from 9:00 a.m. to 5:00 p.m. at Langley Air Force Base, Vir-

ginia has been changed to September 22, 1977. All other information is the same. This meeting was advertised in 42 FR 39254, August 3, 1977.

For further information contact the Scientific Advisory Board secretariat at (202) 697-4648.

FRANKIE S. ESTEP,  
Air Force Federal Register Liaison  
Officer, Directorate of  
Administration.

[FR Doc.77-25119 Filed 8-29-77;8:45 am]

#### USAF SCIENTIFIC ADVISORY BOARD Meeting

AUGUST 19, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Wide Area Munitions will hold meetings at the Lawrence Livermore Laboratory, Livermore, California, on September 29 and 30, 1977 from 8:30 a.m. to 5:00 p.m. each day.

The committee will receive classified briefings and hold classified discussions on Air Force munitions programs and technology.

The meetings concern matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 697-8404.

FRANKIE S. ESTEP,  
Air Force Federal Register Liaison  
Officer, Directorate of  
Administration.

[FR Doc.77-25120 Filed 8-29-77;8:45 am]

#### USAF SCIENTIFIC ADVISORY BOARD Cancelled Meeting

AUGUST 22, 1977.

The USAF Scientific Advisory Board ad hoc Committee on the EF-111A meeting scheduled for September 20, and 21, 1977 at Kirtland AFB, New Mexico, has been cancelled. This meeting was published in 42 FR 41469 August 17, 1977.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-8404.

FRANKIE S. ESTEP,  
Air Force Federal Register Liaison  
Officer, Directorate of Adminis-  
tration.

[FR Doc.77-25121 Filed 8-29-77;8:45 am]

#### Office of the Secretary

#### CIVILIAN HEALTH AND MEDICAL PRO- GRAM OF THE UNIFORMED SERVICES (CHAMPUS)

Opportunity for Oral Presentation of Views on CHAMPUS Regulation in DoD 6010.8-R

Notice is hereby given that the meeting dates published in Vol. 42 FR 41118, Monday, August 15, 1977, are being changed. It has been decided to cancel the hearings scheduled in the afternoon



of September 8 and all hearings on September 9. The other dates and times remain in effect.

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

AUGUST 26, 1977.

[FR Doc. 77-25283 Filed 8-29-77; 8:45 am]

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 772-6; OPP-210007A]

### OFFICE OF PESTICIDE PROGRAMS

Response to Petition To Suspend Certain  
Products Containing Nitrosamines

#### Corrections

In FR Doc. 22627 appearing at page 40009 in the issue for Monday, August 8, 1977, the following corrections should be made.

1. On line two of the footnote appearing at the bottom of the third column of page 40013, the word, "protecting", should read, "protection".

2. Line two of the first column on page 40014 reading, "recommended label alterations in this area.", should be removed, and placed as the final line of the footnote at the bottom of the third column on page 40013.

## FEDERAL COMMUNICATIONS COMMISSION

[FCC 77R-77]

[Docket Nos. 20567-20569; File Nos.  
BPH-8905, BPH-9011, BPH-9156]

ALEXANDER S. KLEIN JR., ET AL.

Applications for Construction Permits;  
Memorandum Opinion and Order

In re applications of Alexander S. Klein, Jr., Media, Pennsylvania; Greater Media Radio Co., Media, Pennsylvania; Roberts Broadcasting Corp., Media, Pennsylvania, for construction permits.

Adopted August 23, 1977.

Released August 30, 1977.

1. This proceeding involves the mutually exclusive applications of Alexander S. Klein, Jr. (Klein), Greater Media Radio Company (Greater Media), and Roberts Broadcasting Corporation (Roberts) for authorization to construct a new FM broadcast station at Media, Pennsylvania. On February 14, 1977, after the record was closed, Klein filed a "Petition to Reopen the Record" and a separate "Motion to Enlarge Issues," requesting the addition of Rule 1.65,<sup>1</sup> misrepresenta-

tion and financial issues against Greater Media. In an Initial Decision, FCC 77D-17, released April 14, 1977, Administrative Law Judge David I. Kraushaar granted Roberts' application, denied the two competing applications, and denied Klein's petition and motion. He concluded that since Greater Media ranked a distant third under his comparative evaluation of the applicants, the delay involved in considering the petition and motion on their merits would not be warranted.

2. We have reviewed the Initial Decision, the oral argument,<sup>2</sup> the parties' exceptions and the record. While we understand the considerations motivating the Administrative Law Judge to proceed to a final decision without ruling on Klein's request for enlargement of the issues, it is our view that the comparative situation is much closer than it appeared to the Judge, and that a full record should be compiled both for our own review and any review by the Commission which it may deem appropriate. Since we find, for the reasons stated below, that Klein has raised a substantial question regarding Greater Media's compliance with Rule 1.65, a remand of this proceeding for further hearing is required. In addition, we believe that neither Roberts nor Greater Media has established compliance with the Primer on Ascertainment of Community Problems by Broadcast Applicants,<sup>3</sup> and that, for the reasons to be given, they should be afforded an opportunity to correct these deficiencies prior to the remanded hearing.

3. *The Motion to Enlarge Issues.* Klein requested the addition of Rule 1.65, misrepresentation, and financial issues against Greater Media, upon the basis of the following facts relating primarily to the Greater Media proposal, that Daniel M. Lerner, Greater Media's principal stockholder, would obtain the necessary financing by selling his 25 percent interest in other broadcast interests to his brother, Arnold Lerner. The focus of the question is Arnold Lerner's capacity to make that purchase. Greater Media had originally filed its application as a sole proprietorship of Daniel Lerner. On January 10, 1975, prior to designation for hearing, the application was amended to show inter alia, that the applicant had been incorporated in the State of Pennsylvania, and that Lerner owned 95 percent of the stock. Greater Media relied for its financing upon a \$50,000 investment and a \$200,000 loan from Daniel Lerner. In order to obtain these funds, Daniel Lerner was to sell his 25 percent interest in two Massachusetts radio stations to his brother Arnold for \$250,000.

"substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application." The rule further provides that such amendment shall be made "as promptly as possible and in any event within 30 days, unless good cause is shown." (47 CFR 1.65.)

<sup>2</sup> Oral argument was held before a panel of  
<sup>3</sup> 27 FCC 2d 650, 21 RR 2d 1507 (1971).  
the Review Board on August 2, 1977.

On April 9, 1975, also prior to the designation of the Greater Media application for hearing, the Great Down East Wireless Talking Machine Company, Inc. (Down East), of which Arnold Lerner was Treasurer, Chairman of the Board and 43 percent stockholder, filed an application for a construction permit for a new FM broadcast station in Auburn, Maine.<sup>4</sup> The Down East application contained a letter from a bank, dated April 3, 1975, indicating the bank's willingness to establish an \$80,000 line of credit for Down East conditioned upon the personal endorsements of Arnold Lerner and two other Down East shareholders. Down East subsequently amended the application to reflect Arnold Lerner's commitment, by letter dated October 15, 1975, to endorse the bank loan for Down East, and his commitment to loan Down East \$25,000. Down East's construction permit was granted on October 26, 1976 (FCC 76-954), and the license for that station, WWAV, was granted on April 6, 1977.<sup>5</sup>

4. On August 7, 1975, Greater Media's application was designated for hearing. A financial qualifications issue was designated to determine whether Arnold Lerner has sufficient net liquid assets to meet his \$250,000 commitment to Daniel Lerner (40 FR 36805, published August 22, 1975). On October 29, 1975, Greater Media filed an amendment to its application (accepted by Order, FCC 75M-1932, released November 12, 1975), which included a "Partial Statement of Assets and Liabilities" of Arnold Lerner indicating a surplus of current and liquid assets over short term liabilities of \$197,536, and two bank letters indicating a willingness to lend Arnold Lerner an additional \$150,000. This amendment did not, however, report Arnold Lerner's interest in, or commitments to, Down East. On June 4, 1976, Greater Media filed another amendment (accepted by Order, 76M-841, released July 1, 1976), in which the applicant stated that Arnold Lerner was replacing his two prior bank loan commitments with a \$200,000 commitment from another bank. Based on these facts, the Judge issued a partial summary decision favorably resolving the financial qualifications issue. (FCC 76M-1304, released October 12, 1976.)

<sup>5</sup> In response to question 21 of the application form, which requires the applicant to report the interests in any other broadcast stations or pending applications of any member of the immediate family of a party to the application, Greater Media listed in both its original and amended applications that Daniel Lerner's brother, Arnold Lerner, owned interests in three existing broadcast stations in Massachusetts and Rhode Island. Klein's motion to enlarge the issues was based in part upon the failure of Greater Media to update its application to mention Arnold Lerner's interest in Down East. We do not think this omission warrants an issue under Section 1.65, since the omitted fact would not have been of decisional significance in the absence of a showing, not made on the record before us, that Arnold Lerner's broadcast interests should be attributed to Daniel Lerner.

<sup>6</sup> Down East is also the licensee of Station WLAM, Lewiston, Maine.

<sup>1</sup> This petition only addresses the question of whether Klein timely filed its accompanying motion to enlarge issues. Klein maintains that it first became aware of the relevant information during the testimony at hearing.

<sup>2</sup> Rule 1.65 requires an applicant to amend its pending application whenever the information furnished therein "is no longer substantially accurate and complete in all significant respects" or whenever there is a



5. Klein's motion, unresolved by the Administrative Law Judge, asserted that the failure of Greater Media to report Arnold Lerner's financial commitments to Down East warranted issues under Section 1.65 and on misrepresentation, and that a financial issue was also required in view of Arnold Lerner's new liabilities. Thus, it is urged that Arnold Lerner's guarantee of Down East's \$80,000 bank note and his \$25,000 loan commitment reduced his assets to \$105,000, and thus raised substantial questions as to Arnold Lerner's ability to buy Daniel Lerner's broadcast interests, questions which were hidden by the failure to disclose the matter by amendment of the Greater Media application. The Broadcast Bureau stated that it would support the addition of the requested issues should Greater Media be preferred under the standard comparative issue.

6. The Board will grant Klein's petition to reopen the record and its motion to enlarge the issues<sup>7</sup> in part under Section 1.65 (see footnote 5, supra), and deny Klein's requests for misrepresentation and financial issues. We note first that the significance of the failure to report Arnold Lerner's financial commitments to Down East must be evaluated as of the time these events occurred, while the financial qualification question is to be determined in light of the current situation. To take the Section 1.65 and misrepresentation aspects of the matter first, we find that Arnold Lerner's financial commitments to Down East were of potential decisional significance to Greater Media's qualifications to be a licensee. At the time these commitments were made (October 15, 1975), and prior to Greater Media's June 4, 1976 amendment, Arnold Lerner was shown to have net liquid assets plus available bank loans totalling \$347,536 with which to purchase Daniel Lerner's broadcast interests. If a total of \$105,000 in commitments to Down East were subtracted from Arnold Lerner's then available funds, he would have been more than \$7,000 short of establishing his ability to meet the \$250,000 purchase price for Daniel Lerner's stock. We must reject Greater Media's contention that Arnold Lerner's guarantee of Down East's \$80,000 bank note need not have been reported since it was a triply contingent<sup>8</sup>

and long-term liability.<sup>9</sup> The Board has consistently held that contingent liabilities should be reported to the Commission.<sup>10</sup> See *Folkways Broadcasting Co., Inc.*, FCC 71R-63, 21 RR 2d 211, and *Home Industries, Inc.*, 28 FCC 2d 454, 21 RR 2d 851 (Rev. Bd. 1971). From the limited information before us, we are unable to determine whether upon default the entire outstanding balance on the note becomes due and payable immediately, and whether each guarantor will immediately be jointly and severally liable. The terms of repayment of the loan provide no guidance on this point. Accordingly, a Rule 1.65 issue is warranted. However, we will add this issue on a comparative basis only, since there is no indication that Greater Media intended to conceal the unreported information in this proceeding. In this regard, we find it significant that the Down East application revealed to the Commission Arnold Lerner's commitments to both Down East and Greater Media, and Daniel Lerner admitted at hearing that his brother had an interest in Down East.<sup>11</sup>

7. The Board will deny Klein's requested issue concerning Arnold Lerner's ability to finance his purchase of Daniel Lerner's broadcast interests. As indicated above, at the time Arnold Lerner incurred the commitments to Down East, i.e., October 15, 1975, and until the June 4, 1976 amendment, Arnold Lerner may not have had sufficient current and liquid assets over current liabilities to meet his \$250,000 commitment to Greater Media. However, the June 4, 1976 amendment, wherein Arnold Lerner substituted a \$200,000 bank loan commitment for the two commitments totalling \$150,000, cured any possible deficiency in this regard. Thus, Greater Media established that Arnold Lerner has available funds totalling \$397,536 (\$197,536 in net liquid assets and \$200,000 in bank loan commitments). Even if we were to deduct all of Mr. Lerner's commitments to his brother (\$250,000) and to Down East (\$25,000 in loans and \$80,000 as guarantor for the bank note), he would still have a surplus of available funds in excess of \$42,000. Klein has failed to raise a substantial question as to the accuracy of these figures. We also reject the Bureau's contention that Ar-

nold Lerner should not be credited with his \$200,000 bank loan commitment, absent a statement from the bank that it is aware of his obligations to Down East. The Bureau's assertions that the bank may not have been informed of the obligations to Down East, and that it might not have been willing to make the loan commitment had it been aware of this obligation, are based on speculation and conjecture, and not supported by affidavits of a person or persons having personal knowledge thereof.<sup>12</sup> We therefore perceive no adequate basis for adding a financial issue. See Section 1.229(d)<sup>13</sup>, and *J. T. Parker, Jr.*, 7 FCC 2d 462, 9 RR 2d 897 (Rev. Bd. 1967).

8. *Ascertainment of Roberts.* By Memorandum Opinion and Order, 58 FCC 2d 105, 36 RR 2d 481 (Rev. Bd. 1976), the Review Board added the following limited ascertainment issue against Roberts:

To determine whether the general public survey conducted by Roberts Broadcasting Corporation complies with the requirements set forth in the Commission's Primer.

On April 20, 1976, Roberts filed an amendment to its application (accepted by Order, FCC 76M-841, released July 1, 1976) which included the methods, procedures, and results of a new general public survey conducted in March 1976 by one of its principals. This survey consisted of telephone interviews with 105 Media residents, whose homes were chosen from every tenth name on Media's voter registration lists (Democratic, Republican and Independent). These lists contained 3,371 names. Roberts utilized an "Interviewee Identification Form" in order to check the "randomness" of its sample. The judge granted Roberts' motion for partial summary decision by Memorandum Opinion and Order, FCC 76M-1310, released October 12, 1976, concluding that its new general public survey met the randomness requirements of the Commission's Primer, supra, Q. & A. 13(b). Klein excepts to this ruling by the Judge.<sup>14</sup>

9. The Board is of the opinion that the Judge erred in granting Roberts' motion for partial summary decision.

<sup>7</sup> In this regard, we note that the bank letter is dated May 18, 1976, seven months after Mr. Lerner made his commitments to Down East on October 15, 1975.

<sup>8</sup> Section 1.229(d) states that "motions [to enlarge issues], oppositions thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested" and that such allegations "except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof."

<sup>9</sup> Roberts erroneously contends that Klein has waived his right to appeal this ruling by failing to oppose a supplemental pleading submitted by Roberts after Klein had originally opposed its motion for partial summary decision. *Abacoa Radio Corp. v. FCC*, 123 U.S. App. D.C. 218, 358 F.2d 849, 6 RR 2d 2066 (1966), cited by Roberts, is inapposite. That case merely held that the Court of Appeals will not entertain issues not previously raised before the Commission.

<sup>7</sup> Klein has met the standard for filing such motions. It supported its motions with newly discovered evidence, not otherwise known or discoverable with due diligence at the time of the hearing, which, if true, would affect the decision. See *Southeast Arkansas Radio, Inc.*, 61 FCC 2d 72, 38 RR 2d 1338 (1976). For it appears that Klein did not learn about Arnold Lerner's interest in Down East until the hearing held on January 31, 1977. His petition was filed on February 14, 1977.

<sup>8</sup> Greater Media contends that this guarantee was "triple-contingent" since it would only have become a liability of Arnold Lerner upon the occurrence of the following three events: (1) the grant of Down East's construction permit, (2) the failure of Down East to meet its repayment obligations, and (3) the failure of the other two co-guarantors to make their proportionate share of payments.

<sup>9</sup> Greater Media apparently categorizes the guarantee as long-term because principal repayments are deferred for the first year of the loan under the terms of the loan letter.

<sup>10</sup> We note that good accounting principles require disclosure of contingent liabilities in financial statements or notes thereto. See *Accounting Research Bulletin No. 50*, and *APB Accounting Principles, Current Text* as of December 1, 1971, (Section 5514). We need not decide whether the type of commitment made by Arnold Lerner should be held to diminish his current assets, since the issue of financial qualification no longer can turn on that question. But the matter appears to have been of substantial enough potential impact to warrant divulgence under Section 1.65 and examination by the Commission and other interested parties.

<sup>11</sup> For the same reasons we believe that the requested misrepresentation issue is unwarranted.



The Primer at Q. & A. 13(b) requires that a random sample of the general public be conducted. Roberts' use of Media's voter registration lists as the basis for its general public survey did not comply with this requirement. There cannot be a random sample of the public in a community if the base from which the sample is taken excludes a substantial portion of the public upon an arbitrary standard, particularly where, as is the case here, the standard relates to political conduct, i.e., whether a person registers to vote. Unlike telephone or city directories,<sup>12</sup> voter registration lists do not necessarily include a large percentage of a community's population. In fact, Media's registration lists contained only 3,371 names as compared to its 6,444 residents (according to the 1970 census). The exclusion of non-registered voters, we believe, is especially disturbing since at least some of those individuals obviously have different political priorities than others and quite conceivably have differing views of the community's problems than those registering. It is of no consequence that Roberts was unable to use the county's telephone directory, for there were other means available from which a random sample could have been made. Nor can this deficiency in Roberts' survey be cured by its assertion that since it was the homes of registered voters that were called, rather than the voters personally, contacts were not limited to the people on its lists. The interviewing process was distorted at the outset, and we have no way of knowing the likelihood of contacting a non-registrant at the home of a registrant.<sup>13</sup> However, in light of the novel question involved, i.e., the adequacy of voter registration lists as a basis for general public surveys, the fact that Roberts' survey complies with the Primer in all but this one easily correctable aspect, and the fact that this proceeding must be remanded on other grounds, the Board will allow Roberts the opportunity to amend its ascertainment showing within a reasonable period of time.

10. *Ascertainment of Greater Media.* On our own motion, the Board will add a limited ascertainment issue with respect to Greater Media. As previously noted, the Primer, supra, Q. & A. 13(b), requires each applicant to conduct a random sample of the general public. It also states that " \* \* \* an applicant's principal obligation is to ascertain the problems of his community of license." (Q. & A. 6.) Although Greater Media has

apparently conducted a random survey by interviewing 50 people taken from a county telephone directory, only one of those interviewed was listed as residing in Media. Thus, on its face, Greater Media's ascertainment effort with respect to its general public survey appears to be deficient.<sup>14</sup> However, since we are raising this question for the first time, Greater Media will be allowed an opportunity to amend its application to correct this deficiency within a reasonable period of time.<sup>15</sup>

11. *ACCORDINGLY, it is ordered, that the petition to reopen the record filed February 14, 1977 by Alexander S. Klein, Jr. IS GRANTED; the motion to enlarge issues filed February 14, 1977 by Alexander S. Klein, Jr. is granted to the extent indicated herein, and is denied in all other respects; and the Memorandum Opinion and Order, FCC 76M-1310, released October 12, 1976, is vacated; and 12. It is further ordered, That the record herein is reopened; and that this proceeding is remanded to the presiding Administrative Law Judge for adduction of evidence on the following added issues and the issuance of such further Initial Decision as may be appropriate:*

(a) To determine whether the general public survey conducted by Greater Media Radio Company complies with the requirements set forth in the Commission's Primer;

(b) To determine whether Greater Media Radio Company has failed to comply with the provisions of § 1.65 of the Commission's rules with respect to keeping the Commission advised of Arnold S. Lerner's financial commitments and, if so, the effect of such noncompliance on the applicant's comparative qualifications.

13. *It is further ordered, That the burdens of proceeding with the introduction of evidence and proof under Issue (a) shall be on Greater Media Radio Company.*

14. *It is further ordered, That Greater Media Radio Company and Roberts Broadcasting Corporation are afforded 30 days from the release date of this opinion to amend their respective general public surveys."*

FEDERAL COMMUNICATIONS  
COMMISSION,

VINCENT J. MULLINS,  
Secretary.

[FR Doc. 77-25115 Filed 8-29-77; 8:45 am]

<sup>12</sup> In its Report adopting the Primer, the Commission specifically stated that a telephone directory was sufficient because of the "pervasiveness of the telephone in this country." 27 FCC 2d at 667, 21 RR 2d at 1525.

<sup>13</sup> Neither can we accept Roberts' assertion that its statistical breakdown of those interviewed reveals a generally random sample, in light of that sample's failure to encompass non-registered voter households. It is not enough to show that various population groups were included where one type of person was arbitrarily excluded.

<sup>14</sup> The Board has held that a survey of the general public outside of the principal community is not required by the Primer. See, e.g., Temporal Broadcasting Co., 53 FCC 2d 643 (Rev. Bd. 1975).

<sup>15</sup> Should the problems elicited by either Greater Media or Roberts in their new showings dictate any changes in their proposed programming, we expect that such changes will be included in their respective amendments.

<sup>16</sup> Of course, the Judge may grant extensions of time upon a proper showing of good cause by either applicant.

[Report No. 872]

## COMMON CARRIER SERVICES INFORMATION

### Applications Accepted for Filing

AUGUST 22, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See § 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and Section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS  
COMMISSION,

VINCENT J. MULLINS,  
Secretary.

### APPLICATIONS ACCEPTED FOR FILING

#### DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21932-CD-P-(4)-77 Dial-A-Page, Inc., (KWU449). Resubmitted, C.P. to change antenna system operating on 35.22 MHz; Additional Control facilities to operate on 72.02 MHz. at Loc. No. 1: 100 Broadway, Oklahoma City; 35.22 MHz at a new site described as Loc. No. 2, to be located at 9301 South Sooner Road, Moore; 35.22 MHz at a new site described as Loc. No. 3: 3555 NW 58th Street, Oklahoma City, Okla.



- 21933-CD-P-(3)-77 James L. Munch (KOP 307), C.P. for additional facilities to operate on 152.06 (Base) and 459.300 MHz. Repeater to be located at Loc. No. 1: South Peak in Highwood Mountain, 8 miles NNE. of Raynesford; 454.300 MHz Control at Loc. No. 2: 814 5th Street, South, Great Falls, Mont.
- 21934-CD-P-77 Souris River Telephone Mutual Aid (KAT930), C.P. for additional to operate on 152.66 MHz at Loc. No. 1: 13.3 Miles South of Minot, N. Dak.
- 21935-CD-P-77 Adams Telephone Cooperative (new), C.P. for a new 1-way station to operate on 152.84 MHz to be located at Telephone Center Office, Golden, Ill.
- 21936-CD-MP-77 Service Unlimited, Inc. (KUS332), C.P. to relocate facilities operating on 43.22 MHz to be located at Wachovia Building, Winston-Salem, N.C.
- 21937-CD-P-77 Messages by Radio, Inc. (KEA200), C.P. to change antenna system operating on 152.03 at Loc. No. 2: 34 Madison Street, Spring Valley, N.Y.
- 21938-CD-P-(2)-77 Telephone and Radio Answering Service, Inc. (KJF896), C.P. for additional facilities to operate on 454.325, 454.350 MHz, to be located 0.75 mile North of Highway 90 on River Road, Berwick, La.
- 21939-CD-MP-(4)-77 Radio Phone Communications, Inc. (KJF888), C.P. to replace transmitter operating on 454.050, 454.100, 454.200 MHz: Near Northwest Intersection of Virginia Rte. No. 190 and Centerville Turnpike, Virginia Beach, Va.
- 21940-CD-TC-(2)-77 Ram Broadcasting of Washington, Inc., Consent to Transfer of Control from Ram Broadcasting of Washington, Inc., Transferor to Paul A. Matschiner, Transferee. Stations: KTR996, Renton, Washington; KUO584, Seattle, Wash.
- 21941-CD-P-77 Jefferson Telephone Company, (KAA691), C.P. to change antenna system, replace transmitter and relocate facilities operating on 35.54 MHz to be located West Central Avenue and North Walnut Street, Jefferson, Iowa.
- 21942-CD-P-77 Radio Call Company of Long Island, Inc. (KRM955), C.P. to relocate facilities operating on 158.70 MHz to be located 300' S. of Midvale Avenue E. Side of Adirondack Drive, Selden, N.Y.
- 21943-CD-P-77 ATS Mobile Telephone, Inc., (new), C.P. for a new 1-way station to operate on 35.22 MHz to be located at 1716 Wayne Street, Bellevue, Neb.
- 21944-CD-P-77 Carolina Telephone and Telegraph Company, (KFL937), C.P. to change antenna system operating on 152.51 MHz located at 501 Broad Street, New Bern, N.C.
- 21945-CD-P-77 Adams Telephone Cooperative, (new), C.P. for a new 2-way station to operate on 152.78 MHz to be located N.E. Corner of State and South Streets, Mendon, Ill.
- 21946-CD-P-77 Adams Telephone Cooperative, (new), C.P. for a new 1-way station to operate on 152.84 MHz to be located at ONE corner of State and South Streets, Mendon, Ill.
- 21947-CD-P-77 Southeast Mobilphone, Inc. (KLF611), C.P. for additional facilities to operate on 152.24 MHz at a new site described as Loc. No. 2 to be located at View Park Drive, Knoxville, Tenn.
- 21948-CD-P-77 New York Telephone Company, (new), C.P. for a new 1-way station to operate on 152.84 MHz to be located on Hillcrest Street, Lake Placid, N.Y.
- 21949-CD-MP-77 Mobilphone Service, Inc. (KJU811), C.P. to change antenna system operating on 72.18 MHz Loc. No. 1 located at 1.3 miles SE. of Intersection of Hwy. No. 523 and county road 792, Oyster Creek, Tex.

- 21951-CD-AL-77 Vincent W. Elliott, partner, d.b.a. Salem Radio Paging with Phil B. Ford and James F. Sproule, Consent to Assignment of License from Vincent W. Elliott, Partner, d.b.a. Salem Radio Paging with Phil B. Ford and James F. Sproule, Assignor to Vincent W. Elliott, Assignee. Station: KLF656, Salem, Oreg.
- 21952-CD-P-77 Page Boy, Inc. (KEA860), C.P. for additional facilities to operate on 35.22 MHz at a new site described as Loc. No. 6 to be located at Existing Tower at Westchester Community College, Valhalla, N.Y.
- 21953-CD-P-77 Christensen Broadcasting Co., Inc. (new), C.P. for a new 1-way station to operate on 35.58 MHz to be located at Humboldt, Iowa.
- 21954-CD-P-77 Christensen Broadcasting Co., Inc. (new), C.P. for a new 2-way station to operate on 152.15 MHz to be located 0.2 mile E. of Humboldt City limits on Hwy. No. 3, Humboldt, Iowa.

## CORRECTION

- 21897-CD-TC-TC-77 South Georgia Telephone Company, Correct File number to read 21897-CD-TC-(4)-77. All other particulars remain the same as reported on PN: No. 871 dated August 15, 1977.
- 21900-CD-AL-(8)-77 Victor E. Duane d.b.a. Central Mobile Radio Phone Service, Correct to read Consent to Assignment of License from Victor E. Duane as Central Mobile Radio Phone Service, Assignor to Central Mobile Radio Phone Service, Inc., Assignee. All other particulars remain the same as reported on PN: No. 871 dated August 15, 1977.
- 21908-CD-TC-(2)-77 Anserphone of Goldsboro, Inc., Correct to read Consent to Assignment of License from Ferbee Land Patterson, Transferor to Hilda S. Patterson of Estate of Ferbee Land Patterson, Deceased, Transferee. All other particulars remain the same as reported on PN No. 871 dated August 15, 1977.
- 21912-CD-P-77 Dorothy Faye Gallimore & Beverly Marin d.b.a. Pampa Communications Center (KLB497) Correct to add 152.15 MHz base facilities at Loc. No. 2: 1/4 of Section 80, Block A-8, Wheeler, Texas. All other particulars remain the same as reported on PN No. 871 dated August 15, 1977.

## RURAL RADIO SERVICE

- 60384-CR-P/ML-77 James D. and Lawrence D. Garvey (KEG48), Mod License for additional facilities to operate on 158.55 459.075 459.325 459.150 MHz to be located at any Temporary-Fixed location within the territory of the grantee.
- 60389-CR-P/ML-77 RCA Alaska Communications, Inc., (WAF828), Mod License for additional to operate 82.4 MHz and change antenna system located at Hoonah (WACS) Alaska.
- 60388-CR-P/ML-77 RCA Alaska Communications, Inc., (WGF35), Mod License for additional facilities to operate on 79.1 MHz and change antenna system located .2 mile SE of Gustavus Airfield, Gustavus, Alaska.

## POINT TO POINT MICROWAVE RADIO SERVICE

- 3376-CF-P-77 RCA Alaska Communications, Inc. (New Res), 23.3 Km West of McGrath, Tatallina AFS, Alaska. Lat. 62°-55'47" N. Long. 156°00'43" W. C.P. for a new station on frequency 2112.4V MHz toward McGrath ES, Alaska on azimuth 86.1°.
- 3377-CF-P-77 Same (New Res), McGrath ES, 1 Mile ESE of McGrath, Alaska. Lat. 62°56'28" N. Long. 155°33'12" W. C.P. for a new station on frequency 2162.4V MHz toward Tatallina, Alaska on azimuth 266.1°.

- 3379-CF-MP-77 Mountain States Telephone and Telegraph Company (WPW76), Lands End, 7 Miles East of Palsade, (Mesa) Colorado. Lat. 39°05'27" N. Long. 108°13'-20" W. Mod. of C.P. (384-CF-P-77), to replace transmitters on frequencies 2115.2H MHz toward Grand Jct. Colorado 2115.2H MHz toward Mesa, Colorado, on azimuths 265.0° and 41.4° respectively.
- 3386-CF-P-77 American Telephone and Telegraph Company (KAA70), 909 High Street, Des Moines, (Polk) Iowa. Lat. 41°-35'17" N. Long. 93°37'46" W. C.P. to add frequency 4190H MHz toward Collins Iowa.
- 3387-CF-P-77 Same (KAA85), 4 Miles ESE of Collins (Story), Iowa. Lat. 41°52'48" N. Long. 93°14'24" W. C.P. to add frequencies 4198H MHz toward Des Moines, Iowa and 4198H MHz toward Gilman, Iowa.
- 3388-CF-P-77 Same (KAA86), 4.4 Miles WNW of Gilman, (Marshall), Iowa. Lat. 41°54'26" N. Long. 92°51'03" W. C.P. to add frequencies 4190H MHz toward Collins, Iowa and 4190H MHz toward Chelsea, Iowa.
- 3389-CF-P-77 Same (KAA87), 2.4 Miles SSW of Chelsea, (Tama), Iowa. Lat. 41°53'-18" N. Long. 92°24'49" W. C.P. to add frequencies 4198H MHz toward Gilman, Iowa and 4198H MHz toward Homestead, Iowa.
- 3390-CF-P-77 Same (KAA65), 2 Miles ENE of Homestead, (Iowa), Iowa. Lat. 41°45'38" N. Long. 91°50'45" W. C.P. to add frequencies 4190H MHz toward Chelsea, Iowa and 4190H MHz toward Morse, Iowa.
- 3391-CF-P-77 Same (KAA64), 3 Miles ENE of Morse, (Johnson), Iowa. Lat. 41°46'26" N. Long. 91°22'23" W. C.P. to add frequencies 4198H MHz toward Homestead, Iowa and 4198H MHz toward Lowden, Iowa.
- 3392-CF-P-77 Same (KAA63), 1 Mile NW of Lowden, (Cedar), Iowa. Lat. 41°53'03" N. Long. 90°58'16" W. C.P. to add frequencies 4190H MHz toward Morse, Iowa and 4190H MHz toward Princeton, Iowa.
- 3393-CF-P-77 Same (KAA62), 3 Miles NW of Princeton, (Scott) Iowa. Lat. 41°42'21" N. Long. 90°23'19" W. C.P. to add frequency 4198H MHz toward Lowden, Iowa.
- 3405-CF-P-77 Wisconsin Telephone Company (KSP44), 45 N. Stevens Street, Rhineland, (Oneida) Wisconsin. Lat. 45°38'19" N. Long. 89°24'41" W. C.P. to add a point of communication on frequency 11,605V MHz toward Harrison, Wisconsin on azimuth 212.5°; replace antennas on frequencies 5945.2H, 6063.8H MHz toward Parrish, Wisconsin.
- 3408-CF-P-77 Bell Telephone Company of Pennsylvania (KGO87), 1119 18th Street Altoona, (Blair) Pennsylvania. Lat. 40°30'-48" N. Long. 78°24'24" W. C.P. to replace transmitters and increase power output on frequencies 10755V 10915V 11075V MHz toward Wopsy Mtn., Pennsylvania via Cath Hill Passive Reflector.
- 3409-CF-P-77 Same (KGP36), Wopsy Mtn., 4 miles north of Altoona, (Blair), Pennsylvania. Lat. 40°34'00" N. Long. 78°26'38" W. C.P. to replace transmitters and increase power output on frequencies 11365V 11525V 11685V MHz toward Altoona, Pennsylvania via Cath. Hill Passive Reflector.
- 3428-CF-P-77 Northwestern Bell Telephone Company (WAN27), 118 First Street, SE, Mason City, (Cerro Cordo), Iowa. Lat. 43°09'05" N. Long. 93°11'54" W. C.P. to increase structure height and move antenna on frequency 5945.2V MHz toward Nora Springs, Iowa.
- 3430-CF-AL-(4)-77 Island Telepage Systems. Application for Consent to Assignment of Radio Station Licenses from Island Telepage Systems, Assignor, to Island Telepage Systems, Inc., Assignee, for stations WBA735, Bellingham, Washington; WBA775, Oak Harbor, Washington; WBA774,



Blyn Mountain, Washington; and WAH585, Oak Harbor, Washington.

3443-CF-P-77 Offshore Telephone Company (WAU231) Block 513B, West Cameron, Gulf of Mexico, Lat. 28°23'53" N, Long. 93°12'38" W. C.P. to add a point of communication on frequency 2179.85H MHz toward Block 487A, West Cameron, Gulf of Mexico on azimuth 22.4°.

3444-CF-P-77 Same (New Res), Block 487, West Cameron, Gulf of Mexico, Lat. 28°30'37" N, Long. 93°13'14" W. C.P. for a new station on frequencies 2129.85H MHz toward Block 513B, West Cameron, Gulf of Mexico on azimuth 202.2° and 2119.45H MHz toward Block 436A, West Cameron, Gulf of Mexico on azimuth 339.2°.

3445-CF-P-77 Same (New Res), Block 436A, West Cameron, Gulf of Mexico, Lat. 28°39'16" N, Long. 93°13'14" W. C.P. for a new station on frequency 2163.45H MHz toward Block 487A, West Cameron, Gulf of Mexico on azimuth 159.2°.

## FEDERAL ELECTION COMMISSION

[Notice 1977-46, AOR 1977-40]

### ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. § 437f(c) and the procedures reflected in Part 112 of the Commission's regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Request 1977-40 has been made public at the Commission. Copies of AOR 1977-40 were made available on August 24, 1977. These copies of the advisory opinion request were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A description of the request recently made public as well as the identification of the requesting party follows hereafter:

AOR 1977-40: May Friends of Newt Steers, the principal campaign committee of Representative Newton I. Steers, Jr., accept contributions to retire a 1976 general election campaign debt from the Maryland Medical Political Action Committee and the American Medical Political Action Committee in an aggregate amount of \$20,000 representing a maximum \$5,000 contribution from each committee for the primary and general election? Requested by Representative Newton I. Steers, Jr., House of Representatives, Washington, D.C.

Dated: August 24, 1977.

THOMAS E. HARRIS,  
Chairman for the  
Federal Election Commission.

[FR Doc. 77-25075 Filed 8-29-77; 8:45 am]

## FEDERAL ENERGY ADMINISTRATION

### COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

#### Intent To Prepare Environmental Impact Statements

AGENCY: Federal Energy Administration.

ACTION: Notice of Intent to prepare Environmental Impact Statements.

SUMMARY: The Federal Energy Administration (FEA) announces it has begun preparation of draft environmental impact statements (EIS's), in accordance with Section 102(2)(C) of the National Environmental Policy Act, for each of the following proposed projects:

(a) 1 site-specific EIS for the proposed Transco synthetic natural gas (SNG) plant in Chester Township, Pennsylvania;

(b) 3 "cluster" EIS's for groups of proposed crude oil storage sites in Texas and Louisiana for the Strategic Petroleum Reserve (SPR); and

(c) 4 site-specific EIS's and 1 "cluster" EIS for certain major fuel burning installations (MFBI's) issued construction orders under the Energy Supply and Environmental Coordination Act (ESECA).

Further information on these projects is provided below.

All interested agencies, organizations, or persons desiring to submit comments or suggestions for consideration in connection with the preparation of these draft EIS's are invited to do so. Upon completion of the draft EIS's their availability will be announced in the FEDERAL REGISTER, at which time public comments will again be solicited.

#### ADDRESS FOR COMMENTS AND CONTACT FOR FURTHER INFORMATION:

Robert J. Stern (Office of Environmental Impact), 12th and Pennsylvania Avenue NW., Room 7119, Washington, D.C. 20461 (202-566-9760).

#### SUPPLEMENTARY INFORMATION:

##### A. TRANSCO SNG PLANT

FEA is considering an allocation of naphtha to the Transco Gas Transmission Company to be used to manufacture SNG at a site in Chester Township, Pennsylvania, located immediately west of Chester City and northeast of Marcus Hook. FEA may either approve, deny, or adjust the requested allocation of approximately 56,000 barrels per day of naphtha feedstock.

The design capacity of the proposed SNG plant is 245 million cubic feet per day. The company intends to operate the plant 350 days per year. At full design

operation, production will be 85.5 billion cubic feet of SNG annually.

The process facilities would occupy an area of 68 acres, and the feedstock and fuel storage facilities would occupy an area of the same size located about 400 yards west of the proposed plant. Feedstock would be delivered to the storage area by pipeline from an unloading facility on the Delaware River at Marcus Hook.

Major alternatives to be considered in the EIS include: other sources of gas; measures to reduce gas consumption; and alternative sites and facility designs.

##### B. SPR STORAGE SITES

FEA is preparing "cluster" EIS's for three groups of proposed storage sites for the SPR program. The proposed sites include nine undeveloped salt domes and five developed domes with expansion capacity. The arrangement of sites into clusters is based on their proposed connection to the major mid-continent crude oil distribution systems via the Texoma, Seaway, and Capline terminals. The location of the proposed sites and their maximum potential storage capacities are listed below:

1. *Texoma group*, comprised of four sites in Texas and Louisiana; West Hackberry site, Cameron Parish, Louisiana, 210 million barrels (MMB); Black Bayou site, Cameron Parish, Louisiana, 150 MMB; Vinton site, Calcasieu Parish, Louisiana, 50 MMB; and Big Hill site, Jefferson County, Texas, 100 MMB.

2. *Seaway group*, comprised of five sites in Texas; Bryan Mound site, Brazoria County, 163 MMB; Nash site, Fort Bend County, 100 MMB; Allen site, Brazoria County, 100 MMB; Damon Mound site, Brazoria County, 100 MMB, and West Columbia site, Brazoria County, 100 MMB.

3. *Capline group*, comprised of five sites in Louisiana; Chocahoula site, LaFourche Parish, 200 MMB; Bayou Chocataw site, Iberville Parish, 150 MMB; Weeks Island site, Iberia Parish, 180 MMB; Iberia site, Iberia Parish, 50 MMB; and Napoleonville site, Assumption Parish, 150 MMB.

##### C. CONSTRUCTION ORDERS FOR MFBI'S

Section 2 of ESECA, as amended, grants FEA authority to require MFBI's in the early planning process to be designed and constructed with coal burning capability.

FEA intends to prepare site-specific EIS's for MFBI's at the four plants listed in Section I below, and a "cluster" EIS to assess the site-specific and cumulative impacts of making effective construction orders for other MFBI's (listed in Section II below) at sites located in the same Air Quality Control Region (AQCR).

Although the proposed Federal action for each of these cases is strictly to require that each facility be constructed with coal-burning capability, FEA intends to analyze the environmental impacts of utilizing the coal capability in



addition to analyzing the impacts of constructing that capability.

Alternatives to the proposed actions, which will be studied for each site, include: no Federal action (including voluntary conversion), conservation, electrification, cogeneration, fuel mix and alternate fuels.

Further information on each of the sites for which issuance of a Notice of Effectiveness of the construction order is proposed is provided below.

#### I. SITE-SPECIFIC EIS

1. Docket No. 1050-1-1.  
Parent company The Boeing Co.  
MFBI Boeing Vertol Co.  
Number of units 1.  
MFBI location Ridley Township, Pa. (existing facility).  
Industrial category 045 (nonattainment, aircraft, SO<sub>2</sub> and TSP).  
AQCR
2. Docket No. 6650-5-1, 6650-5-2.  
Parent company Shell Oil Co.  
MFBI Mobile chemical plant.  
Number of plants 2.  
MFBI location Mobile, Ala. (existing facility).  
Industrial category Chemicals.  
AQCR 005 (nonattainment, TSP).
3. Docket No. 3300-1-1.  
Parent company Goodyear Tire and Rubber Co.  
MFBI Gadsden plant.  
Number of units 1.  
MFBI location Gadsden, Ala. (existing facility).  
Industrial category Tires.  
AQCR 003.
4. Docket Nos. 3090-2-1, 3090-2-2, 3090-2-3.  
Parent company General Motors Corp.  
MFBI Proposed auto assembly plant.  
Number of units 3.  
MFBI location Oklahoma City, Okla. (new facility).  
Industrial category Motor vehicle bodies.  
AQCR 184 (nonattainment, TSP).

#### II. "CLUSTER" EIS FOR 4 SITES IN AQCR No. 106

1. Docket No. 7230-1-1.  
Parent company Texaco, Inc./Jefferson Chemical Co.  
MFBI Neches plant.  
Number of units 1.  
MFBI location Port Neches Tex. (existing facility).  
Industrial category Chemicals.
2. Docket No. 8340-1-3, 8340-1-4, 8340-1-5.  
Parent company Exxon Chemical Co.  
MFBI Baton Rouge chemical plant.  
Number of units 3.  
MFBI location Baton Rouge, La. (existing facility).  
Industrial category Chemicals, petroleum refining.

3. Docket No. 6650-4-1.  
Parent company Shell Oil Co.  
MFBI Geismar chemical plant.  
Number of units 1.  
MFBI location Geismar, La. (existing facility).  
Industrial category Chemicals.
4. Docket No. 6650-6-1, 6650-6-2.  
Parent company Shell Oil Co.  
MFBI Norco manufacturing complex.  
Number of units 3.  
MFBI location Norco, La.  
Industrial category Chemicals, petroleum refining.

Issued in Washington, D.C., August 25, 1977.

ERIC J. FUGI,  
Acting General Counsel,  
Federal Energy Administration.  
[FR Doc.77-25108 Filed 8-29-77; 8:45 am]

### FEDERAL MARITIME COMMISSION

#### COMPANHIA DE NAVEGACAO, LLOYD BRASILEIRO

##### Security for the Protection of the Public, Indemnification of Passengers for Non-performance of Transportation, Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Companhia de Navegacao, Lloyd Brasileiro, 17 Battery Place, New York, N.Y. 10004.

Dated: August 25, 1977.

JOSEPH C. POLKING,  
Acting Secretary.

[FR Doc.77-25237 Filed 8-29-77; 8:45 am]

#### COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO

##### Security for the Protection of the Public, Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages, Issuance of Certificates (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Companhia de Navegacao, Lloyd Brasileiro, 17 Battery Place, New York, N.Y. 10004.

Dated: August 25, 1977.

JOSEPH C. POLKING,  
Acting Secretary.

[FR Doc.77-25238 Filed 8-29-77; 8:45 am]

### NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE

#### Modification of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before September 19, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the Commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

#### Notice of Agreement Filed by:

Howard A. Levy, Esq., Suite 727, 17 Battery Place, New York, N.Y. 10004.

Agreement No. 9214-23, among the members of the above-named conference, adds traffic from inland U.S. points via North Atlantic ports to the current scope of the agreement. The conference at present has such inland authority only with respect to interior points in Europe served via conference ports. The modification also provides that cargo transhipped at conference ports and moving on a through bill of lading from/to a port outside the scope of the agreement is not covered by the agreement.

By Order of the Federal Maritime Commission.

Dated: August 25, 1977.

JOSEPH C. POLKING,  
Acting Secretary.

[FR Doc.77-25239 Filed 8-29-77; 8:45 am]

### FEDERAL RESERVE SYSTEM

#### ALLIED BANCSHARES, INC.

##### Acquisition of Bank

Allied Bancshares, Inc., Houston, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of The First National Bank of Newton,



Newton, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 21, 1977.

Board of Governors of the Federal Reserve System, August 24, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc.77-25062 Filed 8-29-77;8:45 am]

#### ALLIED BANCSHARES, INC.

##### Acquisition of Bank

Allied Bancshares, Inc., Houston, Tex., has applied for the Board's approval under section 3(a) (3) of the Bank Holding Company Act (12 U.S.C. 1842(a) (3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Addicks Bank, Addicks, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 21, 1977.

Board of Governors of the Federal Reserve System, August 24, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc.77-25063 Filed 8-29-77;8:45 am]

#### ALLIED BANCSHARES, INC.

##### Acquisition of Bank

Allied Bancshares, Inc., Houston, Tex., has applied for the Board's approval under section 3(a) (3) of the Bank Holding Company Act (12 U.S.C. 1842(a) (3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of American National Bank, Humble, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 21, 1977.

Board of Governors of the Federal Reserve System, August 24, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc.77-25064 Filed 8-29-77;8:45 am]

#### ALLIED BANCSHARES, INC.

##### Acquisition of Bank

Allied Bancshares, Inc., Houston, Tex., has applied for the Board's approval under section 3(a) (3) of the Bank Holding Company Act (12 U.S.C. 1842(a) (3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Gulf Coast State Bank, Winnie, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 21, 1977.

Board of Governors of the Federal Reserve System, August 24, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc.77-25065 Filed 8-29-77;8:45 am]

#### ALLIED BANCSHARES, INC.

##### Acquisition of Bank

Allied Bancshares, Inc., Houston, Tex., has applied for the Board's approval under section 3(a) (3) of the Bank Holding Company Act (12 U.S.C. 1842(a) (3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Hillcroft Bank, Houston, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 21, 1977.

Board of Governors of the Federal Reserve System, August 24, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc.77-25066 Filed 8-29-77;8:45 am]

#### FIRST GUTHRIE BANCSHARES, INC.

##### Order Approving Formation of Bank Holding Company and Engaging in Insurance Agency Activities

First Guthrie BancShares, Inc., Guthrie, Okla., has applied for the Board's approval under section 3(a) (1) of the Bank Holding Company Act (12 U.S.C. 1842(a) (1)) of formation of a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Guthrie, Guthrie, Okla. ("Bank").

Applicant has also applied for the Board's approval, pursuant to section 4(c) (8) of the 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)), to

acquire 100 percent of the beneficial interest of a proposed business trust, First Guthrie Business Trust, Guthrie, Okla., which will in turn own 100 percent of First Guthrie Insurance Agency, Guthrie, Okla. ("Insurance"), a company that will engage in the activities of offering credit life insurance and credit accident and health insurance in connection with extensions of credit by Bank. Such activities have been determined by the Board to be closely related to banking (1 CFR 225.4(a) (9)).

Notice of the applications, affording opportunity for interested persons to submit comments and views on the applications, has been given in accordance with sections 3 and 4 of the Act (42 FR 31838). The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act and the considerations specified in section 4(c) (8) of the Act.

Applicant is a non-operating corporation organized for the purpose of becoming a bank holding company by acquiring Bank, which holds deposits of \$24.7 million. Upon acquisition of Bank, Applicant would control the 99th largest commercial banking organization in the State of Oklahoma and approximately 0.2 percent of total deposits in commercial banks in that State.

Bank is the largest of seven banks in the relevant banking market, which is approximated by Logan County, and holds approximately 43.5 percent of the total commercial bank deposits in that market. Since Applicant has no other banking subsidiaries and Applicant's principals do not control any other banks, consummation of the proposal would not have any adverse effects upon either existing or potential competition nor would it increase the concentration of banking resources in any relevant area. Thus, the Board concludes that the competitive effects of the proposal are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, which are dependent upon those of Bank and Insurance, appear satisfactory and are regarded as being consistent with approval of the application to become a bank holding company. The debt to be incurred by Applicant in connection with this proposal appears to be serviceable without having adverse effects on the financial condition of either Bank or Insurance. Therefore, considerations relating to banking factors are regarded as being consistent with approval. While no major changes are contemplated in Bank's services, considerations relating to convenience and needs of the community to be served are also consistent with approval. Accordingly, it is the Board's judgment that Applicant's proposal to form a bank holding company would be consistent with the public interest and that the application should be approved.

<sup>1</sup> All banking data are as of December 31, 1976.



In connection with its application to become a bank holding company, Applicant has also applied for approval to acquire 100 percent of the beneficial interest in First Guthrie Business Trust, which in turn would own 100 percent of the voting shares of Insurance. Insurance would engage de novo in the sale of credit life and credit accident and health insurance in connection with the extensions of credit by Bank. Under Oklahoma State law, financial institutions may not act as agent for the sale of credit-related insurance, nor may an insurance agency pass its income on to any corporation not licensed as an agent. The Oklahoma Attorney General has ruled, however, that the prohibition of Oklahoma insurance statutes do not apply to a business trust. Approval of the application would provide a convenient source of credit-related insurance, and the Board views this as being in the public interest. It does not appear that Applicant's engagement in these activities would have any significant adverse effects on competition. Furthermore, there is no evidence in the record indicating that consummation of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interests, unsound banking practices or other adverse effects on the public interest.

Based on the foregoing and other considerations reflected in the record, the Board has determined that the considerations affecting the competitive factors under Section 3(c) of the Act and the balance of the public interest factors the Board must consider under Section 4(c)(8) of the Act both favor approval of Applicant's proposals.

Accordingly, the applications are approved for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order. The acquisition of Bank and the commencement of the above-described insurance agency activities shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City pursuant to delegated authority. The approval of Applicant's credit-related insurance activities is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require reports by, and make examinations of, holding companies and their subsidiaries and to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder or to prevent evasion thereof.

By order of the Board of Governors,<sup>2</sup>  
effective August 23, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc. 77-25070 Filed 8-29-77; 8:45 am]

#### KREMMLING HOLDING CO.

##### Formation of Bank Holding Company

Kremmling Holding Company, Kremmling, Colo., 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 through acquisition of 100 percent (less directors' qualifying shares) of the voting shares of Bank of Kremmling, Kremmling, Colo. 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)).

Kremmling Holding Company, Kremmling, Colo., has also 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 engage de novo in the sale of credit life and credit accident and health insurance directly related to extensions of credit by Bank of Kremmling. Notice of the application was published on June 16, 1977, in Middle Park Times, a newspaper circulated in Grand County, Colo. 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 at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and re-

<sup>2</sup> Voting for this action: Vice Chairman Gardner and Governors Wallach, Jackson, Partee and Lilly. Absent and not voting: Chairman Burns and Governor Coldwell.

ceived by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 20, 1977.

Board of Governors of the Federal Reserve System, August 23, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc. 77-25071 Filed 8-29-77; 8:45 am]

#### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health  
Administration

##### ADVISORY COMMITTEES

##### Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of September 1977:

##### DRUG ABUSE DEMONSTRATION REVIEW COMMITTEE

TIME: 9:30 a.m., September 19-21.

PLACE: Southwest Conference Room, 8th Floor, One Central Plaza, 11300 Rockville Pike, Rockville, Md. 20852. Open—September 19, 9:30-10:30 a.m. Closed—Otherwise.

CONTACT:—Thomas C. Voskuhl, Room 630, Rockwall Building, 11400 Rockville Pike, Rockville, Md. 20852 (301-443-4100).

PURPOSE: The Drug Abuse Demonstration Review Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse relating to demonstration activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

AGENDA: From 9:30 a.m. to 10:30 a.m., September 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix D).

Substantive program information may be obtained from the contact person listed above. The NIDA Information Officer who will furnish summaries of the meeting and a roster of the Committee membership on request is Mr. Kenneth Howard, Director, Office of Communica-



tions and Public Affairs, 11400 Rockville Pike, Room 110, Rockville, Md. 20852 (301-443-6500).

Dated: August 23, 1977.

CAROLYN T. EVANS,  
Committee Management Officer,  
Alcohol, Drug Abuse, and  
Mental Health Administration.

[FR Doc.77-24871 Filed 8-29-77; 8:45 am]

#### Food and Drug Administration

[Docket No. 77G-0199]

#### ICI UNITED STATES, INC.

#### Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: ICI United States, Inc., has filed a petition (GRASP 7G0087) proposing affirmation that the glucose isomerase enzyme derived from immobilized *Arthrobacter globiformis* used in the isomerization of dextrose-containing nutritive sweeteners and the resulting high-fructose corn syrup are generally recognized as safe (GRAS).

#### FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-472-4750).

**SUPPLEMENTARY INFORMATION:** Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 (21 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35, formerly § 121.40, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), notice is given that a petition (GRASP 7G0087) has been filed by ICI United States, Inc., Concord Pike and New Murphy Rd., Wilmington, DE 19897, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that the glucose isomerase enzyme derived from immobilized *Arthrobacter globiformis* used in the isomerization of dextrose-containing nutritive sweeteners and the resulting high-fructose corn syrup are generally recognized as safe (GRAS).

Any petition that meets the format requirements outlined in § 170.35 is filed by the Food and Drug Administration. There is no pre-filing review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before October 31, 1977, review the petition and/or file comments (four copies, identified with the Hearing Clerk docket

number found in brackets in the heading of this document) with the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1977.

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

[FR Doc.77-24872 Filed 8-29-77; 8:45 am]

#### PANEL ON REVIEW OF TOPICAL ANALGESICS INCLUDING ANTIRHEUMATIC, OTIC, BURN, SUNBURN TREATMENT AND PREVENTION DRUGS

#### Nominations for Nonvoting Representative of Consumer Interests

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document invites nominations for a nonvoting consumer representative to serve on the Panel on Review of Topical Analgesics Including Antirheumatic, Otic, Burn, Sunburn Treatment and Prevention Drugs of the Bureau of Drugs. Nominations will be accepted for the vacancy that currently exists.

DATE: Nominations by September 29, 1977.

ADDRESS: Written submissions to the Director, Office of Consumer Programs (HFG-1), Office of Professional and Consumer Programs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

#### FOR FURTHER INFORMATION CONTACT:

Audrey Wood, Office of Professional and Consumer Programs (HFG-1), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857 (301-443-1547).

**SUPPLEMENTARY INFORMATION:** The function of this committee is to review and evaluate available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of currently marketed nonprescription drug products for human use that contain topical analgesics, including antirheumatic, otic, burn, and sunburn treatment and prevention drugs; to review and evaluate the adequacy of the drugs' labeling; to advise the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these over-the-counter (OTC) drug products are generally recognized as safe and effective and not misbranded; and to serve as a forum for the exchange of views regarding the prescription or nonprescription status of

these various active ingredients and combinations thereof.

The final regulations providing for the OTC drug review under § 330.10 (21 CFR 330.10) include, under the procedure for establishing OTC drug monographs, a provision that advisory review panels may include persons chosen from lists submitted by organizations representing professional, consumer, and industry interests.

The nominations for and selection of the nonvoting member to represent consumer interests on the review panel in this notice shall be made pursuant to § 14.84 (21 CFR 14.84).

Any person interested may nominate one or more qualified persons as a nonvoting member for this committee. Although nominations from individuals will be accepted, individuals are encouraged to submit their nominations through consumer organizations as defined in § 14.84(c)(3).

Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest. A complete curriculum vitae of each nominee shall be included.

After the time for receipt of nominations has expired, the curriculum vitae for each nominee will be sent to each of the consumer organizations listed by the Director, Office of Consumer Programs, pursuant to § 14.84(c)(3), together with a ballot that must be filled out and returned to the Office of Professional and Consumer Programs, at the address given above, within 30 days.

The nominee receiving the most votes shall be selected as the nonvoting member. In the event of a tie, the Commissioner shall select the nonvoting member by lot from among those tied with the most votes.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and Part 14 relating to advisory committees.

Dated: August 23, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate Commissioner,  
for Compliance.

[FR Doc.77-25050 Filed 8-29-77; 8:45 am]

#### ARTIFICIAL KIDNEY-CHRONIC UREMIA ADVISORY COMMITTEE Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Artificial Kidney-Chronic Uremia Advisory Committee, National Institute of Arthritis, Metabolism, and Digestive Diseases, October 11-12, 1977. The meeting will be held in Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 8:45 a.m. to 9:30 p.m. each day to discuss administrative reports. Attendance by the public will be limited to space available. In accordance with the provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6), the meeting



will be closed to the public from 9:30 a.m. to closing each day for review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals.

Messrs. James N. Fordham or Leo E. Treacy, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Maryland 20014, (301) 496-3583, will provide summaries of the meeting and rosters of the committee members.

(Catalog of Federal Domestic Assistance Program No. 13.894, National Institutes of Health.)

Dated: August 18, 1977.

SUZANNE L. FREMEAUX,  
Committee Management Officer,  
National Institutes of Health.

[FR Doc.77-25097 Filed 8-29-77; 8:45 am]

#### NATIONAL ADVISORY ALLERGY AND INFECTIOUS DISEASES COUNCIL

##### Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, October 12, 13, and 14, 1977, in Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on October 12 from 1:30 p.m. until recess, and on October 13 from 9:00 a.m. until recess, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on October 12 from 9 a.m. until 1:30 p.m., and on October 14 from 9 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Md., telephone (301) 496-5717, will provide summaries of the meetings and rosters of the Council members.

Dr. William I. Gay, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301) 496-7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, 13.856, 13.857, and 13.858, National Institutes of Health.)

Dated: August 18, 1977.

SUZANNE L. FREMEAUX,  
Committee Management Officer,  
National Institutes of Health.

[FR Doc.77-25098 Filed 8-29-77; 8:45 am]

#### NATIONAL ADVISORY COUNCIL ON AGING

##### Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, Na- from 9 a.m. to 2 p.m. on October 12, 13, and 14, 1977, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. to 2 p.m. on October 12 and from 9:00 a.m. to adjournment on October 13 and 14 for introductory remarks, status reports, and presentations by NIH Institute Directors. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 12 from 2:00 p.m. to adjournment that day for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Suzanna Porter, Council Secretary, National Institute on Aging, Building 31, Room 5C-07, National Institutes of Health, Bethesda, Md., Area Code 301, 496-5345, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes of Health.)

Dated August 18, 1977.

SUZANNE L. FREMEAUX,  
Committee Management Officer,  
National Institutes of Health.

[FR Doc.77-25099 Filed 8-29-77; 8:45 am]

#### NATIONAL ARTHRITIS ADVISORY BOARD

##### Meeting Time Change

Notice is hereby given of a change in the meeting time of the National Arthritis Advisory Board, National Institute of Arthritis, Metabolism, and Digestive Diseases, which was published in the FEDERAL REGISTER on August 9, 1977, 42 FR 40255.

The Board was to have convened at 9 a.m., September 7, 1977, but has been changed to convene at 8 p.m., September 7 to midnight, at the Key Bridge Marriott Hotel, Rosslyn, Virginia.

The entire meeting is open to the public and attendance is limited to space available.

Dated: August 22, 1977.

SUZANNE L. FREMEAUX,  
Committee Management Officer,  
National Institutes of Health.

[FR Doc.77-25094 Filed 8-29-77; 8:45 am]

#### NATIONAL CANCER INSTITUTE

##### Open Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute. These meetings will be entirely open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014 (301-496-5708) will furnish summaries of the meetings and rosters of committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

##### PRESIDENT'S CANCER PANEL

Date and Time: October 11, 1977; 9:30 a.m.—adjournment.

Place: Building 31C, Conference Room 7, National Institutes of Health.

Type of meeting: Open for the entire meeting.

Agenda: To hear reports of the Chairman, President's Cancer Panel and the Director, National Cancer Program, NCI.

Executive Secretary: Dr. Richard A. Tjalma, Building 31A, Room 11A46, National Institutes of Health. Phone: 301-496-5854.

##### SUBCOMMITTEE ON PREVENTION OF THE CANCER CONTROL AND REHABILITATION ADVISORY COMMITTEE

Date and Time: October 11, 1977; 9 a.m.—adjournment.

Place: Building 31C, Conference Room 10, National Institutes of Health.

Type of Meeting: Open for the entire meeting.

Agenda: To consider those interventions which staff might employ to lower the incidence of cancer through prevention.

Executive Secretary: Dr. Veronica L. Conley, Blair Building, Room 7A07, National Institutes of Health. Phone: 301-427-7941.

##### CANCER CONTROL AND REHABILITATION ADVISORY COMMITTEE

Date and Time: October 12, 1977; 9 a.m.—adjournment.

Place: Building 31C, Conference Room 7, National Institutes of Health.

Type of meeting: Open for the entire meeting.

Agenda: To discuss current and projected programs of the Division of Cancer Control and Rehabilitation.

Executive Secretary: Dr. Veronica L. Conley, Blair Building, Room 7A07, National Institutes of Health. Phone: 301-427-7941.



**PLENARY SESSION OF THE CLEARINGHOUSE  
ON ENVIRONMENTAL CARCINOGENS**

Date and time: October 31, 1977; 8:30 a.m.—  
adjournment.

Place: Building 31C, Conference Room 6,  
National Institutes of Health.

Type of meeting: Open for the entire meet-  
ing.

Agenda: To discuss the activities of the  
Clearinghouse and review the bioassay  
program.

Executive Secretary: Dr. James M. Sontag,  
Building 31A, Room 3A16, National Insti-  
tutes of Health, Phone: 301-496-5108.

Dated: August 22, 1977.

SUZANNE L. FREMEAUX,  
Committee Management Officer,  
National Institutes of Health.

[FR Doc. 77-25006 Filed 8-29-77; 8:45 am]

**RESEARCH MANPOWER REVIEW  
COMMITTEE**

**Meeting**

Pursuant to Public Law 92-463, notice  
is hereby given of the meeting of the Re-  
search Manpower Review Committee,  
National Heart, Lung, and Blood Insti-  
tute, October 6-7, 1977, Conference Room  
5A, Building 31, National Institutes of  
Health, Bethesda, Md.

This meeting will be open to the public  
on October 6, 1977, from 8:30 a.m. to ap-  
proximately 9:30 a.m. to discuss admin-  
istrative details and to hear reports con-  
cerning the current status of the Na-  
tional Heart, Lung, and Blood Institute.  
Attendance by the public will be limited to  
space available.

In accordance with the provisions set  
forth in Section 552b(c) (6), Title 5 U.S.  
Code and Section 10(d) of Pub. L. 92-463,  
the meeting will be closed to the public  
on October 6 and 7, 1977, from 9:30 a.m.  
until adjournment on both days, for the  
review, discussion and evaluation of in-  
dividual grant applications. These appli-  
cations and the discussions could reveal  
personal information concerning indi-  
viduals associated with the applications.

Mr. York E. Onnen, Chief, Public In-  
quiries and Reports Branch, NHLBI,  
NIH, Room 5A03, Building 31, Bethesda,  
Md. 20014, phone 301-496-4236, will pro-  
vide summaries of the meeting and a  
roster of the committee members.

Dr. Charles L. Turbyfill, Executive  
Secretary, NHLBI, NIH, Room 553,  
Westwood Building, Bethesda, Md. 20014,  
phone 301-496-7351 will furnish sub-  
stantive program information.

(Catalog of Federal Domestic Assistance Pro-  
gram No. 13.838, National Institutes of  
Health.)

Dated August 19, 1977.

SUZANNE L. FREMEAUX,  
Committee Management Officer,  
National Institutes of Health.

[FR Doc. 77-25005 Filed 8-29-77; 8:45 am]

**CONSENSUS COMMITTEE FOR BREAST  
CANCER SCREENING**

**Amended Notice of Meeting**

Notice is hereby given of a change in  
the meeting place of the NIH Consensus

Committee for Breast Cancer Screening  
(Temporary), National Institutes of  
Health, September 14-16, 1977, published  
in the FEDERAL REGISTER on August 12,  
(42 FR 40952). This meeting was to have  
been held in Wilson Hall, Building 1,  
NIH, but has been changed to Masur  
Auditorium, Clinical Center (Building  
10), NIH. The meeting will be open to  
the public each day from 8:30 a.m. to  
6 p.m., subject to available space.

Dated: August 25, 1977.

SUZANNE L. FREMEAUX,  
Committee Management Officer,  
National Institutes of Health.

[FR Doc. 77-25294 Filed 8-29-77; 8:45 am]

**Office of Education**

**ADVISORY COUNCIL ON FINANCIAL  
AID TO STUDENTS**

**Public Meeting**

Notice is hereby given, pursuant to  
Section 10(a) (2) of the Federal Advisory  
Committee Act (Pub. L. 92-463), that the  
next meeting of the Advisory Council  
on Financial Aid to Students will be held  
on September 28 and 29, 1977, from 9  
a.m. to 5 p.m. at the Sheraton-North  
Shore Inn, Northbrook, Ill. Notice is also  
given that the Subcommittee on Student  
Aid (Grants and Work-Study) of the  
Advisory Council on Financial Aid to  
Students will hold its next meeting on  
September 26, 1977, from 1 p.m. to 5:30  
p.m. and on September 27, 1977, from 9  
a.m. to 5 p.m. at the same location.

The Advisory Council on Financial Aid  
to Students is established under Section  
499(a) of the Higher Education Act of  
1965, as amended (20 U.S.C. 1089). The  
Committee shall advise the Commis-  
sioner on matters of general policy aris-  
ing in the administration by the Com-  
missioner of programs relating to finan-  
cial assistance to students and on the  
evaluation of the effectiveness of these  
programs.

All meetings shall be open to the pub-  
lic. The agenda of the Council meeting  
on September 27 and 28 includes:

1. Report of Subcommittee;
2. Election of Vice Chairperson; and
3. Discussion of papers prepared by Coun-  
cil members on policy issues in Federal stu-  
dent aid programs and in management of aid  
programs by U.S. Office of Education.

The agenda of the Subcommittee  
meeting on September 26 and 27 in-  
cludes:

1. Report on Bureau of Census and U.S.  
Department of Labor data regarding dis-  
posable family income;
2. Report on determination of student fi-  
nancial eligibility for Federal aid by means  
other than currently utilized; and
3. Different legislative approach to entitle-  
ment concepts.

Records shall be kept of all Committee  
Proceedings and shall be available for  
public inspection at the Council's Office  
located in Room 3661, Regional Office  
Building No. 3, 7th and D Streets SW.,  
Washington, D.C. 20202.

Signed in Washington, D.C. on August  
25, 1977.

WARREN T. TROUTMAN,  
OE Delegate.

[FR Doc. 77-25114 Filed 8-29-77; 8:45 am]

**GUIDANCE AND COUNSELING**

**Closing Date for Receipt of Applications for  
Fiscal Year 1977**

**Correction**

In FR Doc. 77-23549, appearing at  
page 41326, in the issue for Tuesday,  
August 16, 1977, in the first column on  
page 41327, the entry in the table for the  
State of Arizona should read:

Arizona ..... 30,547

**Office of Human Development Services**

**FEDERAL ALLOTMENT TO STATES FOR  
SOCIAL SERVICES EXPENDITURES  
PURSUANT TO TITLE XX OF THE SO-  
CIAL SECURITY ACT**

**Promulgation for Fiscal Year 1979**

Promulgation is made of the Federal  
allotment for Fiscal Year 1979 for pur-  
poses of grants to States under Title XX  
of the Social Security Act pursuant to  
Section 2002(a) (2) of the Act which  
provides that the Federal allotment shall  
be determined and promulgated in ac-  
cordance with said section.

For Fiscal Year 1979, the allotment  
limits are based on the Bureau of the  
Census population statistics contained  
in its publication, "Current Population  
Reports" (Series P-25, No. 646, Febru-  
ary 1977) which is the most recent sat-  
isfactory data available from the De-  
partment of Commerce at this time as  
to the population of each State and of  
all States.

It is hereby promulgated, for purposes  
of grants to States for social services un-  
der title XX, that the Federal allotment  
to each of the 50 States and the District  
of Columbia for the Fiscal Year ending  
September 30, 1979, as determined pur-  
suant to the Act and on the basis of said  
population data, shall be as set forth  
below:

State:	Federal allotment
Alabama .....	\$ 42,683,000
Alaska .....	4,450,000
Arizona .....	26,437,000
Arkansas .....	24,562,000
California .....	250,630,000
Colorado .....	30,083,000
Connecticut .....	35,302,000
Delaware .....	6,779,000
District of Columbia .....	8,176,000
Florida .....	98,074,000
Georgia .....	57,883,000
Hawaii .....	10,330,000
Idaho .....	9,679,000
Illinois .....	130,778,000
Indiana .....	61,750,000
Iowa .....	33,425,000
Kansas .....	26,903,000
Kentucky .....	39,924,000
Louisiana .....	44,734,000
Maine .....	12,462,000
Maryland .....	48,263,000
Massachusetts .....	67,664,000
Michigan .....	106,030,000



State:	Federal allotment
Minnesota	46,178,000
Mississippi	27,416,000
Missouri	55,646,000
Montana	8,770,000
Nebraska	18,087,000
Nevada	7,104,000
New Hampshire	9,573,000
New Jersey	85,439,000
New Mexico	13,603,000
New York	210,613,000
North Carolina	63,694,000
North Dakota	7,490,000
Ohio	124,500,000
Oklahoma	32,214,000
Oregon	27,149,000
Pennsylvania	138,149,000
Rhode Island	10,796,000
South Carolina	33,170,000
South Dakota	7,989,000
Tennessee	49,079,000
Texas	145,428,000
Utah	14,302,000
Vermont	5,544,000
Virginia	58,605,000
Washington	42,067,000
West Virginia	21,208,000
Wisconsin	53,679,000
Wyoming	4,542,000
Total	\$2,500,000,000

Dated: August 28, 1977.

MICHIO SUZUKI,  
Acting Commissioner,  
Administration for Public Services.

Approved: August 24, 1977.

ARABELLA MARTINEZ,  
Assistant Secretary for  
Human Development Services.

[FR Doc. 77-25158 Filed 8-29-77; 8:45 am]

#### Public Health Service

#### CENTER FOR DISEASE CONTROL, COAL MINE HEALTH RESEARCH ADVISORY COMMITTEE

##### Meeting

In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92-463), the Center for Disease Control announces the following National Institute for Occupational Safety and Health Committee meeting:

NAME: Coal Mine Health Research Advisory Committee.

DATE: September 30, 1977.

PLACE: WVU Conference Room, Holiday Inn, 1400 Saratoga Avenue, Morgantown, W. Va. 26505.

TIME: 9 a.m.

TYPE OF MEETING: Open: 9 a.m. to 2:30 p.m. on September 30. Closed: Remainder of meeting.

##### CONTACT PERSON:

Marilyn K. Hutchison, M.D., Executive Secretary, Park Building, Room 3-14, NIOSH, 5600 Fishers Lane, Rockville, Md. 20857 Phone: 301-443-6377.

PURPOSE: The Committee is charged with advising the Secretary, Department of Health, Education, and Welfare, on matters involving or relating to coal mine health research, including grants and contracts for such research.

AGENDA: Agenda items for the open portion of the meeting will include announcements, consideration of minutes of previous meeting, administrative and staff reports, review of the National Institute for Occupational Safety and Health (NIOSH) studies in coal and diesel research, status of new legislation affecting coal workers, and health implications of coal as the major energy source. Beginning at 2:45, the Committee will be performing the final review of coal research grant applications for Federal assistance, and this portion of the meeting will not be open to the public in accordance with the provisions set forth in Section 552b(c) (6), Title 5, U.S. Code, and the Determination by the Director, Center for Disease Control, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: August 19, 1977.

WILLIAM H. FORGE,  
Director, Center for Disease Control.

[FR Doc. 77-24870 Filed 8-29-77; 8:45 am]

#### Social Security Administration DIVISION OF SENSITIVE INQUIRIES, ET AL.

#### Redelegations of Authority to Make Various Findings of Fact, Decisions and Determinations on Cases Referred

Under titles II and XVI of the Social Security Act, as amended (the Act), the Secretary of Health, Education, and Welfare (the Secretary) may make various findings of fact, decisions and determinations affecting the rights of individuals to benefits under these titles of the Act. The Secretary is vested with similar authority to make findings of fact, decisions and determinations under Part B of title IV and related provisions of the Federal Coal Mine Health and Safety Act of 1969, as amended (the "Black Lung" Act). The Secretary has delegated his authority to perform the functions specified above to the Commissioner of Social Security (the Com-

missioner), with authority to redelegate (33 FR 5836-37, dated April 18, 1968 and 35 FR 7033-34, dated May 2, 1970). As appropriate, the Commissioner previously redelegated this authority to various positions in the Social Security Administration.

I. Notice is hereby given that the Commissioner has additionally redelegated, to the positions of Social Insurance Claims Examiner (Disability) and Social Insurance Claims Examiner (Retirement) located in the Division of Sensitive Inquiries, Office of the Assistant Bureau Director, Disability Operations, Bureau of Disability Insurance, Office of Program Operations, Social Security Administration, and to all positions in the direct line of supervision above these positions, the following authorities for exercise with respect to cases referred to the Division of Sensitive Inquiries for necessary action:

A. Pursuant to section 205(b) of the Social Security Act, as amended (the Act), authority to make findings of fact and decisions which constitute initial determinations, as defined in § 404.905 of Social Security Regulations No. 4. This excludes the following determinations:

1. Entitlement to hospital insurance benefits and supplementary medical insurance benefits;
2. Termination of entitlement to hospital insurance benefits and supplementary medical insurance benefits;
3. Existence or absence of disability, or periods of disability; and
4. Waiver of adjustment or recovery of overpayments of: monthly benefits; a lump sum; hospital insurance benefits; or supplementary medical insurance benefits;

B. Pursuant to section 205(b) of the Act, authority to make determinations which do not constitute initial determinations, as defined in § 404.906 of Social Security Regulations No. 4. This excludes the following determinations:

1. Approval or regulation of the amount of fee that may be charged or received by a representative for services before the Social Security Administration;

2. Disqualification or suspension of an individual from acting as a representative in a proceeding before the Social Security Administration; and

3. Determination, under the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953), whether or not to compromise, or to suspend or terminate collection of, a claim for overpayment under title II of the Social Security Act, as amended, including the compromise amount and the time and manner of payment;

C. Pursuant to sections 1602, 1611, 1612, 1613, 1614, 1615, 1616, 1631 and 1633 of the Act, authority to make findings of fact and decisions affecting the eligibility of individuals under the Supplemental Security Income (SSI) program and the amount of SSI benefits;

d. Pursuant to section 1631(c) of the Act, authority to review initial determinations and render reconsideration determinations under the SSI program;



E. Pursuant to sections 402, 312 and 413 of the "Black Lung" Act, authority to make findings of fact and decisions concerning entitlement and continuing eligibility;

F. Pursuant to section 413(b) of the "Black Lung" Act, authority to make determinations concerning a claimant's reasonable medical expenses;

G. Pursuant to section 413(b) of the "Black Lung" Act, authority to make determinations of disability;

H. Pursuant to section 413(b) of the "Black Lung" Act, authority to review State disability determinations; and

I. Authority to make findings required by other government agencies for determining the rights of individuals to benefits.

II. Notice is hereby further given that the Commissioner has also redelegated, to the position of Social Insurance Claims Examiner (Disability) located in the Division of Sensitive Inquiries, Office of the Assistant Bureau Director, Disability Operations, Bureau of Disability Insurance, Office of Program Operations, Social Security Administration, and to all positions in the direct line of supervision above this position, the following authorities for exercise with respect to cases referred to the Division of Sensitive Inquiries for necessary action:

A. Pursuant to section 221(g) of the Act, authority to make-Federal determinations of disability;

B. Pursuant to section 221(c) of the Act, authority to review State disability determinations;

C. Pursuant to sections 1614(a), 1631(a)(4)(B) and 1633 of the Act, authority to make findings of fact and decisions regarding presumptive SSI disability benefits, and authority to authorize payment of such benefits for not more than 3 months;

D. Pursuant to sections 1614, 1631 and 1633 of the Act, authority to make Federal findings of fact and decisions regarding the existence, absence, duration or continuation of disability or blindness;

E. Pursuant to sections 1614, 1631 and 1633 of the Act, authority to review State agency determinations of disability and blindness under title XVI of the Act, and authority to make certain findings of fact and decisions in such cases; and

F. Pursuant to section 1611(e)(3) of the Act, authority to determine whether individuals eligible for SSI benefits, and medically determined to be drug addicts or alcoholics, are complying with the terms and conditions of appropriate available treatment.

III. Notice is hereby given in addition that the Commissioner has also redelegated, to the position of Social Insurance Claims Examiner (Retirement) located in the Division of Sensitive Inquiries, Office of the Assistant Bureau Director, Disability Operations, Bureau of Disability Insurance, Office of Program Operations, Social Security Administration, and to all positions in the direct line of supervision above this position, the following authorities for exercise with respect to cases referred to the Division

of Sensitive Inquiries for necessary action:

A. Pursuant to section 1612(b)(4) of the Act, authority to approve plans of self-support for individuals or spouses eligible for SSI benefits;

B. Pursuant to section 1611(d) of the Act, authority to determine gross income from a trade or business;

C. Pursuant to section 1613 of the Act, authority to find good cause for failure to dispose of resources, and authority to grant extensions of time for disposition of resources.

D. Pursuant to section 1631(e)(2) of the Act, authority to make determinations as to the existence of good cause or fault for failure or delay in reporting information; and

E. Pursuant to section 1631(e)(2) of the Act, authority to reduce SSI benefits for failure or delay in reporting information.

IV. The redelegations described in sections I. through III. above shall be effective as of the date that this General Notice thereof is published in the FEDERAL REGISTER. Any actions taken by incumbents of the positions identified in sections I. through III. above which, in effect, involve the exercise of authority delegated by this document prior to the date that this notice is published in the FEDERAL REGISTER, are hereby affirmed and ratified. These redelegations may not be further redelegated.

Dated: August 22, 1977.

JAMES B. CARDWELL,  
Commissioner of Social Security.

[FR Doc. 77-25106 Filed 8-29-77; 8:45 am]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### CHIEF, BRANCH OF RECORDS AND DATA MANAGEMENT

##### Redelegation of Authority by State Director

Pursuant to the authority contained in section 1.1 of BLM Order No. 701 dated July 23, 1964, as amended, authority is hereby redelegated to the Chief, Branch of Records and Data Management to take action under section 2.6(k) as to mining claim instruments filed for record with BLM under 43 CFR 3833, as follows:

- (1) Accept and record instruments meeting recording requirements;
- (2) Notify owners to take curative actions to complete defective filings;
- (3) Reject instruments and void claims not filed within the prescribed time periods; and
- (4) Reject filings and void claims located on lands not available for mineral location on dates of location.

This delegation is effective on August 30, 1977. The redelegation published August 16, 1977, FR document 77-23561 is revoked.

PAUL L. HOWARD,  
State Director.

Approved: August 23, 1977.

GEORGE L. TURCOTT,  
Acting Director.

[FR Doc. 77-25067 Filed 8-29-77; 8:45 am]

## OUTER CONTINENTAL SHELF OFFSHORE THE NORTH ATLANTIC STATES

### Availability of Final Environmental Statement Regarding Proposed Oil and Gas Lease Sale

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement relating to a proposed oil and gas lease sale of 178 tracts consisting of 410,112 hectares (1,013,386 acres) of submerged lands on the Outer Continental Shelf offshore the North Atlantic States (OCS Sale #42).

Single copies of the final environmental statement can be obtained from:

Office of the Manager, New York Outer Continental Shelf Office, Bureau of Land Management, 6 World Trade Center, Room 600-D, New York, New York 10048, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the final environmental statement will also be made available for review in the following public libraries:

New York Public Library, 5th Avenue and 42nd Street, New York City; Nassau Library System, Lower Concourse, Roosevelt Field, Garden City, New York; Suffolk Cooperative Library System, 627 North Sunrise Service Road, Bellport, New York; Trenton Free Public Library, 129 Academy Street, Trenton, New Jersey; Atlantic City Free Public Library, Illinois and Pacific Avenues, Atlantic City, New Jersey; Free Public Library of Elizabeth, 11 South Broad Street, Elizabeth, New Jersey; Hartford Public Library, 500 Main Street, Hartford, Connecticut; Bridgeport Public Library, 925 Broad Street, Bridgeport, Connecticut; New Haven Free Public Library, 133 Elm Street, New Haven, Connecticut; Providence Public Library, 150 Empire Street, Providence, Rhode Island; Newport Public Library, Aquidneck Park, Newport, Rhode Island; Boston Public Library, Copley Square, Boston, Massachusetts; Provincetown Public Library, 330 Commercial Street, Provincetown, Massachusetts; Falmouth Public Library, Main Street, Falmouth, Massachusetts; Fall River Public Library, 104 North Main Street, Fall River, Massachusetts; Concord Public Library, 45 Green Street, Concord, New Hampshire; Manchester City Library, Carpenter Memorial Building, 405 Pine Street, Manchester, New Hampshire; Lithgow Library, 1 Winthrop Street, Augusta, Maine; Portland Public Library, 619 Congress Street, Portland, Maine.

Dated: August 11, 1977.

GEORGE L. TURCOTT,  
Acting Director,  
Bureau of Land Management.

Approved: August 25, 1977.

LARRY E. MEIEROTTO,  
Deputy Assistant Secretary of the Interior.

[FR Doc. 77-25060 Filed 8-29-77; 8:45 am]

[Wyoming 60657]

### WYOMING Application

August 19, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing



Act of 1920, as amended (30 U.S.C. 185) the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½" O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 24 N., R. 111 W.

Sec. 4, S½SW¼ and SW¼SE¼;  
Sec. 5, NW¼SE¼ and S½SE¼.

The pipeline will transport natural gas within T. 24 N., R. 111 W., in Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyo.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands and  
Minerals Operations.

[FR Doc.77-25141 Filed 8-29-77;8:45 am]

[Wyoming 60658]

# WYOMING Application

AUGUST 19, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 24 N., R. 111 W.,

Sec. 3, lots 19, 20  
Sec. 4, lot 13, NE¼SE¼.

The pipeline will transport natural gas within T. 24 N.; R. 111 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,  
Chief, Branch of Lands and  
Minerals Operations.

[FR Doc.77-25142 Filed 8-29-77;8:45 am]


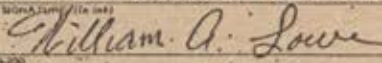
## Fish and Wildlife Service

### ENDANGERED SPECIES PERMIT

#### Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: William A. Lowe, Route 4, Box 206, Beaver Dam, Wis. 53916.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE  FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION		1. APPLICATION FOR (Indicate) (one)	
		<input type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT	
		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. Propagation of cheetahs: I have negotiated a tentative purchase of a male and female cheetah from San Diego, California, and request a transportation permit for transporting to my residence.	
3. APPLICANT: (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested) William A. Lowe Route 4, Box 206 Beaver Dam, WI 53916 Telephone: 414-885-9631 414-885-9346		4. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION Not applicable	
5. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: SEX: <input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.      HEIGHT: 6'      WEIGHT: 185 lbs. DATE OF BIRTH: 1-8-35      COLOR HAIR: brown      COLOR EYES: blue PHONE NUMBER WHERE EMPLOYED: Office 414-885-7745      SOCIAL SECURITY NUMBER: 396-32-4608 Home 414-885-9631 OCCUPATION: Self-employed* (explained at right) ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None		6. IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED	
8. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED: Cheetahs are kept in the NE¼ SE¼ of Section 35, T12N, R14E, Beaver Dam Township, Dodge County, Wisconsin. William Lowe Farm Route 4, Box 206 Beaver Dam, WI 53916		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If yes, list license or permit numbers) 35-A-91	
9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF \$ Not applicable as purpose is propagation of cheetahs.		10. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list jurisdiction and type of document) State of Wisconsin Game Farm License and individual permits for tigers and leopards and cheetahs.	
11. DESIRED EFFECTIVE DATE: Sept. 1, 1977		12. DURATION NEEDED: Six months if possible	
13. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (see 50 CFR 17.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED. Enclosed			
<b>CERTIFICATION</b>			
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.			
Signature (In ink) 		DATE 7-7-77	



Attachment (12) to Form 3-2000

17:22

## (a) Application for enclosed

- (1) Cheetah (*Acinonyx jubatus*)  
One (1) male--age one year  
One (1) female--age three years  
Activity sought to be authorized--transportation permit from California to Wisconsin for purpose of propagation.
- (2) Both cheetahs were born in captivity
- (3) This transaction would not affect the status of cheetahs in the wild. It would make room for more cheetahs to be propagated at this San Diego facility (Wild Animal Park).
- (4) Born in captivity--San Diego, California 1976 and 1974 (Wild Animal Park)
- (5) The cheetahs will be kept in the N24 of S24 of Section 35, T12N, R14E, Beaver Dam Township, Dodge County, Wisconsin.

William A. Lowe Farm  
Route 4, Box 205  
Beaver Dam, Wisconsin 53516

The farm is 3 1/2 acres. It includes a house, five barns (four barnhouses approximately 50 Arabian horses, one barn houses 3 Bengal tigers and 2 leopards.)

- (6) Live cheetahs will be housed in existing facilities.

(1) We have built the facilities on recommendations of Dr. Dolan so that we have the maximum potential for breeding the cheetahs. We are duplicating the facility and care used successfully by Dr. Dolan in breeding cheetahs in San Diego's Wild Animal Park. It is necessary to keep male and female cheetahs separate except for the breeding period. For this reason we built two facilities approximately 1/4 mile apart for the males and the females. The facilities are large enough to house additional cheetahs, as it is our desire to eventually have a large cheetah breeding operation. Each facility has a 8 foot high chain link wire (11 gauge) with an electric wire at the top, approximately 1 1/2 acres, hexagonal shape, located on a moderate hill with several rock piles, including a heated and insulated 8' x 4' x 8' building for their optional use, and a ten-foot gate opening. There is a rock house with an opening to the east in each facility. We have also planted over 100 trees and shrubs in these facilities. (A diagram of the facility is on the next page.)

(11) My wife, Janet, and I have raised Arabian horses since 1959. We have won national championships and are well recognized as serious breeders. Since 1973 we have specialized in horses of "Egyptian breeding," which has included three trips to Egypt for purchasing them.

In 1976 we acquired four Bengal tigers and two leopards from the Racine Zoo.

Our main purpose in acquiring the tigers and leopards was to gain expertise and recognition so that we would be granted the necessary permits to raise cheetahs.

Besides Arabian horses, cheetahs, tigers, and leopards, we raise llamas and have a large veal calf operation, currently housing 1,800 calves. The calves give us an excellent source of meat for our tigers and leopards and cheetahs.

In addition, our six children are raising fox, ferrets, and dogs.

(111) We would be willing to work on a cooperative breeding program and will maintain stud books. Most zoos have been unsuccessful in breeding cheetahs because of lack of a proper facility. We hope to eventually work a breeding loan with some of them.

(1v) Transportation will be by air freight to Chicago and trucked to Beaver Dam, Wisconsin. The zoo crates are approximately 30" x 60" x 48". They are open on one end with one-inch pipe, 3 inches on center. Food and water will be fed between the pipes.

(7) Copy of sale contract is attached.

(8) Reasons why permit is justified:

(1) Intention of transporting two cheetahs from San Diego, California, to Beaver Dam, Wisconsin, for the purpose of propagation.

(11) Transportation will be by air freight and truck carrying two zoo cages used for this purpose. Breeding facilities have been constructed and are in use by four cheetahs.

(111) The purpose is propagation.

(1v) Eventually animals will be offered for sale to zoos or others who are interested in propagation.



Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-1212-07; please refer to this number when submitting comments. All relevant comments received on or before September 29, 1977.

Dated: August 22, 1977.

DONALD G. DONAHOO,  
Chief, Permit Branch, Federal  
Wildlife Permit Office, U.S.  
Fish and Wildlife Service.

[FR Doc. 77-25144 Filed 8-29-77; 8:45 am]

#### National Park Service

#### ADVISORY BOARD ON NATIONAL PARKS HISTORIC SITES, BUILDINGS AND MONUMENTS

##### Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Advisory Board on National Parks, Historic Sites, Buildings and Monuments will be held September 22-29, during field inspections of areas in the Southwest Region of the National Park Service, and conclude with the regular fall business meeting, at LBJ State Park, Texas, on September 30 and October 1.

The purpose of the Advisory Board is to advise the Secretary of the Interior on matters relating to the National Park System, and the administration of the Historic Sites Act of 1935.

The Advisory Board will inspect various management and operational functions of the Southwest Region of the National Park Service as follows: September 22, Bandelier National Monument; September 23, subgroups will visit Pecos-Fort Union National Monuments; Chaco Canyon National Monument, and Canyon de Chelly National Monument; September 24-25 at Big Thicket National Preserve; September 26-28 Padre Island National Seashore. The inspection trip will be concluded on September 29 with a visit to the proposed San Antonio Missions National Historical Park.

The fall business meeting of the Advisory Board will convene at 10:30 a.m. on September 30 at the Lyndon B. Johnson State Historical Park, Texas, and will meet in general session to receive reports on the Alaska park proposals; National Heritage Trust Program, urban parks, and to discuss field trip matters. October 1, the Advisory Board will reconvene at 9 a.m. to receive reports on Redwoods National Park; Death Valley mining; land acquisition program, preservation easement program; to receive reports from the committee meetings; consideration of past and future Ad-

visory Board activities; and to formulate its comments and recommendations.

The meetings will be open to the public. However, members of the public wishing to participate in the field inspection must provide their own transportation, food and accommodations, which are generally available on a commercial basis. Space and facilities to accommodate members of the public at the business meetings are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Advisory Board a written statement concerning the matters to be considered.

Persons wishing further information concerning the field inspection and business meeting, or who wish to submit written statements, may contact Robert M. Landau, Assistant for Advisory Boards and Commissions, National Park Service, Washington, D.C. 202-343-2012. Summary minutes of the meeting will be available for public inspection 10 to 12 weeks after the meeting in Room 3013, Interior Building, Washington, D.C.

Dated: August 29, 1977.

ROBERT M. LANDAU,  
Assistant for Advisory Boards  
and Commissions, National  
Park Service.

[FR Doc. 77-25101 Filed 8-29-77; 8:45 am]

#### MIDWEST REGIONAL ADVISORY COMMISSION

##### Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Midwest Regional Advisory Committee will be held September 29 and 30 at Jefferson National Expansion Memorial National Historic Site in St. Louis, Mo.

The committee was established pursuant to Public Law 91-383 to provide for free exchange of ideas between the National Park Service and the public, and to facilitate the solicitation of advice or other counsel from the public on programs and problems pertinent to the Midwest Region of the National Park Service.

The members of the Advisory Committee are as follows:

Hon. Robert W. Berrey III (Chairman)  
Mr. Wallace C. Dayton  
Mr. John J. Franke, Jr.  
Mr. Fred D. Hartley  
Mr. William L. Lieber  
Mr. Erwin D. Slas

The committee will meet in the Explorer Room of the Visitor's Center beneath the Gateway Arch at Jefferson National Expansion Memorial. The Thursday session will begin at 1:30 p.m. (CDT) and the Friday meeting at 8:30 a.m. (CDT). The committee will conduct a forum and hear case histories on the impacts of urban parks on neighboring communities.

The meeting is open to the public, and any member of the public may file with the committee a written statement concerning matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Bill W. Dean, Executive Assistant to the Regional Director, Midwest Regional Office at Area Code 402, 221-3481. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102.

Dated: August 17, 1977.

MERRILL D. BEAL,  
Regional Director,  
Midwest Region.

[FR Doc. 77-25100 Filed 8-29-77; 8:45 am]

#### NATIONAL REGISTER OF HISTORIC PLACES

##### Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 19, 1977. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted on or before September 10, 1977.

WILLIAM J. MURTAGH,  
Keeper of the National Register.

#### ALABAMA

##### Hale County

Greensboro, Greensboro Historic District (Addition: East Main Street), Boundary extension to include E. Main St. properties. HABS.

#### IOWA

##### Linn County

Cedar Rapids, Calder Houses, The, 1214 and 1216 2nd Ave., SE. HABS.

#### KENTUCKY

##### Jefferson County

Louisville, Calvary Episcopal Church, 821 S. 4th St.

##### Kenton County

Covington, Linden Grove Cemetery, 13th to 15th between Kavanaugh and Holman Sts.

#### MARYLAND

##### Washington County

Hagerstown (Fiddlesburg, Security), Rockland Farm (Funk Farm; Davis House), 728 Antietam Dr.

#### MICHIGAN

##### Menominee County

Menominee, First Street Historic District, Boundary extension to include NE and NW corner of 1st St. and 10th Ave.

#### MISSISSIPPI

##### Lafayette County

Oxford, Lafayette County Courthouse, Courthouse Sq.



## Washington County

Greenville, Wetherbee House, 509 Washington Ave.

## Wilkinson County

Woodville, Office and Banking House of the West Feliciana Railroad Company, Depot St.

## MISSOURI

## Jackson County

Kansas City, Corrigan, Bernard, Residence (Sutherland, Robert, Residence), 1200 W. 55th St.

Kansas City, Loew's Midland Theater-Midland Building (Midland Office Building), 1232-1234 Main St., 1221-1233 Baltimore Ave.

## NEBRASKA

## Lincoln County

North Platte vicinity, Scout's Rest Ranch (Buffalo Bill Ranch State Historical Park), NW of North Platte.

## UTAH

## Carbon County

Price, Price Municipal Building, Corner of East and Main Sts.

## VIRGIN ISLANDS

## St. Croix County

Christiansted vicinity, Estate Judith's Fancy, 2 mi. NW of Christiansted.

Christiansted vicinity, Estate Little Princess, 1.5 mi. NW of Christiansted at Long Reef.

Christiansted vicinity, Estate St. John (St. Jan Plantage), 3 mi. NW of Christiansted below SR Bay.

Christiansted vicinity, Friedensthal Mission (Friedensthal Moravian Church), SW of Christiansted.

Christiansted vicinity, Richmond Prison, and Detention and Workhouse (Richmond Penitentiary), W of Christiansted at Richmond.

Frederiksted vicinity, Bottler's Bay (Estate Butler Bay), 2 mi. N of Frederiksted.

Frederiksted vicinity, Estate Grove Place (Grove Place Factory), 4 mi. E of Frederiksted off Centerline Rd.

Frederiksted vicinity, Estate Hogansborg (Estate Hogansborg), 2.5 mi. E of Frederiksted off Centerline Rd.

Frederiksted vicinity, Estate Mount Victory (Mount Pleasant), 2.5 mi. NE of Frederiksted.

Frederiksted vicinity, Estate Prosperity, 1 mi. N of Frederiksted.

## St. John County

Cruz Bay vicinity, Beverhoudt Plantage (Beverhoudtsberg), 1.5 mi. E of Cruz Bay off Center Line Rd.

St. John's Island vicinity, HMS Santa Monica, East End Rd. at Hansen Bay.

Mary's Point vicinity, Whistling Cay Customs House, W of Mary's Point on tip of Whistling Cay.

## St. Thomas County

Capella Islands, Buck Island Lighthouse, On Buck Island at Capella Bay.

Charlotte Amalie vicinity, Estate Bordeaux, W of Charlotte Amalie at Bordeaux Bay.

Charlotte Amalie vicinity, Estate Brewers Bay, 2 mi. W of Charlotte Amalie at Brewers Bay.

Charlotte Amalie vicinity, Estate Neltjeberg, 3 mi. NW of Charlotte Amalie at North Bay.

Charlotte Amalie vicinity, Hafensight (Havensight), S of Charlotte Amalie at Havensight Point.

Charlotte Amalie vicinity, Mafolie Great House (Estate Mafolie), N of Charlotte Amalie at Lee Hill.

Charlotte Amalie vicinity, Niesky (Nisky Moravian Mission; Estate Nisky), 1.5 mi. W of Charlotte Amalie off Harwood Hwy.

Charlotte Amalie vicinity, Northern Hassel Island Historic District (Orkanshullet, Hurricanehole), Hassel Island.

Charlotte Amalie vicinity, Perseverance, 4.5 mi. W of Charlotte Amalie.

Charlotte Amalie vicinity, Venus Hill (Mafolie Observatory; Venus Pillar), N of Charlotte Amalie at Lee Hill.

## VIRGINIA

## Albemarle County

Keene vicinity, Plain Dealing, E of Keene off VA 712. HABS.

## Botetourt County

Buchanan, Wilson Warehouse (Community House), N corner of Lower and Washington Sts. HABS.

## Charles City

Charles City vicinity, Woodburn (Woodbourne), 1.7 mi. NW of jct of VA 5 and VA 618. HABS.

## Falls Church

Falls Church, Birch House, 312 E. Broad St.

## Grayson County

Independence, Grayson County Courthouse, NE corner of U.S. 21/221 and U.S. 58 (Main St.). HABS.

## Mecklenburg County

Baskerville vicinity, Eureka, SE of Baskerville between U.S. 1 and VA 709. HABS.

## New Kent County

Providence Forge vicinity, Olvet Presbyterian Church, 2.7 mi. NW of Providence Forge on VA 618.

## Northampton County

Wardtown vicinity, Grapeland, N of Wardtown. HABS.

## Petersburg

Petersburg, Bowers, William H., House (McGee's Drug Store), 254 N. Sycamore St. HABS.

## Rockbridge County

Lexington vicinity, Church Hill (Timber Ridge Plantation), 6.5 mi. NE of Lexington off U.S. 11 at I 64/81. HABS.

## Surry County

Surry vicinity, Warren House (Enos House), SW of Surry.

## Wythe County

Wytheville vicinity, St. John's Lutheran Church and Cemetery, NW of Wytheville at US 21/52 and I 81. HABS.

[FR Doc. 77-25073 Filed 8-29-77; 8:45 am]

## Office of Hearings and Appeals

[Docket No. 77-240]

## BAILEY MINING CO.

## Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Bailey Mining Company, Drawer A, Bypro, Kentucky 41612, has filed a petition to modify the application of 30 CFR 75.1710, cabs or canopies, to its Mine No. 8, located in Floyd County, Kentucky.

The substance of Petitioner's statement is as follows:

1. The coal seam height at this mine is 38 inches, both the floor and roof are uneven thus causing the height to vary considerably. The electric face equipment averages in height as follows:

Cutting machine	34 in
Roof bolter	28 in
Coal drill	23 in
Scoop	34 in

2. Cable boards are used, further decreasing mining heights. Headers up to 6 inches are also used. The face equipment is approximately 6 years old and was never designed for cabs or canopies. In the No. 2 Elkhorn seam of coal which Petitioner is presently mining, Petitioner believes that if it were possible to adapt cabs or canopies to this equipment it would create an even greater hazard and result in a cramped and uncomfortable position for the operators. The technology for such compliance at this time is not available.

## REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,

Acting Director,

Office of Hearings and Appeals.

August 19, 1977.

[FR Doc. 77-25131 Filed 8-29-77; 8:45 am]

[Docket No. M 77-2491]

## BLUE DIAMOND MINING, INC.

## Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Blue Diamond Mining, Incorporated, Leatherwood, Ky. 41756, has filed a petition to modify the application of 30 CFR 75.155 (b) (1), qualified hoisting engineer; qualifications, to its Royal Diamond Mine, located in Leslie County, Ky.

The substance of Petitioner's statement is as follows:

1. Petitioner's mine is in the development stage and there is a current unavailability of experienced hoistmen in the geographical area of the mine.

2. Petitioner's employees will complete a special training program to train them in hoist operation and safety. This training program includes no less than 30 days instruction under the direct supervision of certified and qualified hoistmen.

3. Petitioner feels that those employees at the mine who will complete the training program and have been certified as hoistmen by the State of Kentucky will be capable of responsibility and safety performing the duties of hoistmen in a manner that will at all times guarantee



the same or greater safety of the miners as afforded by the standards.

4. Petitioner respectfully requests modification of the application of 30 CFR 75.155(b) (1) at the Royal Diamond Mine by waiving the requirement that a qualified hoistman have at least 1 year experience and substituting therefore the requirement that a qualified hoistman must complete a special training program and is a certified hoistman in the State of Kentucky to perform the duties of a qualified hoistman.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director,  
Office of Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc. 77-25122 Filed 8-29-77; 8:45 am]

[Docket No. M 77-250]

#### BLUE DIAMOND MINING, INC.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Blue Diamond Mining, Incorporated, Leatherwood, Ky. 41756, has filed a petition to modify the application of 30 CFR 77.105(a) (1), qualified hoistmen; slope or shaft sinking operation, qualifications, to its Royal Diamond Mine, located in Leslie County, Ky.

The substance of Petitioner's statement is as follows:

1. Petitioner's mine is in the development stage and there is a current unavailability of experienced hoistmen in the geographical area of the mine.

2. Petitioner's employees will complete a special training program to train them in hoist operation and safety. This training program includes no less than 30 days instruction under the direct supervision of certified and qualified hoistmen.

3. Petitioner feels that those employees at the mine who will complete the training program and have been certified as hoistmen by the State of Kentucky will be capable of responsibly and safely performing the duties of hoistmen in a manner that will at all times guarantee the same or greater safety of the miners as afforded by the standards.

4. Petitioner respectfully requests modification of the application of 30 CFR 77.105(a) (1) at the Royal Diamond Mine by waiving the requirement that a qualified hoistman have at least 1 year experience and substituting therefore the

requirement that a qualified hoistman must complete a special training program and is a certified hoistman in the State of Kentucky to perform the duties of a qualified hoistman.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director,  
Office of Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc. 77-25123 Filed 8-29-77; 8:45 am]

[Docket No. 77-241]

#### CLINCHFIELD COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Clinchfield Coal Company, Dante, Va. 24237, has filed a petition to modify the application of 30 CFR 75.1100-2(b), quantity and location of fire-fighting equipment, to its Moss No. 3 Mine Portal D, located in Dickenson County, Va.

The substance of Petitioner's statement is as follows:

1. The mine is opened by multiple drift entries into the Thick Tiller coalbed. One hundred and fifty men are employed on three shifts a day to produce an average of 1,200 tons of coal from four mechanized working sections.

2. In June 1975, new openings, referred to as 10 East located about one air mile from the main portals, were made. Subsequent to the 10 East openings, the main portals were abandoned and all material mined is now conveyed by 48-inch belts through the 10 East portal. The main ventilating fan is located at the 10 East openings and the operations of the main portal fan will soon be discontinued.

3. From the 10 East opening, the mined material is conveyed overland by a series of 48-inch belts to the 425-foot tunnel, a distance of about 13,300 feet. The belt conveyor continues through the tunnel and again overland to a railroad car loading facility. From this point, the material is transported over rail to a central preparation plant at South Clinchfield, Va.

4. The tunnel was made in the coalbed across a set to entries called 1 Left off 1 East. This set of entries was developed several years ago in a narrow ridge that jutted from the main coal boundary. Installation of a belt conveyor through the narrow ridge was the only logical means of connecting the two overland belt systems which provided a continual conveyance system from the 10 East portal to the railroad facilities.

5. The height of the coalbed in the tunnel averages 12 feet with an average width of 14 feet. An independent ventilating system will be installed and concrete block brattices will isolate the tunnel from the rest of the mine. The tunnel is more than 3 miles from any active underground working section and projections indicate that such workings will never be closer (see attached mine map of Moss No. 3 Mine Portal D).

6. The Petitioner seeks modification of 30 CFR 75.1100-2(b) as it applies to the installation of a water pipe system with outlets and firehose along the 48-inch belt conveyor in the 425-foot tunnel. To comply with the provision, the Petitioner would be required to install and maintain a lengthy surface water pipe system to provide water to the tunnel, and to maintain this system would be very difficult during the winter months (note—the ground froze to a depth of 15 inches during January 1977).

7. In lieu of section 75.1100-(b) provisions, the Petitioner proposes the following alternate proposal which will at all times afford the same measure of protection for the miners:

A. Ten pound all-purpose fire extinguishers will be maintained and located as follows:

(1) One fire extinguisher at each entrance to the tunnel.  
(2) One fire extinguisher at 100-foot intervals in the tunnel.

B. In the event any type of maintenance work is done in the tunnel the belt conveyor will be stopped and the conveyor control line (only power circuit in the tunnel) will be deenergized.

8. The map of Moss No. 3 Mine Portal D referred heretofore in the petition is on a 1,000 feet=1-inch scale and delineates the tunnel, active working section, 10 East Portal and the abandoned main portal. The map also shows the belt conveyance route from 10 East to the tunnel.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director,  
Office of Hearings and Appeals.

AUGUST 19, 1977.

The enclosed map is available for inspection at the address listed in the last paragraph of this notice.

[FR Doc. 77-25132 Filed 8-29-77; 8:45 am]

[Docket No. M 77-229]

#### CONRAD COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section



301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Conrad Coal Company, Weeksbury, Kentucky 41667, has filed a petition to modify the application of 30 CFR 75.1710, cabs or canopies, to its Mine No. 1, located in Floyd County, Kentucky.

The substance of Petitioner's statement is as follows:

1. The coal seam height at this mine is 38 inches. Both the mine floor and roof are uneven thus causing the height to vary considerably. The electric face equipment averages in height as follows:

Cutting machine.....	34 in.
Roof bolter.....	28 in.
Coal drill.....	26 in.
Scoop.....	34 in.

2. Cable boards are used. This decreases mining heights. Headers up to 6 inches are also used. The face equipment is approximately 6 years old and was never designed for cabs or canopies. In the No. 2 Elkhorn seam of coal which Petitioner is presently mining, Petitioner believes that if it were possible to adapt cabs or canopies to this equipment Petitioner would be creating an even greater hazard. An added problem is the cramped and uncomfortable position which the operator must assume. In Petitioner's opinion, the technology for such compliance is not available at the present time.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director,  
Office of Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc.77-25133 Filed 8-29-77;8:45 am]

[Docket No. M 77-242]

#### COAL RESOURCES CORP.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Coal Resources Corporation, Coalgood, Kentucky 40818, has filed a petition to modify the application of 30 CFR 75.1710-1(5), cabs or canopies, to its Belmon Division Number Three Mine, located in Harlan County, Ky.

The substance of Petitioner's statement is as follows:

1. Petitioner's mine is located in the Wallins seam. The projected life of the mine is greater than 1 year.

2. The average thickness of the Wallins seam is 43 inches. The height on the present working section is 40 inches. The physical limitations of the coalbed are

undulating bottom and varying seam height.

3. Petitioner's equipment consists of the following: 265HH Lee Norse continuous miners, TD31 and TD34 Lee Norse roof drills, 5L and 6L FMC Galis shuttle cars, AR5 and AR75 Elkhorn and S-and S scoops. The equipment is less than 12 months old and equipped with the latest safety features.

4. The entries are normally driven on 70-foot centers with an entry width of 20 feet. The bolt spacings are on 4 to 5 feet centers using 5 bolts across the entry. The roof and rib conditions are good, and, since the beginning of their operation, the mine has not had an injury due to roof or rib falls.

5. A request was made by the employees of the mines to evaluate the cabs and canopies and to determine if they could be used safely. The following are the findings of the Safety Department of Coal Resources Corporation employees of the mine, and management.

(a) The present roof control used at the mines would be seriously weakened if cabs are used due to the uneven floor of the mine. The dislodgment of roof bolts by the canopies are frequent.

(b) The vision of the equipment operator is seriously impaired and could cause serious injury to fellow workmen or the operator. Some of the hazards are as follows:

(1) The section repairmen, ventilation personnel, miner helper, and general laborer are endangered with the movement of face equipment.

(2) The operator of equipment cannot effectively evaluate his roof due to the obstruction of a canopy or cab.

(3) The operator must place a portion of his body out of the deck in order to see.

(4) The impaired vision of the operator creates a hazard for other mobile face equipment.

(c) The cramped position the operator must arrange himself in makes it virtually impossible to operate the equipment safely.

(d) Undulating bottom is often encountered and makes it virtually impossible to operate the equipment on the section.

(e) The plans and devices listed below are in Petitioner's opinion adequate to maintain as high a safety factor as cabs or canopies.

(7) The mining method employed at the mines would be of a nature to insure as adequate room control as possible.

(8) The use of effective roof and rib control measures will be installed to prevent roof falls.

(9) A training program to inform the section employees of proper roof control techniques and safe operation of equipment will be initiated.

(10) Since the beginning of operation of these mines in 1976 there has been no serious or fatal injury that was related to a fall or roof or rib.

(11) In the opinion of the employees and management of the mine, the installation of cabs or canopies would seriously detract from safety and place the workman in a hazardous condition. Petitioner

feels that this mine does not warrant cabs or canopies because of the past experience of the roof and rib conditions and the safety record maintained in connection with roof related injuries.

(12) Petitioner feels that the present technology used in the installation and design of cabs or canopies is inadequate to use in low seams.

(13) The first concern of Coal Resources Corporation is a safe working environment for its employees, and in this thought we urgently ask your attention to this request for modification.

(14) The personnel employed by the Belmon Division are not represented by any labor organization.

(15) This petition will be posted at the mine sites and discussed with mine personnel.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: August 19, 1977.

DAVID TORBETT,  
Acting Director,  
Office of Hearings and Appeals.

[FR Doc.77-25124 Filed 8-29-77;8:45 am]

[Docket No. 77-244]

#### ISLAND CREEK COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Island Creek Coal Co., P.O. Box 11430, Lexington, Ky. 40511, has filed a petition to modify the application of 30 CFR 75.507, power connection points, to its Hamilton No. 1 Mine, located in Union County, Ky.

The substance of Petitioner's statement is as follows:

1. Pursuant to the plans set forth in the mine map depicting certain mining projections at Petitioner's mine, which map is annexed hereto as Exhibit A, Petitioner desires to drive two, new and specially designed entries through an existing coal barrier in the subject mine. This action is necessary to maintain and upgrade the ventilation and belt haulage systems in the northern portion of the mine. The completion of this project will result in a greatly improved mine ventilation system and, consequently, will result in greater protection and safety for the miners employed in said mine.

2. Petitioner requests that the application of the Act and regulations be modified.

\* The enclosed map is available for inspection at the address listed in the last paragraph of this notice.



fled as they pertain to the project described and depicted in Exhibit A, in order that Petitioner may develop these entries in the manner set forth therein.

3. The alternative method proposed for developing these entries is contrary to the standard mining practices in the subject mine; however, Petitioner will accomplish such development with adequate safeguards to insure the continued protection of the health and safety of the miners pursuant to mining practices which will at all times guarantee the same, or a greater degree of protection as afforded by the standards set forth in the Act and regulations.

4. Petitioner states that it has discussed in detail the proposed project with the proper officials of the Kentucky Department of Mines and Minerals, and that it has obtained the Department's approval of this project with certain stipulations and requirements.

5. Petitioner states that it will take any and all other precautions which may lawfully and reasonably be prescribed by MESA to protect the health and safety of its employees in connection with this project.

#### REQUESTS FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc.77-25125 Filed 8-29-77; 8:45 am]

[Docket No. 77-245]

#### ISLAND CREEK COAL CO.

##### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Island Creek Coal Co., P.O. Box 11430, Lexington, Ky. 40511, has filed a petition to modify the application of 30 CFR 75.327-1, velocity of air, to its Hamilton No. 1 Mine, located in Union County, Ky.

The substance of Petitioner's statement is as follows:

1. Pursuant to the plans set forth in the mine map depicting certain mining projections at Petitioner's mine, which map is annexed hereto as Exhibit A,<sup>1</sup> Petitioner desires to drive two, new and specially designed entries through an existing coal barrier in the subject mine.

<sup>1</sup> The enclosed map is available for inspection at the address listed in the last paragraph of this notice.

This action is necessary to maintain and upgrade the ventilation and belt haulage systems in the northern portion of the mine. The completion of this project will result in a greatly improved mine ventilation system and, consequently, will result in greater protection and safety for the miners employed in said mine.

2. Petitioner requests that the application of the Act and regulations be modified as they pertain to the project described and depicted in Exhibit A, in order that Petitioner may develop these entries in the manner set forth therein.

3. The alternative method proposed for developing these entries is contrary to the standard mining practices in the subject mine; however, Petitioner will accomplish such development with adequate safeguards to insure the continued protection of the health and safety of the miners pursuant to mining practices which will at all times guarantee the same, or a greater degree of protection as afforded by the standards set forth in the Act and regulations.

4. Petitioner states that it has discussed in detail the proposed project with the proper officials of the Kentucky Department of Mines and Minerals, and that it has obtained the Department's approval of this project with certain stipulations and requirements.

5. Petitioner states that it will take any and all other precautions which may lawfully and reasonably be prescribed by MESA to protect the health and safety of its employees in connection with this project.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc.77-25126 Filed 8-29-77; 8:45 am]

[Docket No. 77-246]

#### ISLAND CREEK COAL CO.

##### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Island Creek Coal Co., P.O. Box 11430, Lexington, Ky. 40511, has filed a petition to modify the application of 30 CFR 75.327, aircourses and trolley haulage systems, to its Hamilton No. 1 Mine, located in Union County, Ky.

The substance of Petitioner's statement is as follows:

1. Pursuant to the plans set forth in the mine map depicting certain mining

projections at Petitioner's mine, which map is annexed hereto as Exhibit A,<sup>1</sup> Petitioner desires to drive two, new and specially designed entries through an existing coal barrier in the subject mine. This action is necessary to maintain and upgrade the ventilation and belt haulage systems in the northern portion of the mine. The completion of this project will result in a greatly improved mine ventilation system and, consequently, will result in greater protection and safety for the miners employed in said mine.

2. Petitioner requests that the application of the Act and regulations be modified as they pertain to the project described and depicted in Exhibit A, in order that Petitioner may develop these entries in the manner set forth therein.

3. The alternative method proposed for developing these entries is contrary to the standard mining practices in the subject mine; however, Petitioner will accomplish such development with adequate safeguards to insure the continued protection of the health and safety of the miners pursuant to mining practices which will at all times guarantee the same, or a greater degree of protection as afforded by the standards set forth in the Act and regulations.

4. Petitioner states that it has discussed in detail the proposed project with the proper officials of the Kentucky Department of Mines and Minerals, and that it has obtained the Department's approval of this project with certain stipulations and requirements.

5. Petitioner states that it will take any and all other precautions which may lawfully and reasonably be prescribed by MESA to protect the health and safety of its employees in connection with this project.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc.77-25127 Filed 8-29-77; 8:45 am]

[Docket No. 77-247]

#### ISLAND CREEK COAL CO.

##### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of sections 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c)

<sup>1</sup> The enclosed map is available for inspection at the address listed in the last paragraph of this notice.



(1970), Island Creek Coal Co., P.O. Box 11430, Lexington, Ky. 40511, has filed a petition to modify the application of 30 CFR 75.326, aircourses and belt haulage entries, to its Hamilton No. 1 Mine, located in Union County, Ky.

The substance of Petitioner's statement is as follows:

1. Pursuant to the plans set forth in the mine map depicting certain mining projections at Petitioner's mine, which map is annexed hereto as Exhibit A, Petitioner desires to drive two, new and specially designed entries through an existing coal barrier in the subject mine. This action is necessary to maintain and upgrade the ventilation and belt haulage systems in the northern portion of the mine. The completion of this project will result in a greatly improved mine ventilation system and, consequently, will result in greater protection and safety for the miners employed in said mine.

2. Petitioner requests that the application of the Act and regulations be modified as they pertain to the project described and depicted in Exhibit A, in order that Petitioner may develop these entries in the manner set forth therein.

3. The alternative method proposed for developing these entries is contrary to the standard mining practices in the subject mine; however, Petitioner will accomplish such development with adequate safeguards to insure the continued protection of the health and safety of the miners pursuant to mining practices which will at all times guarantee the same, or a greater degree of protection as afforded by the standards set forth in the Act and regulations.

4. Petitioner states that it has discussed in detail the proposed project with the proper officials of the Kentucky Department of Mines and Minerals, and that it has obtained the Department's approval of this project with certain stipulations and requirements.

5. Petitioner states that it will take any and all other precautions which may lawfully and reasonably be prescribed by MESA to protect the health and safety of its employees in connection with this project.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

<sup>1</sup> The enclosed map is available for inspection at the address listed in the last paragraph of this notice.

[FR Doc. 77-25128 Filed 8-29-77; 8:45 am]

[Docket No. M 77-227]

#### JOHNSON MINING CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Johnson Mining Co., Route No. 1, Bidwell, Ohio 45614, has filed a petition to modify the application of 30 CFR 75.1710-1, cabs or canopies, to its Johnson Mine, located in Jackson County, Ohio.

The substance of Petitioner's statement is as follows:

1. Petitioner requests the modification of the application of the mandatory safety standard 30 CFR 75.1710-1(a) with respect to the subject mines for the reason that the application of such standard will result in a diminution of safety to the miners.

2. Petitioner asserts that technology does not presently exist to enable it to equip its self-propelled electric face equipment with suitable canopies to protect and provide for the safety of the operators of said equipment. Petitioner further asserts that based upon its experience with presently available canopies, the use of such canopies results in diminution of safety to the miners in said mines.

3. The average mining height for the Alice Mine is 48 inches, varying from 36 inches to 55 inches. The coal seam also undulates and rolls resulting in ascending and descending grades that further limit and prevent the effective use of cabs or canopies.

4. Operators of face equipment, including shuttle car operators, are under MESA's approved plans for permanently and/or temporarily supported roof at all times. Such roof support is deemed satisfactory for all other personnel in the mines including the helpers on self-propelled electric face equipment and these helpers and other personnel freely move about the mines under the protection of approved roof support.

5. Petitioner's experience indicates the application of the mandatory standard will result in a diminution of safety to miners for the following reasons:

a. Several instances have occurred where canopies became edged against the roof, exposing employees who are not provided a canopy. There have been several near misses as a result of poor vision.

b. Employees strongly object to operating machinery so equipped and allege a diminution of safety resulting from impaired vision and being required to operate in cramped positions cause the following hazards and unsafe practices:

(1) Miners attempt to operate the machinery while standing between it and the rib, thus incurring a risk of being crushed should the machine slue.

(2) The combination of impaired vision and cramped positions cause the operator to expose his body and appen-

dages, such as head and feet, to the risk of being crushed between the machine and rib.

(3) Ingress and egress from the cab is limited and effectively prevents quick escape when mining conditions warrant such escape.

(4) Impaired vision is given as a major cause by machine operators for the damaging or severing of power cables by running over them.

(5) Impaired vision subjects the operator and fellow employees to increased risks of injuries because the operator cannot adequately see other employees and/or equipment.

6. At present, Petitioner is unaware of any proposed commercially manufactured canopy which could be installed which would provide the same degree of safety to miners as the complete removal of the canopy would provide.

7. Hence, the alternate method Petitioner proposes to establish, in lieu of the mandatory standard, is the elimination of canopies on its face machinery, including shuttle cars, until such time as technology establishes beyond doubt that canopies can be safely used in Petitioner's mine, and have sufficient ground clearance to penetrate the Clarion 4-A seam of coal or if the mining height shall be in excess of 56 inches, that Petitioner would voluntarily install canopies.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc. 77-25137 Filed 8-29-77; 8:45 am]

[Docket No. M 77-231]

#### K R & K COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), K R & K Coal Co., c/o John Kroh, 120 Main Street, Joliet, Pa. 17981, has filed a petition to modify the application of 30 CFR 75.301, air quality, quantity, and velocity, to its K R K Slope Mine, located in Schuylkill County, Ky.

The substance of Petitioner's statement is as follows:

1. Petitioner requests that section 75.301 be modified for this anthracite mine to require, in part, that the minimum quantity of air reaching each working face shall be 1,500 cubic feet a minute, that the minimum quantity of air reach-



ing the last open crosscut in any pair or set of developing entries shall be 5,000 cubic feet a minute, and that the minimum quantity of air reaching the intake end of a pillar line shall be 5,000 cubic feet a minute and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

2. This petition is submitted for the following reasons:

A. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

B. Ignition, explosion, and mine fire history are nonexistent for the mine.

C. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

D. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

E. Extremely high velocities in small cross sectional areas of airways and manways required in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

F. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

G. Difficulty in keeping miners on the job and securing additional mine help is due primarily to the conditions cited.

3. Finally, Petitioner avers that a decision in its favor will in no way provide less than the same measure of protection afforded the miners under the existing standard.

4. A copy of this petition will be posted at the mine by the operator.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc 77-25135 Filed 8-29-77; 8:45 am]

[Docket No. M 77-233]

#### L & K COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), L & K Coal Co., 14 West Main Street, Good Spring, Pa. 17941, has filed a petition to modify the application of 30 CFR 75.301, air quality, quantity, and velocity, to its Mammoth Slope Mine, located in Schuylkill County, Pa.

The substance of Petitioner's statement is as follows:

1. It is requested that section 75.301 be modified for this anthracite mine to require, in part, that the minimum quantity of air reaching each working face shall be 1,500 cubic feet a minute, that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries shall be 5,000 cubic feet a minute, and that the minimum quantity of air reaching the intake end of a pillar line shall be 5,000 cubic feet a minute and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

2. This petition requesting modification to 30 CFR 75.301 is submitted for the following reasons:

A. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

B. Ignition, explosion, and mine fire history are nonexistent for the mine.

C. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

D. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

E. Extremely high velocities in small cross sectional areas of airways and manways required in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

F. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

G. Difficulty in keeping miners on the job and securing additional mine help is due primarily to the conditions cited.

3. Finally, the Petitioner avers that a decision in its favor will in no way provide less than the same measure of protection afforded the miners under the existing standard.

4. A copy of this petition will be posted at the mine by the operator.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director,  
Office of Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc 77-25136 Filed 8-29-77; 8:45 am]

[Docket No. M77-248]

#### LITTLE HACKNEY CREEK COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section

301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Little Hackney Creek Coal Co., Mouthard, Ky. 41548, has filed a petition to modify the application of 30 CFR 75.1710-1, cabs or canopies, to its Mine No. 50, located in Pike County, Ky.

The substance of Petitioner's statement is as follows:

1. Petitioner's mine has one working section in the Split-Eagle Seam. The coal is 32 to 42 inches in height and scoops and roofs bolters are used.

2. It would be more dangerous to use a cab or canopy because of the poor vision and the cramped position of the operator in the low coal.

3. A copy of this petition will be posted at the mine.

#### REQUEST FOR HEARINGS OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc 77-25129 Filed 8-29-77; 8:45 am]

[Docket No. M 77-219]

#### ORCHARD COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Orchard Coal Co., c/o Franklin Lucas, R.D. No. 3, Pine Grove, Pa. 17963, has filed a petition to modify the application of 30 CFR 75.301, air quality, quantity, and velocity, to its Orchard Slope Mine, located in Schuylkill County, Ky.

The substance of Petitioner's statement is as follows:

1. Petitioner requests that section 75.301 be modified for this anthracite mine to require, in part, that the minimum quantity of air reaching each working face shall be 1,500 cubic feet a minute, that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries shall be 5,000 cubic feet a minute, and that the minimum quantity of air reaching the intake end of a pillar line shall be 5,000 cubic feet a minute and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

2. This petition is submitted for the following reason:

A. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

B. Ignition, explosion, and mine fire history are nonexistent for the mine.



C. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

D. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

E. Extremely high velocities in small cross sectional areas of airways and manways required in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

F. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

G. Difficulty in keeping miners on the job and securing additional mine help is due primarily to the conditions cited.

3. Finally, Petitioner avers that a decision in its favor will in no way provide less than the same measure of protection afforded the miners under the existing standard.

4. A copy of this petition will be posted at the mine by the operator.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc. 77-25137 Filed 8-29-77; 8:45 am]

[Docket Nos. M 77-184, M 77-186, M 77-185,  
M 77-180, M 77-151]

#### PONTIKI COAL CORP.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Pontiki Coal Corp., Box 57, Lovely, Ky. 41231, has filed additional information for its petitions to modify the application of 30 CFR 1710, caps or canopies, electrical face equipment, to its No. 1 and No. 2 Mines located in Martin County, Ky.

The substance of Petitioner's statement is as follows:

1. The two Pontiki Mines are located in the Pond Creek Coal Seam in which the height is very irregular. According to the drilling results, it will retain this pattern throughout the lease. At the present time in the Pontiki No. 1 Mine there is an active section with a height of 34 to 38 inches. On the other section there is a height of 56 to 60 inches. In a geological survey, professional paper 507 by Huddle and Englund, it is stated

that only 30 percent of the Pond Creek Seam is in the thickness category of more than 42 inches. Taking into consideration the additional roof support that it is necessary to use at this time, the height would be lessened even more.

2. Presently they have been able to maintain the canopies on the miners, on the roof bolters over the drill pot, and on the coal drills. The problem would be on the other equipment when lower coal is encountered. In order to remove the canopies the roof would have to be shot down. Variations have been encountered in the Pond Creek Seam with 40 inches on one side of a section and 60 inches within 150 feet of the 40-inch height.

3. At this time a map is being prepared of the lease in the Pond Creek Coal Seam. It will show the core drillings and the irregularity of the coal which the operator feels will have a great bearing on their situation. They request that the maps also be entered into the petition files.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director,  
Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc. 77-25138 Filed 8-29-77; 8:45 am]

[Docket No. M 77-181]

#### RANGER FUEL CORP.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Ranger Fuel Corp., % Robert C. Kota, Attorney, Lebanon, Va. 24266, has filed a petition to modify the application of 30 CFR 75.326, air courses and belt haulage entries, to its Beckley No. 1 Mine, located in Wyoming County, W. Va.

The substance of Petitioner's statement was published in the FEDERAL REGISTER on July 19, 1977.

#### REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies

of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc. 77-25139 Filed 8-29-77; 8:45 am]

[Docket No. M 77-237]

#### S & N COAL CO.

#### Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), S & N Coal Co., R.D. No. 2, Box 504-A, Pottsville, Pa. 17901, has filed a petition to modify the application of 30 CFR 75.301, air quality, quantity, and velocity, to its Skidmore Slope Mine, located in Schuylkill County, Pa.

The substance of Petitioner's statement is as follows:

1. It is requested that section 75.301 be modified for this anthracite mine to require, in part, that the minimum quantity of air reaching each working face shall be 1,500 cubic feet a minute, that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries shall be 5,000 cubic feet a minute, and that the minimum quantity of air reaching the intake end of a pillar line shall be 5,000 cubic feet a minute and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

2. This petition requesting modification to 30 CFR 75.301 is submitted for the following reasons:

A. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

B. Ignition, explosion, and mine fire history are nonexistent for the mine.

C. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

D. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

E. Extremely high velocities in small cross sectional areas of airways and manways required in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

F. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

G. Difficulty in keeping miners on the job and securing additional mine help is due primarily to the conditions cited.

3. Finally, the Petitioner avers that a decision in its favor will in no way provide less than the same measure of protection afforded the miners under the existing standard.

4. A copy of this petition will be posted at the mine by the operator.



## REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 29, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,  
Acting Director, Office of  
Hearings and Appeals.

AUGUST 19, 1977.

[FR Doc. 77-25139 Filed 8-29-77; 8:45 am]

## Office of the Secretary

[INT FES 77-34]

## CORONADO PROJECT

## Availability of the Final Environmental Statement

Pursuant to the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 7332), the Department of the Interior has prepared a final environmental statement for the Coronado Project.

The environmental statement describes the environmental impacts associated with the Salt River Project's proposed electrical generating plant at St. Johns, Ariz., and associated facilities. The purpose of the project is to provide for the future electrical energy needs of the Phoenix metropolitan area in Maricopa County and for the increased electrical demands of the "Eastern Mining Area." Major facilities consist of a 1050-MW coal-fired electric generating station, associated 500-kV and 230-kV transmission lines, a railroad spur for carrying coal, well fields and pipelines to transport cooling water, service and process to the generating station, and a limestone source to provide limestone to the Air Quality Control System. The transmission lines consist of: one 500-kV line from the plant southwest 240 miles to the Kyrene Substation south of Phoenix which will share a common corridor with the Cholla-Saguaro 500-kV line through the Sitgreaves and Tonoto National Forests; a 76-mile 500-kV backup transmission line proposed to run from the Coronado Station to the Arizona Public Service Cholla Project near Holbrook, Ariz.; and a Silver King Substation 60 miles east of Phoenix proposed to distribute power along two 230-kV lines—one going to Goldfield Substation just east of Phoenix, and the other going to the Hayden Substation in Hayden, Ariz.

Copies of the final environmental impact statement are available for inspection at the following locations:

Office of the Assistant to the Commissioner—Ecology, Bureau of Reclamation, Room 7622, Department of the Interior, Washington, D.C. 20240. Telephone 202-343-4991, FTS 343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver,

Colo. 80225. Telephone 303-234-3006, FTS 234-3006.

Office of the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nev. 89005. Telephone 702-293-8464, FTS 598-7464.

Single copies of the final statement may be obtained upon request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the Document Service, Environmental Law Institute, 1346 Connecticut Avenue NW., Washington, D.C. 20036. Please refer to the statement number above.

Dated: August 25, 1977.

LARRY E. MEIEROTTO,  
Deputy Assistant  
Secretary of the Interior.

[FR Doc. 77-25082 Filed 8-29-77; 8:45 am]

[Order No. 3008]

## GEOTHERMAL RESOURCES

## Research and Development Operations on Unleased Lands

SUBJECT: Geothermal resources research and development operations conducted on unleased lands under the jurisdiction of the Secretary of the Interior.

SECTION 1. Purpose. The purpose of this Order is to insure that geothermal resources research and development operations, carried out pursuant to research, development, and technology demonstration programs on unleased lands under the jurisdiction of the Secretary of the Interior, are conducted in accordance with the same operational requirements as are applicable to geothermal resources operations conducted on lands leased pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

Sec. 2. Compliance with Operating Regulations. Bureaus and Offices within the Department of the Interior having jurisdiction or control over unleased lands, as a condition of permitting entry on said lands by individuals, public or private agencies, institutions or organizations for the purpose of conducting any geothermal resources research and development program, shall require that all drilling, well testing, production or related activities be conducted in accordance with the provisions of Title 30 CFR 270 and the Geothermal Resources Operational (GRO) Orders issued pursuant to said regulations. As a further condition of permitting entry on unleased land for these purposes, the authorizing Bureau or Office shall require that the project area and all wells and facilities thereon be open at all reasonable times for inspection by appropriate officials of the permitting Bureau or Office who are responsible for enforcing compliance with Title 30 CFR 270 and the GRO Orders.

Bureaus and Offices within the Department who sponsor or conduct geothermal resources research and development projects on lands under their control or jurisdiction shall likewise insure that those operations are conducted in

accordance with Title 30 CFR 270 and the GRO Orders.

Sec. 3. Cooperation. Bureaus and Offices within this Department, as a further condition of permitting entry on unleased lands under their control or jurisdiction for the purpose of conducting geothermal resources research and development projects, shall require the permittee to furnish the Director, Geological Survey, or his designated representative, a copy of all notices, reports, well logs, maps, plats, temperature surveys, geophysical and geological data, records, and all other information collected as a result of the activities conducted. Bureaus and Offices within the Department are likewise to furnish the Director, Geological Survey, with a copy of all such notices, reports, technical data, and information which are collected as a result of geothermal resources research and development projects which are sponsored or conducted by said Bureaus and Offices.

Sec. 4. Information and Advice. Except as specifically prohibited by statute or regulation, authorized employees of the Geological Survey may provide technical advice, and shall make available to appropriate individuals, agencies, institutions, or organizations, who are permitted entry in conformity with this Order, such records and information as may be necessary or appropriate for the most efficient performance of those activities and operations.

Sec. 5. Fiscal. Any necessary fiscal arrangements and personnel adjustments may be effected to accomplish the purposes of this Order.

Sec. 6. Effective Date. This Order is effective immediately and shall remain in effect until it is amended, superseded, or revoked.

Dated: August 19, 1977.

JAMES A. JOSEPH,  
Acting Secretary.

[FR Doc. 77-25061 Filed 8-29-77; 8:45 am]

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## IMPORTATION OF CONTROLLED SUBSTANCES

## Application

Pursuant to Section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 15, 1977, Research Technology Branch, Division of Research, National Institute on Drug Abuse, DHEW, 11400 Rockville Pike, Rockville, Md.



20852, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below to be imported for research purposes only:

Drug:	Schedule
Tetrahydrocannabinols	I
Marihuana	I
Lysergic acid diethylamide	I
Etonitrozone	I
Psilocybin	I
Psilocyn	I
5-methoxy - 3,4 - methylenedioxy amphetamine	I
3,4,5-trimethoxy amphetamine	I
3,4-methylenedioxy amphetamine	I
4-bromo-2,5 - dimethoxyamphetamine	I
Dimethyltryptamine	I
Bufotenine	I
2,5 dimethoxyamphetamine	I
4-methyl-2,5-dimethoxy amphetamine	I
4-methoxyamphetamine	I
Buprenorphine	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objection to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than September 28, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street NW., Washington, D.C. 20537.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823 (a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 24, 1977.

DONALD E. MILLER,  
Acting Deputy Administrator,  
Drug Enforcement Administration.

[FR Doc.77-25243 Filed 8-29-77;8:45 am]

## MANUFACTURE OF CONTROLLED SUBSTANCES

### Application

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such

registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to Section 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on August 3, 1977, Eli Lilly & Co., Tippecanoe Lab., Box 685, Lilly Road, Lafayette, Ind. 47902, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Methadone	II
Methadone-intermediate	II

Pursuant to Section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a), notice is hereby given that the above firm has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances indicated, and any other such person, and any existing registered bulk manufacturer of the above substances may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than September 28, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street NW., Washington, D.C. 20537.

Dated: August 24, 1977.

DONALD E. MILLER,  
Acting Deputy Administrator,  
Drug Enforcement Administration.

[FR Doc.77-25105 Filed 8-29-77;8:45 am]

## Law Enforcement Assistance Administration

### NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

#### Meeting Cancellation

The National Advisory Committee for Juvenile Justice and Delinquency Prevention meeting, which was announced in the August 17, 1977 FEDERAL REGISTER and originally scheduled for Wednesday, August 31, 1977, Thursday and Friday, September 1 and 2, 1977, at the Mon-

tephone Hotel, 214 Royale Street, New Orleans, La., has been cancelled.

Dated: August 24, 1977.

JAY A. BROZOST,  
Attorney Advisor,  
Office of General Counsel.

[FR Doc.77-25102 Filed 8-29-77;8:45 am]

## DEPARTMENT OF LABOR

### Employment and Training Administration JOB CORPS

Proposed Job Corps Center at Benton Air Force Base, Red Rock Mountain, Pa.;  
Determination of Negative Environmental Impact

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice—Finding of Negative Environmental Impact.

SUMMARY: The purpose of this notice is to announce a determination by the Department under the Environmental Policy Act and 40 CFR Part 1500 that the establishment of a Job Corps center at Benton Air Force Base, Red Rock Mountain, Pa., does not constitute a major Federal action which will significantly affect the environment.

FOR FURTHER INFORMATION CONTACT:

John H. Stetson, Director, Job Corps,  
Room 6100, Patrick Henry Building,  
601 D Street NW., Washington, D.C.  
20213. Telephone 202-376-6995.

SUPPLEMENTARY INFORMATION: Title IV of the Comprehensive Employment and Training Act of 1973, as amended (CETA), 29 U.S.C. 911 et seq., directs the Secretary of Labor to establish Job Corps centers to provide occupational training to disadvantaged youths ages 16 through 21. The Secretary has issued regulations published at 29 CFR Part 97a, implementing Title IV of CETA. Pursuant to his authority the Secretary is establishing a Job Corps center at the Benton Air Force Base location.

Pursuant to 40 CFR Part 1500, the Department of Labor has conducted an environmental assessment as part of a site utilization study and has determined that preparation of an environmental impact statement is not required since the establishment of this Job Corps center is not a major Federal action which will significantly affect the quality of the human environment within the meaning of 40 CFR 1500.6(c). The proposed Benton Job Corps Center will be a training center with residential, non-residential and educational facilities for approximately 250-300 disadvantaged youth, men, and women, ages 16 through 21, who need and can benefit from intensive employment-related services. The function of the center and the staff of approximately 100 will be to provide skill training in selected vocational courses and continuing and/or remedial education in academic subjects.

The proposed use of the facility is intended for essentially the same purpose



as used by the previous occupant, specifically residential living and education.

The center will be a self-contained facility located on the top slopes of Red Rock Mountain approximately 9 miles north of Benton, and 40 miles west of Wilkes-Barre, Pa. The site is located on approximately 100 acres of mountain land, of which 70-80 acres are cleared and enclosed by fencing. The facility consists of approximately 44 buildings, of which 31 buildings are proposed for utilization.

Onsite sewage treatment facilities will be upgraded as required to meet applicable Federal, State, and local standards. This will be accomplished either by the remodeling of the existing plan or by the installation of a new prepackaged plant with tertiary treatment.

The two deep wells operating onsite will more than adequately meet the volume requirements and standards for water supply. The system includes one 85,000 gallon exterior water tank and an interior 75,000 gallon storage reservoir utilizing charcoal bed water treatment in addition to an automatic chlorination and caustic soda treatment system.

The proposed Job Corps center will be operated in compliance with the Job Corps Environmental Standards published at 29 CFR 97a.116, and with applicable Federal, State, and local regulations concerning environmental health.

The proposed Job Corps center will comply with the water quality and related standards of the State and local Government, and with the standards established pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., with Executive Order 11752, and with regulations and guidelines of the United States Environmental Protection Agency.

The center installation will be designed, operated, and maintained so as to conform to Federal air quality standards, including those found in Executive Order 11752 and 40 CFR Part 86.

Signed at Washington, D.C., this 19th day of August, 1977.

JOHN H. STETSON,  
Director, Job Corps.

[FR Doc. 77-25145 Filed 8-29-77; 8:45 am]

#### JOB CORPS

**Proposed Job Corps Center at Fremont Junior High School, San Bernardino, Calif.; Determination of Negative Environmental Impact**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice—Finding of Negative Environmental Impact.

**SUMMARY:** The purpose of this notice is to announce a determination by the Department under the Environmental Policy Act and 40 CFR Part 1500 that the establishment of a Job Corps center at Fremont Junior High School, San Bernardino, Calif., does not constitute a major Federal action which will significantly affect the environment.

#### FOR FURTHER INFORMATION CONTACT:

John H. Stetson, Director, Job Corps, Room 6100, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213. Telephone: 202-376-6995.

#### SUPPLEMENTARY INFORMATION:

Title IV of the Comprehensive Employment and Training Act of 1973, as amended (CETA), 29 U.S.C. 911 et seq., directs the Secretary of Labor to establish Job Corps centers to provide occupational training to disadvantaged youths ages 16 through 21. The Secretary has issued regulations published at 29 CFR Part 97a, implementing Title IV of CETA. Pursuant to his authority the Secretary is establishing a Job Corps center at the Fremont Junior High School location.

Pursuant to 40 CFR Part 1500, the Department of Labor has conducted an environmental assessment as part of a site utilization study and has determined that preparation of an environmental impact statement is not required since the establishment of this Job Corps center is not a major Federal action which will significantly affect the quality of the human environment within the meaning of 40 CFR Section 1500.6(c). The proposed Fremont Job Corps Center will be a training center with residential, non-residential, and educational facilities for approximately 200 resident and 75 nonresident disadvantaged youth, men, and women, ages 16 through 21, who need and can benefit from intensive employment-related services. The function of the center and the staff of approximately 90 will be to provide skill training in selected vocational courses and continuing and/or remedial education in academic subjects.

The site utilization by the previous occupant, education, will be substantially continued but site modifications will be required to provide for residential living.

The center will be a self-contained facility located northwest of the City of San Bernardino, Calif. The facility is located on approximately 17 acres of land consisting of 9 buildings and athletic facilities. Several new buildings will be constructed on the site to provide for residential living.

Domestic water and sewage collection systems to all existing buildings are provided from city mains. Modifications to site utility systems will be accomplished to provide utility service to new buildings. These utility systems, provided by the City of Muscogee, Calif., to the site, are adequate to meet the load capacity and standards for the proposed site utilization.

The proposed Job Corps center will be operated in compliance with the Job Corps Environmental Standards published at 29 CFR 97a.116, and with applicable Federal, State, and local regulations concerning environmental health.

The proposed Job Corps center will comply with the water quality and related standards of the State and local Government, and with the standards established pursuant to the Federal Water

Pollution Control Act, 33 U.S.C. 1251 et seq., with Executive Order 11752, and with regulations and guidelines of the United States Environmental Protection Agency.

The center installation will be designed, operated, and maintained so as to conform to Federal air quality standards, including those found in Executive Order 11752 and 40 CFR Part 86.

Signed at Washington, D.C., this 19th day of August 1977.

JOHN H. STETSON,  
Director, Job Corps.

[FR Doc. 77-25146 Filed 8-29-77; 8:45 am]

#### JOB CORPS

**Proposed Job Corps Center at Turner Air Force Base, Albany, Ga.; Determination of Negative Environmental Impact**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice—Finding of Negative Environmental Impact.

**SUMMARY:** The purpose of this notice is to announce a determination by the Department under the Environmental Policy Act and 40 CFR Part 1500 that the establishment of a Job Corps center at Turner Air Force Base, Albany, Ga., does not constitute a major Federal action which will significantly affect the environment.

#### FOR FURTHER INFORMATION CONTACT:

John H. Stetson, Director, Job Corps, Room 6100, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213. Telephone: 202-367-6995.

#### SUPPLEMENTARY INFORMATION:

Title IV of the Comprehensive Employment and Training Act of 1973, as amended (CETA), 29 U.S.C. 911 et seq., directs the Secretary of Labor to establish Job Corps centers to provide occupational training to disadvantaged youths ages 16 through 21. The Secretary has issued regulations published at 29 CFR Part 97a, implementing Title IV of CETA. Pursuant to his authority the Secretary is establishing a Job Corps center at the Turner Air Force Base Complex.

Pursuant to 40 CFR Part 1500, the Department of Labor has conducted an environmental assessment as part of a site utilization study and has determined that preparation of an environmental impact statement is not required since the establishment of this Job Corps center is not a major Federal action which will significantly affect the quality of the human environment within the meaning of 40 CFR 1500.6(c). The proposed Turner Job Corps Center will be a training center with residential, nonresidential and educational facilities for approximately 700 disadvantaged youth, men, and women, ages 16 through 21, who need and can benefit from intensive employment-related services. The function of the center and the staff of approximately 230 will be to provide skill training in selected vocational courses and



continuing and/or remedial education in academic subjects.

It is intended that the center be used for essentially the same purposes as used by the previous occupant, specifically residential living and instruction, at a greatly reduced occupancy.

The center will be a self-contained facility located off of Turner Field Road, approximately 4½ miles northwest of downtown Albany, Ga. The portion of the facility to be utilized consists of approximately 74 acres of land consisting of 64 buildings, of which approximately 20 buildings will be occupied for the program.

Domestic water and sewage collection systems to all existing buildings are provided through the base utility systems. These utility systems, provided by the City of Albany, Ga., to the site, are adequate to meet the load capacity and standards for the proposed site utilization.

The proposed Job Corps center will be operated in compliance with the Job Corps Environmental Standards published at 29 CFR 97a.116, and with applicable Federal, State, and local regulations concerning environmental health.

The proposed Job Corps center will comply with the water quality and related standards of the State and local Government, and with the standards established pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., with Executive Order 11752, and with regulations and guidelines of the United States Environmental Protection Agency.

The center installation will be designed, operated, and maintained so as to conform to Federal air quality standards, including those found in Executive Order 11752 and 40 CFR Part 86.

Signed at Washington, D.C., this 19th day of August 1977.

JOHN H. STETSON,  
Director, Job Corps.

[FR Doc. 77-25143 Filed 8-29-77; 8:45 am]

#### Wage and Hour Division

#### CERTIFICATES AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the

captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended). The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

College Casuals Company, Shepton, Pa.; 4-23-77 to 4-22-78; 10 learners. (Ladies' slacks.)

Crane Mfg. Company, Republic, Mo.; 6-5-77 to 6-4-78; 10 learners. (Boys' and men's pants.)

Edison Textiles, Inc., Edison, Ga.; 3-29-77 to 3-28-78. (Toddler's and girls' sportswear.)

Flushing Shirt Mfg. Co., Inc., Waynesburg, Pa.; 4-18-77 to 4-17-78; 10 learners. (Men's shirts.)

Freeland Sportswear Co., Inc., Freeland, Pa.; 5-27-77 to 5-26-78; 10 learners. (Men's jackets.)

Greenway Mfg. Co., Waynesburg, Pa.; 5-28-77 to 5-27-78. (Boys' and infants' shirts.)

Michael Berkowitz Co., Inc., Frostburg, Md.; 3-29-77 to 3-28-78; 10 learners. (Men's sleepwear.)

Pass Christian Industries, Inc., Pass Christian, Miss.; 5-1-77 to 4-30-78. (Ladies' shirts and jeans.)

Richfield Shirt Mfg. Co., Inc., Richfield, Pa.; 5-1-77 to 4-30-78. (Men's and boys' shirts.)

J. H. Rutter Rex Mfg. Co., Inc., Franklin, La.; 4-24-77 to 4-23-78. (Men's and boys' pants.)

J. H. Rutter Rex Mfg. Co., Inc., Columbia, Miss.; 3-30-77 to 3-29-78. (Men's and boys' shirts and pants.)

Sancar Corporation, Harrisonburg, Va.; 4-22-77 to 4-21-78. (Ladies' underwear.)

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended).

Louis Gallet, Inc., Uniontown, Pa.; 6-13-77 to 6-12-78; 5 learners for normal labor turnover purposes. (Boys' and men's sweaters.)

The following certificate was issued under the glove industry regulations (29 CFR 522.1 to 522.9, as amended and 522.60 to 522.65, as amended).

Galena Glove & Mitten Company, Dubuque, Iowa; 4-7-74 to 4-6-78; 10 learners for normal labor turnover purposes. (Work gloves.)

The following learner certificate was issued in Puerto Rico to the company hereinafter named. The effective and expiration dates, learner rates, occupation, learning period, and number of learners authorized to be employed are indicated.

General Cigar de Utuado, S. A., Utuado, P.R.; 6-15-77 to 6-14-78; 20 learners for normal labor turnover purposes is the occupation of cigar making machine operator for a learning period of 320 hours for the first 160 hours at the rates of \$2.09 an hour and \$2.19 an hour for the remaining 160 hours. (Tobacco.)

Each learner certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order

to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR, Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before September 14, 1977.

Signed at Washington, D.C., this 26th day of July 1977.

DONALD T. CRUMBACK,  
Authorized Representative  
of the Administrator.

[FR Doc. 77-25154 Filed 8-29-77; 8:45 am]

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 76-54]

#### JAPAN ENGINEERING DEVELOPMENT CO.

#### Intent to Grant Foreign Exclusive Patent License

In accordance with the NASA Foreign Licensing Regulations, 14 CFR 1245.405 (e), the National Aeronautics and Space Administration announces its intention to grant to the Japan Engineering Development Co., Tokyo, Japan, an exclusive patent license in Japan for the four NASA owned inventions covered by the Japanese counterparts of: (1) U.S. Application for Patent Serial No. 682,435 for "Method of Treating the Surface of a Glass Member," filed by NASA on May 3, 1976, (2) U.S. Application for Patent Serial No. 678,813 for a "Cubic-Interleaver," filed by NASA on April 21, 1976, (3) U.S. Application for Patent Serial No. 718,266 for "Absorption Detector," filed by NASA on August 27, 1976, and (4) U.S. Application for Patent Serial No. 694,407 for "A Reverse Osmosis Membrane of High Urea Rejection," filed by NASA on June 9, 1976. Copies of the above U.S. Patent Applications can be purchased from the National Technical Information Service, Springfield, Va. 22161, at a cost of \$3.75 per copy. Interested parties should submit written inquiries or comments within 60 days to the Assistant General Counsel for Patent Matters, Code GP, National Aeronautics and Space Administration, Washington, D.C. 20546.

Dated: August 23, 1977.

S. NEIL HOSENBALL,  
General Counsel.

[FR Doc. 77-24957 Filed 8-29-77; 8:45 am]

#### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

#### National Endowment for the Arts

#### MUSIC ADVISORY PANEL

#### Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Music Advisory Panel (Folk/Ethnic Section) for the National



Council on the Arts will be held on September 14-16, 1977, from 9:30 a.m. to 6 p.m., in Room 1422, Columbia Plaza Building, 2401 E Street NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on September 16, 1977, from 2 p.m. to 6 p.m. on a space available basis. The agenda for these sessions will include policy discussions.

The remaining sessions of this meeting on September 14-15, 1977, from 9:30 a.m. to 6 p.m. and September 16, 1977, from 9:30 a.m. to 2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(B) of section 552 (b) of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6377.

ROBERT M. SIMS,  
*Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.*

AUGUST 24, 1977.

[FR Doc.77-25104 Filed 8-29-77;8:45 am]

#### SPECIAL PROJECTS ADVISORY PANEL Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Special Projects Advisory Panel (Folk Arts) for the National Council on the Arts will be held September 16, 1977, from 9:30 a.m. to 6 p.m. and September 17-18, 1977, from 9:30 a.m. to 5:30 p.m., in Room 1340, Columbia Plaza Building, 2401 E Street NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on September 16, 1977, from 2 p.m. to 6 p.m. on a space available basis. This portion of the meeting will be held in Room 1422 and will be a joint session with the Music Advisory Panel (Folk/Ethnic Section). The agenda for this session will include policy discussions.

The remaining sessions of this meeting on September 16, 1977, from 9:30 a.m. to 2 p.m. and September 17-18, 1977, from 9:30 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the

agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(B) of section 552(b) of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6377.

ROBERT M. SIMS,  
*Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.*

AUGUST 24, 1977.

[FR Doc.77-25103 Filed 8-29-77;8:45 am]

#### PANAMA CANAL COMPANY

##### WHITE AMUR FISH; PROPOSED INTRODUCTION INTO GATUN LAKE AS BIOLOGICAL CONTROL FOR SUBMERGED AQUATIC MACROPHYTE

##### Availability of Draft Environmental Impact Statement and Notice of Public Hearings

Pursuant to Section 102(2)(c) of the National Environmental Policy Act, and the Panama Canal Company/Canal Zone Government procedures implementing said Act, the Environmental Quality Committee of the Panama Canal Company/Canal Zone Government has prepared a draft environmental impact statement for the proposed introduction of a biological agent (*Ctenopharyngodon idella*, white amur fish) to aid in the control of the submerged aquatic macrophyte, *Hydrilla verticillata*. The Committee has determined that this is an action which will significantly affect the quality of the human environment.

The Draft Environmental Impact Statement considers the biological, economic and social impact on the overall ecology of Gatun Lake, an artificial body of fresh water having a surface area of 431 Km<sup>2</sup>, and the principal tributary river systems of the Republic of Panama, together with the project's effect relative to an increased reliance on chemical methods of control of aquatic weeds.

The Draft Environmental Impact Statement will be published and distributed on or about August 26, 1977, and thereafter a copy of same will be on file at the below-listed addresses and available for public inspection.

Dr. Paul Campanella, Secretary, Environmental Quality Committee, Panama Canal Company, Box M, Balboa Heights, Canal Zone; or

Secretary, Panama Canal Company, Room 312, Pennsylvania Building, 425 Thirteenth Street NW., Washington, D.C. 20004.

Copies of the Draft Environmental Impact Statement have been sent to various federal and local agencies for comment as outlined in the Council on Environmental Quality Guidelines. Comments are invited from others having knowledge of or special expertise on environmental impacts of the proposed project. In order to afford full oppor-

tunity for such comments in addition to written comments, a public hearing for the purposes of taking oral or written testimony on the matter will be held on September 30, 1977, at 2 p.m. in the Panama Canal Company Training Center, Building No. 0600, Room 4, Balboa Heights, Canal Zone.

Written comments concerning the proposed action or requests for additional information should be mailed, airmail, and addressed to:

Dr. Paul J. Campanella, Secretary, Environmental Quality Committee, Panama Canal Company, Box M, Balboa Heights, Canal Zone.

Comments must be received at the above address on or before October 17, 1977 and all comments so received will be considered prior to the preparation and distribution of a final environmental impact statement.

THOMAS M. CONSTANT,  
*Secretary, Panama Canal Company.*

AUGUST 15, 1977.

[FR Doc.77-24947 Filed 8-29-77;8:45 am]

#### DEPARTMENT OF THE TREASURY

##### Office of the Secretary

##### PARTICIPATION IN OR COOPERATION WITH INTERNATIONAL BOYCOTT

##### Revised Effective Dates of Certain New Boycott Guidelines

On August 19, 1977, the Treasury Department announced a delay in the effective dates of answers H-8 and H-29 of the new boycott guidelines that were released on August 12, 1977 and that appeared in the FEDERAL REGISTER of August 17, 1977 (42 FR 41504). These answers relate to letters of credit. The effective dates for the remainder of the new guidelines were left unchanged.

The guidelines relate to the provisions of the Tax Reform Act of 1976 which deny certain tax benefits for participation in or cooperation with international boycotts. The new guidelines superseded earlier sets of guidelines issued by the Treasury on November 4, 1976 and December 30, 1976.

Answers H-8 and H-29 of the new guidelines will be effective only for operations, requests, and agreements after September 21, 1977. In addition, in the case of operations carried out in accordance with the terms of a binding contract entered into before September 22, 1977, answers H-8 and H-29 will not be effective until after June 30, 1978.

Dated: August 24, 1977.

LAURENCE N. WOODWORTH,  
*Assistant Secretary for Tax Policy.*

[FR Doc.77-25052 Filed 8-25-77;10:17 a.m.]

[Supplement to Dept. Circular Public Debt Series—No. 20-77]

#### TREASURY NOTES OF SERIES T-1979

##### Interest Rate

AUGUST 24, 1977.

The Secretary of the Treasury announced on August 23, 1977, that the in-



terest rate on the notes described in Department Circular—Public Debt Series—No. 20-77, dated August 12, 1977, will be 6½ percent per annum. Accordingly, the notes are hereby redesignated 6½ percent Treasury Notes of Series T-1979. Interest on the notes will be payable at the rate of 6½ percent per annum.

PAUL H. TAYLOR,  
Deputy Fiscal  
Assistant Secretary.

[FR Doc. 77-25080 Filed 8-29-77; 8:45 am]

## VETERANS ADMINISTRATION

### GERIATRIC RESEARCH, EDUCATION AND CLINICAL CENTERS ADVISORY COMMITTEE

#### Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a final meeting of the Geriatric Research, Education and Clinical Centers Advisory Committee, authorized by 38 U.S.C. 4101, will be held in Conference Room 119, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C., on September 15 and 16, 1977. The final meeting will be for the purpose of reviewing and evaluating the progress of the existing Geriatric Research, Education and Clinical Centers and to aid in the start-up of new Geriatric Research, Education and Clinical Center(s). The Committee has advised the Veterans Administration through the Assistant Chief Medical Director for Extended Care.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 4:30 p.m. on September 15 and from 8:30 a.m. to 1 p.m. on September 16. To assure adequate accommodations, those who plan to attend should contact Dr. Richard Filer, Assistant Departmental Committee Manager, Veterans Administration Central Office, Washington, D.C. 202-389-3854, prior to September 12, 1977.

By direction of the Administrator.

Dated: August 23, 1977.

RUFUS H. WILSON,  
Deputy Administrator.

[FR Doc. 77-25110 Filed 8-29-77; 8:45 am]

### VOLUNTARY SERVICE NATIONAL ADVISORY COMMITTEE

#### Meeting

The Veterans Administration gives notice that the annual meeting of the Veterans Administration Voluntary Service National Advisory Committee, composed of representatives of 46 national voluntary organizations, will be held at the Hyatt Regency Hotel, 400 New Jersey Avenue NW., Washington, D.C., October 26-28, 1977.

Registration of the conferees and preliminary meetings of the planning subcommittees will be held during the afternoon of October 26, 1977. The meeting will officially convene with a Plenary Session at 9 a.m., October 27, in the York-

town Room of the hotel and will conclude at noon on October 28, 1977.

The purposes of the meeting are to instruct committee members and officials of their organizations in obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the Agency's nationwide medical program.

By direction of the Administrator.

Dated: August 23, 1977.

RUFUS H. WILSON,  
Deputy Administrator.

[FR Doc. 77-25109 Filed 8-29-77; 8:45 am]

## INTERSTATE COMMERCE COMMISSION

[No. 487]

### ASSIGNMENT OF HEARINGS

AUGUST 25, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

- MC 103066 (Sub-No. 56), Stone Trucking Co., now being assigned October 12, 1977 (1 day), for hearing in Chicago, Ill., will be held in Court Room 704, Federal Building, 610 South Canal Street.
- MC 113908 (Sub-No. 394), Erickson Transport Corp., now being assigned October 13, 1977 (2 days), for hearing in Chicago, Ill., will be held in Court Room 704, Federal Building, 610 South Canal Street.
- MC 141511 (Sub-No. 1), Robert W. Rettig, DBA Protein Express, now being assigned October 17, 1977 (1 day), for hearing in Chicago, Ill., will be held in Court Room 704, Federal Building, 610 South Canal Street.
- MC 138144 (Sub-No. 20), Fred Olson Co., Inc., now being assigned October 18, 1977 (2 days), for hearing in Chicago, Ill., will be held in Court Room 704, Federal Bldg., 610 South Canal Street.
- MC 720 (Sub-No. 31), Bird Trucking Co., Inc., now being assigned October 20, 1977 (2 days), for hearing in Chicago, Ill., will be held in Court Room 704, Federal Building, 610 South Canal Street.
- MC 66886 (Sub-No. 54), Beiger Cartage Service, Inc., now assigned October 17, 1977, at Kansas City, Mo., will be held in Room 609, Federal Bldg., 911 Walnut St.
- MC 26739 (Sub-No. 91), Crouch Freight Systems, Inc., now assigned October 19, 1977, at Kansas City, Mo., will be held in Room 609, Federal Bldg., 911 Walnut St.
- MC 126118 (Sub-No. 36), Crete Carrier Corp., MC 128375 (Sub-No. 148), Crete Carrier Corp., and MC 128375 (Sub-No. 149), Crete Carrier Corp., now assigned October 12, 1977, at Kansas City, Mo., will be held in Room 609, Federal Bldg., 911 Walnut St.

MC 59957 (Sub-No. 50), Motor Freight Express, now assigned October 17, 1977, at Pittsburgh, Pa., will be held in Room 2218, Federal Bldg., 1000 Liberty Avenue.

MC 129903 (Sub-No. 7), Emporia Motor Freight, Inc., now assigned October 17, 1977, at Topeka, Kans., will be held in Room 489 Federal Bldg., U.S. Courthouse, 444 South Quincy.

PD 27421, Southern Pacific Transportation Co.—Common use of Terminal Facilities—Union Pacific Railroad Co. & Burlington Northern, Inc., now assigned October 31, 1977, at Portland Oreg., will be held in Room 103, Pioneer Courthouse, 555 SW. Yamhill Street.

MC 2202 (Sub-No. 525), Roadway Express, Inc., now being assigned November 15, 1977 (3 days), at Baton Rouge, La., in a hearing room to be later designated.

MC 140612 (Sub-No. 15), Robert F. Kazimour, now being assigned November 14, 1977 (1 day), for hearing in Chicago, Ill., in a hearing room to be later designated.

MC 1934 (Sub-No. 39), The Arrow Line, Inc., now being assigned November 29, 1977 (4 days), for hearing in New Haven, Conn., in a hearing room to be later designated.

MC 108587 (Sub-No. 21), Schuster Express, Inc., now being assigned December 5, 1977 (1 week), for hearing in Hartford, Conn., in a hearing room to be later designated.

MC 143140, Seymour Bus Lines, Inc., now being assigned December 5, 1977 (1 week), for hearing in Knoxville, Tenn., in a hearing room to be later designated.

AB 19 (Sub-No. 32), The Baltimore & Ohio Railroad Co., abandonment near Green Spring and Petersburg in Hampshire, Hardy, and Grant Counties, W. Va., now being assigned October 17, 1977 (1 week), for hearing in Moorefield, W. Va., in a hearing room to be later designated.

MC 107515 (Sub-No. 1040), Refrigerated Transport Co., Inc., now assigned September 14, 1977, at Chicago, Ill., is postponed indefinitely.

AB 12 (Sub-No. 39), Southern Pacific Transportation Co., abandonment between Concord and Dougherty in Contra Costa and Alameda Counties, Calif., now being assigned November 1, 1977 (3 days), for hearing in Walnut Creek, Calif., in a hearing room to be later designated.

MC 113855 (Sub-No. 378), International Transport, Inc., now being assigned November 4, 1977 (1 day), for hearing in San Francisco, Calif., in a hearing room to be later designated.

MC 138018 (Sub-No. 35), Refrigerated Foods, Inc., now being assigned November 7, 1977 (2 days), for hearing in San Francisco, Calif., in a hearing room to be later designated.

No. 36626, San Francisco Port Commission v. Delta Lines, Inc., et al, now being assigned November 9, 1977 (3 days), for hearing in San Francisco, Calif., in a hearing room to be later designated.

MC 139495 (Sub-No. 218), National Carriers, Inc., now being assigned November 14, 1977 (1 week), for hearing in San Francisco, Calif., in a hearing room to be later designated.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 77-25163 Filed 8-29-77; 8:45 am]

## FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 25, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common



carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1102.40) and filed on or before September 14, 1977.

**FSA No. 43417—Phthalic Anhydride from Texas City, Tex.** Filed by Southwestern Freight Bureau, Agent, (No. B-707), for interested rail carriers.

Rates on phthalic anhydride, in tank-car loads, as described in the application, from Texas City, Tex., to East St. Louis, Ill.

Grounds for relief—Market competition.

**Tariff—Supplement 13 to Southwestern Freight Bureau, Agent, tariff 12-K, I.C.C. No. 5272.**

Rates are published to become effective on September 24, 1977.

**FSA No. 43418—Joint Water-Rail Container Rates—Evergreen Line.** Filed by Evergreen Line (No. 1), for itself and interested rail carriers.

Rates on general commodities, between ports in Japan, Korea, Hong Kong, and Taiwan, and rail carriers terminals on the U.S. Atlantic and Gulf Coasts.

Grounds for relief—Water competition.

**Tariffs—Evergreen Line tariffs I.C.C. Nos. 1 and 2.**

Rates are published to become effective on September 17, 1977.

By the Commission.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc. 77-25164 Filed 8-29-77; 8:45 am]

[Finance Docket No. 28499]

**NORFOLK & WESTERN RAILROAD CO.  
AND BALTIMORE & OHIO RAILROAD  
CO.; CONTROL OF DETROIT, TOLEDO &  
IRONTON RAILROAD CO.**

**Waiver of Requirements of Exhibits**

**Order.** At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 15th day of August 1977.

Upon consideration of the petition filed on June 30, 1977, by Norfolk and Western Railway Co. (N&W), Chessie System, Inc., the Chesapeake and Ohio Railway Co. (C&O) and the Baltimore and Ohio Railroad Co. (B&O), seeking a waiver of the strict requirements of the regulation at 49 CFR 1111.2(b)(3)(i).

N&W and B&O have agreed, to purchase, in equal parts, all of the shares of stock of the Detroit, Toledo and Ironton Railroad Co. (DT&I) owned or under control of Pennsylvania Company. Petitioners plan to file a section 5(2) joint control application in the early fall of 1977. The regulation at 49 CFR 1111.2(b)(3)(i) would require the submission of traffic studies for the period January 1, 1976, to December 31, 1976.

Petitioners seek a waiver of the requirements of the above-cited regulation and seek permission to submit traffic studies covering the period May 1, 1976 to April 30, 1977 with their application. Petitioners claim that the traffic patterns in the area changed substantially after April 1, 1976, when the Consolidated Rail Corporation (ConRail) began operating and when DT&I began serving the Cincinnati, Ohio Gateway via trackage rights over ConRail. Thus, in order to reflect the new traffic patterns and current revenues, petitioners allege that they should be permitted to submit traffic

studies covering the period May 1, 1976, to April 30, 1977.

We believe that good cause has been presented to justify granting the waiver requested. We also believe that, in order for the Commission to make valid comparisons of traffic data to be submitted, we should require that all traffic studies to be submitted in the proposed proceeding must cover the period May 1, 1976, to April 30, 1977.

Since petitioners have not yet filed an application, and we realize that traffic studies take some time to prepare, we believe that notice of our action herein should be published in the *FEDERAL REGISTER*. In addition, petitioners should be required to specify the required time period for traffic studies in the notice that must be published when the application is filed.

*It is ordered,* That the petition for waiver be, and it is hereby, granted;

*It is further ordered,* That if petitioners file the above-described joint control application, all parties to the proceeding shall file required traffic studies covering the period May 1, 1976, to April 30, 1977; and that petitioner shall be required to state the period for traffic studies in the notice which must be published when their application is filed;

*It is further ordered,* That public notice of our action herein shall be given to the general public by delivery of a copy of this order to the Director, Office of the Federal Register, for publication therein;

*It is further ordered,* That this order shall be effective on the date of service.

By the Commission (Commissioner Hardin was absent and did not participate).

H. GORDON HOMME, Jr.,  
Acting Secretary.

[FR Doc. 77-25162 Filed 8-29-77; 8:45 am]



# sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

## CONTENTS

Civil Aeronautics Board.....	1
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### 1

[M-48]

August 24, 1977.

#### CIVIL AERONAUTICS BOARD.

TIME AND PLACE: 10 a.m., September 1, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue, Washington, D.C. 20428.

SUBJECT: 1. Ratification of items Adopted by Notation.<sup>1</sup>

2. Docket 29193, Alamogordo's and Ponca City's petitions for reconsideration of Order 77-2-116 insofar as it granted Frontier's petition to overfly Ponca City and Alamogordo (Memo No. 6408-B, BOR).

3. Docket 30885, Northwest's application for Chicago-Washington "fill-up" authority (Memo No. 6980-C, BOR, OGC).

4. Dockets 27999 and 28000, United's Petition for an Order to Show Cause and Exemption Renewal for Nonstop Cleveland-New Orleans (Memo No. 7361, BOR).

5. Docket 29601, ATC agreement requiring travel agents to reimburse ATC for litigation expenses, Agreement CAB 16874-A53 (Memo No. 7366, BOR, OGC).

6. Dockets 29827 and 30034, Motion of Allegheny Airlines for Hearing on its application to extend its system to various Florida cities; and Motion of United Air Lines for Hearing on its application to add Orlando to its Route 51 between the Great Lakes and Florida (Memo No. 7156, BOR).

7. Docket 28194, Eastern/Piedmont Route Exchange, Notice of Target Date (Memo No. 7365, OGC).

<sup>1</sup> The ratification process provides an entry in the Board's Minutes of items already adopted by the Board through the written Notation process (memoranda circulated to the Members sequentially). A list of items ratified at this meeting will be available in the Board's Public Reference Room (Room 710, 1825 Connecticut Avenue NW., Washington, D.C. 20428) following the meeting.

### Items

8. Docket 24694, Miami-Los Angeles Competitive Non-stop Case. Order Reopening Proceeding (Memo No. 7354, OGC).

9. Docket 28196, California-Alberta Route Proceeding, Order on Discretionary Review (Memo No. 7332, OGC, BE).

10. Dockets 24582 and 29132, Cincinnati-Washington Subpart M Proceeding (Memo No. 5734-P, OGC, BE).

11. Comments on the "Redtape Reduction Act of 1977, H.R. 5880" (Memo No. 6844-A, OGC).

12. Docket 30783, Rulemaking Petition of Novo Airfreight (Novo) to permit co-operative shippers associations to use the services of air freight forwarders (Memo No. 7363, OGC).

13. Docket 30848, Motion to review the decision of the Director, BOE, dismissing third-party complaint in the matter of James Ehrman v. Alitalia Airlines (Memo No. 7369, OGC).

14. Docket 29139, Proposed Rule on overbooking and oversales (Memo No. 5963-G, No. 5963-H, OGC).

15. Docket 30182, Iowa/Illinois-Atlanta Route Proceeding, Order on reconsideration and consolidation (Memo No. 6950-A, BLJ, OGC).

16. Transmittal of responses to questions in conjunction with testimony before the Senate Committee on Foreign Relations on Protocols amending the Warsaw Convention and the Supplemental Compensation Plan, Order 77-7-85 (Memo No. 7178-D, BAS, OGC).

17. Docket 30240, Aviation Consumer Action Project Petition for Rulemaking to Amend Part 241 (Memo No. 7337, OGC, BE, BAS, BOE).

18. Nonacceptance of certain types of shipments proposed by Associated Air Freight, an air freight forwarder, effective September 5, 1977 (BFR).

19. Docket 31166, TWA complaint against Laker Airways Sky Train tariff (BFR).

20. Docket 29926, Notice of Proposed Rulemaking, SPDR-56—OTC Advance Purchase Period (For Information Memo No. 8/3, BIA, OGC, BOE, BE, BOR).

STATUS: Open.

#### PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

[S-1200-77 Filed 8-25-77;4:00 pm]

### 2

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-1185-77.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (Eastern Time), Tuesday, August 30, 1977.

CHANGES IN THE MEETING: Addition of the following item to the portion open to the public:

3. *New Charge Intake and Backlog Procedures.* The Commission will consider the approval of the use of these new procedures by all of its district offices, under a phasing plan to be approved at a later date.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission requires this change and that no earlier announcement was possible.

The vote was as follows:

*In favor of change:* Eleanor Holmes Norton, Chair; Ethel Bent Walsh, Commissioner; Daniel E. Leach, Commissioner.

*Opposed:* None.

#### CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748. This Notice Issued August 25, 1977.

[S-1202-77 Filed 8-26-77;10:08 am]

### 3

#### FEDERAL POWER COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published August 26, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: August 31, 1977, 10 a.m.

CHANGE IN THE MEETING: The following item has been added:

*Item No., Docket No., and Company*

G-9.—C177-306, Transco Exploration Company.

[S-1197-77 Filed 8-25-77;2:06 pm]



Register  
Federal

TUESDAY, AUGUST 30, 1977

PART II



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DEPARTMENT OF  
HOUSING  
AND URBAN  
DEVELOPMENT

Federal Insurance  
Administration



PROPOSED FLOOD  
ELEVATION  
DETERMINATIONS



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[ 24 CFR Part 1917 ]

[ Docket No. FI-3237 ]

## PROPOSED FLOOD ELEVATION DETERMINATIONS

Borough of Shippensburg, Cumberland County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Borough of Shippensburg, Cumberland County, Pa.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Shippensburg Borough Office, 60 West Burd Street, Shippensburg, Pa.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Walter K. Smith, Borough Manager of Shippensburg, P.O. Box 129, Shippensburg, Pa. 17257.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Shippensburg, Cumberland County, Pa. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent

in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Burd Run.....	U.S. Route 11.....	651
	Orange St.....	654
Middle Spring Creek	North corporate limit.....	640
	Spring House Rd.....	642
	West Burd Rd.....	645
	West King St.....	652
	West Orange St.....	652
	Garfield St.....	655
	South corporate limit.....	661
Middle Spring Creek tributary.	Dykeman Rd.....	664
	Con Hall.....	660

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24677 Filed 8-29-77; 8:48 am]

[ 24 CFR Part 1917 ]

[ Docket No. FI-3238 ]

## PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Aberdeen, Brown County, S. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Aberdeen, Brown County, S. Dak.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base

flood elevations are available for review at the Aberdeen Municipal Building, on the first floor, 123 South Lincoln Street, Aberdeen, S. Dak.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Jeff Solem, Mayor of Aberdeen, P.O. Box 299, Aberdeen, S. Dak. 57401.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line, 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

## SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Aberdeen, Brown County, S. Dak., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Moccasin Creek.....	Confluence with Moccasin Creek tributary.....	1,297
	3d Ave.....	1,297
	6th Ave.....	1,296
	8th Ave.....	1,296
	10th Ave.....	1,296
	Meigs Rd.....	1,294
	Brown County 14.....	1,294
Moccasin Creek tributary.	8th Ave.....	1,299
	B.N. RR.....	1,298
	C.M. & P. RR.....	1,298
	Confluence with Moccasin Creek.....	1,297
Foot Creek.....	Meigs Rd.....	1,302
	Frontage Rd.....	1,302
	U.S. 281.....	1,301
	Brown County 14.....	1,300

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delega-



tion of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974.)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc. 77-24668 Filed 8-29-77; 8:45 am]

[ 24 CFR Part 1917 ]

[Docket No. FI-3239]

**PROPOSED FLOOD ELEVATION DETERMINATIONS**

City of Columbia, Brown County, S. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Columbia, Brown County, S. Dak. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Columbia City Hall, Main Street, Columbia, S. Dak.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Honorable Egon Buntrock, Mayor of Columbia, Columbia, S. Dak. 57433.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Columbia, Brown County, S. Dak. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in

their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
James River	Lavin Ave. (extended)	1,293
	County Rd. No. 11	1,292
	C. & N.W. RR.	1,292.5
	Stella St.	1,292

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc. 77-24669 Filed 8-29-77; 8:45 am]

[ 24 CFR Part 1917 ]

[Docket No. FI-3240]

**PROPOSED FLOOD ELEVATION DETERMINATIONS**

City of Athens, McMinn County, Tenn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Athens, McMinn County, Tenn. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review on the Bulletin Board, 815 North Jackson Street, Athens, Tenn.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. G. Isbell, P.O. Box 849, Athens, Tenn. 37303.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Athens, McMinn County, Tenn. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Gostanula Creek	State Highway 90	456
	Madison Ave.	870
	Upstream corporate limits	895
Walker Branch	Downstream side of Etowah Rd.	863
	Upstream side of Old Englewood Rd.	879
Black Branch	Upstream corporate limits	845
	Downstream corporate limits	844
Forest Branch	Downstream side of U.S. Highway 11	882
	Downstream side of Louisville & Nashville RR	891
	Kent St.	936
North Mouse Creek	Downstream side of State Highway 30	892
	Upstream Corporate limits	806
Blue Springs Branch	Upstream side of Old Decatur Rd.	801
	Upstream corporate limits	811
Tributary No. 1 to North Mouse Creek	Downstream side of Private Dr. at Stream Mile 0.30	806
	Upstream side of Private Dr. at Stream Mile 0.60	834
	Downstream side of Layman Rd.	879

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation



of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24670 Filed 8-29-77;8:45 am]

# [ 24 CFR Part 1917 ]

[Docket No. FI-3241]

## PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Morristown, Hamblen County, Tenn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Morristown, Hamblen County, Tenn. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Municipal Building, 144 West First North Street, Morristown, Tenn. 37814.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Honorable John R. Johnson, Mayor of Morristown, P.O. Box 1499, Morristown, Tenn. 37814.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Morristown, Hamblen County, Tenn. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regu-

lations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Turkey Creek.....	Fairview Rd. (downstream).	1,126
	Fairview Rd. (upstream).	1,130
	South Outer Dr. (downstream).	1,182
	South Outer Dr. (upstream).	1,186
	Davis Ave. (downstream).	1,218
	Davis Ave. (upstream).	1,221
	Cherokee Dr. (downstream).	1,244
	Cherokee Dr. (upstream).	1,244
	West 3d North St. (downstream).	1,206
	West 3d North St. (upstream).	1,283
	Morris Blvd., west fork, Turkey Creek (downstream).	1,284
	Morris Blvd., west fork, Turkey Creek (upstream).	1,303
	Sunrise Ave. (downstream).	1,303
	Sunrise Ave. (upstream).	1,318
	Freelour St. (downstream).	1,372
West fork, Turkey Creek.	Corporate limits.	1,285
	South Jackson St.	1,288
	Dice St. (downstream).	1,289
	Dice St. (upstream)...	1,297
	Sulphur Springs Rd. (downstream).	1,300
	Sulphur Springs Rd. (upstream).	1,307
	Valley St. (downstream).	1,309
	Valley St. (upstream).	1,332
	Kennedy Circle (downstream).	1,339
	Kennedy Circle (upstream).	1,351
	Lincoln Ave. (downstream).	1,356
	Lincoln Ave. (upstream).	1,358
	Corporate limits.	1,212
	Stubblefield Creek.	1,220
	North Liberty Rd. (downstream).	1,228
	North Liberty Rd. (upstream).	1,209
	U.S. Highway 11E bypass (downstream).	1,271
	U.S. Highway 11E bypass (upstream).	1,282
	Trade St. (downstream).	1,282
	Trade St. (upstream).	1,285
	Merwin St. (downstream).	1,288
	Merwin St. (upstream).	1,311
	Forgey Ave. (downstream).	1,318
	Forgey Ave. (upstream).	1,328
	Algonquin Dr. (downstream).	

Source of flooding	Location	Elevation in feet above mean sea level
Stubblefield Creek..	Algonquin Dr. (upstream).	2,334
	Bacon Lane (downstream).	1,345
	Bacon Lane (upstream).	1,346
	Hillvale Dr. (downstream).	1,373
	Hillvale Dr. (upstream).	1,373
	Corporate limits.	1,374
	Corporate limits (downstream).	1,144
	Corporate limits (upstream).	1,155
	Turkey Bridge Rd.	1,181
	Corporate limits.	1,199
	do.	1,192
	do.	1,208
	do.	1,222
	do.	1,225
	Walters Dr. (downstream).	1,230
Havley Springs branch.	Walters Dr. (upstream).	1,235
	Walters Dr. (downstream).	1,236
	Walters Dr. (upstream).	1,242
	North Economy Rd. (downstream).	1,271
	North Economy Rd. (upstream).	1,272
	Confluence with Turkey Creek.	1,307
	Lincoln Ave. (downstream).	1,334
	Lincoln Ave. (upstream).	1,335
	Union Ave. (downstream).	1,344
	Union Ave. (upstream).	1,345
	Unnamed tributary to Turkey Creek.	
	Lincoln Ave. (downstream).	1,334
	Lincoln Ave. (upstream).	1,335
	Union Ave. (downstream).	1,344
	Union Ave. (upstream).	1,345

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24671 Filed 8-29-77;8:45 am]

# [ 24 CFR Part 1917 ]

[Docket No. FI-3242]

## PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Allen, Collin County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Allen, Collin County, Texas.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**ADDRESSES:** Maps and other information showing the detailed outlines of the



flood-prone areas and the proposed base flood elevations are available for review at City Hall, Allen, Texas.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Frank Dugger, P.O. Box 487, Allen, Texas 75002.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Allen, Collin County, Texas in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Rowlett Creek	Upstream of Greenville Ave. (State Highway 5)	576
	Upstream of Rowlett Dr.	622
Cottonwood Creek	Downstream of Jupiter Rd.	603
	Upstream of Main St. (Farm Rd. 2170)	611
	Upstream of Stacey Rd.	655
Stream 2G1	Upstream of Allen Heights Dr.	622
	Upstream of Main St. (Farm Rd. 2170)	649
Stream 2G2	Jupiter Rd.	602
	Upstream of Greenville Ave. (State Highway 5)	628
Stream 2G3	Upstream Southern Pacific RR.	645
Stream 2D15	Allen Dr.	652
	Upstream of Chaparral Rd.	598
Stream 2D16	Approximately 0.8 mi south of Bethany Rd. at the crossing of an unnamed road.	601

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Watters Branch	Upstream of Main St. (Farm Rd. 2170)	617
	Upstream of Rowlett Dr.	639
	Downstream of State Highway 121	603
Stream 2F1	Upstream of Main St. (Farm Rd. 2170)	646
West Rowlett Creek	Downstream of State Highway 121	641
Russell Creek	Downstream of Custer Rd.	655

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24672 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

[Docket No. FI-3243]

#### PROPOSED FLOOD ELEVATION DETERMINATIONS

##### City of Del Rio, Val Verde County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Del Rio, Val Verde County, Texas.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the City Hall, 109 West Broadway, Del Rio, Texas 78840.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify, Honorable Alfredo Gutierrez, Jr., Mayor of Del Rio, City Hall, 109 West Broadway, Del Rio, Texas 78840.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Del Rio, Val Verde County, Texas in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
San Felipe Creek	Southeast corporate limit.	923
	Academy St.	946
	Canal St.	939
	Tani St.	946
	Margarite Ave.	958
	U.S. Route 90	965
Calaveras Creek	Confluence with San Felipe Creek.	924
	Tani St. (extended)	931
	Broadbent Ave.	934
	U.S. Route 277	947
	Vitela St. (extended)	955
	Sanchez St. (extended)	966
	Southern Pacific RR.	998
	Most upstream corporate limit.	1,013
Stream 1	Confluence with Calaveras Creek.	937
	Bowie St.	946
	San Felipe Ave.	954
	U.S. Route 277	958
	Vitela St.	963
Stream 2	Western corporate limit.	978
	Lenora Ave.	983
	Wildcat Dr.	1,005
Canta Branch	Western corporate limit.	1,000
	Kings Way	1,006
	Alta Vista Rd.	1,017
	Margaret Lane	1,025
	Gayle Ave.	1,030
	U.S. Routes 277, 90, 377	1,034
	Lansen Rd.	1,036
	Ohio St. (extended)	1,039
	Kings Way (extended)	1,042
Stream 3	Kings Way (southern crossing)	1,010
	Amistad Blvd.	1,031
	Kings Way (northern crossing)	1,064

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance



Administrator 34 F.R. 2680, February 27, 1969, as amended (39 F.R. 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc. 77-24673 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

(Docket No. FI-3244)

### PROPOSED FLOOD ELEVATION DETERMINATIONS

#### City of Lavilla, Hidalgo County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Lavilla, Hidalgo County, Texas.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Lavilla, Texas.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Gileerto M. Hinojosa, P.O. Box 38, Lavilla, Texas 78562.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Lavilla, Hidalgo County, Texas in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities.

These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Shallow flooding...	Intersection of Tully and Jili Sts.	57
	Intersection of Lackland and Lull Sts.	57
	Intersection of East Ave. and Parker St.	58
	Center St. (between Branch St. and Yarbrough Ave.).	58

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, February 27, 1969, as amended (39 F.R. 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc. 77-24674 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

(Docket No. FI-3245)

### PROPOSED FLOOD ELEVATION DETERMINATIONS

#### County of Amherst, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the County of Amherst, Va.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the County Courthouse, Amherst, Va. 24521.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Roy C. Mayor,

County Administrator of Amherst County, P.O. Box 390, Amherst, Va. 24521.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the County of Amherst, Va. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
James River.....	County boundary.....	421
	Allens Creek, Nelson County.....	421
	Walker Ford Creek.....	449
	Christian Mill Creek.....	453
	Partridge Creek.....	468
	Back Creek.....	470
	Appomattox County and Campbell County.....	481
	Chesapeake & Ohio R.R.....	491
	Norfolk & Western R.R.....	500
	Campbell County & Lynchburg City.....	508
	Williams Run.....	512
	Norfolk & Western R.R.....	522
	U.S. Route 29.....	526
	Alternate Route 29.....	528
	Lynchburg Dam.....	532
	Harris Creek.....	534
	Reynolds Dam.....	567
	Holcombs Rock Dam.....	568
	Wilderness Creek.....	598
	Wilderness Creek.....	612
	Coleman Falls Dam.....	622
	State Route 647.....	625
	Big Island Dam.....	631
	Blue Ridge Parkway.....	644
	Bedford Dam.....	651
	U.S. Route 501.....	670
	Cashaw Dam.....	673
	Chesapeake & Ohio R.R.....	718
	Corporate limits and Rockbridge County.....	



Source of flooding	Location	Elevation in feet above mean sea level
Piney River.....	Virginia Blue Ridge R.R.	603
	Maple Run.....	612
	State Route 665.....	638
	State Route 151.....	644
	Mine Quarry Rd.....	692
	Indian Creek.....	698
	State Route 778.....	730
	Little Piney River.....	773
	State Route 608.....	785
	State Route 767.....	829
	State Route 606.....	858
Pedlar River.....	Maple Creek.....	618
	Clark Creek.....	610
	State Route 130.....	673
	State Route 635.....	690
	State Route 644.....	707
	Dancing Creek.....	729
	State Route 610.....	740
	Love Lady Creek.....	744
	State Route 640.....	762
Buffalo River.....	U.S. Route 29.....	555
	Old Dam.....	558
	Tribulation Creek.....	567
	Old Dam.....	568
	Huff Creek.....	574
	State Route 616 (ex- tended).....	584
	Mill Creek.....	601
	Beaver Creek.....	620
	State Route 778.....	628
	Stonehouse Creek.....	637
	Thrashers Creek.....	664
	Private Rd.....	670
	U.S. Route 60.....	680
	Puppy Creek.....	687
	U.S. Route 610.....	690
	Long Branch.....	740
	Private road.....	855
	State Route 635.....	879
	U.S. Route 60.....	937
Williams Run.....	End of Ragland Rd.....	632
	Private bridge.....	654
	State Route 622.....	659
	State Route 681.....	678

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc. 77-24675 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

[Docket No. FI-3246]

### PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Salem, Independent City, Va.

AGENCY: Federal Insurance Adminis-  
tration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Salem, Independent City, Va.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of

local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Bulletin Board, Engineering Department, Salem Municipal Building, 19 North College Avenue, Salem, Va.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. William J. Paxton, City Manager of Salem, P.O. Box 869, Salem, Va. 24153.

#### FOR FURTHER INFORMATION CON- TACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Salem, Independent City, Va., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Roanoke River.....	Eastern corporate limits.....	983
	Norfolk & Western R.R.....	990
	U.S. Route 11 (Apperson Dr.).....	993
	Virginia State Route 419.....	996
	Colorado St.....	1,006
	Eddy Ave.....	1,010
	Mill Lane.....	1,030
	Diagnids Lane.....	1,049
Mason Creek.....	Norfolk & Western R.R.....	987
	Roanoke Blvd.....	996
	Lynchburg Turnpike.....	1,013
	East Main St.....	1,023
	Garst St.....	1,047
	Sycamore Dr. (extended).....	1,065
	Corporate limits.....	1,087

Source of flooding	Location	Elevation in feet above mean sea level
Gish Branch.....	Kessler Mill Rd.....	1,029
	Chamberlain Lane.....	1,045
	Parkdale Dr.....	1,050
	Virginia Route 631.....	1,095
Williams Branch.....	7th St.....	1,012
	6th St.....	1,013
	4th St.....	1,024
	2d St.....	1,032
	Burwell St.....	1,044
	Clay St.....	1,053
	Market St.....	1,064
	Hawthorne Rd.....	1,091
Snyder Branch.....	Alabama St.....	1,040
	Roanoke Blvd.....	1,043
	College Ave.....	1,060
	Main St.....	1,067
	Clay St.....	1,062
High School Branch.....	Mill Lane.....	1,026
	Norfolk & Western Ry.....	1,035
Dry Branch.....	4th St.....	1,022
	Burwell St.....	1,039
	U.S. Route 460.....	1,047
	Carrollton Ave.....	1,103
	Corporate limits.....	1,141
Cole Hollow Brook.....	Hurt Rd.....	1,031
	Norfolk & Western Ry. U.S. 11 and 460.....	1,036
	Horner Lane.....	1,046
	Windsor Dr.....	1,073
	Litchell Rd.....	1,092
Paint Bank Branch.....	Salem Industrial Dr.....	1,042
	West Main St.....	1,053
	Valley Dale Rd.....	1,107
	Texas Hollow Rd.....	1,126
Butt Hollow.....	Downstream city limits.....	1,057
	Main St.....	1,073
	Butt Hollow Rd.....	1,108
Bowman Hollow.....	Riverside Dr.....	1,002
	U.S. Route 11 (Apperson Dr.).....	1,012
	Kimball Ave.....	1,020
	Franklin St.....	1,070
Barnhardt Creek.....	Roanoke River to city limits.....	984

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc. 77-24676 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

[Docket No. FI-3247]

### PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Toppenish, Yakima County, Wash.

AGENCY: Federal Insurance Adminis-  
tration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Toppenish, Yakima County, Wash.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second pub-



lication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the City Hall, Toppenish, Wash. 98948.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Honorable Fred K. Mutch, Mayor of Toppenish, City Hall, Toppenish, Wash. 98948.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Toppenish, Yakima County, Wash., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Yakima River.....	Intersection of East Toppenish Ave. and L St.	752
	Intersection of East Toppenish Ave. and H St.	753
	Intersection of East Toppenish Ave. and A St.	755
	Intersection of Chehalis Ave. and North Beach St.	757
	Intersection of Chehalis Ave. and North Elm St.	760
	Intersection of Buena Way and Idaho Ave.	763
	Buena Way at north corporate limit.	765

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24677 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

[Docket No. FI-3248]

#### PROPOSED FLOOD ELEVATION DETERMINATIONS

##### Town of Henderson, W. Va.

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Henderson, W. Va. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Town Hall, Henderson, W. Va.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Carolyn Rainey, Town Hall, Henderson, W. Va. 25106.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Henderson, W. Va., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980 which, added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required.

They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Ohio River.....	Silver Memorial Highway	570
	New York Central R.R.	570
Kanawha River...	West Virginia State Route 2.	570

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24678 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

[Docket No. FI-3249]

#### PROPOSED FLOOD ELEVATION DETERMINATIONS

##### Village of Gays Mills, Wis.

**AGENCY:** Federal Insurance Administration, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Village of Gays Mills, Wis. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Village Hall, Gays Mills, Wis.

Any person having knowledge, information, or wishing to make a comment



on these proposed elevations should immediately notify Mr. Bernard Watson, President, Village of Gays Mills, Village Hall, Gays Mills, Wisc. 54631.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

#### SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Gays Mills, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Kickapoo River.....	Dam.....	703
	Main St.....	702

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24679 Filed 8-29-77;8:45 am]

#### [ 24 CFR Part 1917 ]

[Docket No. FI-3250]

#### PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Glendale, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Glendale, Wis. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 5909 North Milwaukee River Parkway, Glendale, Wis.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Norbert J. Hynek, City Hall, 5909 North Milwaukee River Parkway, Glendale, Wis. 53209.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Glendale, Wis., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional enti-

ties. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Milwaukee River...	Port Washington Rd	620
	U.S. 141	620
	Hampton Ave.....	622
	Chicago & Northwest- ern RR	622
	Silver Spring Dr.....	625
	Bender Rd.....	631
	Chicago & Northwest- ern RR	632
	Green Tree Rd.....	636
	Good Hope Rd.....	638

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24680 Filed 8-29-77;8:45 am]

#### [ 24 CFR Part 1917 ]

[Docket No. FI-3251]

#### PROPOSED FLOOD ELEVATION DETERMINATIONS

Village of Cleveland, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevation (100-year flood) listed below for selected locations in the Village of Cleveland, Wisconsin.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Veterans of Foreign Wars Building, Park Lane, Cleveland, Wisconsin.



Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Robert Wagner, Village President, Village of Cleveland, 334 East Washington Avenue, Cleveland, Wisconsin 53015.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Cleveland, Wisconsin, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Centerville Creek tributary	Linden St.	613
	Hickory St.	635
	Chicago & North-western RR.	633
	Washington Ave.	631
Centerville Creek	Center St.	628
	Footbridge	654
	U.S. Highway 141	640
	Dam	597
	County Trunk Highway LS.	584

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24681 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

[ Docket No. FI-3252 ]

### PROPOSED FLOOD ELEVATION DETERMINATIONS

Jefferson County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in Jefferson County, Wisconsin.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at County Courthouse, 320 South Main Street, Jefferson, Wisconsin.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Robert Baier, County Administrator, Jefferson County, County Courthouse, 320 South Main Street, Jefferson, Wisconsin 53549.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for Jefferson County, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will

also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Rock River	County Trunk Highway CW bridge	847
	State Highway 135 bridge	813
	County Trunk Highway P bridge	837
	Chicago, Milwaukee, St. Paul, and Pacific Ry. bridge	836
	Chicago and North-western Ry. bridge	793
	State Highway 106 bridge	789
Koshkonong Creek	County Trunk Highway O bridge	813
	Chicago and North-western Ry. bridge	834
	U.S. Highway 18 bridge	831
	Rockdale Road Bridge	796
Whitewater Creek	Town Road Bridge	798
	Fremont Rd at Cold Spring	788
Oconomowoc River	Morgan Road (county line)	519
	Elm Drive Bridge	817
	River Road Bridge (upstream side)	843
Bark River	County Trunk Highway D bridge	789
Crawfish River	County Trunk Highway A bridge	792
	U.S. Highway 18 bridge	790

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24682 Filed 8-29-77; 8:45 am]

#### [ 24 CFR Part 1917 ]

[ Docket No. FI-3253 ]

### PROPOSED FLOOD ELEVATION DETERMINATIONS

Sheboygan County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in Sheboygan County, Wisconsin.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).



**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Sheboygan County Courthouse, 615 North 6th Street, Sheboygan, Wisconsin.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Leo Tresp, Sheboygan County Board Chairman, 615 North 6th Street, Sheboygan, Wisconsin 53081.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for Sheboygan County, Wisconsin, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
North Branch Milwaukee River	Farm bridge	811
	State Trunk Highway 144	811
	Farm bridge	815
	County Trunk Highway 88	817
Silver Creek	Cascade Rd.	820
	Farm bridge	809
	Camp Awana Rd.	819
	County Trunk Highway DE	847
	Creek Rd.	849

Source of flooding	Location	Elevation in feet, national geodetic vertical datum	Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Batavia Creek	County Trunk Highway 88	817	Pigeon River	County Trunk Highway LS	585
	Farm bridge	819		Chicago and Northwestern R.R.	591
	State Trunk Highway 28	842		Mill Rd.	594
Black River	Evergreen Rd.	584		U.S. Highway 141	615
	Indian Mound Rd.	588		Golf course bridge	625
Black River tributary 1	Lakeside Dr.	585		County Trunk Highway Y	638
	County Trunk Highway KK	593		Golf course bridge	670
Black River tributary 2	County Trunk Highway KK	595		County Trunk Highway J	673
	County Trunk Highway EK	617		Range Line Rd.	677
Sheboygan River	Chicago and Northwestern R.R.	590	Fisher Creek	Playbird Rd.	682
	State Trunk Highway 28	594		County Trunk Highway A	707
	State Trunk Highway 23	686		Farm bridge	716
	Meadowlark Rd.	691		County Trunk Highway FF	724
	County Trunk Highway TT	704			
	Alpine Rd.	716			
	County Trunk Highway O	739			
	County Trunk Highway M	742			
	Rio Rd.	748			
	Woodland Rd.	753			
	County Trunk Highway J	759			
	County Trunk Highway JM	771			
	County Trunk Highway JJ	783			
	County Trunk Highway A	798			
	Old County Trunk Highway A	802			
	County Trunk Highway FF	808			
	Frankland Rd.	814			
	County Trunk Highway MM	820			
	Willow Rd.	825			
	County Trunk Highway EH	828			
	County Trunk Highway MC	841			
	Old bridge	843			
	State Trunk Highway 87	844			
Onion River	Ourtown Rd.	699			
	County Trunk Highway V	695			
	County Trunk Highway V	695			
	County Trunk Highway O	704			
	State Trunk Highway 32	711			
Mullet River	Chicago and Northwestern R.R.	677			
	County Trunk Highway PP	677			
	Sumac Rd.	724			
	County Trunk Highway M	739			
	Willow Rd.	754			
	State Trunk Highway 67 North	777			
	State Trunk Highway 57 South	778			
	Pleasant View Rd.	783			
	County Trunk Highway AC	786			
	Chicago, Milwaukee, St. Paul and Pacific R.R.	789			
	County Trunk Highway PP	804			
	Short Cut Rd.	806			
	State Trunk Highway 67	817			
	Terrace Ave.	840			
	State Trunk Highway 67	841			
	Woodland Rd.	860			
	Private road	868			
	Abandoned bridge	884			
La Budde Creek	Chicago, Milwaukee, St. Paul and Pacific R.R.	884			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: JULY 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24683 Filed 8-29-77;8:45 am]

[ 24 CFR Part 1917 ]

[Docket No. FI-3254]

#### PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Stoughton, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Stoughton, Wis. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 381 East Main Street, Stoughton, Wis.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Linell H. Cooper, City Hall, 381 East Main Street, Stoughton, Wis. 53589.



## FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

## SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Stoughton, Wisconsin, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also

be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Yahara River.....	4th Street Culvert.....	835
	Stoughton Dam.....	842
	Forton Street Bridge..	842
	Main Street Bridge...	842
	Chicago, Milwaukee, St. Paul & Pacific RR Bridge.	843

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2690, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: July 28, 1977.

PATRICIA ROBERTS HARRIS,  
Secretary.

[FR Doc.77-24684 Filed 8-29-77;8:45 am]



registered  
property

TUESDAY, AUGUST 30, 1977

PART III



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## ENDANGERED SPECIES SCIENTIFIC AUTHORITY

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### EXPORT OF BOBCAT, LYNX, RIVER OTTER AND AMERICAN GINSENG

Preliminary Findings and Request  
for Comment



# ENDANGERED SPECIES SCIENTIFIC AUTHORITY

## EXPORT OF BOBCAT, LYNX, RIVER OTTER, AND AMERICAN GINSENG

### Preliminary Findings and Request for Comment

AGENCY: Endangered Species Scientific Authority.

ACTION: Notice.

SUMMARY: This notice summarizes current findings of the Endangered Species Scientific Authority (ESSA) on commercial international export of certain Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora. In particular, notice is given of preliminary ESSA findings on a State-by-State basis for the 1977-78 season for the international commercial export of bobcat (*Lynx rufus*, excluding the Mexican bobcat, *L. r. escuinapae*), lynx (*Lynx canadensis*), river otter (*Lutra canadensis*), and American ginseng (*Panax quinquefolius*). Because the export of Appendix II specimens may be permitted only if the ESSA is able to find that the export will not be detrimental to the survival of the species, and because the biological, commercial, and legal classification of the named species varies among the States, a State-by-State analysis was considered necessary. It is hoped that this notice will encourage comment and the submission of substantive information, which may be used to supplement or modify the conclusions drawn herein.

DATE: All interested persons are invited to comment on these preliminary findings at any time. Comments received by October 31, 1977 will be considered in a general republication of ESSA findings within the next few months. However, the ESSA will publish revised findings at any time if new information indicates that modification of particular findings are appropriate.

ADDRESS: Comments should be addressed to the Executive Secretary, Endangered Species Scientific Authority, 18th and C Streets, NW., Washington, D.C. 20240.

### FOR FURTHER INFORMATION CONTACT:

Dr. William Y. Brown, Executive Secretary, Endangered Species Scientific Authority, 18th and C Streets NW., Washington, D.C. 20240, (202-343-5687).

### BACKGROUND

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) and its implementing regulations, 50 CFR Part 23, control international trade in animal and plant species included in each of three Appendices, listed in § 23.23. It is emphasized that the Convention Appendices are distinct from the list of species issued under the Endangered Species Act of 1973, 16 U.S.C. 1531-1543. Whereas listings under the Act include species en-

dangered by any factor, species on the Convention Appendices must be actually or potentially endangered by international trade. Listed in Appendix II are generally those species not necessarily now threatened with extinction, but which may become so unless trade in them is subject to strict regulation.

The Convention required the establishment of a Scientific Authority whose purpose is to insure the scientific soundness of governmental decisions concerning trade in listed species of plants and animals. Therefore, the Endangered Species Scientific Authority (ESSA) was established by Executive Order 11911 on April 13, 1976. On July 11, 1977, the ESSA published an Interim Charter and other information essential to its operation (42 FR 35799). In that notice, the ESSA requested interested persons to comment on the Interim Charter as well as to provide biological and trade information on Convention species.

Before the Federal Wildlife Permit Office of the U.S. Fish and Wildlife Service, that serves as the U.S. Management Authority (MA) for the Convention, can issue permits for foreign export of Appendix II species taken from the wild, the ESSA must first find and advise the MA that the export will not be detrimental to the survival of the species (Convention, Article IV 2(a)). The ESSA has established in its Interim Charter the following general criteria for determining whether an export (or purpose of import or introduction from the sea) will not be detrimental to the survival of a species:

1. Whether similar export, import or introduction from the sea has occurred in the past, and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystem.

2. Whether life history parameters of the species and the structure and function of its ecosystem indicate that the present frequency of export, import, or introduction from the sea will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem.

3. Whether such export, import, or introduction from the sea is expected to increase, decrease, or remain constant in frequency. (ESSA Interim Charter, Article IV. C., 42 FR 35801)

The U.S. Fish and Wildlife Service is currently reviewing the status of the bobcat, lynx, river otter, and American ginseng to determine whether they should be proposed as Endangered or Threatened under the Endangered Species Act of 1973. On July 13, 1977 the Service published a notice of review for the bobcat and the lynx (42 FR 35996); on July 28, 1977 the Service published a notice of review for the river otter (42 FR 38395); and on August 11, 1977 the Service published a notice of review for the American ginseng (42 FR 40823). In all three of these notices of review the Service requested interested parties to submit comments concerning the status of these species. As indicated in 42 FR

40979-40980 on August 12, 1977, findings of the ESSA on commercial international export of these species for the 1977-78 season will be based on a State-by-State assessment of the status of each species. The variation among the States in species status indicated that such an individualized approach would best give the ESSA the necessary basis for finding whether export would not be detrimental to the survival of the species. The ESSA usually reviews applications on a case-by-case basis, but the large volume of trade in these species calls for general findings. Interested parties were advised in the August 12 Notice that the ESSA would publish a subsequent notice indicating the States or origin from which commercial international export of subsequently obtained pelts and roots must be prohibited by the MA in the 1977-78 season, and indicating the appropriate level of exports of any species for which commercial international export was not initially prohibited. Interested persons were further advised that the ESSA would monitor any export and would notify the MA when it can no longer find that export from particular States will not be detrimental to the survival of the species, and therefore further commercial international exports must be barred by the MA.

The purpose of this notice is to present the ESSA's evaluation of the State-by-State biological status of the four named species, and to state the ESSA's preliminary findings on commercial international export. The ESSA seeks substantive comments which may serve to supplement or modify conclusions drawn from the available information. Of special interest are actual population censuses and trends, recent changes in habitat availability, Statewide trade and the legal status and impact of the international market on the named species. Comments received by October 31, 1977, will be considered in a republication of ESSA findings this Fall. However, these preliminary findings represent the best data available to the ESSA, and although little harvest of these species is expected for the next few months, these preliminary findings are effective immediately to prevent last minute stockpiling of pelts and roots. Because the ESSA cannot find in favor of international export without supporting evidence, foreign export cannot be permitted from States for which sufficient data and adequate regulatory mechanisms are lacking. The ESSA is hopeful that it will have most available information on these species by the end of the comment period, for incorporation into the republication of ESSA findings for 1977-78.

Regulation of bobcat, lynx, and river otter harvest varies considerably from State to State. Hunters, trappers, and dealers usually must be licensed by the State. Although methods of reporting vary from State to State, the most common means are dealer reports of purchases or sales, and surveys based on voluntary trapper reports of take. Such estimates may not accurately reflect the harvest or trends in the harvest (cf.



Colorado and South Dakota State analyses). Analyses of State harvests are further complicated by changes in State regulations, and trapping and hunting seasons. Currently, tagging of pelts is required in only 9 States for bobcat and 5 States for river otters, but several additional States have plans or proposals to implement such systems in the near future. Several States require tagging of fur shipments but not pelts.

The bobcat is completely protected by 12 States, the lynx by 9 States, and the river otter by 23 States. Most States allowing harvest have defined hunting or trapping seasons.

No States have established seasonal limits on total legal harvest of any of these species.

Few States regulate the harvest of American ginseng. The plant is completely protected by New York State law, except for collecting by private landowners. The plant is also protected by Michigan, although commercial harvest is allowed under State permit. Only the State of Wisconsin has established a collecting season. Certain counties in North Carolina and West Virginia require the consent of the landowner or an authorized agent before American ginseng may be collected. In addition, many States require consent of landowners or approval of authorized State agents for general plant collecting on private or public lands.

It cannot be overemphasized that the development of more adequate management and regulation of these species in many States would lead the ESSA to many more findings in favor of international commercial export than is now possible. Many of the negative ESSA findings in this notice are compelled by the lack of data and adequate regulatory mechanisms, rather than by positive evidence of declining populations. The ESSA strongly encourages the States to establish and enforce biologically justifiable limits on the harvest of these species, and to require tagging of every pelt, and issue documentation on all American ginseng taken in the State. Although in certain instances the ESSA may accept less than this for international export in 1977-78, it is unlikely that less will be accepted in 1978-79. Implementation of these requirements is a vital component of the Federal-State cooperation essential to the success of the Convention.

#### PRE-NOTICE SPECIMENS

Although these preliminary ESSA findings require the MA to prohibit or restrict international commercial export of pelts and roots taken in 1977-78, the ESSA expressly finds that the export of any pelts and roots of the four named species will not be detrimental to the survival of the species if the pelts and roots were obtained from the wild before the date of this notice.

The ESSA recognizes that exporters may have obtained Appendix II specimens taken during the 1976-77 season, or earlier without awareness of impending export regulations under the Conven-

tion, which became generally effective on May 23, 1977. For this reason, and because the impact on wild populations of the 1976-77 season is now past, the ESSA will allow export of this inventory without the same degree of scrutiny that will be required hereafter.

However, because of the danger of claims that pelts and roots taken after the date of this notice were taken before, general ESSA approval of these pre-notice commercial international exports will expire November 1, 1977, giving more than six months for export of the bulk of pelts and roots taken in the 1976-77 season or before, yet requiring discharge of inventory before the 1977-78 season is advanced. After November 1, applications for international export of allegedly pre-notice specimens are discouraged. Such applications will be closely scrutinized on a case-by-case basis and a positive finding will be made only if proof such as State tags or documents issued by authorized State officials leaves no reasonable doubt that the pelts or roots in question were acquired before the date of this notice.

Exporters should note that no ESSA approval is required for exports of pelts and roots under certificates of exemption issued by the MA. These certificates may be issued for various reasons stated in § 23.13 of Title 50, Code of Federal Regulations. Specifically encompassed are cases where pelts or roots were acquired by an exporter before the Convention became effective for the species in question, specifically July 1, 1975 for American ginseng and February 4, 1977 for bobcat, lynx, and river otter, or cases where roots are from cultivated plants.

#### FINDINGS IN GENERAL

Prior to November 1, 1977, the ESSA for its part approves commercial international export of all American ginseng roots, bobcat, lynx, and river otter pelts obtained from the wild prior to the date of this notice. In addition, the ESSA approves the commercial international export of river otters and American ginseng taken subsequent to this notice, but only if the applicant can prove that the pelts were obtained from one of the 17 States named below in the river otter section, or from Michigan in the case of American ginseng, and only to the extent authorized in that section for each State. Furthermore, all shipments of pelts and roots must carry as an attachment to the required permit copy the information requested by the joint U.S. Fish and Wildlife Service/ESSA notice of August 12, 1977 (42 FR 40979). For river otter pelts and American ginseng roots taken after the date of this notice, such attachments must state for each pelt and pound of roots the State of origin and the season taken. For American ginseng, copies of Michigan permits must be attached also, accounting for all roots. For pelts and roots taken before the date of this notice, this same information must be stated to the extent that it is known. The ESSA will monitor international exports of river otters and American ginseng taken in authorized States, and if

necessary will establish dates for each State based on limits stated herein or in any revised findings, after which no further international commercial exports will be allowed of pelts and roots taken in the 1977-78 season. Findings for 1978-79 will be developed after the close of the 1977-78 season.

#### BOBCAT

**Data base.** In evaluating the bobcat, the ESSA relied in part on State fur harvest and price reports summarized in *Fur Catch in the United States, 1934-70*, and more recently on answers to a questionnaire circulated to State agencies by the Fur Resources Committee of the International Association of Fish and Wildlife Agencies, 1970-71 until the present. Data on the number of bobcats killed and recovered per fiscal year were provided by the Federal Animal Damage Control Division (ADC) of the U.S. Fish and Wildlife Service, 1958-present. Other data were obtained from the States and miscellaneous other sources. Little population census information is available (e.g., see 1 and 2).

As noted, fur harvest and price reporting systems vary widely among the States. Therefore, express interstate comparisons should not be made. Where known changes in State policy may have influenced harvest figures, these have been discussed.

Although ADC recovery has been used unqualifiedly by some as an indicator of bobcat population trend (see 3 and 4), the take may reflect certain other factors as well. For example, the number of ADC field people has declined from about 750 in the 1960's to about 400 people at present (see 5). Therefore, it can be inferred that the effort expended has also declined somewhat. To what extent the often tenfold decrease in ADC recovery can be directly attributed to a less than twofold decrease in personnel is unclear.

In addition, it has further been reported that within the past ten years the sheep industry has declined in the West. This occurrence might have led to decline in ADC recovery, because of fewer bobcat-rancher confrontations. Furthermore, ADC implemented a policy change in 1973 which may have influenced recovery at that time, but which would have had no effect on the take in prior years.

Although certain factors not directly related to bobcat abundance may have influenced the ADC recovery, they may not completely account for the general pattern of long-term, substantial decline. Therefore, the ADC figures have been presented as possible but uncertain indicators of bobcat population trend.

**Discussion.** The bobcat is a secretive animal, widely distributed across the lower forty-eight States, and occupying many habitat types (see 5). In recent years, greatly increased fur prices, far above any measure of inflation, have contributed to an increase in hunting and trapping pressure on the bobcat. In addition, it is generally acknowledged among wildlife professionals that bobcats are easily trapped. For example, Mil-



ton Caroline, of Texas ADC reported (see 6): "Bobcat psychology is such that, unlike coyote, an experienced trapper can cut into the population without much difficulty."

Population dynamics of bobcat in seven northwestern States (Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota) are apparently influenced by densities of rabbit, a primary prey, which fluctuate, although not in predictable cycles (see 1 and 3).

Superimposed on this fluctuating pattern is a possible overall decline in population size as reflected by ADC recovery data, from the early 1960's until the present, perhaps brought by decline in available habitat, reaction to control efforts against other predators (especially coyote; see 7), and especially increased hunting and trapping pressure, particularly from the late 1960's until the present (see 3, 8, 9, and 10).

The intensive trapping effort of the 1970's brought by the sudden increase in price has been imposed on populations subject to natural fluctuations in numbers and possibly involved in a general, long-term decline. Although reported harvest in the 1970's has been great in the northwestern States, recent reported harvests do not always reflect the continual rising price. The inability of State harvests to keep and maintain pace with rising price suggests that bobcat may be already overharvested in at least some States.

The status of the bobcat is more variable outside of the northwest, and discussion is deferred to analysis by State. However, the patterns of the northwestern States occur in whole or part in many other States, and several of these States have initiated protective actions. Increasing harvest in California and in the southern States suggests that peak harvest may not yet have been reached, perhaps because of lower price than in the North.

The recent history of soaring price followed by rise and then, in some States, drop or destabilization of harvest, coupled with the apparent general lack of adequate State management of harvest, leaves the ESSA without grounds for approval of any commercial bobcat export for the 1977-78 season.

**Findings.** For the reasons discussed above and analyzed by State below, the ESSA is unable to find that international commercial export of bobcat pelts or products of animals taken from the wild during the 1977-78 season anywhere in the United States after the date of this notice will not be detrimental to the survival of the species. All Convention export permits presently in force or subsequently issued by the MA must conform with this finding. For bobcat pelts and products of animals taken from the wild before the date of this notice, the ESSA finds that export prior to November 1, 1977 will not be detrimental to the survival of the species, but the ESSA is unable to make this general finding for such exports after that date, for reasons stated above.

## LYNX

**Data base.** In evaluating the lynx, the ESSA has relied in part on State fur harvest and price reports summarized in Fur Catch in the United States, 1934-19, and more recently on answers to a questionnaire circulated to State agencies by the Fur Resources Committee of the International Association of Fish and Wildlife Agencies, 1970-71 until the present. Other useful data were obtained from the States and miscellaneous other sources. ADC data on lynx were too scanty to be of any value. As in the case of bobcat, little population census information was available. Use of these data was constrained by the same considerations discussed for the bobcat, above.

**Discussion.** It has been widely documented that populations of lynx cycle in response to changes in density of snowshoe hare, a major prey (see 11, 12, and 13). Early post partum mortality of kittens (probably starvation related) and reduced conception rates among yearlings may contribute to the decline in lynx population (see 13).

Based on radio tracking data which show that lynx in Alaska range further and spend more time hunting during years of low prey density, Berrie (see 12) postulated that lynx are disproportionately vulnerable to trapping in "low" years. If trapping during those years is not prohibited, he predicted that a progressive dampening in amplitude of the lynx cycle would result, because the time lag between increases of hare and lynx would lengthen. Eventually lynx might be reduced to isolated pockets in the most remote parts of Alaska.

A similar prediction has been made by C. Brand, University of Wisconsin. Brand stated orally that for lynx in Alberta, Canada, the time lag between hare and lynx expansions, which has been about one year in the past, will lengthen due to increased trapping pressure. Unless the season is completely closed during years of lows and expansion, local and regional extinctions may occur. Brand has recommended that the Alberta government close the season now, because this year the population of hares should begin to expand.

More recently, Berrie (see 14) reported that in central Alaska, lynx should be emerging from a low in 1977-78. Although there is apparent asynchrony in cycles between different populations of Alaska lynx (see also 15), the next high is not expected until 1981 or 1982. A price per pelt of up to \$350.00 led to an intensive trapping effort last season. This year, with the pipeline construction efforts decreasing, Berrie predicted an increase in the trapping force because of rising unemployment. In addition, Berrie reported that the capacity of individual trappers utilizing snowmobiles and new oil roads has apparently increased three times beyond the capacity of the most ambitious trapper utilizing dogs.

Lynx are much less widely distributed throughout the lower 48 States and have been reported extirpated in Massachu-

setts, New York, North Dakota, and South Dakota (see 16). Where they do occur, lynx are generally scarce on transient, but have been subject to increased trapping pressure recently due to increased pelt prices. Discussion of lynx status in the lower 48 States is deferred to the analyses by State.

**Finding.** For the reasons discussed above and analyzed by State below, the ESSA is unable to find that international export of lynx pelts or products of animals taken from the wild during the 1977-78 season anywhere in the United States after the date of this notice will not be detrimental to the survival of the species. All Convention export permits presently in force or subsequently issued by the MA must conform with this finding. For lynx pelts and products of animals taken from the wild before the date of this notice, the ESSA finds that export prior to November 1, 1977 will not be detrimental to the survival of the species, but the ESSA is unable to make this general finding for such exports after that date, for reasons stated above.

## RIVER OTTER

**Data base.** In evaluating the river otter, the ESSA has relied in part on State fur harvest and price reports summarized in Fur Catch in the United States, 1934-70, and more recently on answers to a questionnaire circulated to State agencies by the Fur Resources Committee of the International Association of Fish and Wildlife Agencies, 1970-71 until the present. The use of these data was constrained by the considerations discussed under bobcat above. Other useful data were obtained from several States and miscellaneous other sources. As in the cases of bobcat and lynx, no real population censuses were available.

**Discussion.** River otters are carnivorous mammals occurring in fresh and brackish water. They are widely distributed across the United States, but have experienced range reductions in certain areas (e.g., see 17). Probably because of the river otter's role in the aquatic food chain, varying levels of pesticides have been found in their tissue, but the ultimate effects of these toxins are generally unknown (see 18).

River otter fur has traditionally been highly valued, and the price has been high but relatively constant, excepting a general increase in 1976-77. Besides price incentives, the annual harvest of river otter may reflect availability and price of other more easily taken furbearers (e.g., muskrat and nutria), which may deflect trapper interest. In addition, trapping of river otter is apparently much easier in periods of drought and low water level (see 19). Low water levels often concentrate fish preys of river otter in creeks and rivers where river otters are trapped, leading to increased concentration of river otters in given areas. This increased concentration facilitates greater and possibly excessive harvests.

According to available information, the river otter is fully protected in 23 of 60



States. The river otter has been reported as extirpated in Colorado, Indiana, Kansas, Kentucky, Nebraska, North Dakota, Oklahoma, and West Virginia (see 16). In the remaining States, few patterns in reported harvest have emerged, and discussion of these is deferred to the analyses by State. In numerous States, reported harvests suggest no danger to populations from continued international export: *Provided*, That export is monitored and limited.

**Finding.** For the reasons discussed above and analyzed by State below, the ESSA is unable to find that international export of river otter pelts or products of animals taken from the wild during the 1977-78 season from 33 of the 50 United States after the date of this notice will not be detrimental to the survival of the species. All Convention export permits presently in force or subsequently issued by the MA for commercial export of river otters originating in these 33 States must conform with this finding.

For the reasons discussed above and analyzed by State below, the ESSA is able to find that international commercial export of river otter pelts or products of animals taken in the following States during the 1977-78 season will not be detrimental to the survival of the species, if State harvests are limited to the number specified:

State:	Allowable export
Alaska	2,114
Delaware	37
Georgia	335
Louisiana	3,923
Maine	354
Maryland	165
Massachusetts	68
Michigan	551
Montana	36
New Hampshire	114
New York	272
North Carolina	1,195
Oregon	249
South Carolina	430
Virginia	396
Washington	618
Wisconsin	458

No actual population estimates were available, and the export limits have been based upon reported harvest. Because the fur harvest data used in computation of the appropriate limits are subject to the vagaries discussed above, the approach used by the ESSA has been conservative, to insure that the specified limits will not be detrimental to the survival of the species.

To compute a statistic indicating what total take for the 1977-78 season in each

State would not be detrimental to the survival of the species, the following procedure was used:

1. The mean annual river otter fur harvest of all seasons reported in the State's record was computed. In certain cases, unusually high harvests were not included in computing the mean.

2. Seasons which were followed by at least a 25 percent decrease in take the following season and whose harvests exceeded the mean computed in step 1 were determined.

3. The mean annual river otter fur harvest was recomputed, eliminating the harvests of the seasons determined in step 2 from the calculation. This final mean is considered a safe take for the 1977-78 season, having eliminated the skewing influence of seasons whose takes may have been detrimentally excessive. It has been reported that 99+ percent of raw American wild furs (excluding mink) are exported for processing overseas. Therefore, the final means, as computed above for each State, should serve as adequate export limits.

All Convention export permits presently in force or subsequently issued by the MA for commercial export of river otter originating in these 17 States must conform with this finding. Exports of river otter taken from the wild during the 1977-78 season from these 17 States will be permitted until the ESSA determines that these limits have been reached. Such exports will also be conditional on adequate documentation on State of origin and season of taking.

For river otter pelts and products of animals taken from the wild before the date of this notice, the ESSA finds that export prior to November 1, 1977, will not be detrimental to the survival of the species, but the ESSA is unable to make this general finding for such exports after that date, for reasons stated previously.

#### AMERICAN GINSENG

**Data base and discussion.** American ginseng is closely related to *Panax ginseng*, a plant whose roots have been used as a panacea (hence the generic name) and an aphrodisiac in the Far East for thousands of years (see 20 and 21). The American plant was discovered in Canada by a Jesuit in the early 18th century after he read of the medicinal qualities attributed to the Asian species (see 22, 23, and 24). Soon after the discovery, the Jesuits began to export the American roots to China.

Exports continued until the middle of the 18th century, when a lot collected out of season was shipped to China without proper drying. This resulted in a distrust of the American product causing

the market to crash. However, the export trade was soon picked up by the American colonies as American ginseng was discovered with the expanding settlement of Eastern North America. In 1788, Daniel Boone collected more than 12 tons in what is now West Virginia and Kentucky to sell in Philadelphia.

By the late 19th century, much of the original habitat for American ginseng, hardwood forests, had been cut and more than 150 years of collecting pressure had taken its toll. Depletion of the plant prompted enactment of several Province and State statutes in Canada and the United States, to protect private resources and to establish collecting seasons (e.g., Acts and Joint Resolutions of Virginia 1875-1876, Chapter 90, and Acts of West Virginia, 11th session, 1872-73, Chapter 158). In 1898, Nash (see 25) noted: "It (American ginseng) grew abundantly over large areas in these States (he listed 28), but it has been so energetically hunted, and at the same time the forest area has been so diminished, that the supply is greatly reduced. In Canada it is pretty generally distributed throughout Ontario and Quebec, but it has now become rather scarce."

There is a large volume of botanical literature qualitatively documenting the impact of habitat modification and collecting on American ginseng. In 1848, Asa Gray (see 26), in the first edition of "A Manual of the Botany of the Northern United States", noted that the plant was "not common." Eight years later he noted in the second edition (see 27) that it was "becoming rare." In 1931, Harned (see 28) wrote: "At the present rate of foreign shipment it is only a matter of a short time when wild ginseng will be almost as rare in the United States as it is now in China." Other botanists (see 29, 30, and 31) have commented on the increasing rarity of American ginseng.

To meet the demand for the American roots a boom in commercial cultivation took place in the late 19th century. However, by 1904 overproduction, disease, and the slow growth of the plants (up to 2 years to germinate and 5-7 years to maturity), ruined many of the get-rich-quick ginseng farmers.

Despite the numerous initial difficulties encountered, American ginseng was successfully cultivated and continues to be exported along with roots obtained from the wild. The following table shows total exports in pounds of wild and cultivated plants, average prices per pound in dollars, and total exports in dollars.



Table of Exports of American Ginseng from the United States<sup>1</sup>

Year	Pounds exported	Average price	Total value
1822	153,717	\$0.42	\$313,943
1841	640,967	.71	437,245
1861	346,577	.84	292,899
1871	114,221	1.04	119,385
1881	338,841	1.65	561,545
1891	283,000	3.39	959,992
1901	140,009	5.38	801,672
1911	153,999	7.06	1,089,202
1921	182,000	8.28	1,507,000
1931	265,000	7.20	1,922,000
1941	120,000	8.51	1,021,000
1946	180,000	12.10	2,251,000
1951	76,999	17.38	1,338,282
1954	112,347	15.26	1,714,191
1960	179,523	18.22	3,281,969
1961	131,000	17.65	2,322,000
1962	141,000	17.60	2,481,000
1963	136,000	20.65	2,844,000
1964	138,000	19.65	2,732,000
1965	116,791	23.72	2,887,310
1966	173,405	25.13	4,358,542
1967	146,135	30.84	4,507,152
1968	133,701	32.61	4,359,524
1969	145,392	38.06	5,533,406
1970	162,689	30.84	5,016,951
1971	168,835	24.51	5,827,289
1972	227,549	39.21	8,922,426
1973	183,136	48.30	8,846,112
1974	216,832	51.27	11,116,787
1975	248,854	60.61	15,065,082
1976	239,754	63.93	17,856,435
1977 (through May)	61,672	62.29	3,218,540

<sup>1</sup> Export totals from 1954 and 1965-76 are from U.S. Bureau of Census Records (see 32). Average prices were calculated. Export totals and average prices from 1822-64, excluding 1954, are from Hardacre (see 24).

It is important to note that the figures from 1881 to present represent sums of both wild and cultivated roots. Thus the average prices do not indicate the increasing price differences between wild roots and cultivated roots. Prices have traditionally varied with the origin and quality of the roots. The most desirable are the wild roots that are in the shape of a man.

Unfortunately, continuous data are not available to determine the quantities of wild roots exported. In 1974, Patty (see 33 and 34) noted that the U.S. Census of Agriculture reported an 88,600 pound harvest of cultivated American ginseng in 1954 (after 1954, Agriculture did not solicit data on American ginseng production). Thus in 1954, at least 23,747 pounds of wild roots were exported. In the same references, Patty estimated that over half of the roots then being exported were cultivated. In 1976, Patty (see 35) estimated that 65,000 pounds of wild roots were exported in the 1975-76 season.

Almost all of the cultivated and wild American ginseng produced in the United States is exported (see 33 and 36) to the Far East, primarily Hong Kong (see also 32). However, there appears to be a growing domestic market (presumably as a result of the increased interest in natural foods and medicines) (see 37). Much of the domestic market is satisfied by products derived from cultivated *P. ginseng* imported from South Korea. If adequate processing facilities are developed in the United States, cultivated American ginseng could become a larger factor in the domestic market.

The domestic market may never compete with the high prices offered in the Far East for wild American ginseng as long as exports continue. Geczi (see 38) noted that while cultivated roots were

priced at \$20-\$25 a pound in 1970, wild roots were bringing \$40-\$45. By 1974 wild roots were up to \$70 per pound while cultivated were slightly less than the 1970 prices. One dealer stated orally that prices reached \$125 per pound for wild American ginseng in the 1975-76 season. Another dealer stated orally that he had not paid less than \$86 per pound for roots collected in the summer of 1977. Wild *P. ginseng* has been sold by the individual root for thousands of dollars (see 21, also oral communication with a dealer).

Wild American ginseng appears to be second in desirability only to wild *P. ginseng*. Whereas the market for cultivated ginseng is limited (see 39) and subject to competition from South Korea and other countries (see 33, 34, 35, and 36) there is no reason to suspect that the demand for the wild product will cease (see 21).

Traditionally American ginseng collectors have promoted the conservation of the species by digging only mature plants in the fall, and by planting the seeds (see 40). Often stands have been maintained in the forest (woodsgrown) to ensure a steady yield of roots that would simulate the desirable wild type.

However, Patty (see 34, also 40) noted: "In interviewing representatives of the U.S. trade, it appears that there is scarcity of U.S. supply of ginseng from the wild. The major reason is that gatherers tend to dig roots too early in the season—before seeds have been produced or when the roots are too young. There are also too few plants left for reproduction purposes. The high prices prevailing probably encourage this overgathering."

The ESSA is aware of similar abuses in the summer of 1977. At present large stocks of wild American ginseng are being accumulated by dealers before the plants have had a chance to fruit. It is apparent that voluntary conservation

measures are not adhered to in the face of prices approaching \$100.00 per pound.

Other factors causing concern for the current status of the American ginseng are the origins of the plants and the legal conditions under which the plants are gathered. Most States have trespass statutes pertaining to the protection of private plant resources. Usually these laws require, at minimum, oral permission from the landowners before wild plants can be removed from private property and in some cases require written documentation for the removal and transport of such plants. The removal of resources from most public lands similarly require written documentation. In addition, wild American ginseng is protected in at least Michigan and New York, and Wisconsin has established a collecting season. Most State officials concede that such protective statutes are difficult to enforce and are not generally adhered to by collectors. Appropriate Federal control of wild American ginseng exports may vitalize the State regulatory mechanisms.

The ESSA has received some information indicating that the number of individuals who collect American ginseng has decreased. Dr. Arnold Krochmal, U.S.D.A. Forest Service (see 41), among others, has commented that many Appalachians who traditionally collected American ginseng have moved to urban areas. Although such migrations may lessen collecting pressure in certain areas, they may or may not alleviate overall collecting pressure. In Ohio, recent Appalachian emigrants are reported to be the primary collectors. It also has been suggested that collectors are decreasing because young people do not take up the practice.

In assessing the status of the American ginseng the ESSA has relied heavily on qualitative and quantitative information in the literature, and data and opinions from professional botanists, State officials, persons involved in the ginseng trade, and other interested persons. Detailed knowledge of the distribution and population sizes of American ginseng is not available except for a few States, such as Maine, where the plant apparently has been practically extirpated.

The ESSA is aware that opinions of the plant's status vary with field experience. For example, professional botanists may be less familiar with the plant and its habitat than collectors and may be more inclined to consider the plant rare.

State lists of endangered, threatened, rare, or otherwise specially designated species are noted herein when it was known whether they included or excluded American ginseng. Most of these lists were compiled by one or more professional botanists; however, it is obvious that the content of such lists and their meaning vary depending on the expertise, experience, and the intent of the author(s). Thus, such lists and the terms used must be examined critically. (For a more thorough discussion of the problems involved in compiling such lists and the use of the descriptive terms, see 42.) In addition, although these lists are often produced by State agencies, they have



varying legal meaning. When known, legal implications will be noted along with State statutes that require written documentation for the collection of American ginseng (excluding general laws pertaining to public lands).

As previously discussed, the MA has been issuing permits for the export of wild American ginseng under the conditions specified in 42 FR 40979.

Numerous applications for permits specified the States from which roots were to be obtained. Although these applications are referred to in the State summaries, they are only referenced to indicate that the State is a commercial source.

**Finding.** The ESSA is unable to find that the export of American ginseng collected in the wild, except in Michigan, during the 1977-78 season after the date of this notice will not be detrimental to the survival of the species. American ginseng may be relatively abundant in some sections of some States. However, the ESSA has no alternative to this finding, in view of the overall decline in the abundance of this plant, the sustained market demand, increasing prices, continuing habitat modification, general lack of management programs or regulatory mechanisms to promote its conservation, and, most importantly, the lack of any positive evidence that the plant will not further decline because of continued export.

The ESSA is sensitive to the fact that many of the people who collect American ginseng are indigent. However, it should be clear that sustained, uncontrolled harvests of the plant cannot continue forever. As was previously discussed, there is no reason to suspect that the market for wild American ginseng will not continue. Thus the ESSA urges the States to establish conservation programs and regulatory mechanisms that will enable the ESSA to modify this or future findings. The ESSA is willing to assist the States (as appropriate and within its means) in developing suitable conservation programs and regulatory mechanisms.

For the State of Michigan, the ESSA finds that export of American ginseng collected in the wild after the date of this notice in the 1977-78 season, within the State and in compliance with State law, will not be detrimental to the survival of the species. This finding results primarily from the development of a promising regulatory program by the State, for the purposes of establishing the plant's status and monitoring its harvest, to be elaborated on in the State's analysis below. However, approval of export may be withdrawn at any time, and all shipments must be accompanied by copies of Michigan permits, accounting for all roots.

#### ANALYSES BY STATE

Below are discussions and preliminary findings by State for the bobcat, lynx, river otter, and American ginseng. Available data on season, State harvest, price, and ADC recovery (of bobcats only) are summarized for each State in a table

with asterisks and associated footnotes providing additional information. Unless otherwise specified, State harvest data and price are either from Fur Catch in the United States, 1934-70, or from responses to the questionnaire of the Fur Resources Committee, International Association of Fish and Wildlife Agencies. Tabular data by State is not available for American ginseng.

Following tabular information, a narrative section is provided on each species. First, the conclusions of available scientific literature are summarized without critique. Next, a brief but critical discussion is given of available data, including the tabulated data, summarized literature, and data from other sources. For American ginseng, these two sections are combined. Last, a finding is stated. If the ESSA is unable to find that any export will not be detrimental to the survival of the species for pelts or roots taken in the State during the 1977-78 season, then the finding will be stated as "negative." A negative finding may be compelled primarily by lack of evidence, rather than evidence of a stressed or declining population, and, in such instances, the

lack of adequate data will be stated in the discussion. If the ESSA finds that some level of export will not be detrimental to the survival of the species, in this notice limited to river otter pelts taken from 17 States and American ginseng collected in Michigan during the 1977-78 season, then the finding will be stated as "positive," and the allowable international export will be stated as a condition to the positive finding. For example, a finding might read: "Positive; total international export of animals taken in State X during the 1977-78 season after the date of this notice may not exceed 400."

In some cases, available information indicates that a species does not occur or is accidental or is completely protected in a State. In such cases, this fact will be stated in the discussion and the finding will be negative. Apparently, none of these four species presently occur in the District of Columbia or has ever occurred in the territories and possessions of the United States, and only for this reason are no analyses given for these jurisdictions.

#### Alabama

Season	Bobcat		River Otter	
	State Harvest	Price per pelt	State Harvest	Price per pelt
1960 to 1961	6		296	
1961 to 1962	19		190	
1962 to 1963	54		440	
1963 to 1964	50		330	
1964 to 1965	30		198	
1965 to 1966	83		219	
1966 to 1967	90	\$1.46	321	\$15.05

#### BOBCAT

**Literature Review.** D. Miller, Auburn University, stated orally that bobcats in Alabama are more dense on southern managed quail plantations than on river bottom, their ideal habitat. They are less dense in the northern part of the State. Miller thought that bobcats are common despite heavy trapping. In 1971, Jenkins (see 43) noted that bobcats are widely hunted at night with lights, apparently making serious inroads in the population in certain areas of Southern Alabama.

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Alabama.

In addition, Alabama has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

#### LYNX

**Discussion.** The lynx apparently does not occur in Alabama (see 16).

**Finding.** Negative.

#### RIVER OTTER

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of river otter taken in Alabama.

In addition, Alabama has not established an annual limit on river otter harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

#### AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Alabama.

Mohr (see 44, also 45) in 1890 noted that American ginseng was: "Not infrequent in rich woods through N. half of the State. Commanding a high market price, considerable quantities are exported from the mountainous region of the Tennessee basin." More recently, Delcourt and Delcourt (see 46) noted herbarium records for four counties and literature references to two additional counties.

American ginseng is included as an endangered species in "Endangered and Threatened Plants and Animals of Alabama" (see 47). Steve Guy, Alabama State Forester's Office, stated orally that American ginseng is restricted to northern Alabama and that it is rare.

The MA has forwarded to the ESSA one permit application for international export of wild American ginseng collected in Alabama.



In addition, Alabama has neither management programs nor regulatory mechanisms to promote the conservation of

American ginseng and to regulate harvest.

*Finding. Negative.*

#### Alaska

Season	Lynx		River otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1934	723		3,897	
1935	1,338		3,224	
1936	2,421		3,235	
1937	2,089		3,007	
1938	2,130		2,892	
1941	781		2,188	
1942	639		2,821	
1943	713		1,547	
1944	990		2,772	
1945	922		1,721	
1946	601		3,361	
1947	883		2,609	
1949	854		2,287	
1950	680		2,660	
1951	900		2,400	
1952	600		2,950	
1953	900		2,340	
1954 to 1955	3,100		3,100	
1955 to 1956	2,900		2,300	
1956 to 1957	2,200		3,300	
1957 to 1958	1,500		3,890	
1958 to 1959	605		1,657	
1959 to 1960	782		3,680	
1960 to 1961	900		3,500	
1961 to 1962	1,100		1,200	\$17
1962 to 1963	2,500		3,000	22
1963 to 1964	4,700		2,300	25
1964 to 1965	3,957	\$22	2,781	26
1965 to 1966	6,190	35	3,960	28
1966 to 1967	3,000	35	4,000	28
1967 to 1968	1,590	35	3,380	25
1968 to 1969	2,000	45	2,000	30
1969 to 1970	1,400	35	1,500	35
1970 to 1971	3,300	50	2,000	50
1971 to 1972	5,130	115	2,570	55
1972 to 1973	8,970	125	2,540	45
1973 to 1974	8,846	200	2,074	50
1974 to 1975	2,678			
1975 to 1976	1 c 2000	* 350		
1976 to 1977				

<sup>1</sup> Personal comm., R. Hinmann, Alaska Department of Fish and Game, Aug. 11, 1977.

<sup>2</sup> Personal comm., P. Berrie, July 15, 1977.

#### BOBCAT

*Discussion.* The ESSA has no information that the bobcat occurs in Alaska.

*Finding. Negative.*

#### LYNX

*Literature Review.* Several studies have documented that populations of lynx cycle in response to changes in density of snowshoe hare, a major prey (see 11, 12 and 13). Early post partum mortality of kittens (probably starvation related) and reduced conception rates among yearlings may contribute to the decline in lynx populations (see 13).

Based on radio tracking data indicating that lynx in Alaska ranged further and spent more time hunting during years of low prey density, Berrie (see 12) postulated that lynx are disproportionately vulnerable to trapping in "low" years. If trapping during low years is not prohibited, he predicted that the time lag between increases of hare and lynx would lengthen causing a progressive dampening in amplitude of the lynx cycle. Thus, lynx might be reduced to isolated pockets in the remote parts of Alaska.

The last population low occurred about 1967-1970, but the fur harvest was about double that of previous lows, apparently because of increased fur prices (see 15). Most recently, Peter M. Berrie in a letter to the ESSA (see 14) reported that the lynx in central Alaska should be emerging from a low in 1977-78, compli-

cated by apparent asynchrony of different populations in Alaska between lynx cycles (see also 15). The next general high is not expected until 1981 or 1982. A price of \$350.00 per pelt prompted an intensive trapping effort last season. This year, with the pipeline construction nearing completion, Berrie predicts an increase in trapping force from rising unemployment. In addition, the capacity of individual trappers utilizing snowmobiles and new oil roads has apparently increased three times beyond the capacity of the most ambitious trapper utilizing dogs.

*Discussion.* State harvest records from 1934 until the present indicate a large scale variable harvest, consistently high since 1962. The trapping season was extended by two months in 1963 to meet demand for the prime pelts available in February and March, and available price information shows a high level fur price from 1965 until the present. For these reasons, current high take figures reflect increased interest in lynx fur rather than increase in population size.

In 1975, the reported State harvest dropped to 3846 following a reported harvest of 8970, the highest on record, while the price rose from \$125 to \$200. Although this decline may reflect a normal cyclic decline in lynx abundance, it may also reflect an overstressed population.

Alaska lynx populations appear to be at a low, probably because of normal

cyclic decline, perhaps coupled with trapping pressure. Considering that lynx populations may disproportionately vulnerable to trapping in low years and that high pelt price is likely to cause intense trapping pressure in 1977-78, it is impossible to conclude that continued international export of lynx from Alaska will not be detrimental to the survival of the species.

In addition, Alaska has not established an annual limit on lynx harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The reported State harvest over the past forty years varied from 1200-4000, although harvest since 1968 has been generally more uniform and lower than previously.

Because reported harvest has been relatively stable and because pelt price has risen only gradually over the past 15 years, the wild population apparently can support an annual harvest. However, the consistently low yield since 1968 gives some cause for concern, and may reflect low population levels or decreased trapping effort. Because the ESSA cannot distinguish between these two factors, a positive export finding will be made but will be based upon the last 9 years reported harvest alone.

*Finding. Positive;* total international export of river otters taken in Alaska during the 1977-78 season after the date of this notice may not exceed 2114.

#### AMERICAN GINSENG

*Discussion.* The ESSA does not have any information that American ginseng occurs in Alaska.

*Finding. Negative.*

#### Arizona

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1957 to 1958			444
1958 to 1959			282
1959 to 1960			292
1960 to 1961			411
1961 to 1962			740
1962 to 1963			678
1963 to 1964			701
1964 to 1965			347
1965 to 1966			292
1966 to 1967			279
1967 to 1968			238
1968 to 1969			287
1969 to 1970			291
1970 to 1971			119
1971 to 1972			164
1972 to 1973			127
1973 to 1974			192
1974 to 1975			47
1975 to 1976			67
1976 to 1977		7,272	

*Literature Review.* In 1971, Small (see 49) reported no evidence of interspecific competition for food between bobcat and coyote or grey fox.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Arizona.

The major decrease in ADC recovery since 1964 suggests actual population de-



cline in Arizona, but the inadequacy of these data draw into question any conclusions based upon them.

Robert Jackson, Arizona Game and Fish Commission, stated orally that Arizona will establish a season for the bobcat in 1977-78 and will require a trapping license for the first time in 1978, in part to restrict trapper immigration from adjoining States. However, Arizona has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### LYNX

*Discussion.* The ESSA has no information that the lynx occurs in Arizona.

*Finding.* Negative.

#### RIVER OTTER

*Discussion.* The river otter is completely protected by Arizona law (see 54).

*Finding.* Negative.

#### AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in Arizona.

*Finding.* Negative.

#### Arkansas

Season	Bobcat			River otter	
	State harvest	Price per pelt	ADC recovery	State harvest	Price per pelt
1958 to 1959			16		
1959 to 1960			276		
1960 to 1961			237	62	
1961 to 1962	93		179	71	
1962 to 1963	79		290	438	
1963 to 1964	129		350		
1964 to 1965					
1965 to 1966	277	\$1.00		64	\$17.00
1966 to 1967	192	1.40		121	17.00
1967 to 1968	232	3.23		73	19.31
1968 to 1969	169	3.19		89	18.40
1969 to 1970	185	4.79		56	13.40
1970 to 1971	190	6.55		38	13.84
1971 to 1972	348	10.73		76	24.06
1972 to 1973	520	19.85		25	23.03
1973 to 1974	761	17.15		37	19.51

#### BOBCAT

*Literature Review.* In 1971, Jenkins (see 43) reported that: "Bobcat is common and widespread \* \* \* It is generally considered a nuisance animal in Arkansas."

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Arkansas.

The bobcat harvests reported since 1972 exceed all previous reports in the last two decades, and apparently correlate directly with pelt price. In addition, Arkansas has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### LYNX

*Discussion.* The lynx apparently does not occur in Arkansas (see 16).

*Finding.* Negative.

#### RIVER OTTER

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of river otter taken in Arkansas.

The reported river otter harvest in Arkansas has been less than 100 since 1967. Furthermore, the last two years reported harvest were exceptionally low (25, 37), although pelt price was relatively high. This suggests that the population may be declining.

In addition, Arkansas has not established an annual limit on river otter harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Arkansas.

Crow (see 50) noted in the "Arkansas Natural Area Plan": "Ginseng has been dug and sold to dealers in drug plant materials over a period of many years. The extremely high prices paid for the roots of ginseng in recent years have no doubt contributed to its depletion in some sections of the State. It is still locally abundant in many upland sections of the State but is difficult to find in many areas where it formerly grew."

In a letter to the U.S. Fish and Wildlife Service (see 51), Dr. Edwin B. Smith, University of Arkansas, commented: "*Panax quinquefolius* L. is rare in Arkansas, and \* \* \* occurs in small populations. The populations are small enough (perhaps 5-20 plants) that it is certainly in danger of local extinction. On the other hand, the few times I have seen it have always been times when I was collecting in remote areas (difficult to get 'into'); so it may be protected more or less by its remoteness from well-traveled areas." Dr. Smith provided a map indicating the occurrence of American ginseng in 12 Arkansas counties (see also 46), but advised that the plant may occur elsewhere.

In contrast, Dr. Gary E. Tucker, Arkansas Tech University, commented (see 52) that based on his field experience, American ginseng was locally common in many upland areas of the State and the plant's present distribution was not significantly different from its historic distribution. However, he added that the plant should be protected based on its status throughout its historical range and not on a State-by-State basis. He expressed concern that substantial collecting pressures may develop in Arkansas if wild American ginseng exports were banned for numerous other States while exports were allowed for roots collected in Arkansas.

Botanists that commented on the status of wild American ginseng in Arkansas vary widely in their opinions. Some sections of Arkansas may be capable of supporting a sustained harvest of American ginseng. However, Arkansas has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.

*Finding.* Negative.



## NOTICES

## California

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1934	1,994		
1935	1,436		
1936	2,190		
1937	2,292		
1938	2,808		
1939 to 1944	2,036		
1944 to 1945	1,730		
1945 to 1946	1,072		
1946 to 1947	689		
1947 to 1948	169		
1948 to 1949	375		
1949 to 1950	293		
1950 to 1951	239		
1951 to 1952	338		
1952 to 1953	144		
1953 to 1954	223		
1954 to 1955	228		
1955 to 1956	276		
1956 to 1957	202		12,687
1957 to 1958	142		13,444
1958 to 1959	175		3,664
1959 to 1960	304		3,364
1960 to 1961	205	\$3.27	3,375
1961 to 1962	295	2.75	3,366
1962 to 1963	361	3.35	3,327
1963 to 1964	221	4.15	
1964 to 1965	221	4.15	
1965 to 1966	192	7.97	2,386
1966 to 1967	244	13.59	2,094
1967 to 1968	381	13.93	1,363
1968 to 1969	588	10.58	
1969 to 1970	319	10.90	1,147
1970 to 1971	588	18.80	636
1971 to 1972	686	29.30	142
1972 to 1973	1,244	45.00	144
1973 to 1974	1,293	50.00	105
1974 to 1975	2,203	133.50	347
1975 to 1976			

<sup>1</sup> Lynx and bobcat.

## BOBCAT

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in California.

The major decrease in ADC recovery since 1964 suggests actual population decline in California, but the inadequacy of these data draw into question any conclusions based upon them. The reported State harvest declined from a high in 1943-1944 and remained low until the 1970's, when it began to rise at the same time that pelt price increased. Apparently high pelt price has intensified trapper effort.

In addition, California has not established an annual limit on bobcat harvest based on the animal's population status,

nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in California (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is completely protected by California law (see 54).

**Finding.** Negative.

## AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in California.

**Finding.** Negative.



## Colorado

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1943 to 1944	1,146		
1944 to 1945	1,019		
1945 to 1946	833		
1946 to 1947	348		
1947 to 1948	689		
1948 to 1949	169		
1949 to 1950	373		
1950 to 1951	293		
1951 to 1952	230		
1952 to 1953	103		
1953 to 1954	46		
1954 to 1955	61		
1955 to 1956	207		
1956 to 1957	2,283		
1957 to 1958	119		2,654
1958 to 1959	328		2,535
1959 to 1960	2,186		2,035
1960 to 1961	1,116		2,286
1961 to 1962	1,396	\$4.75	1,616
1962 to 1963	1,457		1,672
1963 to 1964	2,113	6.18	1,913
1964 to 1965	1,950	11.62	1,734
1965 to 1966	1,066	12.50	1,379
1966 to 1967	1,473	15.50	1,008
1967 to 1968	1,620	22.50	779
1968 to 1969	1,760	15.69	598
1969 to 1970	505	15.67	449
1970 to 1971	2,166	15.89	190
1971 to 1972	2,391	24.25	171
1972 to 1973	2,174	44.68	173
1973 to 1974	2,967	61.79	21
1974 to 1975	804	48.84	0

<sup>1</sup> Harvest and price data since 1970, personal comm., R. Tully, Colorado Division of Wildlife, Aug. 15, 1977.

**Literature Review.** In 1971, Sandfort and Tully described the bobcat as "very common," and noted that it appeared to "hold its own despite reductions induced by predator control programs" (see 55).

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Colorado.

The major decrease in ADC recovery since 1958 suggests actual population decline in Colorado, but the inadequacy of these data draw into question any conclusions based upon them. State reported harvest, based upon pelts sold within the State, showed a significant drop in the 1974-75 season. However, Robert J. Tully, Colorado Department of Natural Resources, has stated orally that surveys of hunters and trappers indicated a harvest of 3678 pelts in 1974. The decreased reported State harvest in 1974-75 could have resulted from declining population, decreased sales within the State, or decreased trapper effort. Decreased trapper effort is unlikely because of high pelt price, but either decreased population size or decreased sales within the State may have contributed to the drop in reported harvest, and the ESSA is unable to distinguish between these factors. The uncertain relationship between actual harvest and reported harvest, that may be considerably lower, weakens further the usefulness of the data.

In addition, Colorado has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx is completely protected by Colorado law (see 54).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is apparently extirpated and completely protected by Colorado law (see 16 and 54).

**Finding.** Negative.

## AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in Colorado.

**Finding.** Negative.

## Connecticut

Season	River Otter	
	State harvest <sup>1</sup>	Price per pelt
1961 to 1962	2	
1962 to 1963	3	
1963 to 1964	15	
1964 to 1965	1	
1965 to 1966	7	
1966 to 1967	4	
1967 to 1968	4	
1968 to 1969	11	
1969 to 1970	15	
1970 to 1971	7	\$25
1971 to 1972	14	30
1972 to 1973	7	40
1973 to 1974	10	20
1974 to 1975	15	25
1975 to 1976	11	
1976 to 1977	6	

<sup>1</sup> Personal comm., D. DeCarli, Connecticut Department of Environmental Protection, Aug. 8, 1977.

## BOBCAT

**Discussion.** The bobcat is completely protected by Connecticut law (see 54).

**Finding.** Negative.

## LYNX

**Discussion.** The lynx is completely protected by Connecticut law (see 54).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of river otter taken in Connecticut.

Reported State harvest in Connecticut is very low, probably indicating a small river otter population, though perhaps also reflecting lack of trapper effort (see 54).

In addition, Connecticut has not established an annual limit on river otter harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Connecticut.

American ginseng is included as a State Endangered species in "Rare and Endangered Species of Connecticut and Their Habitats" (see (56): "Formerly common in rich woods and on rocky hill-sides, this species is now local and rare throughout most of its range. Extirmination by commercial root hunters has been held principally responsible for its present rarity in the East. Recent reports show it to be very rare and local in Connecticut." Theodore Bampton, Connecticut Department of Environmental Protection, stated orally that he was not aware of any commercial collecting activities in the State.

In addition, Connecticut has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

**Finding.** Negative.

## Delaware

Season	River Otter	
	State harvest	Price per pelt
1960 to 1961	40	
1961 to 1962	36	
1962 to 1963	36	
1963 to 1964	40	
1964 to 1965	30	
1965 to 1966	50	
1966 to 1967	50	
1967 to 1968	50	
1968 to 1969	40	
1969 to 1970	30	
1970 to 1971	30	
1971 to 1972	25	
1972 to 1973	25	
1973 to 1974	25	
1974 to 1975	25	
1975 to 1976	50	c.30.00
1976 to 1977	50	c.30.00

<sup>1</sup> Harvest and price, data, personal comm., L. Alexander, Aug. 8, 1977.



## BOBCAT

*Discussion.* The bobcat apparently does not occur in Delaware (see 16 and 57).

*Finding.* Negative.

## LYNX

*Discussion.* The lynx apparently does not occur in Delaware (see 16 and 57).

*Finding.* Negative.

## RIVER OTTER

*Discussion.* The reported Delaware harvest since 1960 has never exceeded 50 and has been fairly regular, although based on rough estimates. In addition, the reported pelt price is not exceptionally high.

In a letter to the ESSA, H. Lloyd Alexander (see 57), Delaware Department of Natural Resources and Environmental Control, noted that river otter populations in Delaware were low during the 1960's, possibly because of pesticides. He further noted that the river otter population has recovered since the late 1960's and that trapping effort is not intense in the State.

Consequently, the ESSA is able to find that international export of river otter taken in Delaware during the 1977-78

season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in Delaware during the 1977-78 season after the date of this notice may not exceed 37.

## AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Delaware.

In 1941, Tatnall (see 58) noted that American ginseng was infrequent in the woodlands of two valleys in one county in Delaware. Dr. C. W. Dunham, University of Delaware stated orally that American ginseng has always been rare in Delaware and that he was not aware of any commercial collecting in the State.

In addition, Delaware has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

*Finding.* Negative.

## Florida

Season	Bobcat		River Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1941			506	
1942			816	
1943			659	
1944			271	
1945			192	
1946 to 1947	672		379	
1947 to 1948	1,028		375	
1948 to 1949	538			
1949 to 1950	566			
1950 to 1951	300			
1951 to 1952	300		200	
1952 to 1953	300		200	
1953 to 1954	300		800	
1954 to 1955	400		600	
1955 to 1956	400		600	
1956 to 1957	400		500	
1957 to 1958	400		500	
1958 to 1959	300		1,000	
1959 to 1960	250		750	
1960 to 1961	450		1,450	
1961 to 1962	450		1,550	
1962 to 1963			1,739	
1963 to 1964	13		2,611	
1964 to 1965	23		3,773	
1965 to 1966	23		3,809	
1966 to 1967	2		294	
1967 to 1968	400	\$10.00	7,000	\$25
1968 to 1969	20		296	

## BOBCAT

*Literature Review.* In 1971, Jenkins reported that the bobcat was "common" throughout Florida, and is "in little danger," although widely hunted (see 43).

*Discussion.* The data available to ESSA are insufficient to support a positive finding for international export of bobcat taken in Florida.

The reported State harvest data are insufficient to assess the current status of bobcat in Florida. In addition, Florida has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

## LYNX

*Discussion.* The lynx apparently does not occur in Florida (see 16).

*Finding.* Negative.

## RIVER OTTER

*Literature Review.* In 1963, McDaniel reported that low water levels increase the number of river otters harvested, by concentrating their prey, fish, and restricting their habitat in creeks and rivers. He recommended that trapping season be shortened during drought. McDaniel expressed doubt as to the value of State harvest reports in showing the actual harvest in Florida. In one case, a dealer revealed that he had purchased



4500 hides in 1961-1962, exceeding the harvest for the entire State (see 19).

**Discussion.** The data available to ESSA are insufficient to support a positive finding for international export of river otter taken in Florida.

Although Florida may be capable of supporting a sustained yield of river otter, the data are inadequate to assess the status of the species in the State. In addition, Florida has not established an

annual limit on river otter harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

#### AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in Florida.

**Finding.** Negative.

#### Georgia

Season	Bobcat		River otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1987	16		202	
1988	26		152	
1945 to 1946	574		(1)	
1947 to 1948	499		(1)	
1948 to 1949	1,000		(1)	
1949 to 1950	1,000		(1)	
1950 to 1951	1,000		110	
1951 to 1952	1,000		100	
1952 to 1953	1,000		100	
1953 to 1954	1,000		100	
1954 to 1955	1,200		200	
1955 to 1956	1,500		400	
1956 to 1957	1,500		350	
1957 to 1958			54	
1958 to 1959	12			
1959 to 1960	16		94	
1960 to 1961	20		100	
1961 to 1962	20		336	
1962 to 1963			386	\$38.00
1963 to 1964			2,000	
1964 to 1965	44		415	
1965 to 1966	29	\$2.00	463	22.00
1966 to 1967	300	2.50	500	22.00
1967 to 1968	300	4.00	713	25.00
1968 to 1969			670	22.84
1969 to 1970			222	31.17
1970 to 1971			585	30.48
1971 to 1972			453	25.49
1972 to 1973			624	21.87
1973 to 1974	422	16.80	496	22.82
1974 to 1975	422	17.54	947	34.15
1975 to 1976	864	40.02		
1976 to 1977				

1 No open season.

2 Prior to this season, trappers were not required to report.

#### BOBCAT

**Literature Review.** In 1971, Jenkins reported that bobcat was common across Georgia, but particularly in the coastal plain and where protected (see 43).

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Georgia. Although Georgia may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State. In addition, Georgia has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

#### LYNX

**Discussion.** The lynx apparently does not occur in Georgia (see 16).

**Finding.** Negative.

#### RIVER OTTER

**Literature Review.** In 1962, Golley reported that river otters were fairly common on the coastal plain and in the salt marshes, rare on piedmont just above the fall line, and absent in the northern

piedmont region and in the mountains (see 59).

**Discussion.** The reported Georgia harvest has been consistently higher in the 1960's and 1970's than in previous years, but no specific patterns emerge that give cause for concern. Pelt price has risen only gradually over the last 10 years. Consequently, the ESSA is able to find that international export of river otters taken in Georgia during the 1977-78 season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter, excluding the 1965-66 harvest which was the second highest reported for the State.

**Finding.** Positive; total international export of river otters taken in Georgia during the 1977-78 season after the date of this notice may not exceed 335.

#### AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of ginseng collected in Georgia.

Delcourt and Delcourt (see 46) noted American ginseng herbarium records for seven counties and literature references to two additional counties. However, in a letter to the U.S. Fish and Wildlife Service (see 60), Jerry McCollum, Georgia Department of Natural Resources, noted that the plant occurred in 26 counties. McCollum also noted that he did not consider the plant to be endangered currently, but that he thought commercial collection should be regulated to prevent the plant's status from deteriorating.

American ginseng has been included in several lists of rare and endangered Georgia plants: "Rare and Endangered Vascular Plants of Georgia," Wilbur H. Duncan (see 61); "Rare and Endangered Plant Species of Georgia," Georgia Botanical Society (see 62); and "Endangered Species of Georgia" (listed as Endangered), McCollum (see 63).

The MA has forwarded to the ESSA one permit application for international export of wild American ginseng collected in Georgia.

Mellinger (see 64) referred to the extirpation of American ginseng in one location in Georgia. The State was mentioned as a major commercial source of the roots in Wigginton (see 40).

The Georgia Wildflower Preservation Act of 1973 (see Ga. laws 1973, p. 373 et seq.) provides substantially for the conservation of plants listed as Endangered or Threatened by the Georgia Department of Natural Resources or the U.S. Department of the Interior. American ginseng is not listed under the Georgia Act; however, Jerry McCollum has stated orally that his Department was formally petitioned to list the species.

American ginseng has been considered a rare and endangered species by several professional and amateur botanists familiar with the Georgia flora. However, some sections of Georgia may be capable of supporting a sustained harvest of the plant. The Georgia Act generally prohibits taking, transport, or commerce in listed species except by permits issued by the Georgia Department of Natural Resources. Currently, American ginseng is not protected by the Georgia Act, and there is insufficient evidence to support a positive finding by the ESSA for export of wild American ginseng collected from the State. In the event American ginseng is listed under the Georgia Act, or protected by other mechanisms that would provide for its conservation and regulate its harvest in the State the ESSA may modify its finding for the 1977-78 season or subsequent seasons.

**Finding.** Negative.

#### HAWAII

**Discussion.** The ESSA has no information that the bobcat, lynx, river otter, or American ginseng occur in Hawaii.

**Finding.** Negative.



## Idaho

Season	Bobcat			Lynx	
	State harvest	Price per pelt	ADC recovery	State harvest	Price per pelt
1934	11			44	
1944	1,190				
1945	700			8	
1946	800			11	
1947 to 1948				9	
1949 to 1950	346				
1951 to 1952	675		1,871	8	
1953 to 1954	802		1,418	1	
1955 to 1956	1,478		1,288	8	
1957 to 1958	1,173		1,985	6	
1959 to 1960	756	\$4.22	925	1	
1961 to 1962	861	5.48	1,076	12	
1963 to 1964	972	5.56	886	28	
1965 to 1966	856	7.10		40	\$5.64
1967 to 1968	1,161	18.10	472	4	38.50
1969 to 1970	958	10.56	301	5	23.33
1971 to 1972	935	18.62	346	9	17.80
1973 to 1974	1,191	21.38	327	50	21.82
1975 to 1976	1,318	14.02	254	70	15.29
1977 to 1978	1,318	14.02	256	70	15.29
1979 to 1980	901	21.71	104	65	22.44
1981 to 1982	901	48.00	98	52	56.19
1983 to 1984	1,173	77.66	47	15	50.37
1985 to 1986	608	58.00	20	15	82.66
1987 to 1988	467	100.21	18		226.51
1989 to 1990		150.02			214.11

<sup>1</sup> Lynx and bobcat.

## BOBCAT

**Literature Review.** Bailey (see 1) studied the bobcat in a rugged area of southeastern Idaho, and he found that few kittens were trapped following a crash in the local rabbit population during the winter of 1971-72.

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Idaho.

The major decrease in ADC recovery since 1958 suggests actual population decline in Idaho, but the inadequacy of these data draw into question any conclusions based upon them.

The last two State harvest reports are the lowest since 1957 despite the highest prices ever offered for bobcat pelts in Idaho. Although not conclusive, this suggests an overstressed population.

In addition, Idaho has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## LYNX

**Literature Review.** In 1971, Nellis reported that lynx were "rare to common" in Idaho: "Data are not extensive enough to show whether the lynx in the northwest is cyclic or not, but drastic fluctuations in numbers do occur." Nellis reported that the population had increased over the past thirty years, with most animals in the northern half of the State (see 65).

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of lynx taken in Idaho.

Fur harvest from 1969-1975 suggests either that the population is cyclic and was at a low phase in 1974-1975 or that trapping pressure in the early 1970's, due to high prices, has reduced the population. In either case, the lynx in Idaho

may be particularly vulnerable to trapping pressure at present.

In addition, Idaho has not established an annual limit on lynx harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is completely protected by Idaho law (see 54).

**Finding.** Negative.

## AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in Idaho.

**Finding.** Negative.

## ILLINOIS

## BOBCAT

**Discussion.** The bobcat is completely protected by Illinois law (see 54).

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in Illinois (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is completely protected by Illinois law (see 54).

**Finding.** Negative.

## AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Illinois.

American ginseng was considered "infrequent" in Illinois in 1876 by Patterson (see 66). Jones and Fuller (see 67) noted that American ginseng had been collected in 29 counties. Dr. Charles Sheviak, Endangered Plant Project/Natural Land Institutes supplied herbarium

records (see 68) of the plant from 57 counties. In 1959, Mohlenbrock and Voigt (see 69) noted that in southern Illinois American ginseng "is rare in moist woods. It has become uncommon because of mass collections of its roots during past years."

The Illinois Nature Preserves Commission has included American ginseng as a threatened species in an interim list of plant species, "Endangered, Vulnerable, Rare, and Extirpated Vascular Plants in Illinois" (see 61). Dr. Charles Sheviak has stated orally that the plant is rare throughout the State and could be easily extirpated except in southern Illinois. He added, however, that plant had been considered too common for inclusion in the list of endangered plants being developed by the Endangered Plant Project.

The MA has forwarded to the ESSA three permit applications for international export of wild American ginseng collected in Illinois. The State was also mentioned as a commercial source in Wigginton (see 43).

Some sections of southern Illinois may be capable of supporting a sustained harvest of American ginseng. However, the State has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.

**Finding.** Negative.

## INDIANA

## BOBCAT

**Discussion.** The bobcat is completely protected by Indiana law (see 70).

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in Indiana (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is apparently extirpated in Indiana and is completely protected by Indiana law (see 18, 54).

**Finding.** Negative.

## AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Indiana.

Coulter in 1900 (see 71) noted: "Found (American ginseng) only in the southern half of the State and rapidly disappearing because of its commercial value." "It is still abundant in Brown County upon the authority of W. S. Blutchley and is reported as not rare in Fayette County by Dr. Hessler. Its quantity, however, has been so greatly reduced that the 'sang' gatherers have disappeared." Coulter mentioned seven counties where the plant had been found. Forty-six years later Deam (see 72) noted: "Formerly frequent to common in rich woods throughout the State. From the earliest times it was dug for its large roots which were shipped mostly to China for use as a medicine. The earliest pioneers received



twenty-five cents a pound for the dried roots. The fact that the price has steadily advanced, until it now sells for about \$15.00 a pound, has resulted nearly in its extinction."

In correspondence to the U.S. Fish and Wildlife Service (see 73), Robert D. Feldt, Indiana Department of Natural Resources, supplied several documents and correspondence concerning the flora of Indiana. Maryanne Newsom, McCormick Creek State Park (see 74) noted: "In the three years I have been at McCormick's Creek, I have seen ginseng go from being fairly easy to find to being practically non-existent. With this rapid decline in the park itself, I can well imagine what is happening to the plant in other unprotected areas. Without some form of control over the indiscriminate harvesting of this plant, ginseng will very soon join the list of Endangered plants, possibly within the next five years if something is not done."

Lois M. Gray, Spring Mill Park (see 75) regarded American ginseng as abundant; however, she expressed the same concerns as Ms. Newsom.

In addition, Mr. Feldt supplied a preliminary State list entitled "Rare and Endangered Plants in Indiana," that was compiled by William B. Barnes, Director, Division of Nature Preserves. This list was limited to those plants that were recorded to occur in six or fewer counties. American ginseng was not included.

In a letter to the U.S.D.A. Foreign Agricultural Service, Andy Irbe, Danville, Indiana, commented that American ginseng does not emerge every year and the plant was producing harvestable amounts in sections of Indiana where he collected it (see 76).

Mr. Edward Hanson, Indiana Department of Natural Resources, stated orally that American ginseng under collecting pressure in certain local areas of Indiana and that the collection appeared to occur year-round.

The MA has forwarded to the ESSA three permit applications for international export of wild American ginseng collected in Illinois.

American ginseng has declined in Illinois and this decline has been attributed to collecting pressure. Some sections of Indiana may be capable of supporting a sustained harvest of American ginseng. However the State has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

*Finding. Negative.*

#### IOWA

##### BOBCAT

*Discussion.* The bobcat is completely protected by Iowa law.  
*Finding. Negative.*

#### LYNX

*Discussion.* The lynx apparently does not occur in Iowa (see 16).  
*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The river otter is only occasionally trapped in Iowa and is or soon may be completely protected by State law.  
*Finding. Negative.*

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Iowa.

In 1899, Fitzpatrick (see 77) noted that American ginseng was "becoming infrequent" (he listed nine counties where the plant occurred). Dean Roosa, Iowa Conservation Commission, stated orally that he considered the plant threatened. He further noted that he had observed it in central Iowa and that it was probably more prevalent in the more densely wooded northeastern Iowa.

The MA has forwarded to the ESSA two permit applications for international export of wild American ginseng collected in Iowa.

Some sections of Iowa may be capable of supporting a sustained harvest of American ginseng. However, the State has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.

*Finding. Negative.*

#### KANSAS

##### BOBCAT

*Discussion.* The bobcat is completely protected by Kansas law (see 54).  
*Finding. Negative.*

#### LYNX

*Discussion.* The lynx apparently does not occur in Kansas (see 16).  
*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The river otter is completely protected by Kansas law (see 54).  
*Finding. Negative.*

#### AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in Kansas.  
*Finding. Negative.*

#### KENTUCKY

##### BOBCAT

*Discussion.* The bobcat is completely protected by Kentucky law (see 78).  
*Finding. Negative.*

#### LYNX

*Discussion.* The lynx apparently does not occur in Kentucky (see 16).  
*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The river otter is virtually extirpated and is completely protected by Kentucky law. (See 54 and 78).  
*Finding. Negative.*

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Kentucky. Braun (see 79) in 1943 recorded American ginseng in eleven counties in Kentucky. Twenty-eight years later Wharton and Barbour (see 80) noted: "The dried roots, long in demand in Chinese folk medicine and bringing a high price, have been sought, dug, and sold for export. As a result, this native species, once common in most of rich forest of the state, has been exterminated in many places and is now rare throughout Kentucky, as well as in other States. The species should be protected by law from further exploitation, and any plants to be sold should be propagated and grown commercially."

In a letter to the Smithsonian Institution (see 41), Dr. Arnold Krochmal, U.S.D.A. Forest Service supplied the following comments: "I have lived in the Appalachian region over a period of 40 years now, 17 as a student and botanist. Ginseng has always been hard to find, contributing to its high cost. The collection of ginseng has been much reduced in the past twenty years by the out-migration of Appalachian population to urban areas." He also noted that he had "seen increases in ginseng populations in Kentucky, and \* \* \* (could not) \* \* \* consider it in any way endangered."

American ginseng is included as a threatened species in "A List of Rare, Threatened, or Endangered Flora in Kentucky" (see 61). The plant was not included in the "Endangered Plants and Animals of Kentucky" (see 81).

The MA has forwarded to the ESSA six permit applications for international export of wild American ginseng collected in Kentucky. Wigginton (see 40) also mentioned Kentucky as a commercial source.

The ESSA has received conflicting information on the status of American ginseng in Kentucky. The more recent comments by Krochmal indicate there may be some sections of Kentucky capable of supporting a sustained harvest of the plant. However, the State has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.  
*Finding. Negative.*



## NOTICES

## Louisiana

Season	Bobcat		River otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1934			780	
1935			789	
1936			650	
1937			780	
1943 to 1944			2,404	
1944 to 1945	518		1,912	
1945 to 1946	628		2,367	
1946 to 1947	1,430		2,852	
1947 to 1948	283		3,078	
1948 to 1949	60		2,222	
1949 to 1950	222		2,968	
1950 to 1951			4,801	
1951 to 1952	58		4,849	
1952 to 1953	35		4,198	
1953 to 1954	21		3,884	
1954 to 1955	5		5,407	
1955 to 1956	542		4,653	
1956 to 1957	102		5,056	
1957 to 1958	31		4,382	
1958 to 1959	200		5,106	
1959 to 1960	126		5,559	
1960 to 1961	252		3,602	\$17.00
1961 to 1962	29		4,195	16.00
1962 to 1963	41	\$0.50	8,484	17.00
1963 to 1964	110	2.00	4,274	18.00
1964 to 1965	26		3,288	25.00
1965 to 1966	31	2.00	3,588	20.00
1966 to 1967		2.00	4,118	18.00
1967 to 1968	10	2.00	3,466	14.00
1968 to 1969			5,426	0.00
1969 to 1970	56	5.00	6,634	23.00
1970 to 1971	110		4,808	25.00
1971 to 1972	55		5,440	
1972 to 1973	136	1 c. 6.00	7,668	
1973 to 1974	481	1 c.12.00	5,989	32.55
1974 to 1975	953	1 c.20.00	6,118	
1975 to 1976	775	1 c.25.00	5,730	1 c.23.00
1976 to 1977	1,289	1 c.50.00	11,900	1 c.45.00
	5,255	1 c.50.00		

<sup>1</sup> Personal comm., G. Linscombe, Louisiana Wildlife Fisheries Commission, Aug. 1, 1977.

## BOBCAT

**Literature Review.** In 1971, Jenkins reported that bobcats in Louisiana were common and widespread (see 43). In 1976, O'Neil and Linscombe (see 82) reported that the number of bobcat pelts taken was formerly insignificant, but the increased interest in long haired furs has brought higher price and increased harvest. In 1974, Lowry reported that the bobcat was widely distributed over the State and still occurred in nearly all heavily wooded regions (see 83).

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Louisiana.

Increased pelt price in the 1970's has apparently brought a dramatic and unprecedented rise in bobcat harvest. Although Louisiana may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

In addition, Louisiana has not established an annual limit on bobcat harvest based on the animal's populations status, although the State does tag shipments but not individual pelts.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in Louisiana (see 16).

**Finding.** Negative.

## RIVER OTTER

**Literature Review.** In 1974, Lowry commented that river otters were probably once distributed statewide in Louisiana, but have become local in occurrence because of major alterations in habitat.

Lowry suggested that trapping in southern Louisiana does not appear to adversely affect otter numbers, but that it may be detrimental in the northern part of the State (see 83).

**Discussion.** Reported State harvest has been high and comparatively regular since 1944, and pelt price has changed little since 1965, excluding 1976-77. Reported State harvest and pelt price both doubled for the 1976-77 season. Greg Linscomb, Louisiana Wildlife and Fisheries Commission, stated orally that the increased harvest was probably caused by an abundance of young river otters rather than increased trapper effort. Consequently, the ESSA is able to find that international export of river otters taken in Louisiana during the 1977-78 season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter, excluding the 1976-1977 harvest, which was the highest ever recorded for the State.

**Finding.** Positive; total international export of river otters taken in Louisiana during the 1977-78 season after the date of this notice may not exceed 3923.

## AMERICAN GINSENG

**Literature Review and Discussion.** Data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Louisiana.

In a letter to the U.S. Fish and Wildlife Service, Dr. Mary G. Curry, VTN Louisiana Inc. (see 84) commented that American ginseng is known definitely from only one parish in Louisiana, where it is



considered rare (see also 46 and 85). She further noted: "The species should be considered threatened, if not endangered in Louisiana" (see also 85).

In addition, Louisiana has neither

management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

*Finding.* Negative.

#### Maine

Season	Bobcat		River Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1934.....	644	.....	148	.....
1935.....	911	.....	170	.....
1936.....	687	.....	164	.....
1937.....	400	.....	166	.....
1942.....	133	.....	129	.....
1943.....	105	.....	89	.....
1944.....	184	.....	120	.....
1945.....	1044	.....	121	.....
1946.....	181	.....	199	.....
1947 to 1948.....	178	.....	197	.....
1948 to 1949.....	489	.....	184	.....
1949 to 1950.....	100	.....	196	.....
1950 to 1951.....	263	.....	114	.....
1951 to 1952.....	83	.....	153	.....
1952.....	438	.....	.....	.....
1953.....	504	.....	271	.....
1954.....	688	.....	.....	.....
1955.....	667	.....	360	.....
1955 to 1956.....	.....	.....	570	.....
1956 to 1957.....	695	.....	.....	.....
1957.....	263	.....	442	.....
1958.....	198	.....	416	.....
1959.....	221	.....	357	.....
1960.....	278	\$3.35	414	\$21.53
1961 to 1962.....	231	1.81	456	21.26
1962 to 1963.....	588	2.78	471	20.00
1963 to 1964.....	269	8.74	504	25.00
1964 to 1965.....	152	5.50	301	22.85
1965 to 1966.....	233	5.79	425	23.29
1966 to 1967.....	153	8.17	444	27.06
1967 to 1968.....	730	9.88	588	25.78
1968 to 1969.....	654	11.78	537	32.48
1969 to 1970.....	641	17.58	503	39.89
1970 to 1971.....	573	36.00	871	35.92
1971 to 1972.....	554	26.00	1007	31.52
1972 to 1973.....	373	.....	446 (896)	.....
1973 to 1974.....	436	.....	531	.....
1974 to 1975.....	.....	.....	.....	.....
1975 to 1976.....	.....	.....	.....	.....
1976 to 1977.....	.....	.....	.....	.....

<sup>1</sup> Lynx and bobcat.

<sup>2</sup> Number tagged (total harvest).

#### BOBCAT

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Maine.

Hunt (see 86) has estimated the total Maine bobcat population to be about 4200. In 1976-77, the State established a limited season on bobcat and began requiring tags on every pelt. Furthermore, a bobcat management plan for the State would establish an ultimate management objective of 1000 bobcats harvested per year, or about 25 percent of the population.

Bobcat pelt price has recently increased in Maine, as across the United States. The potential exists for intensified trapping effort in Maine, although reported harvest has not increased since 1975, but has dropped somewhat. It would appear that Maine may be able to support a sustained annual yield of several hundred bobcats without adversely impacting the population. However, in a March 3, 1977 memorandum to the U.S. Fish and Wildlife Service, Regional Director, the U.S. Fish and Wildlife Service State Supervisor for Maine advised that overharvest may be occurring in many areas (see 87). Widespread demand for bobcat pelts may particularly increase for bobcats in any States for which international export is allowed in 1977-78. Maine has already projected harvest level by management units, and

tagging of pelts is required. If Maine would establish appropriate direct limitations on harvest that would prevent overharvest from increased demand, the ESSA would approve international export of pelts taken legally in Maine and carrying Maine tags. Pending this action, the ESSA is unable to find that such international export will not be detrimental to the survival of the species.

*Finding.* Negative.

#### LYNX

*Discussion.* The lynx is completely protected by Maine law (see 88).

*Finding.* Negative.

#### RIVER OTTER

*Discussion.* The reported State harvest of river otter from 1961 through 1970 was fairly regular. From 1971 through 1975 State harvest nearly doubled with generally higher prices per pelt, and the 1974-75 season exceeded the river otter management objective for Maine by about 25 percent (see 89). The reported river otter harvests in the last two seasons returned to more typical levels, but were based on tagging data for the first time, apparently giving lower estimates than the previous reporting methods.

Maine has developed a management plan for river otter on a unit-by-unit basis, and has established a harvest of 800 animals as a management objective. However, the management plan notes that the river otter may be overexploited

in some units, suggesting a need to regulate harvest by these areas, and the management plan indicates that Maine may limit the harvest in the near future to allow river otter increase. In addition, Maine now requires a tag on every river otter pelt taken in the State.

Consequently, the ESSA is able to find that international export of river otters taken in Maine during the 1977-1978 season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter. Maine may have information justifying modification of this quota, and the ESSA encourages the State to submit comments on this point so that the quota will be tailored as closely as possible to the status of the river otter in Maine.

*Finding.* Positive; total international export of river otters taken in Maine during the 1977-78 season after the date of this notice may not exceed 354.

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Maine.

In 1976, Eastman (see 90), in a report on American ginseng prepared for Maine's Critical Areas Program, noted that American ginseng was collected in Maine in the 1920's and that most of the plants in the State have been destroyed because of logging operations and ginseng collectors. In reviewing the status of the plant, Eastman found that: "A thorough review of the literature, consultations with professional and amateur botanists, and field checking indicated references to 14 stations in Maine" (eight counties; see also 91). Several professional botanists contacted by Eastman were not aware of any American ginseng in the areas of the State with which they were familiar. Eastman found only four stations which still had plants, none of which occupied more than 100 square meters.

Kartesz (see 61) noted that American ginseng was included as a rare species in "Types of Critical Areas in Maine Phase I Report." This report was prepared by Garret C. Clough and Paul R. Adamus in 1976.

Two of the four known stands of American ginseng have been registered as "Critical Areas" by the State and a third is also being considered for such designation. "Critical Areas," as designated by Maine's State Planning Office, are natural areas of Statewide importance because of their unusual natural, scenic, scientific or historical significance. Except for the registration process, the program is essentially nonregulatory.

Based on a review conducted under the direction of the Maine State Planning Office, only four stations of wild American ginseng are known in Maine. The State has recognized these stations as valuable State resources. Thus it is clear that exports of wild American ginseng



collected in Maine should not be approved by the ESSA for the 1977-78 collecting season.

*Finding.* Negative.

### Maryland

Season	River Otter	
	State harvest	Price per Pelt
1940 to 1950	48	
1950 to 1951	329	
1951 to 1952	231	
1952 to 1953	55	
1953 to 1954	71	
1954 to 1955	96	
1955 to 1956	113	
1956 to 1957	149	
1957 to 1958	131	
1958 to 1959	99	
1959 to 1960	142	
1960 to 1961	150	
1961 to 1962	216	
1962 to 1963	241	
1963 to 1964	303	
1964 to 1965	376	
1965 to 1966	405	
1966 to 1967		
1967 to 1968	167	\$18.75
1968 to 1969	319	21.00
1969 to 1970	271	25.00
1970 to 1971	131	42.00
1971 to 1972	360	55.00
1972 to 1973	218	45.00
1973 to 1974	208	40.00
1974 to 1975	141	40.00
1975 to 1976	105-130	50.00
1976 to 1977	181	1 e. 50.00

<sup>1</sup> Preliminary estimate, D. Pursley, Maryland Fish and Wildlife Administration, Aug. 17, 1977.

### BOBCAT

*Discussion.* The bobcat apparently does not occur in Maryland (oral communication, D. Pursley, Maryland Fish and Wildlife Administration).

*Finding.* Negative.

### LYNX

*Discussion.* The lynx apparently does not occur in Maryland (see 16).

*Finding.* Negative.

### RIVER OTTER

*Discussion.* Reported State harvest has varied irregularly since 1949, rarely exceeding 300 river otters per year. Although the reported harvest has been relatively low since 1973, this has been attributed to a decline of trapper interest in river otter. Duane Pursley stated orally that nutria and muskrat are currently very marketable in Maryland, and provide a higher return per trapper effort than river otter.

Maryland is one of the few States requiring a tag on each river otter pelt that is exported, and the reported harvest suggests that Maryland can support a limited sustained yield of river otters.

Consequently, the ESSA is able to find that international export of river otters taken in Maryland during the 1977-1978 season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in Maryland during the 1977-78 season after the date of this notice may not exceed 165.

### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Maryland.

Shreve (see 92) in 1910 noted that American ginseng occurred throughout the mountain and midland zones, but was absent from the coastal zone. He further noted the plant was abundant in some areas, but was rare to infrequent in others, particularly in the midland zone. Bernard F. Halla, Maryland Wild-

life Administration, stated orally that American ginseng was found in the three western counties of Maryland and that it was not abundant.

The MA has forwarded to the ESSA one permit application for international export of wild American ginseng collected in Maryland.

In addition, Maryland has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

*Finding.* Negative.

### Massachusetts

Season	Bobcat		River Otter	
	State harvest	Price per Pelt	State harvest	Price per Pelt
1934	83			
1935	212			
1936	186			
1937	76			
1940	260			
1941	80			
1942	108			
1943	29			
1944	110			
1945				
1946	139			
1947	27			
1948	85			
1949	75			
1950	70			
1950 to 1951			92	
1951 to 1952			63	
1952 to 1953			48	
1953 to 1954			77	
1954 to 1955			34	
1955 to 1956			82	
1956 to 1957			82	\$25.00
1957 to 1958			47	20.00
1958 to 1959				20.00
1959 to 1960			76	20.00
1960 to 1961			76	27.00
1961 to 1962			53	30.00
1962 to 1963			71	40.00
1963 to 1964	9	\$40.00	66	40.00
1964 to 1965	8	24.00	66	38.30
1965 to 1966	11	41.50	103	133.68
1966 to 1967	13	78.00	108	169.90

<sup>1</sup> Personal comm., C. McCord, Massachusetts Department of Environmental Resources, Aug. 2, 1977.

### BOBCAT

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Massachusetts.

Recent reported State harvests have been relatively low despite high prices. Massachusetts is now studying the bobcat and, effective 1977-78, will require tags on all pelts.

However, Massachusetts has not established an annual limit on bobcat harvest based upon the animal's population status.

*Finding.* Negative.

### LYNX

*Discussion.* The lynx is apparently extirpated in Massachusetts (see 16).

*Finding.* Negative.

### RIVER OTTER

*Discussion.* Reported State harvest has varied irregularly since 1960, never exceeding 100 river otters until 1975-76. Price increased only gradually until last season, when it more than doubled. Apparently Massachusetts can support a limited sustained yield of river otters.

Consequently, the ESSA is able to find that international export of river otters

taken in Massachusetts during the 1977-78 season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in Massachusetts during the 1977-78 season after the date of this notice may not exceed 68.

### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Massachusetts.

Dr. Norton Nickerson, Tufts University, stated orally that American ginseng was harvested in Massachusetts by the bushel in the early 20th century, but it is very scarce now (for references concerning the occurrence of the plant in Massachusetts before 1915, see 93, 94, 95, and 96).

American ginseng is included as a rare species in the "List of Plant Species Which are Rare, Endangered, or Have Undetermined Status in Massachusetts" prepared by Robert W. Franzen and Hen-



ry J. Ritzer, USDA, Soil Conservation Service (see 61). The authors considered a species rare if because of its small numbers, it may become threatened with extinction due to further deterioration of the environment or other factors.

In addition, Massachusetts has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

*Finding.* Negative.

## MICHIGAN

Season	Bobcat		River Otter	
	State Harvest	Price per pelt	State Harvest	Price per pelt
1936	1,134			
1937	811			
1941 to 1942	1,529			
1943 to 1944	2,358		154	
1944 to 1945	2,802		100	
1945 to 1946	2,910		349	
1946 to 1947	2,353		322	
1947 to 1948	2,174			
1948 to 1949	2,063			
1949 to 1950	754		103	
1950 to 1951	942		157	
1951 to 1952	990		339	
1952 to 1953	1,138		315	
1953 to 1954			329	
1954 to 1955			533	
1955 to 1956			434	
1956 to 1957	847		663	
1957 to 1958	880		577	
1958 to 1959			853	
1959 to 1960	200		836	
1960 to 1961			750	
1961 to 1962			923	
1962 to 1963		\$2.00	625	\$18.00
1963 to 1964	588	2.00	587	20.00
1964 to 1965	494		485	20.00
1965 to 1966	265		825	25.00
1966 to 1967			825	25.00
1967 to 1968	400	1.50	642	15.50
1968 to 1969		2.00	815	18.00
1969 to 1970		2.00	815	18.00
1970 to 1971	300	3.00	500	20.00
1971 to 1972	300		584	
1972 to 1973	300		859	
1973 to 1974	300		1,152	
1974 to 1975	300		430	
1975 to 1976	300		609	
1976 to 1977	341	40-125.00	914	
			910	

<sup>1</sup> From Burt (see 97).

<sup>2</sup> Data since 1975, personal comm., J. Bogt, Michigan Department of Natural Resources, Aug. 8, 1977.

## BOBCAT

*Literature Review.* In 1946, Burt (see 97) noted that bobcats were formerly distributed over the entire State, but were confined to the Upper Peninsula and the northern half of the lower peninsula by 1946. He stated that they were "not too common."

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Michigan.

Reported State bobcat harvest has declined nearly tenfold in Michigan since a high of 2910 in 1945-1946, despite rising price since 1970. However, bounties paid from 1936 to 1965 rarely exceeded 500 (with the exception of 1247 in 1935; oral statement of Joe Bogt, Michigan Department of Natural Resources, 8 August 1977). From removal of the bounty in 1965 until establishment of a tagging requirement in 1976-1977, harvest was roughly estimated from informal surveys. Overall, reported bobcat harvest in Michigan is of questionable value in assessing actual population status. Although Michigan may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

Michigan now requires a tag on all bobcat pelts, completely protects bobcat in the southern portion of the State, and

limits the open season on bobcat to the north. However, Michigan has not established an annual limit on bobcat harvest based upon the animal's population status.

*Finding.* Negative.

## LYNX

*Discussion.* The lynx is completely protected by Michigan law (see 54).

*Finding.* Negative.

## RIVER OTTER

*Literature Review.* In 1946, Burt noted that the river otter was once formerly distributed over the entire State and had become restricted to less densely populated areas in the Upper Peninsula and northern part of the Lower Peninsula.

He noted that the season was closed in 1925 because of reduced numbers, but it was reopened in 1940 (see 97).

*Discussion.* Michigan is one of the few States requiring a tag on each river otter pelt and also establishes a bag limit (one river otter per trapper in 1976-1977). These regulations, combined with the fairly regular reported harvest, suggest that Michigan can support sustained yield of river otters.

Consequently, the ESSA is able to find that international export of river otters taken in Michigan during the 1977-1978 season will not be detrimental to the survival of the species in that State. How-

ever, the total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in Michigan during the 1977-78 season after the date of this notice may not exceed 551.

## AMERICAN GINSENG

*Literature Review and Discussion.* In 1881, Wheeler and Smith (see 98) noted that American ginseng grew throughout Michigan: "Usually rare, but so common in places that it has been dug for profit, and nearly exterminated." They further noted the plant occurred in great abundance in one county, but eleven years later (see 99) the observation was modified, "formerly in great abundance." In 1961, Smith (see 100) noted that the plant was once very common in Michigan, but that by 1961 it was quite rare due to overcollecting.

The MA has forwarded to the ESSA one permit application for international export of wild American ginseng collected from Michigan.

Wagner et al. (see 101) reported that American ginseng is an official Threatened species in the State of Michigan. The Michigan Endangered Species Act of 1974 (Act Number 203) considers a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." American ginseng was originally considered for endangered status; however, information acquired by the Department indicated that threatened status might be more appropriate. The Michigan Endangered Species Act of 1974 contains several provisions for the conservation of animals and plants either listed by the Department of the Interior or by the Director of the Michigan Department of Natural Resources. Section 6(1) of the Michigan Act states: "Except as otherwise provided in this Act a person shall not take, possess, transport, import, export, process, sell, or offer for sale, buy or offer to buy, nor shall a common carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing in the following lists \* \* \*"

The Michigan Department of Natural Resources is issuing collecting permits for American ginseng provided the permit holders supply the Department with data concerning the amount of plants collected, distribution and population sizes of the plants, and the name and address of the purchaser(s) and date(s) of sale(s), with the understanding that the data would not be made public. The Department intends to use the data to more accurately assess the status of the species in Michigan and to establish the appropriate collecting controls.

Because Michigan has initiated a program designed to conserve American ginseng and to regulate the harvest in order to prevent overexploitation, the ESSA is anxious to give the State's program a fair chance to become functional. However, care must be taken to ensure



that the approval of exports from this one State does not result in overcollection.

Thus, Michigan roots may only be exported if copies of the relevant Michigan permit(s) are attached to the copy of the U.S. Fish and Wildlife Service permit that must accompany each shipment. Also, as an attachment to the U.S. Fish and Wildlife Service permit, the exporter must state the number of pounds of roots included that were collected under each Michigan permit. As it becomes available, the U.S. Fish and Wildlife Service periodically will supply this information to the Michigan Department of Natural Resources.

The ESSA is working with the Michigan Department of Natural Resources to establish an appropriate quota for exports of roots collected in the 1977-78 season. Because roots are already being collected in the State and the status of

the plant has not been adequately ascertained by State officials and the ESSA, the quota for this collecting season will be conservative.

When the ESSA determines the quota has been met, exports of roots collected in Michigan after the date of this notice will be closed. Because the demand for wild American ginseng is high, the quota may be filled before revised ESSA export findings are published in the Fall.

Export quotas for future collecting seasons will be determined based on current biological and commercial data including data generated by the Michigan permit system. In addition, the ESSA will require that future international exports be collected in an appropriate collection season to ensure mature plants have had adequate opportunity to reproduce.

*Finding. Positive.*

#### Minnesota

Season	Bobcat		Lynx	
	State harvest	Price per belt	State harvest	Price per belt
1934	58		10	
1935	271		84	
1937	487		114	
1938	1,017		156	
1942	231		55	
1943	450		33	
1944	1,880		20	
1945	3,065		56	
1946	2,010		57	
1947	1,294		64	
1948	1,255		24	
1949	1,866		38	
1950	2,309		0	
1951	860		157	
1952	1,519		327	
1953	1,969		70	
1954	1,332		134	
1955	1,080		135	
1956	449		283	
1956 to 1957	449		283	
1957 to 1958	1,067		0	
1958 to 1959	717		2	
1959 to 1960	441		1	
1960 to 1961	502		50	
1961 to 1962	450	\$3.00	66	
1962 to 1963	264	4.00	387	
1963 to 1964	359	2.75	281	
1964 to 1965	13	17.50	33	
1965 to 1966	136	5.50	40	
1966 to 1967	70	5.00	50	
1967 to 1968	80	8.50	90	\$45
1968 to 1969	75		10	
1969 to 1970	130	8.00	11	
1970 to 1971	135	12.00	175	
1971 to 1972	198	15.00	400	
1972 to 1973	111	35.00	72	
1973 to 1974	175	80.00		
1974 to 1975				

\* All harvest data after 1965-69, personal comm., David Uesall, Minnesota Division Game and Fish, Aug. 15, 1977.

\* Number bounties.

#### BOBCAT

*Literature Review.* In 1975, the Minnesota Department of Natural Resources (see 102) reported that bobcats were formerly more abundant in southern than northern Minnesota. However, cutting of forests in northern and increased agriculture in southern have made the bobcat more common in the north, with animals now occurring only occasionally in the south. The Department report stated that annual take had dropped drastically during the past twenty years. Population apparently fluctuated with the food supply, although the bobcat population had never been studied in the State.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Minnesota.

Reported State bobcat harvest has declined over tenfold in Minnesota since a high of 3085 in 1945. Bounties may have generated the large harvest of the early years. However, reported State harvest has remained low since 1970, despite rising and quite high pelt price.

Minnesota will require tagging of bobcat pelts in 1977-78. However, the data are inadequate to assess the status of the species in the State and give cause for concern.

*Finding. Negative.*

#### LYNX

*Literature Review.* In 1975, the Minnesota Department of Natural Resources (see 102) reported that the lynx is a "species of changing or uncertain status." \* \* \* Some (usually less than 100) are still taken each year by hunters and trappers. The report stated that lynx numbers have fluctuated considerably in recent years, possibly because of changes in abundance of rabbits and rodents on which it feeds, and that the species would benefit from protection by the State.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of lynx taken in Minnesota.

*Finding. Negative.*

#### RIVER OTTER

*Discussion.* David Uesall, Minnesota Division of Game and Fish, stated orally that the river otter will be completely protected by Minnesota law in 1977-1978.

*Finding. Negative.*

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Minnesota.

In 1884 Upham (see 103) noted that American ginseng occurred "throughout the State, exception northwestward; local, wanting in some districts, rare northward; frequent, occasionally abundant, in the region of the upper Mississippi, and in \* \* \* (he listed five counties)." In 1892, MacMillan (see 104) found the plant " \* \* not very abundant in the Minnesota Valley." By 1969, Morley (see 105) noted that American ginseng was "now exterminated or nearly so by herb hunters \* \* \* in Minnesota. Monserud and Ownbey (see 106) concurred, "Now extremely rare."

American ginseng was included in the "Rare and Endangered Plants of Minnesota" prepared by Dr. Thomas Morley, University of Minnesota, in 1972 (see 61).

The Minnesota Department of Natural Resources (see 102) listed the American ginseng as a "Species of Special Interest," that is not presently endangered or threatened but is apt to become so in the near future:

\* \* \* (Ginseng) was once common in mature forests. It has long been collected, and is largely extirpated by people who dig for its \* \* \* roots \* \* \*. Clearing of forests has also been a factor \* \* \*. Preservation of undisturbed areas of hardwood forest, and possibly some planting, should help retain it as a wild plant \* \* \*. Ginseng should be placed on the protected wild flower list so that collection of the roots from public lands can be regulated.

In a letter to the U.S. Fish and Wildlife Service, Carrol L. Henderson (see 107), Minnesota Department of Natural Resources, commented that Dr. Morley and Dr. John Moyle both favored restrictions on international trade to protect American ginseng from overcollecting. Mr. Henderson further noted that based on



the opinions of these botanists, and on other available data, his Department endorses prohibition of exports of wild American ginseng collected in Minnesota.

Both Upham (see 103) and Nash (see 25 referred to Minnesota as a large producer of American ginseng. Upham quoted the price at about one dollar per pound. The MA has forwarded to the

ESSA two permit applications for export of wild American ginseng collected in Minnesota.

Besides the lack of data that would support a positive finding by the ESSA for international export of wild American ginseng collected in Minnesota, the State endorses a prohibition on export.

*Finding. Negative.*

#### Mississippi

Season	Bobcat		River Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1960 to 1961	126		126	
1961 to 1962	88		88	
1962 to 1963	100		100	
1971 to 1972	553			
1972 to 1973	774			
1973 to 1974	1,374			
1974 to 1975	1,785			
1975 to 1976	4,374			

#### BOBCAT

*Literature Review.* In 1971, Jenkins reported that the bobcat was found in all parts of Mississippi in good numbers and it was not in any danger at that time (see 43).

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Mississippi.

Reported State harvest in Mississippi has risen dramatically since 1972. In addition, Mississippi has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding. Negative.*

#### LYNX

*Discussion.* The lynx apparently does not occur in Mississippi (see 16).

*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of river otter taken in Mississippi. In addition, Mississippi has not established an annual limit on river otter harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding. Negative.*

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Mississippi.

In 1971, Lowe (see 108) noted that American ginseng occurred in five counties in Mississippi. Delcourt and Delcourt (see 46) reported herbarium records for eight counties, and found literature references to four additional counties.

The plant is included in a preliminary checklist of "Rare and Endangered Species in Mississippi," compiled by Dr. Thomas M. Pullen, University of Mississippi (see 109).

In addition, Mississippi has neither management programs nor regulatory

mechanisms to promote the conservation of American ginseng and to regulate harvest.

*Finding. Negative.*

#### MISSOURI

##### BOBCAT

*Discussion.* Effective with the 1977-78 trapping season, the bobcat has been given complete protection by Missouri law (see 110).

*Finding. Negative.*

##### LYNX

*Discussion.* The lynx apparently does not occur in Missouri (see 110).

*Finding. Negative.*

##### RIVER OTTER

*Discussion.* The river otter is completely protected by Missouri law (see 110).

*Finding. Negative.*

##### AMERICAN GINSENG

*Literature Review and Discussion.* In 1886, Tracy (see 111) regarded American ginseng as "common in rich woodland. \* \* \* 77 years later, Steyermark (see 112) noted that the plant was: "Frequent throughout the Ozark section and in extreme eastern Missouri, rare elsewhere in the State. \* \* \* He further added: "The demand for this plant \* \* \* has threatened it with extinction in many parts of Missouri. \* \* \* Usually at any given locality in Missouri, the plants are few to several in number, and occur as scattered individuals, well separated from one another."

American ginseng is not included in the *Rare and Endangered Species of Missouri* (see 113). In a letter to the U.S. Fish and Wildlife Service, John E. Wylie (see 114), Missouri Department of Natural Resources, commented that American ginseng had reportedly become "noticeably scarcer in the last year \* \* \* He further noted that the decline in status may be attributed to recent drought and collecting for the foreign and domestic markets. Wylie concluded by stating that his Department would recommend a ban on American ginseng exports for at least three years. In a letter to the ESSA, Allen Brohn (see



115), Missouri Department of Natural Resources, commented that American ginseng is not considered endangered in the State, but that " \* \* \* it is subject to substantial exploitation and numbers may be dwindling." He concurred with John E. Wylie that there should be a prohibition against the exportation of the plant.

The MA has forwarded to the ESSA four permit applications for international

export of wild American ginseng collected in Missouri. Wigginton (see 40) also mentions Missouri as a commercial source.

Besides the lack of data that would support a positive finding of the ESSA for international export of wild American ginseng collected in Missouri, the State endorses a prohibition on export.

*Finding.* Negative.

#### Montana

Season	Bobcat			Lynx			River Otter		
	State harvest	Price per pelt	ADC recovery	State harvest	Price per pelt		State harvest	Price per pelt	
1950 to 1951	461			2					
1951 to 1952	835			17					
1952 to 1953	927			8					
1953 to 1954	1,007			21					
1954 to 1955	1,320			16					
1955 to 1956	1,209			21					
1956 to 1957	808			45					
1957 to 1958	890			9					
1958 to 1959	1,180			32					
1959 to 1960	2,000			43					
1960 to 1961	1,657			115					
1961 to 1962	855			590			59		
1962 to 1963	928	\$4.62	565	35			45		
1963 to 1964	1,500	6.18	739	76			51		
1964 to 1965	1,220	5.46		157	\$7.21		65	\$15.85	
1965 to 1966	2,000	15.29	231	170	7.21		32	22.17	
1966 to 1967	1,660	10.66	126	102	13.91		54	20.41	
1967 to 1968	1,075	10.17	126	60	12.61		42	17.66	
1968 to 1969	1,740	20.62	106	42	21.98		28	18.80	
1969 to 1970	1,364	15.54	123	65			27	24.17	
1970 to 1971	1,364	16.83	78	65			32		
1971 to 1972	1,228	12.58	56	43	\$5.63		24	\$3.77	
1972 to 1973	2,472	15.97	122	301	148.42		84	32.19	
1973 to 1974	2,257	18.92	65	280	176.09		48	35.25	
1974 to 1975	1,404	15.55	55	163	163.66		42	20.60	
1975 to 1976	1,068	154.36		244	174.47		28	29.28	

<sup>1</sup> Personal comm., J. Egans, Montana Fish and Game Department, Aug. 3, 1977.

#### BOBCAT

*Literature Review.* In 1977, the Montana Department of Fish and Game (see 116) commented that available data indicate that the bobcat population in Montana is "going downhill faster than Jean Claude Killy." The Department further noted that State regulation of harvest is called for.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Montana.

The major decrease in ADC recovery since 1960 suggests actual population decline in Montana, but the inadequacy of these data draw into question any conclusions based upon them.

Reported State bobcat harvest for 1950-72 frequently exceeded 1000 but not 2000 animals. However, reported harvest exceeded 2000 for two consecutive years in 1972-74, at the same time that pelt price increased dramatically, and then dropped from 1974-76, even though pelt price continued a sharp increase. These data give concern that the population may be overharvested.

In addition, Montana has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### LYNX

*Literature Review.* In 1969, Hoffman reported that lynx were most frequent

in the northwestern and northcentral areas of the State, and less frequent to the south and east, being rarest in the southeast corner of Montana. This corresponds in general with the abundance of snowshoe hares in the State. Hoffman further reported that lynx had reached a peak in 1963-64, and since then had declined (see 117). In 1971, Nellis reported that lynx were "common" in Montana (see 65).

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of lynx taken in Montana.

It has been reported that prior to 1940, trapping pressure probably decreased the distribution and abundance of lynx in Montana, suggesting that the lynx population, probably cyclic, is vulnerable to heavy trapping (see 65). The extremely high pelt price at present is likely to stimulate intense trapper effort.

In addition, Montana has not established an annual limit on lynx based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### RIVER OTTER

*Discussion.* Reported river otter harvest in Montana has never exceed 65 and has been fairly regular. In addition, price has not risen markedly.

Consequently, the ESSA is able to find that international export of river otters taken in Montana during the 1977-1978

season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in Montana during the 1977-1978 season after the data of this notice may not exceed 36.

#### AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in Montana.

*Finding.* Negative.

#### Nebraska

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1943 to 1944	100		
1944 to 1945	133		
1945 to 1946	48		
1946 to 1947	14		
1947 to 1948	98		
1948 to 1949	170		
1949 to 1950	206		
1950 to 1951	33		
1951 to 1952	67		
1952 to 1953	45		
1953 to 1954	46		
1954 to 1955	84		
1955 to 1956	80		
1956 to 1957	68		
1957 to 1958	21		
1958 to 1959	90		
1959 to 1960	59		
1960 to 1961	59		
1961 to 1962	60		
1962 to 1963	14	\$4.50	
1963 to 1964	129	4.40	
1964 to 1965	29	3.83	
1965 to 1966	87	9.75	
1966 to 1967	70	12.33	
1967 to 1968	96	15.38	
1968 to 1969	129	18.37	
1969 to 1970	98	14.07	
1970 to 1971	31	12.75	
1971 to 1972	49	17.50	
1972 to 1973	79	25.62	
1973 to 1974	180	53.25	
1974 to 1975	186	41.16	

#### BOBCAT

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Nebraska.

The major decrease in ADC recovery since 1964 suggests actual population decline in Nebraska, but the inadequacy of these data draw into question any conclusions based upon them.

From 1944 through 1975 the reported State harvest has varied irregularly from 14 to 266. The harvests from 1973-75 were the highest reported since 1950, and in light of the general rising trend in pelt price, these data suggest that the Nebraska bobcat may be under increased trapper pressure.

In addition, Nebraska has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### LYNX

*Discussion.* The lynx apparently does not occur in Nebraska (see 16).

*Finding.* Negative.



## RIVER OTTER

*Discussion.* The river otter apparently is extirpated in Nebraska and is completely protected by State law (see 16 and 54).

*Finding.* Negative.

## AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Nebraska.

Pound and Clements in 1900 (see 118) and Winter in 1936 (see 119) have stated that American ginseng is rare in Ne-

braska. In a letter to the U.S. Fish and Wildlife Service, Mr. Curtis M. Twedt (see 120), Nebraska Parks Commission commented that American ginseng occurs in three eastern counties in Nebraska. Mr. Twedt also stated orally that he was not aware of commercial harvests of ginseng in the State and that the plant was being considered for listing under the Nebraska Nongame and Endangered Species Conservation Act.

There is no evidence that would support a finding by the ESSA approving exports of wild American ginseng collected in Nebraska.

*Finding.* Negative.

## Nevada

Season	Bobcat			River Otter	
	State harvest	Price per pelt	ADC recovery	State harvest	Price per pelt
1957 to 1958	303		3,485		
1958 to 1959			3,629		
1959 to 1960			4,077		
1960 to 1961			3,756		
1961 to 1962			2,175		
1962 to 1963			2,707		
1963 to 1964			2,636		
1964 to 1965					
1965 to 1966			1,844		
1966 to 1967			1,155		
1967 to 1968			1,029		
1968 to 1969	643		632	33	
1969 to 1970	1,473	\$15.32	443	6	
1970 to 1971	1,421	15.32	382		
1971 to 1972	1,442	23.36	56		
1972 to 1973	1,517	47.75	268		
1973 to 1974	2,051	77.81	128		
1974 to 1975	1,345	58.44	34		
1975 to 1976			29		
1976 to 1977					

## BOBCAT

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Nevada.

The major decrease in ADC recovery since 1960 suggests actual population decline in Nevada, but the inadequacy of these data draw into question any conclusions based upon them.

As in many other States, reported State bobcat harvest in Nevada has been high, probably largely reflecting increase in pelt price. It cannot be determined from these data whether Nevada can sustain this level yield, or greater.

In addition, Nevada has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

## LYNX

*Discussion.* The lynx apparently does not occur in Nevada (see 16).

*Finding.* Negative.

## RIVER OTTER

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of river otter taken in Nevada.

Glen K. Griffith, Nevada Department of Fish and Game, stated orally that his Department estimate 500 river otters are in Nevada, and that the population could support a sustained annual harvest of 40 to 60.

However, Nevada has not established an annual limit on river otter harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

## AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in Nevada.

*Finding.* Negative.

## New Hampshire

Season	River Otter	
	State harvest	Price per pelt
1935	45	
1936	54	
1937	37	
1938	21	
1942	40	
1943	28	
1944	45	
1945 to 1946	40	
1946 to 1947	52	
1945 to 1948	61	
1948 to 1949	116	
1949 to 1950	111	
1950 to 1951	98	
1951 to 1952	120	
1952 to 1953	107	
1953 to 1954	109	
1954 to 1955	133	
1955 to 1956	95	
1956	102	
1957	93	
1959	124	
1960	122	
1961	167	
1961 to 1962	189	
1962 to 1963	182	
1963 to 1964	196	
1964 to 1965	181	\$24.27
1965 to 1966	157	23.82
1966 to 1967	119	21.38
1967 to 1968	110	24.74
1968 to 1969	150	20.56
1969 to 1970	135	26.48
1970 to 1971	157	32.26
1971 to 1972	206	36.61
1972 to 1973	186	32.75
1973 to 1974	170	29.30
1974 to 1975	181	
1975 to 1976		

## BOBCAT

*Discussion.* Mason Butterfield, New Hampshire Fish and Game Department, stated orally that the State has established a two year moratorium on bobcat harvest for 1977-1979.

*Finding.* Negative.

## LYNX

*Discussion.* Mason Butterfield stated orally that the lynx is completely protected by New Hampshire law.

*Finding.* Negative.

## RIVER OTTER

*Discussion.* The reported harvest of river otter in New Hampshire gradually increased from 1935 until the early 1960's, declined somewhat in the latter 1960's, then returned to the high level of the early 1960's. The price has risen little since first reported in 1964-65.



Consequently, the ESSA is able to find that international export of river otters taken in New Hampshire during the 1977-78 season will not be detrimental to the survival of the species in that State. However, the total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in New Hampshire during the 1977-78 season after the date of this notice may not exceed 114.

#### AMERICAN GINSENG

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in New Hampshire.

In 1924, Pease (see 121) noted two stations of American ginseng in Coos County, and regarded the plant as scarce and nearly exterminated in the State. Eight additional stations in New Hampshire are documented by herbarium specimens at the New England Botanical Club, Cambridge, Massachusetts and at the University of New Hampshire.

American ginseng was included as an endangered species in the list, "Endangered Plants of New Hampshire" developed by Albion Hodgson, University of New Hampshire (see 61).

*Finding.* Negative.

#### NEW JERSEY

##### BOBCAT

*Discussion.* The bobcat is completely protected by New Jersey law (see 122).

*Finding.* Negative.

##### LYNX

*Discussion.* The lynx apparently does not occur in New Jersey (see 16).

*Finding.* Negative.

##### RIVER OTTER

*Discussion.* The river otter is completely protected by New Jersey law (see 54).

*Finding.* Negative.

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in New Jersey.

In 1889, Britton (see 123) noted that American ginseng was very rare in New Jersey.

In 1973, Fairbrothers and Hough (see 124) listed American ginseng as a rare species in Rare or Endangered Vascular Plants of New Jersey. The authors noted that the plant occurred in three counties.

Santiago Porcella III, New Jersey Department of Environmental Protection, commented in a letter to the U.S. Fish and Wildlife Service (see 125) that American ginseng should be considered rare. He noted that the plant occurred in five counties.

*Finding.* Negative.

#### New Mexico

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1942	7,292		
1943	3,989		
1944	4,000		
1945	5,278		
1946 to 1947	4,500		
1947 to 1948	4,000		
1948 to 1949	4,000		
1949 to 1950	3,000		
1950 to 1951	3,600		
1951 to 1952	3,500		
1952 to 1953	3,000		
1953 to 1954	2,500		
1954 to 1955	1,279		
1955 to 1956	2,075		
1956 to 1957	1,000		
1957 to 1958	209		
1958 to 1959	663		
1959 to 1960	319		1,812
1960 to 1961	367		1,873
1961 to 1962	638		1,631
1962 to 1963	732		1,240
1963 to 1964			1,388
1964 to 1965	200		1,128
1965 to 1966			839
1966 to 1967	1,500	\$12.00	1,109
1967 to 1968			742
1968 to 1969			715
1969 to 1970	300	13.59	689
1970 to 1971	1,589	13.39	619
1971 to 1972			403
1972 to 1973			296
1973 to 1974	3,187	51.39	398
1974 to 1975	1,945	48.16	276
1975 to 1976			264
1976 to 1977	5,077	130.87	

*Literature Review.* In 1975, Findley et al. reported that bobcats are found throughout the State in almost all habitats, are probably rare on the eastern plains and at higher altitudes in the northern mountains, and are perhaps most common in rocky country from desert through the ponderosa forest (see 126).

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in New Mexico.

The major decrease in ADC recovery since 1961 suggests actual population decline in New Mexico, but the inadequacy of these data draw into question any conclusions based upon them.

William S. Huey, New Mexico Department of Game and Fish, stated orally that his Department estimates approximately 50,000 bobcats are in the State and that an annual harvest of 5,000 bobcats would not be excessive. He further noted that most bobcats are taken incidental to coyote trapping, primarily conducted in habitat not optimal for the bobcat. Huey also thought that pelts should be tagged to facilitate monitoring of international exports.

New Mexico may be able to support a sustained yield of bobcat. However, the State has not established an annual limit on bobcat based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

##### LYNX

*Discussion.* The lynx apparently does not occur in New Mexico (see 16).

*Finding.* Negative.



## RIVER OTTER

*Discussion.* The river otter is completely protected by New Mexico law (see 54).

*Finding.* Negative.

## AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in New Mexico.

*Finding.* Negative.

## New York

Season	Bobcat		River Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1934	92		242	
1935	106		215	
1936	77		500	
1937	63		163	
1938				
1939	163			
1940	220			
1941	210			
1942	72			
1943				
1944	257			
1945	158			
1946				
1947	209			
1948	251			
1949	199		128	
1950	142		78	
1951	194		217	
1952			127	
1953			292	
1954			310	
1954 to 1955			301	
1955 to 1956			301	
1956 to 1957			301	
1957 to 1958			357	
1958 to 1959			215	
1959 to 1960			508	
1960 to 1961			387	
1961 to 1962				
1962 to 1963	1760 (35800)		176	
1963 to 1964			300	
1964 to 1965			318	
1965 to 1966			244	
1966 to 1967			249	
1967 to 1968			256	
1968 to 1969			255	
1969 to 1970			263	
1970 to 1971			171	
1971 to 1972			329	
1972 to 1973	161		413	
1973 to 1974			405	
1974 to 1975			496	
1975 to 1976			533	

<sup>1</sup> Spring season only.

<sup>2</sup> Gunning figure only.

<sup>3</sup> Unpublished estimate.

## BOBCAT

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in New York. In 1976, the bobcat was first classified as a game animal and tagging of pelts became required. However, New York has not established an annual limit on bobcat harvest based upon the animal's population status.

*Finding.* Negative.

## LYNX

*Discussion.* The lynx is apparently extirpated in New York (see 16).

*Finding.* Negative.

## RIVER OTTER

*Discussion.* The reported State harvest varied irregularly between 78 and 287 since 1949. Only in the last three reported years has the take exceeded 400 per year, perhaps because of somewhat higher prices. However, the annual reported harvest has remained fairly regular for an extended period. Apparently New York can support a sustained yield of river otters. Consequently, the ESSA is able to find that international export of river otters taken in New York during

the 1977-78 season will not be detrimental to the survival of the species in that State. However, total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in New York during the 1977-78 season after the data of this notice may not exceed 272.

## AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in New York.

In 1924, House (see 127) noted that American ginseng was "frequent as local, at least formerly so, northward in the State. Less common or rare southward to Rockland County and westward to Lake Erie." Zander (see 128) documented the distribution of American ginseng in 12 western New York counties and noted that the plants were "found at scattered locations in rich woods."

Dr. Richard S. Mitchel, New York State Museum of Science, stated orally that American ginseng has been extirpated in many areas of New York and



that it was currently restricted to relatively inaccessible areas. He further stated his understanding that the plants were collected only when mature, but he thought much of the collecting took place on public lands.

Effective September 1, 1974, New York law prohibited taking of American ginseng without the landowner's consent, and since May 25, 1976, a collecting permit has been required, issued by the New York Department of Environmental Con-

servation. Permits are granted for purposes of scientific research or salvage, but not for commercial harvest.

The MA has forwarded to the ESSA six permit applications for international export of wild American ginseng collected in New York.

The taking of American ginseng in New York State is generally prohibited by State law.

*Finding. Negative.*

#### North Carolina

Season	Bobcat		River Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1941	250			
1942	153			
1943	109			
1944	100			
1945	120			
1946 to 1947	35			
1947 to 1948	65			
1948 to 1949	36			
1949 to 1950	64			
1950 to 1951	63			
1951 to 1952	28			
1952 to 1953	9			
1953 to 1954	19			
1954 to 1955	30			
1955 to 1956	23			
1956 to 1957	9			
1957 to 1958	24			
1958 to 1959	80		1130	
1959 to 1960	100		1294	
1960 to 1961	116		1456	
1961 to 1962	148		1739	
1962 to 1963	166	\$0.50	13.28	\$23
1963 to 1964	180	2.50	1443	25
1964 to 1965	108	2.50	1354	25
1965 to 1966	316	4.00	1115	16
1966 to 1967	179	3.75	10.5	23
1967 to 1968	179	3.75		
1968 to 1969	209	7.00	606	9
1969 to 1970	745	14.70	968	
1970 to 1971	712	20.00	893	25
1971 to 1972	867		878	
1972 to 1973	1100		1390	

#### BOBCAT

*Literature Review.* In 1971, Jenkins reported that the bobcat was rare or absent in much of the Piedmont, but frequent to common in the mountains and in the eastern coastal counties (see 43).

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in North Carolina.

Before 1971-72, reported bobcat harvest in North Carolina exceeded 200 only in two separate seasons. However, reported harvest has increased substantially since 1973, reaching 1100 in 1976-77, and has been associated with rising price.

In addition, North Carolina has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding. Negative.*

#### LYNX

*Discussion.* The lynx apparently does not occur in North Carolina (see 16).

*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The reported State harvest of river otter from 1961-69 was high and regular. Reported harvest declined in the early 1970's, then rose to previous levels

in 1976-77. The drop in reported harvest may have been related to low price, although the data are very inadequate on this point. Apparently North Carolina can support a sustained yield of river otters.

Consequently, the ESSA is able to find that international export of river otters taken in North Carolina during the 1977-78 season will not be detrimental to the survival of the species in that State. However, total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding. Positive;* total international export of river otters taken in North Carolina during the 1977-78 season after the data of this notice may not exceed 1195.

#### AMERICAN GINSENG

*Literature Review and Discussion.* Radford et al. (see 129) noted that American ginseng occurred in 14 counties in the mountains and piedmont of North Carolina; Delcourt and Delcourt (see 46) noted herbarium records for one county and literature references to 17 additional counties; and Hardin (see 130) noted the plant occurred in 9 counties (see also 131).

Radford et al. (see 129) regarded American ginseng as rare in North Carolina. This opinion was shared by Hardin

(see 132) who noted that the plant's status was the result of overcollecting.

Hardin also (see 130) included American ginseng as a species threatened throughout its range and exploited in "Endangered and Threatened Plants and Animals of North Carolina". He further noted that collecting wild American ginseng "is a very old but recently growing business which could lead to the eradication of the species in native habitats \* \* \*". In contrast, Arnold Krochmal, U.S.D.A. Forest Service commented in a letter to the Smithsonian Institution (see 41), that he has seen increases in ginseng populations in North Carolina (refer to summary for Kentucky).

The MA has forwarded to the ESSA eight permit applications for international export of wild American ginseng collected in North Carolina. Wigginton (see 40) also noted the State was a major commercial source.

Bogue (see 133) quoted one individual who said that American ginseng was stolen from Great Smokey National Park where it was plentiful. Dr. Susan Bratton, National Park Service, stated orally that poachers are a current problem in the Park and that the plant does not occur in much of the habitat that appears suitable.

North Carolina State law (Section I, 14-129) requires written permission from landowners or an authorized agent before American ginseng can be collected in certain counties.

Some sections of North Carolina may be capable of supporting a sustained harvest of American ginseng. However, the State has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.

*Finding. Negative.*

#### North Dakota

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1943 to 1944	127		
1944 to 1945	42		
1945 to 1946	96		
1946 to 1947	152		
1947 to 1948	119		
1948 to 1949	115		
1949 to 1950	19		
1950 to 1951	27		
1951 to 1952	6		
1952 to 1953	127		
1953 to 1954	135		
1954 to 1955	238		
1955 to 1956	54		
1956 to 1957	46		
1957 to 1958	51		7
1958 to 1959	14		13
1959 to 1960	77		4
1960 to 1961	64		11
1961 to 1962	67	\$4.99	19
1962 to 1963	135	5.06	17
1963 to 1964	135	5.29	8
1964 to 1965	71	2.82	
1965 to 1966	178	8.92	
1966 to 1967	67	6.04	1
1967 to 1968	23	9.10	
1968 to 1969	52	10.25	
1969 to 1970	101	5.88	1
1970 to 1971	39	8.37	3
1971 to 1972	91	14.89	0
1972 to 1973		38.08	0
1973 to 1974	232	50.78	0
1974 to 1975	181	43.88	0
1975 to 1976	75	94.10	
1976 to 1977			

<sup>1</sup> Lynx and bobcat.



## BOBCAT

**Literature Review.** In 1961, Adams (see 134) reported that bobcats were common only in the counties adjoining the Little Missouri, Heart, Cannonball, and Missouri Rivers, occasionally along the Red River in eastern and northern North Dakota, and rare in the prairie pothole region. Because of their scarcity, they were of no major economic importance.

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in North Dakota.

Apparently, bobcats have never been abundant in North Dakota. The reported State harvest has generally been low and irregular over the past thirty years, and the ADC recovery for the past twenty years has been miniscule or absent.

In addition, North Dakota has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx is apparently extirpated in North Dakota (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is apparently extirpated in North Dakota (see 16).

**Finding.** Negative.

## AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in North Dakota.

**Finding.** Negative.

## OHIO

## BOBCAT

Season:	State harvest
1969-70	0
1970-71	0
1971-72	0
1972-73	0
1973-74	0
1974-75	0
1975-76	0

**Literature Review.** In 1973, Smith et al. reported that the bobcat in Ohio was "rare" (see 135).

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Ohio.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in Ohio (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is completely protected by Ohio law (see 54).

**Finding.** Negative.

## AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Ohio.

Schaffner in 1914 (see 136) considered American ginseng generally distributed in Ohio (for references concerning the occurrence of the plant in Ohio in the 19th century, see 137 and 138). Eighteen years later Schaffner (see 139) noted: "General, but now scarce."

Richard S. Moseley, Ohio Division of Natural Areas and Preserves, stated orally that American ginseng occurred in 25 counties in Ohio and that he knows of several areas in the State where the plant has been eradicated in the last eight years. He further noted that the plants were primarily collected by emigrants from West Virginia. A similar opinion was stated orally by Bob McCance and Dennis Anderson, Ohio Natural Heritage Program. Moseley added that the plant had started to flower this year in the first week of July (substantial collecting was taking place in Ohio at that time).

Dr. Thomas Cooperrider, Kent State University, stated orally that American ginseng was potentially threatened in Ohio and that commercial collecting in the State should be stopped. Dr. Charles C. King, Ohio Biological Survey, stated orally that the plant was not common and that it was being collected in parks.

In a letter to the U.S. Fish and Wildlife Service (see 140), Dennis Anderson commented that one record from the major herbaria within Ohio was dated 1892 with a note "becoming rare." He further added: "The verbal responses of a few knowledgeable field people concerning the current status and trend of the species in Ohio yielded partially conflicting reports from 'definitely declining' to 'remaining about constant'. No one reported population increases and most agreed that diggers had reduced populations in at least local areas."

Wistendahl et al. (see 141) included American ginseng as an endangered species in "Rare and Endangered Plant Species of the Central Ohio Valley; A Contribution Toward a Comprehensive List for Ohio," and noted that it occurred in three counties. The plant was also included in a "Preliminary List of Rare and Endangered Species in Ohio Dicotyledoneae," compiled by Dr. Thomas S. Cooperrider (see 142).

The MA has forwarded to the ESSA seven permit applications for international export of wild American ginseng collected in Ohio.

Ohio has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

**Finding.** Negative.

## Oklahoma

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1942 to 1943	76		
1943 to 1944	142		
1944 to 1945	70		
1945 to 1946	66		
1946 to 1947	27		
1947 to 1948	20		
1948 to 1949	10		
1949 to 1950	22		
1950 to 1951	31		
1951 to 1952	12		
1952 to 1953	15		
1953 to 1954	71		
1954 to 1955	25		
1955 to 1956			198
1956 to 1957			273
1957 to 1958	3		247
1958 to 1959			185
1959 to 1960	12		216
1960 to 1961			167
1961 to 1962	8		372
1962 to 1963	12		354
1963 to 1964	14	\$0.82	216
1964 to 1965	20	.88	229
1965 to 1966	20	.88	202
1966 to 1967	7	.75	147
1967 to 1968	50	3.50	198
1968 to 1969	45	3.75	190
1969 to 1970	45	3.75	250
1970 to 1971	49	6.21	167
1971 to 1972	199		133
1972 to 1973	735		94
1973 to 1974	1,458		106
1974 to 1975	2,302	37.28	
1975 to 1976	3,548	53.49	
1976 to 1977			

**Discussion.** The data available to ESSA are insufficient to support a positive finding for international export of bobcat taken in Oklahoma.

Reported bobcat harvest in Oklahoma has generally been very low, except for an enormous increase since 1972, apparently stimulated by rising price. Although Oklahoma may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

Ken Van Hoozer, Oklahoma Department of Wildlife Conservation, stated orally that Oklahoma will restrict the open season on bobcat in 1977-78 and is considering implementation of a tagging requirement. However, Oklahoma has not yet established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in Oklahoma (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is extirpated in Oklahoma and is completely protected by State law (see 16).

**Finding.** Negative.

## AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng taken in Oklahoma.



In a letter to the U.S. Fish and Wildlife Service (see 143), Dr. Jerry J. Crockett, Oklahoma State University, commented: "There is only one reported herbarium specimen of American ginseng in Oklahoma." Although believing the plant still occurs in the State, he considered it rare and in need of protection.

American ginseng is designated "Rare-1" in "Rare and Endangered Vertebrates and Plants of Oklahoma" (see 144). Rare-1 is defined as a species that "although not presently threatened with extinction, is in such small numbers that it may be endangered if its environment worsens."

*Finding.* Negative.

#### Oregon

Season	Bobcat			River Otter	
	State harvest	Price per pelt	ADC recovery	State harvest	Price per pelt
1938	1,382				
1943 to 1944	1,022			120	
1944 to 1945	810			100	
1945 to 1946	1,113			216	
1946 to 1947	567			186	
1947 to 1948	732			206	
1948 to 1949	584			156	
1949 to 1950	399			139	
1950 to 1951	456			182	
1951 to 1952	523			188	
1952 to 1953	377			201	
1953 to 1954	369			164	
1954 to 1955	492			209	
1955 to 1956	438			188	
1956 to 1957	544			282	
1957 to 1958	570		2,830	202	
1958 to 1959	1,188		2,774	254	
1959 to 1960	945		2,266	313	
1960 to 1961	1,143		2,155	350	
1961 to 1962	314	\$3.73	1,969	358	\$19.65
1962 to 1963	324	4.57	2,021	272	19.63
1963 to 1964	481	5.78	2,221	294	21.71
1964 to 1965	481	5.78		296	21.71
1965 to 1966	801	8.92		369	
1966 to 1967	352	14.53	1,100	281	19.30
1967 to 1968	976	17.21	937	362	25.21
1968 to 1969	984	17.21	827	362	25.21
1969 to 1970	1,099	13.66	741	300	23.60
1970 to 1971	1,110	13.66	511	198	23.60
1971 to 1972	1,123	20.96	319	265	31.84
1972 to 1973	1,269	39.43	333	331	46.80
1973 to 1974	1,645	53.55	144	255	35.77
1974 to 1975	1,468	38.97	84	339	34.44
1975 to 1976	1,720	162.94	31	275	41.97
1976 to 1977	1,980	160.00		435	57.13

#### BOBCAT

*Literature Review.* In 1971, Ebert (see 8) reported: "The statewide population of bobcats is currently estimated to be the lowest in twenty years, particularly in eastern Oregon." Ebert noted that the State bounty was removed in 1961, but ten counties continued to pay bounties of \$2.00 to \$4.00 in 1971. Ebert further noted that increased price had stimulated trapping of bobcat.

*Discussion.* The data available to ESSA are insufficient to support a positive finding for international export of bobcat taken in Oregon. The major decrease in ADC recovery since 1957 suggests actual population decline in Oregon, but the inadequacy of these data draw into question any conclusions based upon them.

The reported State harvest has varied widely since 1938, but has risen to particularly high levels in the 1970's in association with dramatic price increase. Robert Stein, Oregon Fish and Wildlife Commission, stated orally that taking of bobcat may be prohibited in eastern Oregon, where pelts are most valuable, and restricted in the West, in 1977-78.

However, Oregon has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### LYNX

*Literature Review.* In 1971, Nellis reported that lynx were "very rare" in Oregon (see 65).

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of Lynx taken in Oregon.

*Finding.* Negative.

#### RIVER OTTER

*Discussion.* The reported harvest of river otter in Oregon has been fairly regular, with no apparent relationship to price, except perhaps in 1976-1977, when both reported harvest and price were the highest ever reported.

Robert Stein, Oregon Fish and Wildlife Commission, stated orally that the river otter was doing well in Oregon, and was particularly common in the central part of the State. Apparently, Oregon can support a sustained yield of river otters.

Consequently, the ESSA is able to find that international export of river otters taken in Oregon during the 1977-1978 season will not be detrimental to the survival of the species in that State. However, total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in Oregon during the 1977-78 season after the date of this notice may not exceed 249.

#### AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in Oregon.

*Finding.* Negative.

#### PENNSYLVANIA

##### BOBCAT

*Discussion.* The bobcat is completely protected by Pennsylvania law (see 122).

*Finding.* Negative.

##### LYNX

*Discussion.* The lynx apparently does not occur in Pennsylvania (see 16).

*Finding.* Negative.

##### RIVER OTTER

*Discussion.* The river otter is completely protected by Pennsylvania law (see 54).

*Finding.* Negative.

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Pennsylvania.

In 1852, Noll (see 145) noted that American ginseng was not common in Pennsylvania. Other botanists have also concurred with Noll that the plant is rare or becoming so in the State (see 146, 147, 148, and 149).

Maurice K. Goddard, Pennsylvania Department of Environmental Resources, stated orally that American ginseng is common throughout Pennsylvania on specific sites; and that he did not consider collection pressure to be a significant problem at present. He further noted that most collectors are careful to conserve the plant. The MA has forwarded to the ESSA six permit applications for international export of wild American ginseng collected in Pennsylvania.

Some sections of Pennsylvania may be capable of supporting a sustained harvest of American ginseng. However, the State has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.

*Finding.* Negative.

#### RHODE ISLAND

##### BOBCAT

*Discussion.* The bobcat is completely protected by Rhode Island law (see 70).

*Finding.* Negative.

##### LYNX

*Discussion.* The lynx apparently does not occur in Rhode Island (see 18).

*Finding.* Negative.

##### RIVER OTTER

*Discussion.* The river otter is completely protected by Rhode Island law (see 54).

*Finding.* Negative.



## AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Rhode Island.

Dr. Irene H. Stuckey, University of Rhode Island, stated orally that although there are herbarium records of American ginseng in Rhode Island, she considers the plant possibly extinct in the State (see also 61).

*Finding.* Negative.

## South Carolina

Season	Bobcat		River Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1960 to 1961			400	
1961 to 1962			450	
1962 to 1963	50		614	
1963 to 1964	26		284	
1964 to 1965	30		300	
1965 to 1966	63		415	
1966 to 1967	72	\$0.50	400	\$14
1967 to 1968	128	2.50	746	20
1968 to 1969	27		184	
1969 to 1970	30		200	
1970 to 1971	217		526	
1971 to 1972	371	25.00	699	35
1972 to 1973	661		783	
1973 to 1974	1,368		1,351	

## BOBCAT

*Literature Review.* Radio tracking proved a satisfactory technique in determining bobcat movements and home ranges, but too few animals were studied over too short a span of time to contribute information useful in assessing bobcat status in South Carolina (see 150).

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in South Carolina.

Reported harvest of bobcats in South Carolina has increased dramatically since 1973, apparently in response to rising pelt price.

In a letter to William C. Hickling, Area Manager, U.S. Fish and Wildlife Service, the Executive Director of the South Carolina Wildlife and Marine Resources Department, James A. Timmerman, Jr., stated that the bobcat is a game animal in South Carolina and is taken for sport hunting (see 151).

Timmerman stated that a 1972 survey indicated bobcats were common in 30 counties, occasional in 16 and nowhere rare. He added that specific population data does not exist. Kenneth B. Stansell of the same Department stated orally that bobcat as game animals cannot be sold commercially in South Carolina.

Although South Carolina may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

In addition, South Carolina has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

## LYNX

*Discussion.* The lynx apparently does not occur in South Carolina (see 16).

*Finding.* Negative.

## RIVER OTTER

*Discussion.* Reported river otter harvest in South Carolina has varied ir-

regularly since 1960, only twice exceeding 500 before 1973. Since 1973, the reported State harvest has risen from 526 to 1351, with nearly a doubling in the last season.

South Carolina requires a tag on every river otter pelt taken, and the reported harvest suggests that South Carolina can support a sustained yield of river otters.

Consequently, the ESSA is able to find that international export of river otters taken in South Carolina during the 1977-78 season will not be detrimental to the survival of the species in that State. However, total international export may not exceed a quota established by the method described in the species summary for river otter, excluding last year's unprecedented harvest which may have been caused by high pelt price.

*Finding.* Positive; total international export of river otters taken in South Carolina during the 1977-78 season after the date of this notice may not exceed 430.

## AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in South Carolina.

In Wigginton (see 40), John Droyton of South Carolina is cited as saying in 1798: "It (American ginseng) is so much sought after by the Cherokees for trade it is by no means as plentiful as it used to be in this State." Radford et al. (see 129) noted that the plant was rare in the mountains and lower piedmont of two counties in South Carolina.

In a letter to the U.S. Fish and Wildlife Service (see 152), Kenneth B. Stansell, South Carolina Wildlife and Marine Resources Department, commented that the higher plant committee of a recent symposium on endangered species, which was sponsored by Mr. Stansell's Department, designated American ginseng as threatened in South Carolina. Mr. Stansell added "this represents a consensus of opinion from extremely knowledgeable individuals in the plant field."



Dr. J. A. Timmerman, South Carolina Wildlife and Marine Resources Department, stated orally that he did not think there was much commercial activity in American ginseng in South Carolina. The

MA has forwarded to the ESSA three permit applications for international export of wild American ginseng collected in the State.

*Finding. Negative.*

#### South Dakota

Season	Bobcat			ADC recovery
	State harvest	Bounty	Price per pelt Commercial	
1957 to 1958	730	\$10		44
1958 to 1959	650	10		56
1959 to 1960	500	10		61
1960 to 1961	400	10		61
1961 to 1962		5		69
1962 to 1963		5		49
1963 to 1964	150	5		99
1964 to 1965	650	5		
1965 to 1966	700	5		92
1966 to 1967	650	5	\$4.00	56
1967 to 1968		5		
1968 to 1969		5		47
1969 to 1970	198	5	11.36	49
1970 to 1971	198	5	11.36	35
1971 to 1972		5		13
1972 to 1973		5		
1973 to 1974	1438		68.00	11
1974 to 1975	1597		37.95	
1975 to 1976	924		132.26	
1976 to 1977	4411		165.00	

<sup>1</sup> Personal comm., R. Fowler, South Dakota Department of Fish and Game, Aug. 23, 1977.

#### BOBCAT

*Literature Review.* In 1976, Anderson (see 9) reported that bobcats are most abundant in the Black Hills area and breaks of the Grand, Moreau, Belle Fourche, Cheyenne, Bad and White River systems, but were quite uncommon in eastern South Dakota. He further noted that conservation officers, hunters and trappers have reported that bobcat numbers have decreased dramatically.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in South Dakota.

Reported State harvest in South Dakota is based on the number of transactions conducted by licensed fur dealers. Thus, the reported harvest may not accurately reflect the actual take in the State. For example, Ronald Fowler stated orally that the actual bobcat harvest for the 1976-77 season has been calculated to be 418. Analysis of the State harvest is further complicated by a reduction over the last three years in the length of the bobcat trapping season.

Kay Cool, South Dakota Department of Game, Fish, and Parks, stated orally that the Department is "extremely concerned" with the status of the bobcat in South Dakota. The State has established a limited season from December 15 to January 15 in 1977-78. The State will also require presentation of all animals to a State conservation officer and fixing of metal tags on all pelts before sale. In addition, teeth will be collected and used to analyze age and sex structure, and to facilitate further State regulatory decisions on bobcat.

In addition, the State has not established an annual limit based on the animal's population status.

*Finding. Negative.*

#### LYNX

*Discussion.* The lynx is apparently extirpated in South Dakota (see 16).

*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The river otter is completely protected by South Dakota law (see 54).

*Finding. Negative.*

#### AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in South Dakota.

*Finding. Negative.*

#### Tennessee

Season	Bobcat	
	State harvest	Price per pelt
1954 to 1955	6	
1955 to 1956	11	
1956 to 1957	17	
1957 to 1958	4	
1958 to 1959	4	
1959 to 1960	9	
1960 to 1961	6	
1961 to 1962	104	\$1.11
1962 to 1963	33	1.28
1963 to 1964	89	1.76
1964 to 1965	109	3.27
1965 to 1966	141	1.55
1966 to 1967	57	3.21
1967 to 1968	372	6.06
1968 to 1969	12	3.44
1969 to 1970	12	
1970 to 1971	607	8.80
1971 to 1972		

<sup>1</sup> Report from resident buyers only.

*Literature Review.* In 1971, Jenkins (see 43) reported that bobcat were scarce in the Nashville area, but were present over most of the rest of the State, in small numbers in the west and in Reelfoot Lake area, and common in the Great Smokies.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of

bobcat taken in Tennessee. Reported State harvest in Tennessee has been very irregular, but was highest in 1969 and 1975, when reported price was highest.

William Yambert, Tennessee Wildlife Resources Agency, stated orally that the status of the bobcat in Tennessee is uncertain, but expressed concern and thought that prohibition of international exports might be called for.

In addition, Tennessee has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding. Negative.*

#### LYNX

*Discussion.* The lynx apparently does not occur in Tennessee (see 16).

*Finding. Negative.*

#### RIVER OTTER

*Discussion.* The river otter is completely protected by Tennessee law (see 54).

*Finding. Negative.*

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Tennessee.

In 1887, Gattinger (see 153, also 154) noted that American ginseng occurred "over the State but everywhere rare." Delcourt and Delcourt (see 46) noted herbarium records for 25 counties in Tennessee. Sharp (see 155) included American ginseng in "Rare Plants of Tennessee"; U.S.D.A. Soil Conservation Service included the plant in "Rare, Threatened, or Endangered Plant Species of Tennessee" (as rare) in 1975 (see 61); and Collins et al. (see 156) included the plant as threatened in "The Rare Vascular Plants of Tennessee."

Dr. Robert Kral, Vanderbilt University, stated orally that American ginseng is no longer found in many of the areas where it has occurred or should occur in central Tennessee. He further noted that it is probably more common in eastern and western Tennessee.

The MA has forwarded to the ESSA four permit applications for international export of wild American ginseng collected in Tennessee. Wigginton (see 40) also noted that the State was a commercial source.

Bogue (see 133) quoted one individual who said that American ginseng was stolen from Great Smokey National Park where the plant was plentiful. Dr. Susan Bratton, National Park Service, stated orally that poachers are a current problem in the Park and that the plant does not occur in much of the habitat that appears suitable.

Some sections of Tennessee may be capable of supporting a sustained harvest of American ginseng. However, the State has neither management programs nor regulating mechanisms to promote the conservation of American ginseng and to regulate a harvest.

*Finding. Negative.*



## Texas

Season	Bobcat			River Otter	
	State harvest	Price per pelt	ADC recovery	State harvest	Price per pelt
1938	1,082				
1941	3,607				
1944	1,293				
1945	1,130				
1946	1,308				
1947	152				
1948	90				
1949	23				
1950	16				
1951	5				
1953	27				
1956 to 1957	3				
1957 to 1958			3,058		
1958 to 1959	52		3,436		
1959 to 1960	10		4,162		
1960 to 1961	66		4,527	149	
1961 to 1962	80	\$1	4,710		
1962 to 1963	28	1	3,472		
1963 to 1964	34	1	2,956		
1964 to 1965	74	1	2,478		
1965 to 1966	34		1,788		
1966 to 1967	16		1,744		
1967 to 1968	41		1,530		
1968 to 1969	207		1,979	3	
1969 to 1970	257		2,061		
1970 to 1971			1,845		
1971 to 1972			1,772		
1972 to 1973	1,393	12	2,237		
1973 to 1974	7,145	20	1,892		
1974 to 1975	11,874	25	1,363	3	\$25
1975 to 1976	9,454		1,007		
1976 to 1977	15,000				

<sup>1</sup> Approximately 50 pct of dealers reported.

<sup>2</sup> Approximately 80 pct of dealers reported.

<sup>3</sup> Preliminary data, personal comm. Uzzel, Aug. 15, 1977.

## BOBCAT

**Literature Review.** In 1971, Russell (see 157) reported that bobcat occurred in "relatively high stable numbers throughout the State, in spite of habitat changes and hunting pressures." He considered the species reasonably secure.

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Texas.

Over the last decade, reported State bobcat harvest in Texas has increased nearly a thousandfold, presumably reflecting increased pelt price. Although Texas may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

In addition, Texas has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in Texas (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The data available to the ESSA are insufficient to support a posi-

tive finding for international export of river otters taken in Texas.

**Finding.** Negative.

## AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in Texas.

**Finding.** Negative.

## UTAH

## BOBCAT

**Discussion.** Donald A. Smith, Utah Division of Wildlife Resources, stated orally that the bobcat will be completely protected by Utah law in 1977-78.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx is completely protected by Utah law (oral statement, D. A. Smith, and see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The river otter is completely protected by Utah law (oral statement, D. A. Smith, and see 16).

**Finding.** Negative.

## AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in Utah.

**Finding.** Negative.



## NOTICES

## Vermont

Season	Bobcat		River Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1937		15		
1964 to 1965		261		
1966 to 1969		155		
1969 to 1970		69		
1972 to 1973			11	
1973 to 1974			27	
1974 to 1975			28	
1975 to 1976 <sup>2</sup>		81		

<sup>1</sup> Bountied animals only.<sup>2</sup> Bounty removed.<sup>3</sup> 1st yr that hunter and trapper reports required.

## BOBCAT

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Vermont.

Walter Cabell, Vermont Fish and Game Department, stated orally that beginning in the 1977-78 season, tags will be required on all bobcat pelts. However, almost no data is available on State harvest, and Vermont has not established an annual limit on bobcat harvest based on the animal's population status.

**Finding.** Negative.

## LYNX

**Discussion.** Walter Cabell, Vermont Fish and Game Department, stated orally that lynx are completely protected by Vermont law.

**Finding.** Negative.

## RIVER OTTER

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of river otters taken in Vermont.

**Finding.** Negative.

## AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Vermont.

In 1900, Brainerd et al. (see 158, also 25 and 159) noted that although American ginseng was "formerly common," it was then "rapidly disappearing." In 1967,

Seymour (see 160) expressed a similar opinion regarding collectors as the primary reason for the decline. He further noted that the plant occurred in seven counties.

Brian Stone, Vermont Department of Forests, Parks and Recreation, after consulting with several botanists familiar with the State's flora, stated orally that American ginseng could be considered a marginally threatened species in Vermont. The plant appears to be neither rare nor common and collecting pressure is apparently light. Designation as a threatened species would primarily be justified by the potential threat of additional collecting pressure as there is substantial habitat available. One botanist told Stone the plant is probably increasing. Opinions differed as to whether the primary collectors were those that had collected the roots for years or individuals who had become recently interested in the alleged medicinal values of the plant.

Vermont requires written permission from private landowners or authorized agents for public lands before more than one individual plant or two cuttings of protected species can be removed. American ginseng is not included in the list of protected plants.

Some sections of Vermont may be capable of supporting a sustained harvest of American ginseng. However, the State has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.

**Finding.** Negative.



## Virginia

Season	Bobcat		Otter	
	State harvest	Price per pelt	State harvest	Price per pelt
1938			148	
1942	123			
1943	134		210	
1944	189		1,279	
1945	157		555	
1947 to 1948	100		217	
1948 to 1949	146		332	
1949 to 1950	68		508	
1950 to 1951	56		469	
1951 to 1952	75		313	
1952 to 1953	39		387	
1953 to 1954	27		456	
1954 to 1955	39		476	
1955 to 1956	37		319	
1956 to 1957	35		298	
1957 to 1958	13		253	
1958 to 1959			299	
1959 to 1960	24		256	
1960 to 1961	3		432	
1961 to 1962	37		546	
1962 to 1963	23		351	
1963 to 1964	51		1,136	
1964 to 1965	98		1,800	
1965 to 1966	135		1,250	
1966 to 1967	117	\$1.42	1,406	\$20.34
1967 to 1968	78	1.45	559	15.10
1968 to 1969	47		807	
1969 to 1970	59	2.98	860	23.43
1970 to 1971	82		648	
1971 to 1972	255	15.97	482	31.50
1972 to 1973	232	22.71	575	29.22
1973 to 1974	370		612	
1974 to 1975	451	27.56	594	27.35

## BOBCAT

**Literature Review.** In 1971, Jenkins (see 43) reported that the bobcat was common in the mountains of Virginia, but uncommon over most of the rest of the State.

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Virginia.

Reported bobcat harvest in Virginia has been irregular and never exceeded 189 before 1972. Since 1972, reported harvest has steadily risen along with increasing pelt price. Although Virginia may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

**Finding.** Negative.

## LYNX

**Discussion.** The lynx apparently does not occur in Virginia (see 16).

**Finding.** Negative.

## RIVER OTTER

**Discussion.** Reported Virginia harvest of river otters has varied irregularly since 1938. Mr. McInteer, Virginia Commission of Game and Inland Fisheries, stated orally that State harvest reports above 1000 are suspect and probably reflect multiple sales of individual pelts rather than actual harvest. He also stated that river otters in Virginia are in fairly good shape and locally abundant.

Apparently, Virginia can support a limited sustained yield of river otters. Consequently, the ESSA is able to find

that international export of river otters taken in Virginia during the 1977-1978 season will not be detrimental to the survival of the species in that State. However, total international export may not exceed a quota established by the method described in the species summary for river otter, but omitting from the calculation all reported harvests in excess of 1000, which may be artifactual.

**Finding.** Positive; total international export of river otters taken in Virginia during the 1977-78 season after the date of this notice may not exceed 396.

## AMERICAN GINSENG

**Literature Review and Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Virginia.

Massey (see 161) noted that American ginseng occurred in 13 counties in Virginia, and Harvill (see 162) noted the plant was local in the piedmont in 4 counties.

American ginseng was included as a depleted species in the list "Endangered Status of Virginia Flowering Plants," developed by Dr. Leonard V. Uttal, Virginia Polytechnic Institute and State University in 1972 (see 61).

The MA has forwarded to the ESSA seven applications for international export of wild American ginseng collected from Virginia.

In addition, Virginia has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

**Finding.** Negative.



## Washington

Season	Bobcat			Lynx		River Otter	
	State harvest	Price per pelt	ADC recovery	State harvest	Price per pelt	State harvest	Price per pelt
1937			124				
1944 to 1945			1,305				
1946			1,151				
1947			1,365				
1948 to 1949			126				
1949 to 1950			74				
1950 to 1951			1,674				
1951 to 1952							
1952 to 1953			75				
1953 to 1954			119				
1954 to 1955			139				
1955 to 1956			1,584				
1956 to 1957			1,427				
1957 to 1958			211				
1958 to 1959			107				
1959 to 1960			91				
1960 to 1961			109				
1961 to 1962			26				
1962 to 1963			81				
1963 to 1964			75				
1964 to 1965			51				
1965 to 1966			57				
1966 to 1967			46				
1967 to 1968			14				
1968 to 1969			15				
1969 to 1970			12				
1970 to 1971			11				
1971 to 1972			9				
1972 to 1973			7				
1973 to 1974			28				
1974 to 1975			35				
1975 to 1976			100				
1976 to 1977			203.54				

<sup>1</sup> Dealer reports only.

<sup>2</sup> Data since 1975, personal comm., R. Larson, Washington Department of Game.

<sup>3</sup> East.

<sup>4</sup> West.

## BOBCAT

**Literature Review.** In 1971, Sweeney (see 10) analyzed bobcat bounty, hunter and trapper harvest records for Washington State from 1935-76, discussing several factors he considered pertinent to an assessment of the current bobcat status. From 1963-64 to 1971-72, the projected number of bobcats harvested (a statistic compiled from number of bobcats reported, number of trappers licensed, number of trappers reporting) increased statewide, while the number of trappers decreased. Therefore, the catch per trapper was found to increase throughout the period.

In 1972, the number of licensed trappers increased (781 to 1100) and continued to increase through 1974. This may have been due to an increase in bobcat fur prices (\$13.10 in 1970; \$106.95 in 1975-76) or a general increase in trapper income in 1971-72. While the bobcat harvest continued to rise after 1972, the number of bobcats per trapper levelled off and then decreased through 1975-76. If individual trapping effort (which the author did not measure) had increased, the decrease in trapper success is even more dramatic.

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Washington.

The major decrease in ADC recovery since 1960 suggests actual population decline in Washington, but the inadequacy of these data draw into question any conclusions based upon them.

Reported bobcat harvest in Washington reached a peak of 1650 animals in 1976-77, at the same time pelt prices rose to an unprecedented level. Furthermore, Ralph Larson, Washington Department

of Game, stated orally that this figure represented trapping alone, and that another 4,400 animals were taken by hunting.

Although Washington may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

In addition, Washington has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## LYNX

**Literature Review.** In 1971, Nellis reported that the lynx were "rare to common" in Washington (see 65).

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of lynx taken in Washington.

Reported harvest of lynx in Washington has been generally low and irregular, but has risen over the last three years, presumably in response to high prices.

In addition, Virginia has not established an annual limit on lynx harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

**Finding.** Negative.

## RIVER OTTER

**Discussion.** Reported harvest of river otters in Washington has varied irregularly since 1969 and generally exceeded 500 but seldom a thousand individuals. Apparently Washington can support a sustained yield of river otters, although the very high reported harvest of 1976-77, in association with the highest price reported, suggests the need for close

monitoring of the population in the future.

Consequently, the ESSA is able to find that international export of river otters taken in Washington during the 1977-78 season will not be detrimental to the survival of the species in that State. However, total international export may not exceed a quota established by the method described in the species summary for river otter, excluding the 1976-77 reported harvest which is the highest on record.

**Finding.** Positive; total international export of river otters taken in Washington during the 1977-78 season after the date of this notice may not exceed 618.

## AMERICAN GINSENG

**Discussion.** The ESSA has no information that American ginseng occurs in Washington.

**Finding.** Negative.

Season	Bobcat	
	State harvest	Price per pelt
1937		575
1943		81
1944		53
1945		69
1946		88
1948		50
1949		23
1951		11
1953		1
1954		9
1955		7
1955 to 1956		7
1957 to 1958		3
1958 to 1959		2
1959 to 1960		18
1961 to 1962		74
1962 to 1963		20
1963 to 1964		53
1964 to 1965		15
1965 to 1966		32
1966 to 1967		20
1967 to 1968		47
1968 to 1969		49
1969 to 1970		33
1970 to 1971		33
1971 to 1972		32
1972 to 1973		79
1973 to 1974		157
1974 to 1975		272
1975 to 1976		308
1976 to 1977		446

<sup>1</sup> Not including fur sold out of State.

<sup>2</sup> Data since 1975, personal comm., J. Ruckel, West Virginia Department of Natural Resources, Aug. 8, 1977.

**Discussion.** The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in West Virginia.

Reported harvest of bobcat in West Virginia has varied irregularly and, excepting 1937, did not exceed 100 until 1973-74. Since 1973-74 the reported harvest has risen to 446, apparently in response to rising price.

Jim Ruckel, West Virginia Department of Natural Resources, stated orally that West Virginia requires tagging of bobcat pelts and plans to establish a bag limit of two animals per trapper in 1977-78. However, West Virginia has not established an annual limit on bobcat harvest based on the animal's population status.

**Finding.** Negative.



## LYNX

*Discussion.* The lynx apparently does not occur in West Virginia (see 16).

*Finding.* Negative.

## RIVER OTTER

*Discussion.* The river otter is apparently extirpated in West Virginia and is completely protected by State law (see 16, 54).

*Finding.* Negative.

## AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in West Virginia.

In 1950, Core (see 163) noted that American ginseng was found throughout West Virginia, but that it was "becoming rare." Straughbaugh and Core (see 164) concurred and added that the decline was due to collectors.

In a letter to the U.S. Fish and Wildlife Service, Dr. Dale E. Pike (see 165), West Virginia Department of Natural Resources, supplied information that American ginseng occurred in 23 counties, based on herbarium records, the literature, and sightings. He also commented:

Undoubtedly ginseng is much more widespread in West Virginia than the records we have indicate. It is our feeling that the species could become very rare in the state, if not completely extirpated in some localities because of commercial collecting. It may be of interest that a check of our morning paper's classified section contained an advertisement offering \$72 a pound for ginseng. We have no idea of how many persons in the State deal in this product—certainly there are several around the state.

Core (see 166) included American ginseng in "Rare and Endangered Plant Species in West Virginia": "rare in most sections because of digging of the roots . . . It was probably found in every county in this State at one time."

The MA has forwarded to the ESSA eight permit applications for international export of wild American ginseng collected in West Virginia. Wigginton (see 40) also noted that West Virginia is a commercial source.

West Virginia law requires written permission from landowners or appropriate agents before any plants can be damaged or collected within 100 yards of any public road, or possessed or transported on public roads in the State. (Acts of West Virginia 11th session 1872-73 Chap 158 also requires the consent of landowners in Pocahontas, Greenbrier and Webster Counties before ginseng or other medical roots can be collected on their land.)

Although West Virginia may be capable of supporting a sustained yield of American ginseng, the data are inadequate to assess the status of the species in the State.

In addition, West Virginia has neither management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate harvest.

*Finding.* Negative.

## Wisconsin

Season	Bobcat		River Otter <sup>1</sup>	
	State harvest	Price per pelt	State harvest	Price per pelt
1927 to 1928			52	
1928 to 1929			68	
1929 to 1930			338	
1930 to 1931			462	
1931 to 1932			361	
1932 to 1933			198	
1933 to 1934			208	
1934 to 1935			175	
1935 to 1936			224	
1936 to 1937			314	
1937 to 1938			156	
1938 to 1939			142	
1939 to 1940			444	
1940 to 1941			188	
1941 to 1942			203	
1942 to 1943			117	
1943 to 1944			135	
1944 to 1945			171	
1945 to 1946			291	
1946 to 1947			484	
1947 to 1948			427	
1948 to 1949			437	
1949 to 1950			482	
1950 to 1951			525	
1951 to 1952			724	
1952 to 1953			740	
1953 to 1954			361	
1954 to 1955			524	
1955 to 1956			321	
1956 to 1957			574	
1957 to 1958			1,366	
1958 to 1959			1,097	\$22.39
1959 to 1960			737	26.05
1960 to 1961			842	19.16
1961 to 1962			267	19.25
1962 to 1963			498	20.00
1963 to 1964			841	22.00
1964 to 1965			571	20.00
1965 to 1966			759	20.00
1966 to 1967			620	21.60
1967 to 1968			958	21.50
1968 to 1969			355	36.00
1969 to 1970			561	24.25
1970 to 1971			483	30.00
1971 to 1972			147	38.55
1972 to 1973			1,179	42.74
1973 to 1974			1,472	
1974 to 1975			1,269	
1975 to 1976			853	
	233	\$49.51		

<sup>1</sup> River otter data, before 1970, from Wisconsin Dept. Nat. Res.

<sup>2</sup> Bobcat and lynx.

## BOBCAT

*Literature Review.* Jackson (see 167) reported that whereas in 1850 bobcats were distributed throughout the State, in 1961 they were found chiefly above the 45° N. latitude. Jackson claimed that bobcats cycle in abundance, and that in peak years there are "possibly some 2500-3000 bobcats in the entire State."

In 1976, the Wisconsin Department of Natural Resources published a report, written by William A. Creed and James E. Ashbrenner, on the status of the bobcat in the State (see 168). The authors noted that the status of the bobcat was considered "questionable" by the Department's Endangered Species Committee in 1973, but they concluded that the species is apparently stable, with potential for population increase because of increasing favorable habitat. Creed and Ashbrenner further noted that additional restrictions on harvest did not appear necessary at that time, although they expressed concern that female bobcats appeared to be particularly susceptible to trapping. They concluded that the bobcat is "currently secure in Wisconsin, and that current regulations (including mandatory registration) should be continued until new information indicates further restrictions are needed."

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Wisconsin.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Wisconsin.

In a letter to the ESSA (see 169), Anthony S. Earl, Wisconsin Department of Natural Resources, stated that the "harvest of bobcat is somewhat consistent, and we do not feel it is necessary to curtail out state shipments of Wisconsin bobcat pelts."

Wisconsin has established a two and a half month season on the bobcat in 1977-78, and requires a tag on every pelt.

Bobcat pelt price has recently increased in Wisconsin, as across the United States. The potential exists for intensified trapping effort in the State, although reported harvest has not increased over the last several years. It would appear that Wisconsin may be able to support a sustained annual yield of bobcats without adversely impacting the population. However, widespread demand for bobcat pelts may particularly increase for bobcats in any States for which international export is allowed in 1977-78. If Wisconsin would establish appropriate direct limitations on harvest that would prevent overharvest from increased demand, the ESSA would approve international export of pelts taken legally in Wisconsin and carrying Wisconsin tags. Pending this action, the ESSA is unable to find that such inter-



national export will not be detrimental to the survival of the species.

*Finding.* Negative.

#### LYNX

*Discussion.* The lynx is completely protected by Wisconsin law (see 169 and 170).

*Finding.* Negative.

#### RIVER OTTER

*Literature Review.* Jackson (see 167) noted that river otters were formerly not uncommon throughout Wisconsin, but were almost extirpated by the early 1900's. In 1956, Knudson (see 171) noted that trappers' responses to questionnaires suggested that the otter population had increased to at least a few thousand individuals in spite of an annual trap harvest of 300-600 individuals.

The Wisconsin Department of Natural Resources has published a report on the status of river otter in the State (see 172). The report noted that the river otter population has been increasing, but that there was no practical way to estimate population sizes except based on harvest records. The report recommended that the river otter populations be "observed more scientifically than in the past and if a large decrease in the population is noted that steps be taken to giving the animal complete or partial protection for a few trapping seasons."

*Discussion.* Reported State harvest has varied since 1928, usually not exceeding 900 river otters per year. Since 1972, harvests have been consistently high with the general rise in pelt prices, except for a drop in the 1975-76 season. Wisconsin requires a tag on every pelt. Because the reported State harvest has been relatively stable, it appears that Wisconsin can support a limited sustained yield of river otters.

Consequently, the ESSA is able to find that international export of river otters taken in Wisconsin during the 1977-78 season will not be detrimental to the survival of the species in that State. However, total international export may not exceed a quota established by the method described in the species summary for river otter.

*Finding.* Positive; total international export of river otters taken in Wisconsin during the 1977-78 season after the date of this notice may not exceed 458.

#### AMERICAN GINSENG

*Literature Review and Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of American ginseng collected in Wisconsin.

In 1938, Fassett (see 173) noted that American ginseng was becoming rare in Wisconsin. (For references concerning the occurrence of the plant in Wisconsin in the 19th century, see 174 and 175.)

American ginseng is listed as a threatened species in "Endangered and Threatened Vascular Plants in Wisconsin" (see 176).

In a memorandum to Ron Nicotera, Wisconsin Department of Natural Resources

(see 177), Robert H. Read, Wisconsin Department of Natural Resources, commented that although American ginseng is rare in Wisconsin, he knew of a few places, all on public land, where it was somewhat common. He expressed concern about the threat of collecting, but did not know if there were enough plants in the State to make collecting economically worthwhile.

The MA has forwarded to the ESSA three permit applications for international export of wild American ginseng collected in Wisconsin.

Destruction or removal of certain plants from private or public lands is prohibited by Wisconsin law unless written permission is obtained from the landowner or appropriate agent. American ginseng is not one of the protected plants. However, Wisconsin (94.36) has established a collecting season from August 1 to January 1.

Some sections of Wisconsin may be capable of supporting a sustained harvest of American ginseng. However, the State does not have adequate management programs nor regulatory mechanisms to promote the conservation of American ginseng and to regulate a harvest.

*Finding.* Negative.

#### Wyoming

Season	Bobcat		
	State harvest	Price per pelt	ADC recovery
1957 to 1958	1,596		1,880
1958 to 1959	104		1,995
1959 to 1960	167		2,244
1960 to 1961			2,273
1961 to 1962	37		1,363
1962 to 1963	73		1,556
1963 to 1964	12		1,706
1964 to 1965	63	\$10.00	1,308
1965 to 1966	4,600		1,024
1966 to 1967	2,294	\$20.00	789
1967 to 1968	4,000		699
1968 to 1969	3,213		882
1969 to 1970	3,053	\$36.00	1,189
1970 to 1971			906
1971 to 1972			379
1972 to 1973			513
1973 to 1974	3,032		393
1974 to 1975			222
1975 to 1976			301
1976 to 1977	2,699		

\* From Crowe, 1975.

#### BOBCAT

*Literature Review.* In 1975, Crowe (see 3) reported that in Wyoming, most bobcats mate in March and most young are born within two weeks of June 1. Analysis of 81 reproductive tracts indicated that all females including those born the previous spring ovulated during the breeding season, and that litter size averaged 2.79 kittens. Crowe suggested that annual mortality is less than three percent, among adults in unexploited populations, and concluded that in exploited populations high trapping mortality would obscure such a low death rate during early adulthood. However, Crowe reported that mortality among juveniles is highly variable, with years of

low and years of high juvenile survival directly associated with prey densities.

Crowe assumed that ADC recovery represents a constant percentage of the wild population. He concluded that increased trapping pressure requires more sophisticated management, and that as of 1974, bobcat numbers were at a low point.

*Discussion.* The data available to the ESSA are insufficient to support a positive finding for international export of bobcat taken in Wyoming.

Bobcat populations in Wyoming appear to vary inversely with density of prey populations and with trapping pressure. The major decrease in ADC recovery since 1961 suggests actual population decline in Wyoming, but the inadequacy of these data draw into question any conclusions based upon them. Although Wyoming may be capable of supporting a sustained yield of bobcat, the data are inadequate to assess the status of the species in the State.

In addition, Wyoming has not established an annual limit on bobcat harvest based on the animal's population status, nor has the State established a tagging system to enforce such limits.

*Finding.* Negative.

#### LYNX

*Discussion.* Earl Thomas, Wyoming Game and Fish Department, stated orally that the lynx is completely protected by State law.

*Finding.* Negative.

#### RIVER OTTER

*Discussion.* The river otter is completely protected by Wyoming law (see 54).

*Finding.* Negative.

#### AMERICAN GINSENG

*Discussion.* The ESSA has no information that American ginseng occurs in Wyoming.

*Finding.* Negative.

Publication of these preliminary findings has been approved unanimously by the members of the Endangered Species Scientific Authority.

Dated: August 24, 1977.

WILLIAM Y. BROWN,  
Executive Secretary, Endangered  
Species Scientific Authority.

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TUESDAY, AUGUST 30, 1977

PART IV



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DEPARTMENT OF  
HEALTH,  
EDUCATION, AND  
WELFARE

Food and Drug Administration



PENICILLIN

Use in Animal Feed



# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 505, 510, 558]

[Docket No. 77N-0231]

## PENICILLIN IN ANIMAL FEEDS

### Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would amend regulations to delete provisions that provide for use of penicillin in animal feeds.

DATE: Written comments by September 29, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Gerald B. Guest, Bureau of Veterinary Medicine (HFV-130), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857 (301-443-3410).

**SUPPLEMENTARY INFORMATION:** Elsewhere in this issue of the FEDERAL REGISTER, under Docket No. 77N-0230, the Director of the Bureau of Veterinary Medicine is issuing a notice of opportunity for hearing on a proposal to withdraw approval of the new animal drug applications (NADA's) for all penicillin-containing premixes on the grounds that new evidence not available until after such applications were approved, evaluated together with the evidence available when the applications were approved, shows that such drug is not shown to be safe for subtherapeutic use, that certain applicants have failed to establish and maintain required records and reports, and that new information demonstrates there is a lack of substantial evidence of effectiveness for these products.

Consistent with this action, the Director is hereby proposing to amend the regulations to delete the provisions that provide for the use of such drugs.

The Director has carefully considered the environmental effects of this action, and because it will not significantly affect the quality of the human environment, he has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration. Moreover, in a proposal published in the FEDERAL REGISTER of May 27, 1977 (42 FR 27264), the Commissioner of Food and Drugs requested data concerning the potential environmental impact of a series of regulatory actions designed to restrict the subtherapeutic use of antibacterials in animal feeds. If the public discussion and information gathered warrant, a comprehensive environmental impact statement will be prepared, evaluating the impact of all the actions as a single program.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343-351 (21 U.S.C. 357, 360b)) and under authority delegated to the Commissioner (21 CFR 5.1) and redelegated to the Director (21 CFR 5.84), it is proposed that Parts 505, 510, and 558 of Chapter I of Title 21 of the Code of Federal Regulations be amended, as follows:

### PART 505—INTERPRETIVE STATEMENTS RE: WARNINGS ON ANIMAL DRUGS FOR OVER-THE-COUNTER SALE

1. By amending the introductory paragraph of § 505.10 to read as follows:

§ 505.10 Animal drug warning and caution statements required by regulations.

Animal feed containing streptomycin, dihydrostreptomycin, chlortetracycline, tetracycline, or bacitracin, with other drugs. (See § 510.515 of this chapter.)

### PART 510—NEW ANIMAL DRUGS

§ 510.5 [Amended]

2. By amending § 510.5 *Certification of new animal drugs containing any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or derivative thereof*, as follows:

a. By deleting from paragraph (b) the word "Penicillin," appearing immediately following the italicized heading, and accordingly, capitalizing the word "Streptomycin";

b. By deleting from paragraph (c) the word "penicillin" appearing in the sentence following the italicized heading.

3. By amending § 510.515: (a) By deleting from the introductory paragraph the phrase "penicillin, streptomycin in combination with penicillin"; (b) by deleting from paragraph (b) (7) (i) the concluding phrase 66, or not less than 90 grams nor more than 180 grams of penicillin and streptomycin in a combination containing 16.7 percent penicillin; (c) by revoking paragraph (b) (7) (i) (c); (d) by revising paragraph (b) (10); (e) by revoking and reserving in the table in paragraph (c) items 1, 4, 5, 6, and 7; and (f) by deleting from the table in paragraph (c) the phrase "or procaine penicillin" from items 8, 9, and 10. Section 510.515 is set forth with the revised introductory paragraph, revised paragraphs (b) (7) (i) and (b) (10) and the amendments to the table in paragraph (c) to read as follows:

§ 510.515 Animal feeds bearing or containing new animal drugs subject to the provisions of section 512(n) of the act.

Animal feeds that bear or contain chlortetracycline, feed grade zinc bacitracin, and bacitracin methylene disalicylate, with or without added suitable nutritive ingredients are exempt from the certification requirements of section 512 of the act provided they are the subject of and in compliance with regulations for their use in Part 558 of this chapter, or

any one of the paragraphs of this section:

(b) \* \* \*

(7) (i) It is intended for use solely as a treatment for complicated, chronic respiratory disease (air-sac infection), infectious sinusitis, blue comb (non specific infectious enteritis, mud fever), and hexamitiasis in poultry, and/or bacterial swine enteritis; its labeling contains adequate directions and warnings for such use; and it contains, per ton of feed, not less than 100 grams of chlortetracycline, or oxytetracycline, or a combination of such drugs.

(c) [Revoked].

(10) It is intended for use solely in the treatment of chronic respiratory disease (air-sac infection), infectious sinusitis, and blue comb (nonspecific infectious enteritis) in poultry and/or bacterial swine enteritis; its labeling bears adequate directions and warnings for such use; and it contains, per ton of feed, the equivalent of either not less than 100 grams and not more than 500 grams of bacitracin (as zinc bacitracin), or not less than 100 grams and not more than 200 grams of bacitracin (as bacitracin methylene disalicylate); except that, if it is intended for the treatment of bacterial swine enteritis, it contains, per ton of feed, 100 grams of bacitracin (as zinc bacitracin or bacitracin methylene disalicylate). When intended for the use specified in this paragraph (b) (10), it may also contain, in the amount specified, one, but only one, of the ingredients prescribed by paragraph (a) of this section: *Provided, however*, That the level of antibiotic or antibiotic combination present is not greater than the minimum amount specified therefor in this paragraph (b) (10).

(c) \* \* \*

Product	Species	Use levels	Indications for use
1. [Reserved]			
4-7 [Reserved]			
8. Furazolidone and bacitracin methylene disalicylate or—Zinc bacitracin.			
9. Furazolidone and bacitracin methylene disalicylate or—Zinc bacitracin.			
10. Furazolidone and bacitracin methylene disalicylate or—Zinc bacitracin.			

### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.15 [Amended]

4. By amending 558.15 *Antibiotic, nitrofurans, and sulfonamide drugs in the feed of animals*, as follows: a. By deleting from the table in paragraph (g) (1):



i. The entry of Merck Sharp & Dohme Research Labs. for the drug premix procaine penicillin.

ii. The entry of E. R. Squibb & Sons, Inc., for the drug premix procaine penicillin.

iii. The entry of Pfizer, Inc., for the drug premix penicillin.

iv. The entry of Pfizer, Inc., for the drug premix of penicillin and streptomycin.

v. The entry of Merck Sharp & Dohme Research Labs. for the drug premix procaine penicillin and streptomycin sulfate.

vi. The entry of American Cyanamid Co. and Rachele Labs, Inc., for the drug premix chlortetracycline, sulfamethazine, and penicillin.

vii. The entry of Diamond Shamrock Corp. for the drug premix chlortetracycline, sulfathiazole and penicillin.

b. By deleting from the table in paragraph (g) (2): i. The eight entries of Merck Sharp & Dohme Research Labs. and Pfizer, Inc., for procaine penicillin, streptomycin combination.

ii. The entries of Merck Sharp & Dohme Research Labs. for procaine penicillin, streptomycin, arsanilic acid combination; nicarbazin, procaine penicillin; nicarbazin, procaine penicillin, 3-nitro-4-hydroxyphenylarsonic acid; amprolium, procaine penicillin; amprolium, procaine penicillin, 3-nitro-4-hydroxyphenylarsonic acid; and amprolium, ethopabate, procaine penicillin, erythromycin.

iii. The entry of Merck Sharp & Dohme Research Labs. for amprolium, ethopabate, procaine, penicillin, 3-nitro-4-hydroxyphenylarsonic acid.

iv. The two entries of Pfizer, Inc., for penicillin, streptomycin combinations.

v. The entries of Dow Chemical Co. for zoalene, penicillin; zoalene, 3-nitro-4-hydroxyphenylarsonic acid, penicillin; and zoalene, arsanilic acid, penicillin.

vi. The phrase "or procaine penicillin" from the entry of Norwich Pharmacal Co.

for furazolidone and bacitracin methylene disalicylate or-zinc bacitracin or procaine penicillin.

§ 558.55 [Amended]

5. By amending § 558.55 *Amprolium* by deleting from the table in paragraph (e) (2) the two entries in items (i), (ii) and (iv), respectively, for the combinations with penicillin, and the combination with penicillin plus streptomycin.

§ 558.58 [Amended]

6. By amending § 558.58 *Amprolium* and *ethopabate* by deleting from the table in paragraph (e) (1) the entries in item (iv) for the combination with penicillin, and the combination with penicillin plus streptomycin.

§ 558.76 [Amended]

7. By amending § 558.76 *Bacitracin methylene disalicylate* by deleting from the table in paragraph (e) (1) the entry in items (v) and (vi) for the combination with penicillin.

§ 558.78 [Amended]

8. By amending § 558.78 *Bacitracin, zinc* by deleting from the table in paragraph (e) (1) the entry in items (v) and (vi) for the combination with penicillin.

§ 558.105 [Amended]

9. By amending § 558.105 *Buquinolate* by deleting and reserving paragraph (f) (1) (iv) and (vi).

§ 558.145 [Revoked]

10. By revoking § 558.145 *Chlortetracycline, procaine penicillin and sulfamethazine*.

§ 558.155 [Revoked]

11. By revoking § 558.155 *Chlortetracycline, procaine penicillin, and sulfathiazole*.

§ 558.274 [Amended]

12. By amending § 558.274 *Hygromycin B* by deleting from the table in para-

graph (e) (1) the three entries in item (i) for the combinations in which penicillin is an ingredient.

§ 558.460 [Revoked]

14. By revoking § 558.460 *Penicillin*.

§ 558.530 [Amended]

15. By amending § 558.530 *Roxarsone* by deleting and reserving paragraph (e) (4) (xvi).

§ 558.680 [Amended]

16. By amending § 558.680 *Zoalene* by deleting from the table in paragraph (e) (1) the entries in items (i) and (ii) for the combinations containing arsanilic acid plus penicillin, penicillin, and penicillin plus roxarsone.

Interested persons may, on or before September 29, 1977, submit to the Hearing Clerk (HPC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. A copy of the inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: August 24, 1977.

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

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# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

[Docket No. 77N-0230]

### DIAMOND SHAMROCK CHEMICAL CO., ET AL.

#### Penicillin-Containing Premixes; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** This is a notice of opportunity for a hearing on the proposal by the Director of the Bureau of Veterinary Medicine to withdraw approval of new animal drug applications (NADA's) for all penicillin-containing premixes intended for use in animal feed on the grounds that (1) new evidence shows that the penicillin-containing products have not been shown to be safe for subtherapeutic use as required by section 512(e) (1) (B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e) (1) (B)) and § 558.15 (21 CFR 558.15); (2) the applicants have failed to establish and maintain records and make reports as required by section 512(e) (2) (A) of the act (21 U.S.C. 360b(e) (2) (A)) and § 558.15; and (3) new evidence shows that there is a lack of substantial evidence that penicillin-containing premixes are effective for therapeutic uses under section 512(e) (1) (C) of the act (21 U.S.C. 360b(e) (1) (C)).

**DATES:** Written appearances requesting a hearing must be submitted by September 29, 1977. Data and analysis upon which a request for a hearing relies must be submitted by October 31, 1977.

**ADDRESS:** Written appearances and data and analysis to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

**FOR FURTHER INFORMATION CONTACT:**

Gerald B. Guest, Bureau of Veterinary Medicine (HFV-130), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857 (301-443-3410).

#### SUPPLEMENTARY INFORMATION

##### RELATED ACTIONS

In a notice published elsewhere in this issue of the FEDERAL REGISTER, the Director of the Bureau of Veterinary Medicine is proposing to delete the provisions that provide for the use of penicillin in animal feeds by amending § 505.10 *Animal drug warning and caution statements required by regulations* (21 CFR 505.10); § 510.5 *Certification of new animal drugs containing any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or derivative thereof* (21 CFR 510.5); § 510.515 *Animal feeds bearing or containing new animal drugs subject to the provisions of section 512(n) of the act* (21 CFR 510.515); § 558.15 *Antibiotic, nitrofurantoin, and sulfonamide drugs in the feed of animals* (21 CFR 558.15); § 558.55 *Amprolium* (21 CFR 558.55); § 558.58 *Amprolium and ethopabate* (21 CFR 558.58); § 558.76 *Bacitracin methylene disalicylate* (21 CFR 558.76); § 558.78 *Bacitracin, zinc* (21 CFR 558.78); § 558.105 *Buquinolate* (21 CFR 558.105); § 558.145 *Chlortetracycline, procaine penicillin and sulfamethazine* (21 CFR 558.145); § 558.155 *Chlortetracycline, procaine penicillin and sulfathiazole* (21 CFR 558.155); § 558.274 *Hygromycin B* (21 CFR 558.274); § 558.460 *Penicillin* (21 CFR 558.460); § 558.530 *Roxarsone* (21 CFR 558.530); and § 558.680 *Zoalene* (21 CFR 558.680).

#### DISCUSSION

Since the Director's discussion of the issues involved in this matter is necessarily detailed, he is setting forth, for the reader's convenience, an outline of the discussion as follows:

##### I. THE DRUG

##### II. INTRODUCTION

##### A. Regulatory Background

##### B. Safety Concerns

##### III. SUMMARY OF THE ARGUMENT

##### IV. STUDIES RELEVANT TO HUMAN AND ANIMAL HEALTH SAFETY CRITERIA

##### A. Transfer of Drug Resistance (Criterion 1). The Pool of R-Plasmid-Bearing Organisms Is Increasing

1. Background.
2. Criterion.
3. Studies Relevant to Transfer of Drug Resistance:
  - (a) R-plasmid-bearing *E. coli* develop in domestic animals that are fed subtherapeutic levels of antibiotics, including penicillin.
  - (b) *E. coli* contribute their R-plasmids to man through several mechanisms.
    - (i) Direct contact with animals.
    - (ii) Contact with *E. coli*-contaminated food.
    - (iii) Widespread presence in the environment.
  - (c) R-plasmid-bearing human and animal strains of bacteria overlap.
  - (d) Epidemiological investigations—*E. coli* serotyping.
  - (e) Direct ingestion evidence.
  - (f) In vivo studies show that R-plasmids transfer from *E. coli* to pathogens.
  - (g) R-plasmid compatibility studies.
  - (h) Hazards.
4. Director's Conclusions.

##### B. Shedding and Resistance Characteristics of Salmonella (Criterion 2)

1. Background.
2. Criterion:
  - (a) Shedding.
  - (b) Resistance characteristics.
3. AHI Studies on the Effects of Subtherapeutic Levels of Penicillin in Animal Feed in Chickens:
  - (a) Experimental design.
  - (b) AHI's summary of the results:
    - (i) Shedding.
    - (ii) Resistance characteristics.
  - (c) The Director's analysis:
    - (i) Shedding.
    - (ii) Resistance characteristics.
4. AHI Studies on the Effects of Subtherapeutic Levels of Penicillin in Animal Feed in Swine:
  - (a) Experimental design.
  - (i) Shedding.

- (ii) Resistance characteristics.
- (b) AHI's summary of the results:
  - (i) Shedding.
  - (ii) Resistance characteristics.
- (c) Director's analysis:
  - (i) Shedding.
  - (ii) Resistance characteristics.

5. Questions Raised by Other Studies of Salmonella: (a) CDC reports; (b) FDA survey; (c) Neu, Cherubin, Longo, Flouton, and Winter studies; (d) Smith and Tucker studies; (e) Kaban, Gustafson study; (f) Other studies.

6. Director's conclusions.

##### C. Compromise of Therapy (Criterion 2(c))

1. Background and Criterion.
2. AHI's Compromise of Therapy Study in Chickens: (a) Experimental design; (b) AHI's summary of the results; (c) Director's analysis.
3. AHI Compromise of Therapy Study in Swine: (a) Experimental design; (b) AHI's summary of the results; (c) Director's analysis.
4. Questions Raised by FDA Funded Research: (a) Experimental design; (b) Director's analysis.
5. Director's Conclusions.
6. Optimal Level of Effectiveness (Criterion 4).

##### D. Pathogenicity (Criterion 3)

1. Background and Criterion.
2. Walton study.
3. Fallow study: (a) In vitro transfer; (b) In vivo transfer.
4. Questions Raised by Other Studies.
5. Director's Conclusions.

##### E. Tissue Residues (Criterion 4)

1. Background.
2. Criterion.
3. Data Submitted.
4. Director's Analysis and Conclusions.

##### V. EFFECTIVENESS

##### VI. CONCLUSION

##### I. THE DRUG

**Name.** Procaine penicillin G (benzylpenicillin) or feed grade penicillin, alone or in combination with other drugs.

**Dosage form.** Feed premix.

**Approvals.** The following companies hold or have effective approvals that are covered by this notice:

NADA 39-077; OSP 250 (chlortetracycline, sulfathiazole, and procaine penicillin); Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH 44114.

NADA 35-638, Aureo SP-250 Feed Premix (Chlortetracycline, sulfamethazine, and procaine penicillin); American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540.

NADA 46-687; Micro-Pen and Streptomycin Sulfate Premixes, (procaine penicillin G and streptomycin sulfate). Micro-Pen 6.25 and Streptomycin Sulfate 18.75, Micro-Pen and Streptomycin Sulfate 75, Micro-Pen and Streptomycin Sulfate 45, Micro-Pen and Streptomycin Sulfate 150; Elanco Products Co., Division of Eli Lilly Co., Indianapolis, IN 46206.

DESI 0072NV; Micro-Pen and MicroPen 100 (procaine penicillin G); Elanco Products Co.

NADA 35-207; Amprolium, Ethopabate and Penicillin; Merck, Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065.

NADA 46-598; Pro-Pen 50% Penicillin Mixture Medicated, Pro-Pen "20" Penicillin Mixture Medicated, Pro-Pen 90% Penicillin Mixture Medicated, and Pro-Pen "100" Penicillin Mixture Medicated; Merck, Sharp & Dohme Research Laboratories.



NADA 9-476; Nicarbazine, Penicillin with/without Roxarsone; Merck, Sharp & Dohme Research Laboratories.

NADA 46-981 Pro-Strep (procaine penicillin, streptomycin sulfate); Merck, Sharp & Dohme Research Laboratories.

NADA 46-726; Streptomycin and Procaine Penicillin Premix 15+5, Streptomycin and Procaine Penicillin Premix 18.75+6.25, Streptomycin and Procaine Penicillin Premix 45+15, Streptomycin and Procaine Penicillin Premix 75+25; Pfizer, Inc., New York, NY 10017.

NADA 46-668; Penicillin Premix P-4, Penicillin Premix P-50, and Penicillin Premix P-100; Pfizer, Inc.

NADA 49-287; Chlorachel 250-Swine (chlortetracycline, sulfamethazine, and procaine penicillin G); Rachelle Laboratories, Inc., 700 Henry Ford Ave., P.O. Box 2029, Long Beach, CA 90801.

NADA 91-668; Super Chlorachel 250-Swine (chlortetracycline, sulfamethazine, and procaine penicillin G); Rachelle Laboratories, Inc.

NADA 46-666; Penicillin G Procaine for Animal Feeds 50 percent and Penicillin G Procaine for Animal Feeds 100 percent; E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540.

Under section 108(b) (2) of the Animal Drug Amendments of 1968 (Pub. L. 90-399), any approval of a new animal drug granted prior to the effective date of the amendments whether through approval of a new drug application, master file, antibiotic regulation, or food additive regulation, continues in effect until withdrawn in accordance with the provisions of section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b). Many such approvals were issued long ago, and some may never have been used by the holder of the approval. Consequently, the current files of the Food and Drug Administration (FDA) may be incomplete and may fail to reflect the existence of some approvals. Also, many approvals have been withdrawn by other agency actions, e.g., FDA's rulemaking procedure published in the *FEDERAL REGISTER* of February 25, 1976 (41 FR 8282). The burden of coming forward with documentation of unrecorded approvals in such circumstances is therefore properly placed on the person claiming to hold such approvals so as to permit definitive revocation or amendment of the regulations.

The Director of Bureau of Veterinary Medicine knows of no approvals affected by this notice other than those named herein. Any person who intends to assert or rely on such an approval that is not listed in this notice shall submit proof of its existence within the period allowed by this notice for opportunity to request a hearing. The failure of any person holding such an approval to submit proof of its existence within that period shall constitute a waiver of any right to assert or rely on it. In the event that proof of the existence of such an approval is presented, this notice shall also constitute a notice of opportunity for hearing with respect to that approval, based on the same grounds set forth in this notice.

**Conditions of use.** All uses of penicillin in penicillin and penicillin-containing combination drug products as cited in:

Sections 510.515, 558.15, 558.55, 558.58, 558.76, 558.78, 558.105, 558.145, 558.155, 558.274, 558.460, 558.530 and 558.680.

## II. INTRODUCTION

### A. Regulatory Background

Antibacterial drugs have been used at subtherapeutic levels (lower levels than therapeutic levels needed to cure disease) in animal feed for over 25 years. Growth benefits from this use were first observed when animals were fed the discard products from the fermentation process that was originally used in the manufacture of chlortetracycline. The precise mechanism of action, however, remains unclear.

Initially, certifiable antibiotics for use in animal feed such as penicillin were regulated under the provisions of section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357). Unlike the basic private licensing system applicable to new drugs, the provisions of section 507 created a public regulation or monograph system for regulating these products, in part because of the complexities in manufacturing the products and the lack of knowledge of their chemical structures. Antibiotic residues in food from food-producing animals were then regulated under the provisions of the act dealing with adulteration and misbranding. After enactment of the Food Additives Amendment of 1958 (Pub. L. 85-929), however, residues were principally regulated by section 409 of the act (21 U.S.C. 349), which also established a public monograph system of premarket approval. Under the antibiotic monograph procedure, the pioneer manufacturer generated and submitted the basic safety and effectiveness data in an FD Form 5 (now FD-1675). A regulation was subsequently published setting forth the standards of identity, strength, quality, and purity and the packaging and labeling requirements that the product must meet. FDA approval of the same product made by another manufacturer was then conditioned solely upon a demonstration that it met the requirements of the regulation, and this is normally accomplished by batch certification. Section 507(c) of the act (21 U.S.C. 357(c)), however, permits the agency to exempt by regulation any drug or class of drugs from the certification requirement when it concludes that certification is unnecessary for the manufacture of the drugs. Antibiotics for use in animal feeds as feed ingredients were exempted from the certification requirements in 1951 (see the *FEDERAL REGISTER* of April 28, 1951 (16 FR 3647)), and those for use as drugs were exempted in 1953 (see the *FEDERAL REGISTER* of April 22, 1953 (18 FR 2335)). These are now set out in §§ 510.510 and 510.515 (21 CFR 510.510 and 510.515).

Congress enacted the Animal Drug Amendments of 1968 (Pub. L. 90-399) and consolidated the provisions of the act dealing with the premarket approval of drugs intended for use in animals (sections 409, 505, 507) into one new section, section 512 (21 U.S.C. 360b), to regulate these articles more efficiently and effectively (Senate Committee on Labor

and Public Welfare, Animal Drug Amendments of 1968, S. Rep. No. 1308, 90th Cong., 2d Sess. (1968)). This legislation also brought the manufacture of antibiotics under the private license system for new drugs (id.; Hearing on S. 1600 and H.R. 3639 Before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 90th Cong., 2d Sess. (1968)). To efficiently accomplish this change, the amendments contained a transition clause (section 108 (b)) which provided that all prior approvals continue in effect and be subject to change in accordance with the provisions of the basic act as amended. In summary, all persons legally marketing antibiotics under the provisions of sections 409, 505, and 507 of that act on August 1, 1969, the effective date of the Animal Drug Amendments of 1968, were considered as holding the equivalent of an approved new animal drug application; however, all holders of such approvals are also subject to all applicable requirements of the act and regulations.

### B. Safety Concerns

In the mid-1960's, FDA became concerned about the safety to man and animals of subtherapeutic antibiotic use; it studied the effects of low-level subtherapeutic feeding of antibiotics for some years. The agency supported research, held symposia, and consulted with outside experts to review these non-medical uses of antibiotics in animal feeds. Following a report issued by the British Government Joint Committee (the Swann Committee) "On the Use of Antibiotics in Animal Husbandry and Veterinary Medicine," the Commissioner of Food and Drugs in April 1970 established a Task Force of scientists, with consultants from government, universities, and industry, to review comprehensively the use of antibiotic drugs in animal feeds. Its conclusions were published in a notice of proposed rule making published in the *FEDERAL REGISTER* of February 1, 1972 (37 FR 2444), which initiated the mandatory testing procedure to resolve conclusively the issues of safety surrounding the subtherapeutic use of antibiotics in animal feeds.

The principal conclusions of the Task Force were the following: (1) The use of antibiotics and sulfonamide drugs, especially in growth promotant and subtherapeutic amounts, favors the selection and development of single and multiple antibiotic-resistant and R-plasmid-bearing bacteria;

(2) Animals that have received either subtherapeutic and/or therapeutic amounts of antibiotic and sulfonamide drugs in feeds may serve as a reservoir of antibiotic resistant pathogens and nonpathogens. These reservoirs of pathogens can produce human infections.

(3) The prevalence of multiresistant R-plasmid-bearing pathogenic and non-pathogenic bacteria in animals has increased and has been related to the use of antibiotics and sulfonamide drugs.

(4) Organisms resistant to antibacterial agents have been found on meat and meat products.



(5) There has been an increase in the prevalence of antibiotic- and sulfonamide-resistant bacteria in man.

In its report to the Commissioner, the Task Force also identified three areas of primary concern: Human health hazards, animal health hazards, and antibiotic effectiveness; and guidelines were established to show whether use of any antibiotic or antibacterial agent in animal feed presents a hazard to human and animal health.

The February 1972 proposal also announced that all currently approved subtherapeutic uses of antibiotics, nitrofurans, and sulfonamides in animal feeds would be revoked unless data were submitted to resolve conclusively the issues concerning safety to man and animals in accordance with the Task Force guidelines. That notice also proposed to establish a time table for filing commitments, conducting studies, and submitting relevant data and information. Based on the guidelines, the agency then began developing specific criteria by which safety and effectiveness of each antibiotic product might be established. The notice further suggested that protocols be submitted to the agency for comment. The criteria and studies to address them may be summarized as follows:

#### HUMAN AND ANIMAL HEALTH SAFETY CRITERIA

1. Transfer of drug resistance: (a) An antibacterial drug fed at subtherapeutic levels to animals must be shown not to promote increased resistance to antibacterials used in human medicine. Specifically, increased multiple resistance capable of being transferred to other bacteria in animals or man should not occur. (b) If increased transferable multiple resistance is found in coliforms, studies may be done to show whether this resistance is transferable to man.

2. The *Salmonella* reservoir: The use of antibacterial drugs at subtherapeutic levels in animal feed must be shown not to result in (a) an increase in quantity, prevalence or duration of shedding of *Salmonella* in medicated animals as compared to nonmedicated controls; (b) an increase in the number of antibiotic resistant *Salmonella* or in the spectrum of antibiotic resistance; (c) disease (caused by *Salmonella* or other organisms) that is more difficult to treat with either the same medication or other drugs.

3. The use of subtherapeutic levels of an antibacterial drug should not enhance the pathogenicity of bacteria, e.g., by increasing enterotoxin production. The association of toxin production characteristics with transfer factors must be investigated in well-designed studies. (Final resolution of this question was not expected within the 2-year period. Drug sponsors were expected to show evidence of work underway which would lead toward answers to this question.)

4. An antibacterial drug used at subtherapeutic levels in the feed of animals shall not result in residues in food ingested by man which may cause either increased numbers of pathogenic bacteria or an increase in the resistance of pathogens to antibacterial agents used in human medicine. Hypersensitivity to residues was to be addressed by a literature survey.

The Commissioner promulgated a final order that was published in the *FEDERAL REGISTER* of April 20, 1973 (38 FR 9811), and at that time the requirements im-

posed by the regulation became legally binding on all firms marketing antibacterial drugs used at subtherapeutic levels in feed. In the *FEDERAL REGISTER* of August 6, 1974 (39 FR 2839), the Commissioner proposed withdrawal of all approvals held by persons who had not complied with the initial requirements, and all these approvals were withdrawn by his order, published in the *FEDERAL REGISTER* of February 25, 1976 (41 FR 8282). Therefore, only those products listed in Part 558 (21 CFR Part 558) can be legally marketed at this time.

By April 20, 1974, the Bureau of Veterinary Medicine (Bureau) had begun a review of the data required by § 558.15 which was applicable to the principal antibiotics used subtherapeutically in animal feeds (penicillin and tetracycline), and by April 20, 1975, data concerning the safety and efficacy criteria for all antibiotic and sulfonamide drugs had been received. To assist the Bureau, the Commissioner asked the agency's National Advisory Food and Drug Committee (NAFDC) to review the data and issues involved and to make recommendations to him on the future uses of subtherapeutic antibiotics in animal feeds. A subcommittee of three members, the Antibiotics in Animal Feeds Subcommittee (AAFS), was appointed to work in conjunction with four expert consultants from disciplines related to the issue. The Bureau prepared 2 days' presentations concerning penicillin during which comments were heard from the drug industry, animal scientists, and other interested parties. The Bureau also prepared a comprehensive summary report with tentative recommendations for the subcommittee. (An identical procedure was carried out for the tetracyclines.) Two additional meetings were held during which subcommittee deliberations were conducted and other statements given.

In September 1976, the AAFS presented its preliminary recommendations to the parent NAFDC, and in January 1977, the subcommittee's final report was submitted to the NAFDC. The parent committee reviewed the recommendations on penicillin and accepted them. NAFDC recommended that FDA immediately withdraw approval for the subtherapeutic uses of penicillin, i.e., growth promotion/feed efficiency, and disease control.

In view of these recommendations and since the information submitted in response to § 558.15 following the guidelines and criteria had failed to resolve conclusively the issues of safety concerning subtherapeutic uses of penicillin in animal feeds, the Director of the Bureau of Veterinary Medicine is therefore proposing to withdraw approval of all subtherapeutic uses of penicillin alone and in combination with other drugs in animal feeds. Because the National Academy of Sciences/National Research Council Drug Efficacy Study Group concluded that the therapeutic use of penicillin in animal feed lacked substantial evidence of effectiveness, he is also proposing to withdraw approval of all penicillin use in animal feed.

#### III. SUMMARY OF THE ARGUMENT

Soon after his advisory of penicillin, Sir Arthur Fleming noted that some bacterial organisms could become resistant to the antibiotic. As the use of antibiotics has increased, the number and types of bacterial resistance have also multiplied. There is a serious concern that, in time, this will lead to declining usefulness of antibiotics in the treatment of both human and animal diseases.

The Bureau's primary concern is with that portion of increased antibiotic resistance in the biological system which may result from the practice of using subtherapeutic levels of penicillin and other antibiotics in animal feed for prolonged periods. This practice, which sometimes produces increases in growth promotion/feed efficiency, provides an ideal environment for selective pressure to operate. When exposed to an antibiotic, the organisms that are drug resistant survive while the growth of other (drug-sensitive) bacteria is inhibited. Eventually, the antibiotic-resistant organisms predominate in the bacterial population, and continuous antibiotic pressure perpetuates this abnormal situation.

Bacterial antibiotic resistance is primarily determined by genetic elements termed "R-plasmids" (R-factors, R+). The Bureau's specific concern, therefore, is with the health hazard that may arise through an increase in the pool of R-plasmids in the animal population and the potential transfer of these R-plasmids and R-plasmid-bearing organisms to the human population and surrounding environment.

R-plasmids are small lengths of DNA that are separate from the bacterial chromosome. These R-plasmids carry transferable genes for drug resistance as well as the capacity to reproduce themselves. Plasmids may determine resistance to more than one antibiotic, and resistance to several antibiotics is common. Moreover, plasmids can transfer from one bacteria to another and from non-pathogenic to pathogenic strains. Transfer occurs, although with varying frequency among all members of the enteric bacteria and also to members of other families of bacteria. The pool of normal Gram-negative bacterial intestinal flora (largely *Escherichia coli*) serves as a reservoir of R-plasmids; the R-plasmid-bearing bacteria interchange among animals, man, and the environment. The potential for harm increases as the R-plasmid reservoir increases because the probability of R-plasmid transfer to pathogens increases. When the Commissioner required all holders of approved NADA's for the subtherapeutic use of penicillin in animal feed to submit data to resolve the safety questions raised, he was principally concerned with the effect of the antibiotics approved for subtherapeutic use in animal feed on the emergence of transferable drug resistance in the *Salmonella* reservoir and the *E. coli* of animals. In the Director's opinion, the results of the studies submitted and the data available are clear; the affected parties have failed to answer the safety questions raised.



Evidence demonstrates that the use of subtherapeutic levels of penicillin and other antibiotics in animal feed contributes to the increase in antibiotic resistant *E. coli* and in the subsequent transfer of this resistance to *Salmonella*. Further, many strains of *E. coli* and *Salmonella* infect both man and animals.

The holders of approved NADA's have submitted no evidence to demonstrate that the observed strains of *E. coli* and *Salmonella* in man and animals are mutually exclusive; in fact, the evidence is overwhelming to the contrary. Furthermore, in some cases the R-plasmids as well as the resistance genes from humans and animal sources are indistinguishable. Thus, the potential for harm exists, as illustrated by the studies submitted and verified by evidence from studies conducted by independent scientists. No evidence has been submitted by any NADA holder to resolve conclusively the safety questions raised by this potential in accordance with the requirements of § 558.15.

The holders of approved NADA's were also required to submit studies demonstrating that the subtherapeutic use of penicillin in animal feed would not compromise subsequent antibiotic therapy in man or animals, but animal studies submitted on their behalf by the Animal Health Institute to determine whether subtherapeutic penicillin use compromised subsequent therapy with related drugs were inconclusive because the studies were improperly designed. Thus, holders also failed to show conclusively that subtherapeutic penicillin use is safe in accord with that criterion.

Additionally, the NADA holders were required to prove that the subtherapeutic use of penicillin would not increase the pathogenicity of the infecting organism. They have submitted no adequate studies on the issue, and other recent evidence now suggests that the genetic determinants for toxic production may become linked with drug resistance genes. Thus, the sponsors failed to satisfy that criterion also.

No studies have ever been submitted on the issues of the safety of penicillin residues in food or the effect of long-term use on the penicillin levels needed to maintain their subtherapeutic effectiveness.

Finally, the National Academy of Sciences/National Research Council Drug Efficacy Study Group evaluated the effectiveness claims for the penicillin premixes and concluded that there was a lack of substantial evidence that the premixes were effective for their therapeutic claims. No adequate and well-controlled investigations showing that these products are effective have been submitted.

None of the specified human and animal health safety criteria have been satisfied, and the premixes lack substantial evidence of effectiveness for their therapeutic claims. For all the foregoing reasons, the Director is proposing to withdraw approval of all NADA's for the use of penicillin and combination products, e.g., chlortetracycline-sulfamethazine-penicillin, in animal feed.

#### IV. STUDIES RELEVANT TO HUMAN AND ANIMAL HEALTH SAFETY CRITERIA

##### A. Transfer of Drug Resistance (Criterion 1). The Pool of R-Plasmid-Bearing Organisms is Increasing

1. *Background.* One of the most important animal and human health safety criteria (number 1., set forth in II. B. above) concerns the role of subtherapeutic antibiotic use on the selection for and increase in the pool of microbial plasmids determining multiple drug resistance, and in the transfer of these plasmids among bacteria in animals and man. Resistance to antibiotics has been known as long as the antibiotics themselves have been known. Until 1959 it was believed that antibiotic resistance was a result of chance mutation and natural selection alone. However, in 1959, Japanese investigators (Ref. 1) discovered that resistance to several common antimicrobial agents could be transferred simultaneously from one bacterium to another by cell-to-cell contact (conjugation). This was shown to be due to the transfer of extrachromosomal resistance determinants called R-plasmids, i.e., R-factors, or R+. Resistance produced by R-plasmids generally involves the production of enzymes that inactivate the antibiotic. For example, R-plasmid mediated penicillin resistance is due to the production of an enzyme, penicillinase, that inactivates the penicillin molecule. This same enzyme is also active against many semisynthetic penicillins, including ampicillin. R-plasmids may carry as many as nine drug resistance genes. The plasmids also carry other genes that determine the R-plasmid's replication, independent of the host chromosome, as well as information for transfer of the R-plasmids from one bacterium to another by conjugation. R-plasmids are transferred by conjugation to virtually all Enterobacteriaceae as well as to such unrelated Gram-negative bacteria as *Vibrio*, *Pseudomonas*, and *Pasteurella*. Thus, resistance may pass from strain to strain, species to species, and most importantly, from nonpathogen to pathogen. R-plasmids are now known to be the predominant cause of antibiotic resistance in Gram-negative organisms that cause human disease, e.g., *E. coli*, *Salmonella*, *Shigella*, etc.

While the development of antibiotics revolutionized the treatment of infectious disease in both man and animals, the magnitude of this achievement has been diminished by the widespread emergence of antibiotic resistant bacteria. R-plasmid mediated resistance is particularly ominous since selection of resistance to a single antibiotic may also lead to the simultaneous selection of resistance to a wide spectrum of other antibiotics. In recent years, antibiotic resistance has emerged in important pathogens; for example, in *Haemophilus*, *Neisseria gonorrhoeae*, and *Salmonella typhi*. R-plasmid mediated resistance has been identified in epidemics around the world, e.g., *Salmonella typhimurium*. Some of these organisms have acquired both ampicillin and chloramphenicol re-

sistance, producing disease that will no longer respond to therapy. Hence, drug-resistant organisms have become an important concern in both human and veterinary medicine. (Ref. 2 and 3).

Because the use of antibiotics is extensive, an effort must be made to assure the future utility of these lifesaving products. In 1960, the annual production of antibiotics in the United States was 4.16 million pounds, of which 2.96 million pounds were used for therapeutic purposes in human and veterinary medicine and 1.20 million pounds in animal feed additives. By 1970, 9.6 million pounds were being used for human and veterinary medicine pharmaceuticals; for animal feed additives, 7.3 million pounds were being used. Moreover, according to "Synthetic Organic Chemicals, United States Production and Sales (1971-1975)" (U.S. International Trade Commission Publication 804), the 5-year average production for 1971 through 1975 was 11.16 million pounds for medicinal uses and 7.68 million pounds for non-medicinal uses, including feed additive uses. Over those 5 years, the aggregate average of the total production for those nonmedicinal uses was 40.8 percent—but 48.6 percent in 1975. Thus the use of antibiotics in animal feeds is a considerable element in the overall use of antibiotics in this country and consequently must be considered a potentially significant contributor to the resistance problem.

#### REFERENCES

1. Watanabe, R., "Infective Heredity of Multiple Drug Resistance in Bacteria," *Bacteriological Reviews*, 27:87-115, 1963.
2. Simmons, H. and P. D. Stolley, "This is Medical Progress?" *Journal of the American Medical Association*, 222:1023-1028, 1974.
3. Linton, A. H., "Antibiotic Resistance: The Present Situation Reviewed," *Veterinary Record*, 100:354-360, 1977.

2. *Criterion.* The FDA Task Force concluded that a human health hazard exists if the subtherapeutic use of antibiotics in animal feeds leads to an increase in R-plasmid-bearing organisms, if these antibiotics used subtherapeutically are also used in human clinical medicine, and if R-plasmids subsequently appear in bacteria in man. It was the intent of the Task Force as well as the intent of § 558.15 to reduce the total load of resistant organisms in the environment and to ensure the effectiveness of antibiotics in the treatment of disease in man and animals. Accordingly, § 558.15 required the following:

An antibacterial drug fed to animals shall not promote an increase of coliforms that are resistant to antibacterial drugs used in human clinical medicine and capable of transferring this resistance to bacteria indigenous to the intestinal tract of man. Studies must be undertaken to assess the occurrence and significance of these events:

a. Controlled studies shall be undertaken to determine whether or not the administration of an antibacterial drug at low and/or intermediate levels to target animals results in an increase in the numbers of coliforms bearing R-



plasmids present in the intestinal tract of the animal or a change in the resistance spectrum of these organisms compared to those found in controls receiving no antibacterial drug. The resistance spectrum must be determined to ascertain whether or not there are determinants present for resistance to antibacterial drugs used in human clinical medicine.

b. If the resistance determinants indicated in a. are found, a sponsor may elect to conduct additional studies to determine if such multiple drug resistance is transferable to the indigenous coliforms in the intestinal tract of man.

In addition to the FDA Task Force, many other scientists were concerned that the use of antibiotics at subtherapeutic levels in feed might lead to the development of R-plasmid-bearing organisms in food animals, which might then spread to man. The normal enteric organisms that can serve as this reservoir are the coliforms, in particular *E. coli*. These *E. coli* can donate the R-plasmids to other bacteria, including pathogens, e.g., pathogenic *E. coli*, *Salmonella*, etc.

3. *Studies Relevant to Transfer of Drug Resistance*—(a) *R-plasmid-bearing E. coli develop in domestic animals that are fed subtherapeutic levels of antibiotics, including penicillin.* Many investigators have reported the presence of R-plasmid-bearing *E. coli* in domestic animals such as chickens, swine and cattle. The influence of antibiotic-supplemented feed in increasing the number of resistant organisms has been extensively documented. Mercer et al. (Ref. 1) showed that 394 of 491 isolates (80 percent) from animals exposed to antibiotics in feed, including penicillin, were resistant strains, and in contrast, only 14 of 64 isolates (21.9 percent) obtained from animals not exposed to antibiotics in feed were resistant strains. Mercer also reported that plasmid-mediated ampicillin resistance occurred more frequently in animals that were exposed to subtherapeutic levels of penicillin in their feed than in nonmedicated animals. Seigel et al. (Ref. 2) Smith and Tucker (Ref. 3), Katz et al. (Ref. 4), and others have also shown that the addition of penicillins to feed at subtherapeutic levels causes a significant increase in the R-plasmid-bearing coliform population of the intestinal flora of animals. Even the data submitted by the drug industry on the effect of subtherapeutic use of penicillin on the *E. coli* flora of poultry, which will be discussed in depth in part IV. B. 3. below, also show an increase in drug-resistant *E. coli*.

Accordingly, the Director has concluded that subtherapeutic use of penicillin in animal feed produces a high level of antibiotic resistant *E. coli* and that the subtherapeutic use of penicillin selects for R-plasmid-containing bacteria in animals (human health criteria 1.(a) set forth in II. B. above), i.e., the antibiotic pressure of subtherapeutic penicillin use allows microbial R-plasmid-containing populations to predominate. These populations appear to be stable and persistent, even in the ab-

sence of penicillin pressure. Once the reservoir of R-plasmids develops, the initial cause of the R-plasmid buildup, whether the subtherapeutic use of penicillin or another drug (or drug combinations), is irrelevant to the R-plasmids' transferability or movement from animals to humans. Therefore, all studies on the movement of R-plasmids and resistant bacteria are germane to this issue even though penicillin was not always used as the specific antibiotic.

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(b) *E. coli contribute their R-plasmids to man through several mechanisms.* There has been much debate over the extent to which *E. coli* in the animal community act as a source of R-plasmid-bearing strains for man. This is perhaps the most controversial and most difficult aspect of R-plasmid ecology to assess. Drug-resistant bacteria originating in animals may reach man (1) by direct contact with animals, (2) through the food chain, and (3) because of their widespread occurrence in the environment.

(i) *Direct contact with animals:* A number of studies have shown that humans in contact with animals receiving medicated feed, including subtherapeutic levels of penicillin, have a higher incidence of drug-resistant organisms in their flora than do control populations without this direct contact. Linton et al. (Ref. 1) found a higher incidence of drug-resistant *E. coli* in adults employed with livestock husbandry than other rural or urban adults. Wells and James (Ref. 2) found a higher incidence of drug-resistant *E. coli* in humans in contact with pigs given certain antibiotics than in humans in contact with pigs that had not been given antibiotics.

Seigel et al. (Ref. 3) compared the proportion of resistant organisms in fecal samples from: (a) people working on farms who were continuously in contact with the predominantly resistant flora of animals receiving subtherapeutic levels of penicillin; (b) people residing on the same farms with no direct exposure to the farm animals; (c) people treated with antibacterial drugs; (d) untreated people residing with treated individuals; (e) untreated people with no exposure to farm animals or treated individuals.

The data (Ref. 3) indicate that the enteric flora of individuals not directly exposed to the selective effects of antibiotics can be affected by contact with animals; furthermore, these individuals may be affected by contact with other people who have a predominantly resistant flora as a result of their exposure to subtherapeutic levels of antibacterials in feeds.

A study sponsored by the Animal Health Institute, Levy et al. (Ref. 4), examined the change in intestinal microflora of chickens, farm dwellers, and their neighbors before and after a tetracycline-supplemented feed was introduced on the farm. Within 1 week after introduction of this antibiotic in their diet, the *E. coli* of the chickens were almost entirely tetracycline resistant. Subsequently, at a slower rate, increased numbers of antibiotic-resistant bacteria appeared in the flora of the farm dwellers. No such increase was observed in the farm neighbors, who were not exposed to the animals fed subtherapeutic antibiotics. Within 5 to 6 months, 31.3 percent of weekly fecal samples from farm dwellers contained greater than 80 percent tetracycline-resistant bacteria compared to 6.8 percent of the samples from the neighbors. This is statistically significant ( $P < 0.001$ ). Using a specially marked resistance gene to identify a particular plasmid, Levy was also able to demonstrate the direct spread of resistant organisms from chickens to chickens and from chickens to man (Ref. 5).

Although penicillin was not used in this study, resistance to both penicillin and tetracycline is plasmid mediated; therefore, the study is germane to the question of the transfer of resistant organisms from animals to man. These studies demonstrate that the subtherapeutic use of certain antibiotics increases the pool of R-plasmid-bearing *E. coli*, and they define one route by which antibiotic-resistant strains can enter the human population. While this route is of great importance to farm dwellers, the majority of the population has no contact with live animals. For this segment of individuals, a more important route of exposure by which resistant bacteria can pass to man is by the handling and ingestion of meat and poultry products contaminated with R-plasmid-bearing *E. coli* of animal origin.

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(ii) Contact with *E. coli*-contaminated food: To assess adequately the significance of the problem of human food contaminated with *E. coli*, Howe and Linton (Ref. 1) described four factors that must be measured: (a) The incidence of R-plasmid-bearing *E. coli* in food-producing animals; (b) the load and frequency of excretion of *E. coli* from these animals; (c) the degree and source of contamination of carcasses at slaughter; and (d) the overlap of *E. coli* serotypes in various host animals with those commonly found in humans. A number of surveys have clearly documented that pigs, calves, and poultry carry a large reservoir of antibiotic-resistant *E. coli*. These include investigations by Anderson; Loken; Mercer; Smith; Howe, Linton and Osborne; Smith and Crabb (Refs. 2 through 8, and 15). In these surveys, animals excrete large numbers of *E. coli* organisms resistant to a wide range of clinically useful antibiotics, and these animals clearly constitute a reservoir "rich" in R-plasmids. Moreover, they excrete a large variety of distinct serotypes of *E. coli*.

During the slaughtering process, contamination of carcasses with intestinal microorganisms cannot be prevented. Meat and meat products are often contaminated with antibiotic-resistant *E. coli*, and these often reach the human consumer. Walton (Ref. 9) demonstrated that 52 percent of the bovine (beef) and 83 percent of porcine (pork) carcasses slaughtered at commercial abattoirs were contaminated with *E. coli*. Walton and Lewis (Ref. 10) isolated resistant *E. coli* from 21 of 50 specimens of fresh meat and from 4 of 50 specimens of cooked meat. Babcock et al. (Ref. 11) isolated multiresistant *E. coli* from 80 percent of 98 samples of dressed beef. Resistance in most cases was found to be transmissible.

Similar incidents of *E. coli* contamination occur with the slaughter of chickens. Kim and Stephens (Ref. 12) found a high incidence of R-plasmid-bearing *E. coli* in "ready to cook" broiler chickens. The greatest number of *E. coli* isolated were obtained from the fluid and abdominal cavity, suggesting that the principal source of these microorganisms is the intestines. Furthermore, poultry meat has been incriminated as a source of *E. coli* for patients in hospitals (Cooke et al., and Shooter et al. (Refs. 14 and 18)).

The presence of antibiotic-resistant (R-plasmid-bearing) *E. coli* in the animal intestinal tract and on the carcass does not conclusively prove that the *E. coli* are identical organisms. However, recent studies using serotyping methods have characterized resistant and sensitive *E. coli* isolated from the animal intestinal tract and carcass (Refs. 13, 15, 16, and 17) and have found that the resistant O-serotypes on the carcasses of pigs, calves, and poultry frequently are identical to those isolated from the fecal

contents of the same animal. Moreover, Linton, Howe, et al. (Ref. 17) showed that a large number of *E. coli* found on table-ready thawed chickens were resistant to therapeutically important antibiotics. The organisms reaching the kitchen included a wide diversity of O-serotypes of antibiotic-resistant *E. coli*. Similarly, Shooter et al. (Ref. 13) described the distribution and serotype of strains of *E. coli* from a poultry packing station and an abattoir. Shooter concluded that "results in both the abattoir and the poultry packing station indicate that there is transfer of strains from the faeces of the animals to the environment and that the strains of *E. coli* found on the carcasses of poultry, cattle and beef will originate from the feces of the animal and from the environment and will reflect the history of the carcass."

Foodborne *Salmonella* infections in man are a well-recognized and continuing problem. Animal meat products that serve as a primary source of *Salmonella* infections in humans also serve as a source of other bacteria for man including R-plasmid-bearing enteric bacteria (Ref. 19). Based on this evidence, the Director must conclude that man is exposed to R-plasmid-bearing intestinal bacteria through contact with contaminated food. Because the drug resistance of these bacteria is increased by feeding the animals subtherapeutic levels of antibiotics, such feeding enhances the likelihood of transmitting R-factor-bearing bacteria to man through contact with contaminated food.

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(iii) Widespread presence in the environment: Many studies (Ref. 1 through 6) have shown that intestinal bacteria (e.g., *E. coli* and *Salmonella*) carrying R-plasmids are widespread in the environment. Resistant strains reach the environment from raw and treated municipal, hospital, and animal wastes. The number of R-plasmid-bearing bacteria reported in sewage and the effects of sewage treatment vary. Most surveys indicate that hospital sewage contains more drug-resistant coliforms, more R-plasmids, and a greater proportion of R-plasmids carrying multiple resistance than sewage from domestic and other sources. However, hospitals do not constitute a large proportion of total sewage. Therefore, Linton et al. (Ref. 4) compared the contributions of hospital and domestic sources to the total pooled sewage output of the city of Bristol, and they concluded that industrial and domestic sources, rather than the hospital population, appear to be by far the greatest contributors to the reservoir of R-plasmids in the community (Ref. 7).



R-plasmid-containing bacteria also occur in rivers and sea water, and some authors have urged stricter control of discharges to surface waters. Feary et al. (Ref. 2) examined the incidence of antibiotic-resistant *E. coli* present at sites along a fresh water river system and within the salt water bay into which it empties. Antibiotic-resistant coliforms were detected in nearly all the fresh water sites sampled and in about 50 percent of the salt water sites. Feary found that 20 percent of the 194 strains tested contained R-plasmids carrying multiple antibiotic resistance which could be transferred to sensitive *Salmonella typhimurium*, *Shigella dysenteriae*, and *E. coli*. They also isolated coliforms containing R-plasmid carrying resistance to chloramphenicol. Transferable chloramphenicol resistance is a significant health concern since chloramphenicol is often the antibiotic of choice for the treatment of typhoid fever. In Feary's study, the incidence of coliform organisms appeared higher around heavily populated areas, but coliforms were also recovered with ease from rural areas. In one case where particularly high counts were obtained, the sample was taken below a large cattle feedlot.

The high levels of resistant coliforms may be of more consequences in the salt water since certain sections are utilized heavily by fishermen in harvesting fish, shrimp, clams, and oysters. Oysters and clams are of primary concern because they continuously filter water and concentrate bacteria in their gut and they are often eaten uncooked.

Recent reports by Cooke (Ref. 1) have also described a high incidence of resistant coliforms in marine shellfish and freshwater mussels.

Therefore, the Director must conclude that the environment is heavily contaminated with bacteria containing transferable R-plasmids. Man is exposed to the danger of acquiring R-plasmid-bearing coliforms from the environment, and the relative number of R-plasmid-bearing bacteria is increased both by the subtherapeutic use of antibiotics in animal husbandry and the use of antibiotics in human medicine. Antibiotic-resistant bacteria are now so widely distributed in the general environment that it is difficult to relate their appearance to a particular use, but any unnecessary practice that results in the ineffectiveness of antibiotics for the treatment of disease should be eliminated.

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(c) *R-plasmid-bearing human and animal strains of bacteria overlap.* Typing of surface bacterial antigens is used as a means of identifying bacterial strains. Three types of specific surface antigens are associated with the *E. coli* cell: An "O" cell wall lipopolysaccharide antigen, a "K" capsular or envelope antigen, and an "H" flagellar protein antigen which occurs among mobile organisms. The antigens are characteristic of a specific organism, and they serve to identify distinct bacterial types (serotypes) within species. Their presence is detected by the ability of *E. coli* organisms to interact with specific antisera.

(1) *Epidemiological investigations—E. coli serotyping:* (a) Despite the widespread occurrence of R-plasmids in the environment, some workers (Bettelheim et al., Ref. 1) suggested that human *E. coli* and animal *E. coli* were distinct. These workers argued that there were marked differences in serotype distribution in strains isolated from man and animals; they also suggested that animal strains of *E. coli* were not reaching the human population or were failing to implant in the bowel. More recently, however, this same group, Bettelheim et al. (Ref. 2), compared the serotypes of 13,139 strains of *E. coli* isolated from humans with the serotypes of 1,076 animal strains of *E. coli*; 708 different O/H serotype combinations were found. Of these, 520 were found in human strains only, 130 from animal strains only, and 58 O/H serotypes from humans and animals. The authors concluded:

At first glance the results described in this paper would indeed support the view that human and animal strains of *E. coli* are largely distinct. Second thoughts, however, suggest a little caution in accepting the opinion too firmly.

However thoroughly human or animal stools are examined, only a minute fraction of the total bacterial content is examined, and inevitably strains recorded as being isolated tend to be those that predominate. It is always probable that if examination is continued, further strains may be isolated but after an amount of work that is impracticable in any ordinary investigation. If this is so, it is possible that many of the strains recorded as coming from humans only or from animals only might, with more diligent examination, be recorded as present in both man and animals.

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(b) Linton, Howe, Richmond, and their collaborators (Refs. 1 through 4) also conducted extensive epidemiological investigations. They found a wide range of resistant and sensitive O-serotypes of *E. coli* in calves, pigs, and poultry, and they compared these serotypes with those found in the human intestine. The authors found that many O-serotypes common to man were also common to one or more of the three animal species examined. Thus, they concluded that it is impossible to make a clear distinction between "animal" and "human" intestinal strains of antibiotic-resistant *E. coli* based on O-serotyping alone. More importantly, the studies suggest a considerable overlap in the distribution of R-plasmid-bearing O-serotypes in man and in animals. Moreover, the same resistant serotypes, which predominate in the *E. coli* populations from healthy human and animal fecal sources, were also prevalent among R-plasmid-bearing strains from clinical material (Ref. 5).

Because the use of O-serotyping alone as an epidemiological tool has been criticized on the grounds that it is incomplete and inadequate, Howe and Linton (Ref. 2) examined *E. coli* for the K and H antigens as well as the O antigen. They studied 90 strains, 17 chosen at random from human urinary tract infections, 17 from human feces, and 56 from calf feces, all belonging to O-types 8, 9, and 101. The authors found the same K and H antigens in certain strains of the same O-types from each of the three *E. coli* sources. Additionally, K and H antigens associated with these O-serotypes were not specific to antigens associated with these O-serotypes were not specific to *E. coli* isolated from humans or from calves. Although further subdivision of the three O-serotypes was possible by this means, the authors concluded that O-serotyping alone provided a very useful means of distinguishing strains of *E. coli* in a general survey.

These studies show that a similar range of drug-resistant R-plasmid-bearing O-serotypes of *E. coli* have been found in man and the various animal species examined. Furthermore, the studies show that the ratio of drug-resistant to drug-sensitive isolates was much higher in animals than in man (Ref. 2 and 6). Thus the abundance and diversity of drug-resistant R-plasmid-bearing O-serotypes in animals are much greater than that currently found in man, and the serotypes overlap.

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(ii) Direct ingestion evidence: Direct ingestion experiments have also been conducted to show that R-plasmid-bearing *E. coli* of farm origin can colonize the human intestinal tract. In 1969, Smith (Ref. 1) concluded that animal *E. coli* strains were poorer at colonizing the intestine of man than were human *E. coli* strains. However, his observations were based on a single volunteer (himself) and a small number of *E. coli* strains. Cooke in 1972 (Ref. 2), on the other hand, reported that it was relatively easy to produce temporary colonization of the intestine by *E. coli* strains from both human and animal sources. She reported the persistence of an *E. coli* infection of animal origin in a human volunteer for 120 days following the ingestion of a very large dose.

Other experimental studies (Refs. 3 and 4) confirm that temporary colonization occurs provided a large dose of the organisms is taken, but there is a great deal of biological variation between colonization for different strains and for different human individuals. In normal individuals the carriage of intestinal *E. coli* seems to follow a characteristic pattern. Each person carries one or two resident strains that establish themselves and multiply for months or years. In addition, four or more transient strains are present for a few days or weeks. Strains disappear and are replaced by others. Sometimes, under antibiotic pressure, a new strain suddenly takes over, later disappearing. Strains of *E. coli* thus differ in their ability to colonize man. Although some strains are not well adapted to colonize man, others are able to live in human as well as in animal intestines. The greater the diversity of R-plasmid-bearing O-serotypes that reach the consumer, the greater the probability that one more of these antibiotic-resistant strains will be capable of colonizing man.

Recently, Linton, Howe, Bennet, et al. (Ref. 5) demonstrated that antibiotic-resistant *E. coli* found on a commercially prepared chicken carcass colonized the intestinal tract of a human volunteer. Two strains present on the chicken carcass handled and eaten by the human volunteer were subsequently excreted by her. Both strains were undetectable in the human before contact with the chicken carcass. The strains were shown to be

identical in chicken and man by comparing their serotypes (O, K, and H antigens) and R-plasmids. The plasmid complements were determined to be identical by electron microscopy and restriction endonuclease patterns. Restriction endonucleases are enzymes that cleave DNA at specific sites. Physicochemical techniques then visualize these plasmid fragments. The identity of these plasmids can be determined by a comparison of the DNA fragments generated using restriction enzymes with different recognition sequences. The Linton study also suggested that the handling of the uncooked carcass provided a greater opportunity for transmission than does eating cooked meat. The strains persisted for 10 days and the process occurred without feeding any antibiotics to the volunteer during the study. This is consistent with reports of *Salmonella* infections from animal sources.

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(iii) In vivo studies show that R-plasmids transfer from *E. coli* to pathogens: The ingestion of R-plasmid-containing bacteria can result in in vivo R-plasmid transfer to the normal intestinal flora. When this occurs, the *E. coli* constitute a reservoir of organisms capable of transferring R-plasmids to intestinal pathogens, e.g., *Salmonella*. The in vivo transfer of R-plasmids has been demonstrated in sheep, mice, calves, pigs, chickens, turkeys, and in the human alimentary tract (Refs. 1 through 8). Generally, in vivo transfer is not as readily detectable as in vitro transfer. In the absence of drug selection, the rate of in vivo R-factor transfer is generally low, and large numbers of resistant donors may be required for transfer (Refs. 1 and 6). Demonstrations of in vivo transfer have usually been achieved by first modifying the normal flora of the alimentary tract by feeding antibiotics, by starvation, or by using germ-free mice or newly hatched chicks, and these procedures probably counteract the inhibitory effects of bile salts, fatty acids, acid pH, and anaerobic conditions of the normal intestinal tract.

These experimental results may not be a true indication of the extent of R-plasmid transfer in natural populations since they often involve individuals who are exposed to restricted numbers and types of donor and recipient organisms. In some instances the methods were not suitable for the detection of low level transfer. However, Smith and Tucker (Ref. 9) studied the effect of antibiotic therapy on the fecal excretion of *Salmonella* by experimentally infected chickens. The authors found that R-plasmid resistance developed in the indigenous *E. coli* and that very similar resistance patterns then developed in the *Salmonella*. These results were duplicated in some of the studies submitted by the Animal Health Institute, which are also discussed in depth under Part IV. B. below.

Regardless of the frequency with which R-plasmid transfer occurs in the absence of modifying influences, it has occurred and given rise to antibiotic resistance in bacteria, including pathogens. The conditions of the Smith and Tucker studies mimic those brought about by the practice of feeding subtherapeutic levels of penicillin and other antibiotics to animals. That practice leads to an increase in and selection for R-plasmid-bearing organisms, and it therefore increases the probability of in vivo R-plasmid transfer to pathogens.

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(iv) R-plasmid compatibility studies: Another FDA study (Ref. 1) examined the compatibility properties of more than 100 R-plasmids from *E. coli* and *Salmonella* isolated from animals in or-



der to determine whether the plasmids are related to those isolated from man. The usual method of genetically classifying plasmids is based on their ability to exist with each other in the same bacterium. Genetically unrelated plasmids can exist in the same host, and they are called compatible. On the other hand, related plasmids cannot coexist, and they are called incompatible. Plasmids belonging to the same incompatibility group are presumed to be related.

The FDA study showed that the R-plasmid incompatibility groups seen in animal isolates show the same distribution as those found in human isolates. This suggests that human and animal bacterial populations contain the same plasmids.

A more direct approach for examining the relationships between plasmids is to measure the proportion of DNA sequences (that is, the number of similar or identical genes) that are common to any two plasmids (DNA-DNA hybridization). R-plasmids belonging to the same incompatibility groups of human and animal origin are identical when examined by DNA-DNA hybridization techniques (Refs. 2 and 3). Restriction endonuclease activity has also confirmed the similarity of R-plasmids isolated from enteric organisms of human and animal sources (Ref. 4). Therefore, the Director must conclude that R-plasmids of human origin are indistinguishable from those of animal origin.

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(v) Hazards: Although antibiotic-resistant *E. coli* in the intestinal tract of humans may generally cause no immediate problems to an individual, under proper circumstances their presence may lead to dangerous situations. For example, *E. coli* is the most common cause of urinary tract infections in man and commonly arises from a person's own intestinal flora. While sulfonamides are generally the drug of choice, a significant number of infections with sulfonamide-resistant strains are now reported, necessitating treatment with penicillin.

Resistant *E. coli* in the intestine of man also constitute a reservoir of organisms capable of transferring R-plasmids to intestinal pathogens. Perhaps the greatest hazard to human health arising from the use and misuse of antibiotics is the large reservoir of plasmid-mediated resistance genes in the normal flora of animals and man and present in the en-

vironment—resistance that can be transferred from nonpathogenic to pathogenic organisms.

In recent years the emergence of R-plasmid-mediated resistance in dangerous pathogens has been identified in epidemics around the world. A strain of *Salmonella typhi* carrying an R-plasmid mediating resistance to chloramphenicol caused an epidemic of typhoid fever in Mexico. Transferable chloramphenicol resistance has also become common in *S. typhi* isolated in India, Vietnam, and Thailand (Ref. 1). The recent epidemic of drug-resistant *Shigella dysenteriae* infection in Central America (Ref. 2) is another example of an epidemic disease that was no longer susceptible to treatment by the antibiotics that had previously been used for its treatment. Plasmid-mediated resistance has been reported in strains of *Bordetella bronchiseptica* (Ref. 3), and FDA scientists have demonstrated plasmid-mediated resistance to penicillin, tetracycline, streptomycin, and sulfonamide in strains of *Pasteurella multocida* and *P. haemolytica*, both of which cause serious diseases in animals (Refs. 3 and 4).

Recent studies (Refs. 5 through 12) have also shown that the genes specifying resistance to ampicillin, tetracycline, kanamycin, chloramphenicol, trimethoprim, and streptomycin reside on DNA sequences that are able to translate or move from plasmid to plasmid as a discrete unit, or from a plasmid to the bacterial chromosome. Therefore, in addition to movement of resistant bacteria from animals to man and the transfer of R-plasmids between bacteria, the genes that reside on the plasmids can themselves migrate from plasmid to plasmid by translocation. Furthermore, an R-plasmid does not have to be maintained stably within a cell to donate its resistant genes to a recipient chromosome or an indigenous plasmid.

Most bacterial species possess indigenous plasmid gene pools. In fact, plasmids have been found in all species of bacteria examined. The function of these plasmids is often unknown, but they could serve as effective recipients for the insertion of translocatable genes. The recent emergence of ampicillin-resistant strains of *Haemophilus influenzae* and penicillin-resistant strains of *Neisseria gonorrhoeae* represent alarming examples of the extension of the R-plasmid gene pool (Refs. 13 and 14). The resistance genes found in both species are identical to those previously found only in *E. coli* and other enteric organisms.

The World Health Organization prophetically warned (Ref. 15):

The point will ultimately be reached at which the transfer of resistance to pathogens becomes inevitable and the larger the pool, the greater is this possibility. Moreover, the wide the distribution of R+ (R-factor) enterobacteria the greater the possibility that R-plasmids may emerge that can cross biological barriers so that they can perhaps enter bacterial species and genera apparently widely different from their original enterobacterial hosts.

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4. Director's conclusions. The holders of the approved NADA's for subtherapeutic penicillin-containing products were required to show that the subtherapeutic use of penicillin does not increase drug resistance (increase the pool of R-plasmid-bearing) organisms in animals. If they were unable to show that subtherapeutic penicillin use does not increase the pool of R-plasmid-bearing organisms in animals, the holders were then required to show that the R-plas-



mids are not transferable from animals to man. They failed to do any of this.

The evidence shows that the pool of R-plasmid-bearing organisms, particularly in *E. coli*, is increasing, and that the increase is due at least in part to the subtherapeutic use of penicillin in animal feed. Further evidence shows that *E. coli* contribute their R-plasmids to man through his direct contact with animals, through his direct contact with *E. coli*-contaminated food, and by widespread presence of the R-plasmids in bacteria in the environment. Studies also show that there is no strict distinction between the *E. coli* that colonize animals and those that infect man. On the contrary, there is considerable overlap in these strains, and there is also an overlap in the enteric bacterial R-plasmid population in humans and animals. This evidence is derived from epidemiology studies, bacterial ingestion studies, and compatibility studies of the normal intestinal flora of man and animals. These bacteria may donate their R-plasmid to pathogens in man and animals even when transient, and the NADA holders have submitted no evidence on the degree of colonization, if any, that is necessary for this transfer to occur. Accordingly, the Director concludes that the holders of the approvals for the subtherapeutic penicillin-containing products for use in animal feeds have failed to satisfy the requirements of § 558.15 and criterion 1 of this notice.

#### B. Shedding and Resistance Characteristics of *Salmonella* (Criterion 2)

1. **Background.** A second area of concern, related to the increase in the pool of R-plasmid-bearing bacteria, is the possibility that the subtherapeutic use of antibiotics in animal feeds may lead to an increase in the duration or quantity of live *Salmonella* excreted by the animal receiving the drug(s), which will increase contamination of the environment with pathogens. This concern was generated in part by reports that antibiotic therapy in human salmonellosis patients had resulted in prolonged *Salmonella* shedding and favored the acquisition of resistance in *Salmonella*.

Aserkoff and Bennett (Ref. below), for example, presented data on the effect of antibiotic therapy on the excretion of *Salmonella* in the feces of human infected with acute salmonellosis. Following a large *S. typhimurium* epidemic caused by eating contaminated chicken, feces of untreated patients and patients treated with tetracycline, ampicillin, and chloramphenicol were examined for *Salmonella*, and the antibiotic susceptibility of the *S. typhimurium* strains was determined. Patients generally received the recommended regimen of antibiotic therapy (1 gram per day). Fecal samples from 87 patients not receiving medication and 185 patients treated with antibiotics were examined. Of the patients treated with antibiotics, 65 percent were shedding *Salmonella* 12 days after infection, and 27 percent were positive 31 days after infection. In the untreated patients, however, *Salmonella* shedding

was observed in 42.5 percent at day 12 and 11.5 percent at day 31.

Antibiotic therapy also favored the acquisition of drug resistance by the infecting strain of *Salmonella*, which was initially susceptible to antibiotics. Of the patients receiving antibiotics, 18 excreted resistant *Salmonella*, while none of the 87 untreated patients excreted resistant *Salmonella* ( $P < .05$ ). The antibiotic resistance acquired in the *Salmonella* strain was shown to be transferable. Because antibiotic treatment increased shedding in human salmonellosis, FDA became concerned that subtherapeutic antibiotic, penicillin administration in animal feeds would prolong *Salmonella* shedding in animals, and for this reason the agency established criterion 2.

#### REFERENCE

Aserkoff, B., and J. V. Bennett, "Effect of Antibiotic Therapy in Acute Salmonellosis on the Fecal Excretion of *Salmonella*," *New England Journal of Medicine*, 281:636-640, 1969.

2. **Criterion—(a) Shedding.** Controlled studies were to be designed to determine whether the administration of an antibacterial drug at subtherapeutic levels would result in an increase in the relative quantity, prevalence, or duration of shedding of *Salmonella* that are pathogens in animals. *Salmonella* are often found in the intestinal tract of man and animals, and the small intestine and colon are the primary sites of multiplication. After penetrating the epithelial lining, they multiply and elicit an inflammatory response. Most *Salmonella* infections are limited to the gastrointestinal tract, producing the clinical symptom termed "gastroenteritis." One of the more common strains, *Salmonella typhimurium*, causes diseases in both man and animals.

When an animal is infected with these bacteria, the live organisms are excreted in the feces ("shedding"). The quantity of *Salmonella* in the feces can be determined by a bacteriological procedure termed a "standard plate count." A specific amount of fecal material is diluted and spread on a semisolid bacterial growth medium which is selective for the growth of *Salmonella*. After a sufficient time for growth, individual colonies are counted and recorded as the number of

*Salmonella* per gram of wet feces. The proportion of antibiotic resistant *Salmonella* in fecal specimens is independent of the quantity of *Salmonella* shed.

(b) **Resistance characteristics.** Controlled studies were to be designed to determine whether the administration of penicillin at subtherapeutic levels would result in an increase in the proportion of antibiotic resistant *Salmonella*. *Salmonella* isolated from feces can be tested for their susceptibility to various antibiotic drugs. *Escherichia coli*, a normal component of the intestinal flora, were also to be examined to determine their resistance spectrum since oral administration of certain antibiotics, whether at therapeutic or subtherapeutic levels, has been shown to result in an increased proportion of indigenous *E. coli* that contains R-plasmids. These *E. coli* can serve as a reservoir of R-plasmids that can be transferable to other *E. coli* or to *Salmonella*.

3. **AHI Studies on the Effects of Subtherapeutic Levels of Penicillin in Animal Feed in Chickens.** On behalf of the NADA holders, the Animal Health Institute submitted the following study to address the criterion.

(a) **Experimental design.** The Animal Health Institute submitted an experiment in which the effects of subtherapeutic levels of procaine penicillin (with or without streptomycin) in feed were investigated. The duration, quantity and antibiotic susceptibility of a *Salmonella* strain inoculated into chickens were compared in medicated and nonmedicated chickens.

Also, FDA specified that prestudy (baseline) *E. coli* antibiotic resistance levels should be under 20 percent. This value was thought to provide a reasonable level for detecting any change in the amount of antibiotic resistance resulting from administration of subtherapeutic antibiotic levels since, if the initial R-plasmid level is too high, a small change in resistance is difficult to detect.

While others served as environmental controls, 1-day-old chicks were divided into six groups, artificially infected with *Salmonella*. Each group received medicated or nonmedicated diet, according to the following plan:

Room	Group	Inoculation of salmonella 1.6X10 <sup>6</sup>	Antibiotics and levels used in feed	Number of chickens in experimental group
1	A	Yes	None	10
2	B <sup>1</sup>	Yes	Procaine penicillin 50 g/ton	10
	B <sup>2</sup>	Yes	Procaine penicillin 12.5 g/ton, streptomycin 37.5 g/ton	10
3	C	No	None	5
	D <sup>1</sup>	No	Procaine penicillin 50 g/ton	5
	D <sup>2</sup>	No	Procaine penicillin 12.5 g/ton, streptomycin 37.5 g/ton	5

<sup>1</sup> Environmental controls.

Groups A and B were used to determine the influence of penicillin or penicillin-streptomycin on shedding after experimental infection and the development of drug resistance by *Salmonella* and *E. coli*, with group A serving as a nonmedicated control group. Groups C and D were controls used to

monitor the environment, and the effects of the drugs in the absence of experimental infection. To assure the absence of naturally occurring *Salmonella* prior to the study, the sponsors examined pre-study fecal samples. The samples were grown in a selective media, brilliant green agar, and serotyping was also done. By



this procedure, the birds were determined to be negative for *Salmonella* before the experiment began, and any bacteria suspected were further tested biochemically and serologically.

The infecting *Salmonella* (*S. typhimurium* 289-1, a poultry strain, chromosomally resistant to nalidixic acid and sulfonamides) was given by oral gavage. Fecal specimens from each chicken were diluted in phosphate buffered saline and appropriate dilutions were spread on growth medium selective for the nalidixic acid-resistant *S. typhimurium* used to infect the birds. The number of *Salmonella* growing on the medium was recorded as the number of *S. typhimurium* per gram of wet feces.

Presumptive *E. coli* isolates were obtained from EMB plates inoculated with diluted fecal material. The antibiotic resistance spectrum for *E. coli* isolates was also measured in accordance with the Standardized Disc Susceptibility Test set forth in § 460.1(c) (2) (21 CFR 460.1(c) (2)) for ampicillin, tetracycline, chloramphenicol, kanamycin, nitrofurantoin, streptomycin, sulfathiazole, and triple sulfa. The *E. coli* isolates were tested only twice prior to infections and once at the termination of the study (28 days), while the *Salmonella* isolates were tested nine times during the study.

*Salmonella* isolates were selected from the selective medium, brilliant green agar plates containing nalidixic acid, and were serotyped. Antibacterial susceptibility tests for ampicillin, tetracycline, chloramphenicol, kanamycin, nitrofurantoin, streptomycin, sulfathiazole, and triple sulfa were carried out in accordance with the Standardized Disc Susceptibility Test in § 460.1(c) (2). The isolates were tested on days 2, 4, 6, 8, 10, 13, 14, 21, and 28 of the experiment.

Clinical records were maintained on body weights, disease symptoms, mortality, and gross and microscopic pathology.

(b) *AHI's summary of the results.* (1) Shedding: Initially, on day 2, group B, (penicillin 50 grams/ton) shed a geometric mean number of  $10^4$  *Salmonella* per gram of feces; and during the remainder of the study, the geometric mean shed by the group decreased steadily. At the end of the study, the number shed was below the reliable limit of quantitation, less than  $10^2$  organisms per gram of feces. Group A, the nonmedicated control group, on the other hand, shed  $10^7$  organisms on day 2, and continued to shed a greater number of organisms than the treatment group ( $P < .05$ ) throughout the remainder of the study. None of the environmental control groups, groups C and D, shed detectable amounts of *Salmonella*.

The prevalence of *S. typhimurium* was estimated by comparing the fraction of *Salmonella* positive fecal samples in the penicillin treatment group (group B) to that for the nonmedicated control group (group A) from all samplings. Thus, 69 out of 90 specimens (77 percent) examined from nonmedicated (control) animals were positive for *S. typhimurium*, while only 36 of 81 specimens (44 percent) in the penicillin treatment

group were positive for *S. typhimurium*. The results represent statistically significant differences ( $P < .01$ ) between the incidence of *Salmonella* positive samples in the treatment group and in the non-medicated control group.

Duration of shedding was measured by determining the length of time that fecal samples were positive for *Salmonella*, or analyzing the time required for quantities of *Salmonella* shed to reach a common value. At least three nonmedicated birds shed *Salmonella* in their feces throughout the experiment, and four were positive 28 days after infection. In contrast, by day 12, only one bird receiving penicillin was positive, and none were positive on day 28. The length of time positive counts persisted was significantly longer ( $P = .05$ ) in nonmedicated controls than for the penicillin-treated group.

Liver, spleen, and cecal tissues from all animals were necropsied, and samples tested for *Salmonella*. All tissues were negative.

The AHI concluded that feeding a diet containing a subtherapeutic level (50 grams/ton) of penicillin to chickens that were experimentally infected with *S. typhimurium* did not increase the quantity, shedding, or prevalence of *Salmonella* in fecal specimens, nor did it increase the quantity of *Salmonella* isolated from liver, spleen, or cecal tissue. In the opinion of the AHI, the evidence from this study suggests that subtherapeutic use of penicillin in chickens reduced the quantity, shedding, and prevalence of *Salmonella*.

(ii) Resistance characteristics: (a) *E. coli*. According to the two pretreatment samples, the proportion of *E. coli* isolates that were drug resistant was low (below 6 percent), except for resistance to sulfonamides which was greater than 85 percent. But at the experiment's end, AHI found that the resistance to ampicillin, chloramphenicol, kanamycin, and nitrofurantoin was significantly higher ( $P < .01$ ) in the penicillin environmental control groups (D) than the control birds (C). Ampicillin resistance also significantly increased in the infected birds that received penicillin. Resistance to sulfonamides remained at the pretreatment level of greater than 85 percent, although the figure in the environmental control groups decreased.

(b) *Salmonella*. Prior to inoculating the birds, the infecting strain of *S. typhimurium* was resistant only to sulfonamides and nalidixic acid, the nontransferable marker. *S. typhimurium* strains showed a significant increase in ampicillin resistance on days 12 ( $P < .01$ ) and 14 ( $P < .05$ ). No other significant increases were observed for the other antimicrobials in the test.

The AHI then concluded that the penicillin supplemented diets significantly increased the percentage of *E. coli* that were resistant to ampicillin. In the *Salmonella*, the AHI found no significant difference in drug-resistant isolates when all the chickens in the trial were considered. But among the animals shedding *Salmonella*, i.e., the medicated groups,

the nonmedicated control, the birds exposed to subtherapeutic antibiotic pressure (both penicillin and penicillin-streptomycin), a significantly greater proportion shed *Salmonella* that were resistant to ampicillin than in the nonmedicated groups.

(c) *The Director's analysis.* (i) Shedding: (a) The Director does not disagree with some conclusions drawn by AHI about this study. Feeding a subtherapeutic level of penicillin did not apparently increase the quantity of *Salmonella* shed in fecal material; it did not appear to increase the number of *Salmonella* in liver, spleen, and cecal tissue; and it did not increase the number of positive chicken tissues.

The Director, however, disagrees with the conclusion of AHI that feeding penicillin at 50 grams/ton did not increase the duration or prevalence of *Salmonella* shedding because the procedures that were used to determine these parameters were inadequate. The information necessary to determine *Salmonella* duration and prevalence is whether *Salmonella* are present in the feces, not the quantity of *Salmonella* in the feces. After the animals were infected with *Salmonella* in this experiment, fecal specimens were processed by diluting them and then plating on the surface of agar plates. Clones growing on the plates were subsequently counted to provide information on number of *Salmonella* per gram of feces. As the study progressed, however, the number of *Salmonella* shed decreased in both groups, and this procedure is inadequately sensitive to detect small numbers of *Salmonella*. Good microbiological practice requires the use of an enrichment procedure for culturing. An enrichment procedure involves the incubation of a fecal sample in a selective broth to increase the number of *Salmonella* before plating on the agar. This increases the likelihood that *Salmonella* will be detected because other genera are being simultaneously inhibited. The enrichment procedure is recommended for examination of fecal specimens where small numbers of *Salmonella* may be present, as in the case of subjects in the carrier state. In its section about processing of specimens from the bacterial family, Enterobacteriaceae (*Salmonella* is a member of this family), the "Manual of Clinical Microbiology," 2d edition, American Society for Microbiology, Washington, D.C., p. 194 (1974) is clear:

It always is advisable to employ enrichment media in the examination of various kinds of specimens, and their use is practically essential when dealing with fecal specimens from carriers of suspected carriers.

In an FDA experiment, the agency studied *Salmonella* shedding by swine (Ref. below). Through careful study, 28 percent more samples (136 rather than 94 from the 151 examined) were determined to be *Salmonella* positive when an enrichment procedure was used. In another similar study by FDA, 95 percent rather than 60 percent of 242 samples were found *Salmonella* positive by media enrichment. Enrichment procedures had been requested by FDA



during the protocol development stage; thus, the AHI determination of prevalence and duration for this study was considered inadequate.

## REFERENCE

Rollins, L. D., FDA Project 108.

(b) The shedding study was conducted in three rooms. The chickens that were experimentally infected with *S. typhimurium* were maintained in two separate rooms, and the third room housed the noninfected environmental control animals. In one of the rooms containing infected birds, the chickens received only nonmedicated feed. However, all birds that were infected with *Salmonella* and receiving medication were placed in the same room. These birds received one of three different medicated diets, either penicillin, penicillin plus streptomycin, or sulfaquinoxaline. Although the chickens were maintained in separate cages within the same room, no birds were placed in this room to determine if bacteria from one study group were flowing to another study group within the room (environmental control). The rise in levels of resistance to antibiotics in noninfected, nonmedicated group A, as well as in the antibiotic-treated groups B<sub>1</sub> and B<sub>2</sub>, suggests that some cross-contamination might have occurred or that contamination from the environment might have occurred. Such contamination of control groups makes it more difficult to detect differences in the increase of drug resistance between the experimental and control animals.

An FDA-sponsored contract (71-269) showed the relative ease by which cross-contamination occurs between various study groups. These groups were under similar or more adequate isolation conditions than the chickens in the AHI study.

Nevertheless, analysis of drug resistance data obtained from bacteria isolated from the various groups maintained in Room 2 of the AHI study indicates there are differences in drug resistance between groups. This suggests that when R-plasmids are present, regardless of their source, they may be transferred even in the absence of antibiotic pressure.

(c) When the shedding studies were initially requested, the optimum duration of such studies was unknown, although the 28-day duration appeared adequate. Data later generated under FDA sponsorship (contract 71-269) show that shedding patterns change after 30 to 50 days, longer than the length of the 28-day AHI experiment. Some studies have shown *Salmonella* shedding to be decreasing in both medicated and nonmedicated groups early in the experiment, with the shedding initially decreasing faster in the medicated group. In several of these experiments, approximately 55 days after initiating the experiment, the *Salmonella* shedding patterns reversed and shedding in the medicated birds increased, while shedding in the nonmedicated birds remained constant or continued to decrease. In the

Director's opinion, the phenomenon is easily explained. Initially, the antibiotic attacks sensitive organisms and as these predominate, little shedding is observed. But, as the antibiotic-resistant organisms remain and become dominant in the population, shedding increases.

(d) The 28-day duration of the chicken studies should also be considered in relation to the life of a commercial broiler chicken, usually about 7 to 8 weeks. Although some changes in shedding pattern occurred beyond 6 weeks, in normal commercial production, groups of broilers are raised continuously with one group immediately following another. The production facilities may be cleaned between groups; however, the facilities are not sterilized. Bacteria left from a preceding group of birds are available to infect the birds that follow, and some of the microbiological changes that occur may be perpetuated in subsequent birds. Thus, if an antibiotic is used in the feed of each group of birds, it would have an opportunity to act over a long period of time. For these reasons, the Director now believes it is necessary to use an experimental design that allows sufficient evaluation of the effect of time of antibiotic usage on shedding.

(ii) Resistance characteristics: (a) *E. coli*. A major concern about occurrence of drug resistance in *E. coli* that are indigenous to the digestive tract is their potential for donating drug resistance to pathogens such as *Salmonella*. The Director agrees with the AHI analysis that feeding chickens the penicillin supplemented diet significantly increased ( $P < .05$ ) the number of *E. coli* isolates that were resistant to ampicillin. But other aspects of the drug resistance characteristics of *E. coli* are also critical to an appropriate analysis of the data. Although the proportion of *E. coli* resistant to sulfonamides was high in all the groups before treatment and before inoculating the chickens with *Salmonella*, the bacteria were relatively susceptible to the other antibiotics tested. Results from one sample collected from each bird after penicillin treatment and inoculation with *S. typhimurium*, how-

ever, indicate that the proportion of *E. coli* resistant to streptomycin and tetracycline increased in all groups—environmental controls, nonmedicated controls, and treatment groups. This suggests bacteria that were resistant to tetracycline, streptomycin, and perhaps sulfonamides colonized the animals in the experimental facility.

(b) *Salmonella*. Although the total quantity of *Salmonella* shed decreased, the percentage of drug-resistant *Salmonella* shed increased, which is crucial. For birds that were shedding *Salmonella*, feeding penicillin resulted in a significantly greater proportion of *Salmonella* resistant to ampicillin ( $P < .05$ ), which is consistent with the AHI analysis. The Director agrees with AHI that feeding subtherapeutic penicillin resulted in a significant increase in both the proportion of ampicillin-resistant *E. coli* and *Salmonella*.

For all of the foregoing reasons, the Director concludes that the study has failed to prove that the subtherapeutic use of penicillin in chickens satisfies the criterion and has failed to show that such use is safe.

4. AHI Studies on the Effects of Subtherapeutic Penicillin in Animal Feed in Swine—(a) Experimental design. To measure *Salmonella* shedding in swine and the transfer of drug resistance to *Salmonella*, AHI submitted a study that was similar in design to the previously described chicken study. This study was also subject to the same experimental conditions that FDA imposed on the chicken study, i.e., the base line incidence of resistance to drugs used in human clinical medicine in the indigenous flora of the test animals was not to exceed 20 percent.

Swine were divided into six groups, three of which were infected with Strain No. 58 DO 13C *Salmonella typhimurium* (swine) characterized as sulfonamide resistant. One noninfected and one infected group received diets containing either no medication, procaine penicillin, or procaine penicillin plus streptomycin according to the following design:

Room number	Group	Antibiotic and level used in feed	Inoculation of salmonella (1.3x10 <sup>11</sup> dose)	Number of pigs in experimental group
1	A	None	Yes	10
2	B <sub>1</sub>	Procaine penicillin (50 g/ton)	Yes	10
	B <sub>2</sub>	Procaine penicillin (12.5 g/ton), streptomycin (37.5 g/ton)	Yes	10
3	C	None	No	5
	D <sub>1</sub>	Procaine penicillin (50 g/ton)	No	5
	D <sub>2</sub>	Procaine penicillin (12.5 g/ton), streptomycin (37.5 g/ton)	No	5

(i) Shedding: Groups B<sub>1</sub> and B<sub>2</sub> were used to test the influence of penicillin on shedding and resistance of *Salmonella* in the test animals, with group A serving as a nonmedicated control group. Groups C, D, and E were used as environmental controls to monitor whether swine administered the drug but not inoculated remained *Salmonella* free.

Orally via the diet, 6-week-old pigs were experimentally infected with an inoculation of  $1.3 \times 10^{11}$  *Salmonella*, 5 days after beginning their test diet. Preinfection

fecal specimens were free of naturally occurring *Salmonella* for all test animals. For all pigs in each group, fecal samples were taken on days 2, 4, 6, 8, 10, 12, 14, 21, and 28 postinfection to quantify the *Salmonella*. One-gram samples of fecal specimens from each test animal were diluted in phosphate-saline solution and plated in duplicate on brilliant green agar containing 0 and 20 micrograms/milliliter of streptomycin. After incubation, characteristic clones of *Salmonella* were recorded as total counts/



gram of wet feces. All pigs were killed and necropsied 28 days after the infection.

One-gram samples of aseptically collected liver, spleen, ileocecal lymph node, and cecum were minced and incubated in tetrathionate brilliant green broth, and subsequently plated on brilliant green agar to determine the presence of *Salmonella*. Clinical records were maintained on body weights, mortality, and gross and microscopic pathology.

(ii) Resistance characteristics: (a) *E. coli*. Coliform counts were obtained from EMB plates inoculated with homogenized fecal samples. One gram of each sample was plated in duplicate on EMB agar containing 0 and 20 milligrams/milliliter of streptomycin. Antibiotic susceptibility tests were conducted on clones obtained from two prestudy samples and one poststudy sample from each animal in accordance with the Standardized Disc Susceptibility Tests in § 460.1(c)(2). Five clones from each specimen were selected from the streptomycin plates and were tested for susceptibility to ampicillin, tetracycline, chloramphenicol, streptomycin, kanamycin sulfate, nitrofurantoin, and sulfathiazole.

(b) *Salmonella*. Five clones of *Salmonella* selected from the brilliant green fecal count plates were tested for antibacterial susceptibility to ampicillin, tetracycline, chloramphenicol, streptomycin, kanamycin sulfate, and nitrofurantoin, sulfathiazole, and triple sulfa, in accordance with the Standardized Disc Susceptibility Test in § 460.1(c)(2). When there were less than five clones of *Salmonella*, the number of clones picked corresponded to the actual number present on the plates.

(b) AHI's summary of the results. (i) Shedding: AHI reported that the number of *Salmonella* recovered per gram of wet feces diminished with time in all groups, and the number of organisms recovered from the medicated groups after day 2 was consistently less than the numbers recovered from the nonmedicated control group. These numbers represent average counts of clones growing on agar that did not contain streptomycin since no *Salmonella* grew on plates containing streptomycin. No *Salmonella* were isolated throughout the experiment from any of the environmental control animal (Groups C, D<sub>1</sub>, and D<sub>2</sub>). From this the AHI concluded that the presence of antibacterials in animal feeds reduces the quality and persistence of *S. typhimurium* in experimentally infected pigs.

(ii) Resistance characteristics: (a) *E. coli*. AHI concluded that penicillin supplemented diets significantly increased ( $P < .01$ ) the number of *E. coli* resistant to chloramphenicol. Similarly, penicillin/streptomycin supplemented diets significantly increased ( $P < .05$ ) the number of *E. coli* resistant to streptomycin.

(b) *Salmonella*. When the experimentally infected pigs in the medicated groups were compared to the nonmedicated control group, AHI concluded that feeding penicillin or penicillin/strep-

tomyacin at subtherapeutic levels did not increase the percent of pigs carrying resistant *Salmonella*. It also concluded that there were no significant differences in the percentage of resistant clones isolated from pigs in the penicillin group and the control group when all the pigs were considered (nonmedicated controls, environmental controls, and treatment groups).

(c) Director's analysis. (i) Shedding: The Director again does not totally disagree with AHI's conclusions concerning *Salmonella* shedding in swine. He agrees that, in this case, feeding a subtherapeutic level of penicillin apparently neither increased the quantity of *Salmonella* being shed in the pig's fecal material, nor increased the number of *Salmonella* in liver, spleen, ileocecal lymph node and cecum. Feeding penicillin also did not increase the number of swine tissues (liver, spleen, ileocecal lymph node and cecum) that were positive for *Salmonella*. However, the Director disagrees with the AHI conclusion that feeding swine penicillin at 50 grams/ton did not increase the duration or prevalence of *Salmonella* shedding, because the procedures that were used to determine these parameters were inadequate. The information necessary to determine duration and prevalence of *Salmonella* shedding is whether feces contain any *Salmonella*, even in very low numbers, rather than the quantity of *Salmonella* present in the feces, which AHI measured. After the animals were infected with *Salmonella*, fecal specimens were processed by diluting and then plating the dilutions on the surface of agar plates. Enrichment procedures were not used.

(ii) Resistance characteristics: (a) *E. coli*. As in the chicken study, the data available on the occurrence of various drug resistances in *E. coli* are limited; nevertheless, they are sufficient to draw general conclusions. Susceptibility tests from streptomycin-containing plates show a high proportion of multiple-resistant *E. coli* in all groups prior to treatment, i.e., treatment groups, nonmedicated controls, and environmental controls. This is contrary to the recommendations of the FDA guidelines established for these studies. Data from post-treatment plate counts (one for each pig) indicate that the proportion of *E. coli* resistant to streptomycin remained high throughout the experiment and was similar for both the penicillin treatment group (group B<sub>1</sub>) and the nonmedicated group (group A). The results are not unexpected because the high initial proportion of drug-resistant organisms makes it difficult to detect differences in the proportion of drug-resistant organisms caused by antibiotic administration.

A more acceptable procedure for determining the proportion of isolates resistant to a particular drug is to select clones from drug-free agar plates for susceptibility testing. A higher proportion of drug-resistant bacteria will be isolated on antibiotic-containing agar than with the random choice of a stand-

ard drug susceptibility test using normal agar.

Further, AHI has injected an element of bias in reporting the *E. coli* information. Only the clones that were growing on the streptomycin-containing agar plates were tested for susceptibility to multiple antibiotics. This procedure will reveal the drugs in addition to streptomycin to which the isolate was resistant, but a high proportion of the streptomycin-resistant isolates were also resistant to tetracycline and the sulfonamides.

Selecting clones from streptomycin-containing agar for further susceptibility testing is acceptable for determining what resistances, in addition to streptomycin, may be present. Only those cells resistant to streptomycin, alone or in a pattern with other antibiotics, will grow on agar containing streptomycin. However, cells may be present in the population that are susceptible to streptomycin but are resistant to one or more other drugs. For example, ampicillin-resistant bacteria might be missed. These cells would not grow on the agar containing streptomycin, and the procedures used by the AHI would not report them.

(b) *Salmonella*. *Salmonella* were isolated from both the nonmedicated control group (group A) and the penicillin treatment group (group B<sub>1</sub>). Isolates that were singly and multiply drug resistant were observed, as well as isolates with resistance to ampicillin, tetracycline, chloramphenicol, nitrofurantoin, kanamycin, and streptomycin. The strain of *Salmonella* used to infect the animals was initially resistant only to sulfonamides when the animals were inoculated. In both the nonmedicated control group and the penicillin treatment group, the proportion of *Salmonella* isolates that were resistant to each drug tested was similar, and a significant proportion of *Salmonella* isolates were resistant to at least one of the following: ampicillin, tetracycline, and streptomycin.

The principal purpose of this experiment was to determine whether feeding of penicillin at subtherapeutic levels results in an increase of drug-resistant *Salmonella*. One way by which *Salmonella* become resistant is by transfer of drug resistance from the indigenous flora, e.g., *E. coli*, of the gut; therefore, the proportion of indigenous organisms in the gut carrying drug resistance directly affects the ability to detect differences due to antibiotic treatment. For this reason the effect that subtherapeutic penicillin has on increasing the proportion of drug-resistant *E. coli* was initially analyzed.

A high proportion of indigenous *E. coli* were drug resistant before treatment, which minimized or negated the observable effect that antibiotic treatment would have on the indigenous gut flora. Since the effect of antibiotic pressure on the indigenous flora was the initial step in the process under study, the study is invalid for demonstrating in a precise manner the effect of feeding subtherapeutic levels of penicillin on occurrence of resistance in *Salmonella*.



An unexplained inconsistency also invalidating the study is the fact that during the study no streptomycin-resistant *Salmonella* grew on the brilliant green agar (BGA) containing streptomycin. However, in subsequent sensitivity testing in the experiment it was determined that many of the *Salmonella* clones isolated at different times on plain BGA were indeed resistant to streptomycin as determined by the standard Kirby-Bauer disc susceptibility test.

A third deficiency undermines the validity of the study. The Director found that 70 to 100 percent of the indigenous *E. coli* in the test swine were resistant to tetracycline, streptomycin, and sulfonamide, and 20 to 50 percent were resistant to ampicillin and kanamycin. He also found that resistance to chloramphenicol and nitrofurantoin had occurred, but to a lesser extent. Nevertheless, in both the medicated animals and nonmedicated animals, the Director found that the resistance patterns corresponded.

Before the study began, the *Salmonella* were resistant only to the sulfonamides. On the basis of the disc susceptibility test, the Director found the following resistance pattern had evolved during the course of the study:

Percent resistant salmonella isolates

Drug	Non-medicated group A	Penicillin treatment group B
Streptomycin	53.0	48.0
Tetracycline	45.0	41.0
Ampicillin	60.0	58.0
Kanamycin	12.0	18.0
Chloramphenicol	3.6	5.6
Nitrofurantoin	8.0	3.6
Number of isolates	247.0	195.0

Resistance was transferred to *Salmonella* in the nonmedicated group at a rate at least equal to that of the medicated group. It is thus apparent that *Salmonella* readily became resistant to ampicillin, tetracycline, and streptomycin when exposed to the R-plasmids of *E. coli* present in the gut. This reaffirms the results observed in the chicken study, as well as the studies by Pocurull et al., Neu et al., and Smith and Tucker (Refs. 2, 3, and 6). Once a sufficient number of R-plasmid-bearing bacteria, principally *E. coli*, are present, the *E. coli* donate their R-plasmids in the absence of antibiotic pressure. Accordingly, the Director concludes that the presence and proportion of R-plasmid-bearing donors were responsible for the resistance in *Salmonella*.

Another safety question may be raised by the high *E. coli* resistance found in the swine used in this study; 70 to 100 percent of the *E. coli* were resistant to tetracycline, streptomycin, and sulfonamides, and 20 to 50 percent resistant to kanamycin and ampicillin. Yet, in the Gustafson study cited below (Ref. 7), in typical swine going to slaughter, there were no *E. coli* resistant to ampicillin, although 17 of 31 isolates were multiply resistant to other antibiotics.

For all of the foregoing reasons, the Director concludes that this study has

failed to prove conclusively that subtherapeutic penicillin use in swine satisfies the criterion and has thus failed to show that such use is safe.

5. *Questions Raised by Other Studies of Salmonella*—(a) *CDC reports*. The Center for Disease Control (CDC) has maintained a national *Salmonella* surveillance program since 1963. The reported incidence of salmonellosis increased until approximately 1973, when it reached 27,000. The level of reported cases averaged 10.77 per 100,000 population from 1970 through 1974, and true incidence may be far higher because of underreporting. But the reported cases from antibiotic resistant *Salmonella* have continued to increase. *Salmonella typhimurium*, which is the most common *Salmonella* strain in animals, is the resistant strain most often reported in man and animals. More importantly, the number of antibiotic resistant strains of *S. typhimurium* isolated and reported almost doubled between 1967 and 1975, and the increase in antibiotic resistance in other *Salmonella* serotypes almost tripled during that period. Further, in addition to the fact that the number of *Salmonella* strains resistant to 6 or more antibiotics increased almost 10 times, the percentage of multiply resistant strains that are "super resistant" (containing resistance to 6 or more antibiotics) increased almost 7 times (Refs. 1 and 1a).

(b) *FDA survey*. Pocurull, Gaines, and Mercer (Ref. 2), in a 1971 survey, report that *Salmonella* strains isolated from outbreaks of salmonellosis in animals were bearing R-plasmid-mediated resistance to antibiotics. *Salmonella* isolates gathered in diagnostic laboratories of most States from outbreaks of salmonellosis in pigs, cows, chickens, and turkeys were tested for their susceptibility to ampicillin, tetracycline, dihydrostreptomycin, cephalothin, sulfamethoxypyridazine, colistin, chloramphenicol, furazolidone, neomycin, polymyxin, and nalidixic acid. Of the 1,251 strains studied, 75 percent were resistant to one or more antibacterial drugs, 40 percent were resistant to two or more antibacterials, and 21 percent were resistant to three or more antibacterials. But an even higher incidence of multiply resistant cultures was observed in *S. typhimurium*, which was again the most commonly isolated pathogen.

(c) *Neu, Cherubin, Longo, Flouton, and Winter studies*. Recently, Neu et al. (Ref. 3) examined the antimicrobial susceptibility of 718 *Salmonella* isolates from humans and 681 from animals. They compared the current prevalence of antibiotic resistance in *Salmonella* isolates from humans with their previous studies in 1968-1969 and with the resistance patterns of *Salmonella* isolates from animals.

Thirty percent of all human isolates were resistant to one or more antibiotic(s). Again, *S. typhimurium* was the most common pathogen and 58 percent were resistant to at least one antibiotic. More than 50 percent of the *S. typhimurium* were resistant to four to five

antibacterials. The fraction of all *Salmonella* strains resistant to kanamycin rose from 3 percent to 12.5 percent. When these results were compared with a 1965 national survey conducted by Gill and Hook (Ref. 4), the authors found that the percentage of isolates of all serotypes resistant to ampicillin had increased fourfold by 1973, and the incidence of resistance to tetracycline and streptomycin had approximately doubled. Resistance in *S. typhimurium* had increased from 19 percent to 58 percent of isolates, and resistance to ampicillin has increased from 23 percent to 37 percent. Moreover, the resistance to ampicillin, tetracycline, chloramphenicol, streptomycin, sulfisoxazole, and kanamycin was transferable among the various *Salmonella* strains.

In animals, *S. typhimurium* accounted for 70 percent of the isolates, and 80 percent were resistant to one or more antimicrobial agents. R-plasmids were found in 86 percent of the *S. typhimurium*, and resistance to ampicillin, tetracycline, chloramphenicol, streptomycin, sulfisoxazole, and kanamycin was transferable. Generally, the resistance patterns were similar to those encountered in the *Salmonella* isolated from humans.

The authors conclude that the high incidence of transferable resistance in man and animals suggests that most resistant strains seen today contain complete R-plasmids, and that strains unable to mobilize resistance determinants are less common than was formerly thought. They further conclude that comparison of the resistance of *Salmonella* isolates from humans with that of *Salmonella* from animals shows that tetracycline resistance is greater among the strains from animals, as in the case with sulfonamide and streptomycin resistance. While the resistance to ampicillin is higher in *S. typhimurium* strains isolated from humans than those isolated from animals, the reverse is true for other serotypes. This difference may reflect the greater current use of tetracyclines, sulfonamides, and streptomycin in animals.

Finally, the authors conclude that the survey clearly demonstrates that resistance to antibiotics is increasing in *Salmonella* isolated from both humans and animals, and since there are great similarities in the resistance patterns of human and animal isolates, it would be useful to know whether the R-plasmids are of a similar nature since this would suggest that animal strains have contributed to the human pool of resistant organisms.

(d) *Smith, H., and J. F. Tucker studies*. Smith and Tucker (Ref. 5) studied the effect of antibiotic therapy on the fecal excretion of *S. typhimurium* by experimentally infecting 3-day-old chicks. There were 3 different treatment regimens studied; 9 different antibiotics were used with experimental groups of 40 during each study. One or two groups in each experiment were fed nonmedicated feed throughout. The following antibacterials were tested: Ampicillin, oxytetracycline, chloramphenicol, furazolidone, neomycin, polymyxin, spectinomycin.



cin, streptomycin, and a mixture of trimethoprim and sulfadiazine. The regimens were: (1) continuous antibiotic administration in the diet for 61 days at 100 milligrams/kilogram of animal feed (subtherapeutic); (2) continuous antibiotic administration in the diet at 500 milligrams/kilogram of animal feed for 44 days (therapeutic); (3) continuous antibiotic administration in the diet for 9 or 18 days at 500 milligrams/kilogram of animal feed while observing for 65 days.

In each preceding experimental group, except the furazolidone group, when chickens were fed subtherapeutic drugs, the *E. coli* became multiply resistant with R-plasmids having the same pattern of resistance that developed shortly thereafter in the *Salmonella* of the same groups. No antibiotic resistant *Salmonella* were ever isolated from the fecal specimens taken from the chicks fed antibiotic-free diets, although high concentrations of antibiotic-resistant populations always developed in the *S. typhimurium* and *E. coli* from groups fed antibiotics.

Smith and Tucker found that although many of the antibiotics brought about a profound reduction in the concentration of fecal *E. coli*, it was usually short-lived because of the emergence of antibiotic-resistant populations of *E. coli*, even in the group receiving subtherapeutic levels of the antibacterials. Most of the resistance to ampicillin, oxytetracycline, chloramphenicol, streptomycin and spectinomycin are due to R-plasmids found initially in the entire chicken population, with the same patterns of antibiotic resistance (ampicillin, streptomycin, tetracycline, chloramphenicol) which were selected, transferred and subsequently appeared in the *S. typhimurium* populations of each different dietary regimen selected for any one drug.

Although penicillin was not used in the study, the principles that apply to the emergence of transferable drug resistance in this study apply to R-plasmids that emerge from use of penicillin. Further, ampicillin is a penicillin, which in sufficient quantity will produce the effects of penicillin G on drug resistance in Gram-negative bacteria.

Antibiotics have been used to such an extent in certain animal species that organisms that are well adapted to their digestive tract are now drug resistant. The selective pressure of antibiotics is one of the primary factors that results in an increase in the number of organisms carrying transferable drug resistance, and the selective pressure may be from either therapeutic or subtherapeutic antibiotic use. Although the procedures used to gather the information from the AHI chicken study were inadequate according to the current state of the art, nevertheless, the AHI chicken study exemplifies the interaction between the pool of R-plasmid donors and drug-susceptible pathogens in chickens; it also demonstrates the effect of subtherapeutic penicillin pressure on the development of resistance to ampicillin. Other recent literature such as the Smith and Tucker

studies and contract studies confirm these findings. The Director concludes that there is no evidence to show that safety hazards do not exist as a consequence of the subtherapeutic use of penicillin in animal feed.

(c) *Kobland, Gustafson study.* Kobland, Gustafson et al. (Ref. 7) of American Cyanamid performed a survey of three major swine producing areas for the Animal Health Institute to determine the extent of the naturally occurring antibiotic-resistant *Salmonella* reservoir in hogs; subtherapeutic levels of antimicrobials were routinely used in animal feeds in the area. Fecal contents were sampled from market-age hogs obtained from slaughter houses in Pennsylvania, Iowa, and Georgia, and these samples returned to the laboratory for *Salmonella* isolation procedures. *E. coli* were also isolated to obtain information regarding antibiotic resistance status of indigenous coliforms.

The first survey was made in Lancaster County, Pennsylvania. Out of 151 animals sampled, 54 (35 percent) were positive for *Salmonella*, and all isolates tested (653) were sensitive to the 10 antimicrobial agents that were tested. Of 31 *E. coli* isolates, 17 were multiply resistant.

In the second study, in Iowa, 26 hogs (10 percent) were positive for *Salmonella* out of 251 sampled. Examination of 219 isolates yielded 10 (5 percent) resistant isolates, but all from 1 hog. Again, most of the coliforms (*E. coli*) were multiply resistant.

Finally, in the Georgia survey, *Salmonella* was isolated from 215 (84 percent) out of 256 animals sampled, i.e., 78 hogs (36 percent) carried drug-resistant *Salmonella*; and of 622 isolates, 145 (23 percent) carried tetracycline resistance singly or with streptomycin.

Four *Salmonella* serotypes were identified in Pennsylvania, eight in Iowa, and seven in Georgia. The *Salmonella* strains that were resistant to more than one antimicrobial were able to transfer resistance to an *E. coli* recipient. When the sponsors tested representative drug-sensitive *Salmonella* isolates for their ability to receive R-plasmids, four *S. worthington* and two *S. newington* isolates acquired resistance after a 24-hour mating. None of 28 other isolates as tested accepted an R-plasmid. Only two samples represented *S. typhimurium*, the most frequently isolated serotype from animal and human sources and a good donor of R-plasmids.

In summary, (i) 40 percent of ceca from animals in Pennsylvania, Iowa, and Georgia contained *Salmonella*; (ii) None were antibiotic-resistant in Pennsylvania, 4 percent in Iowa, and 23 percent in Georgia; and (iii) none of the *Salmonellae* from any of the three States were ampicillin-resistant. For *E. coli*, (i) 7 percent of the swine sampled from Pennsylvania were ampicillin-resistant, (ii) 31 percent from Iowa, and (iii) 39 percent from Georgia. Only certain *Salmonella* serotypes were shown to be good recipients for the *E. coli* R-plasmids in transfer studies done

in conjunction with the surveys, and none acquired ampicillin resistance. On this basis, AHI concluded that naturally occurring *Salmonella* are neither R-plasmid-bearing nor willing R-plasmid recipients.

The survey alone, however, is inadequate to support a conclusion that the background level of drug-resistant *Salmonella* is not increasing because there is no documentation that the sites selected for sampling provide a random representative sample of the total swine population. The authors explained neither how they determined that the sampled swine had been exposed to antibiotic pressure nor which antibiotics were involved. Of 22 Georgia isolates that were resistant only to tetracycline, not one transferred its resistance, and for this reason, the authors assert that the gene coding for tetracycline resistance was probably located on the bacterial chromosome rather than on a plasmid. This assertion is contrary to current information which indicates that naturally occurring tetracycline resistance is invariably plasmid mediated (Ref. 8). Tetracycline resistance in a bacterial strain can be taken to indicate the presence of an R-plasmid because no evidence has ever shown tetracycline resistance to be chromosomally mediated in naturally occurring strains of enteric bacteria (Ref. 9). The plasmid may, however, be small and not self-transmissible, as was apparently the case in the Gustafson study.

American Cyanamid's *in vitro* tests for *Salmonella* R-plasmid recipient activity are also inadequate. Cyanamid tested only "representative" sensitive *Salmonella* isolates, and four *S. worthington* and two *S. newington* isolates acquired resistance. Although none of the other 28 isolates tested accepted an R-plasmid in these tests, only a single R-plasmid-bearing *E. coli* donor was used, and the compatibility properties of the donor R-plasmid were never presented. It is well recognized that certain species of *Salmonella* are generally neither good donors nor recipients of R-plasmid in the laboratory. The ability of a particular *Salmonella* to act as a recipient is dependent on the compatibility properties of the donor R-plasmid. For example, in recent years most R-plasmids isolated from naturally occurring *Salmonella* have been of incompatibility groups H and I, and many *Salmonella* are not good recipients for F II R-plasmids, a common type encountered in *E. coli*. Therefore, without data on incompatibility groupings, the Director believes that this aspect of Gustafson's study is of little value.

(f) *Other studies.* Wilcock et al. (Ref. 10), found far greater levels of antibiotic resistance in clinical isolates of *Salmonella typhimurium* (95 percent were tetracycline-resistant) than in isolates of *S. choleraesuis* (18 percent). These strains accounted for 90 percent of the 63 isolates definitely associated with swine salmonellosis. The greater accessibility of *S. typhimurium* to intestinal *E. coli* in contrast to the systemic *S. choleraesuis* infection may explain this difference.



In a survey of 5 Canadian abattoirs by Groves and Barnum et al. (1970, Ref. 11), 20 percent of 462 hogs were *Salmonella* positive. Tetracycline-resistant *Salmonella* were found in isolates from 11 of the 94 (11.7 percent) mesenteric lymph node samples of marketed swine, in 2 of 15 (13.3 percent) isolates from the abattoir environment, and in only 1 of 25 (4.5 percent) isolates from a farm supplying the abattoir. Thus, 14 of 134 isolates (10.5 percent) were at least tetracycline resistant. Of the 14 resistant *Salmonella*, 5 were *S. typhimurium* and 8 were *S. schwarzengrund*. Single or multiple tetracycline resistance was present in all 14 resistant *Salmonella*. Out of 110 strains studied, 22 were *S. typhimurium*. Other prevalent serotypes included *S. heidelberg*, *S. muenster* and *S. anatum*. Voogd (1973, Ref. 12) charted various *Salmonella* serotypes, and a large percentage of resistance was seen in *S. typhimurium* (25 percent in 1971), *S. anatum* (29 percent) and *S. panama* (25 percent), although resistance in other serotypes such as *S. derby*, *S. infantis*, *S. dublin*, or *S. choleraesuis* was lower. As mentioned earlier, most surveys have clearly shown an increase in drug-resistant *Salmonella* in recent years, and the strains surveyed in those studies have obviously encountered R-plasmids which bacteria can accept and stably maintain. This is clearly demonstrated by the results of the AHI studies and the other evidence discussed earlier.

6. **Director's Conclusions.** Questions raised by the CDC reports, and the studies conducted by Ryder, Pocurull et al., Neu et al., and Smith and Tucker (Refs. 1 through 3, and 5) show precisely the same pattern of resistance and in the same sequence that was observed in the *E. coli* and *Salmonella* isolates from the AHI chicken and swine studies. Resistance occurred in the *E. coli*, and a corresponding pattern of resistance subsequently occurred in the *Salmonella* after exposure to the R-plasmid-bearing *E. coli*. Despite the absence of antibiotic pressure (in the nonmedicated animals), initially high numbers of resistant *E. coli* in all of the test animals did transfer R-plasmids to the antibiotic-sensitive *Salmonella*.

Furthermore, because most of the animals in the AHI studies were harboring drug-resistant R-plasmid-bearing *E. coli*, which was contrary to FDA criteria, the studies may be considered invalid for determining the effect of feeding subtherapeutic penicillin on the emergence of drug-resistant *Salmonella*. Moreover, the procedures used to gather the data on *Salmonella* prevalence and duration were inadequate. The studies nevertheless demonstrate that the reservoir of R-plasmid-bearing *Salmonella* increased in direct correlation with the resistance patterns observed in the drug-resistant *E. coli*. These results confirm the results observed in the literature. R-plasmid-bearing bacteria are widespread in the environment, and they can transfer their R-plasmids to pathogens, even in the absence of antibiotic pressure. Under § 558.15, the holders of approved

NADA's were required to submit data to prove conclusively that the subtherapeutic use of penicillin in animal feed does not increase the duration and prevalence of *Salmonella*, and that such use does not contribute to the development of R-plasmid-bearing organisms. Because subtherapeutic use of penicillin contributes both to R-plasmid buildup and transfer, the data lead to the conclusion that the subtherapeutic use of penicillin has not been shown to be safe.

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## C. Compromise of Therapy (Criterion 2 (c))

1. **Background and criterion.** The 1972 FDA Task Force was concerned that the continuous feeding of antibiotics to ani-

mals might compromise the treatment of certain animal diseases. It concluded that additional information was needed, and FDA accordingly determined that epidemiological and controlled challenge studies were to be carried out to determine the relationship of the use of antibiotics in animal feed to the effectiveness of subsequent treatment of animal disease, which is criterion 2(c) of this notice. To answer this criterion with regard to subtherapeutic use of penicillin, the Animal Health Institute submitted two studies. The first, carried out in chickens, involved treatment of a systemic *E. coli* infection by oxytetracycline after subtherapeutic use of penicillin in feed. The second study, in swine, dealt with treatment of a *Salmonella choleraesuis* infection by nitrofurazone, after subtherapeutic use of penicillin in feed.

2. **AHI Compromise of Therapy Study in Chickens.**—(a) *Experimental design.* Day-old-chicks were placed on subtherapeutic levels of penicillin (50 grams/ton) for 21 days. On day 21 the birds were infected by the intramuscular (I.M.) route with *E. coli* at  $4.5 \times 10^6$  CFU (colony forming units). Subsequent treatment was with oxytetracycline (12.5 milligrams given I.M. for 3 days).

(b) *AHI's summary of the results.* The highest mortality (60 percent) occurred in the group of chickens receiving neither penicillin nor oxytetracycline treatment, as compared with no mortality in the group receiving penicillin in feed and subsequent oxytetracycline treatment. Penicillin-supplemented diets reduced mortality in chickens with systemic *E. coli* infections by 38 percent. The use of oxytetracycline treatment alone was enough to reduce mortality from 60 percent to 13 percent. The penicillin-fed groups showed better weight gain than the control groups.

Based upon the data presented, when mortality, feed consumption, weight gain, and feed efficiency are considered, AHI concluded that the subtherapeutic use of procaine penicillin at 50 grams/ton did not compromise subsequent therapy of artificially induced systemic *E. coli* in chickens, when oxytetracycline 12.5 milligrams I.M. was the therapeutic agent.

(c) *Director's analysis.* The experimental design used was inappropriate to address whether the subtherapeutic use of penicillin in animal feed will compromise therapy in diseased chickens. The establishment of a clinical infection by giving *E. coli* orally in chickens presents some practical problems, whereas challenge via intramuscular injection resulted in a more uniform clinical effect. However, infection by the intramuscular route prevented the interaction, on the intestines, of the infecting organism (*E. coli*) and resident *E. coli*, a combination that is known to be necessary for selection of drug resistance. Therefore, the Director must conclude that this work in chickens presented by AHI fails to address appropriately and to satisfy animal health criterion 2(c). The work provides no evidence that sheds any light on the compromise of therapy issue.



3. *AHI Compromise of Therapy Study in Swine.*—(a) *Experimental design.* Weanling swine were placed on a trial diet (penicillin 30 grams/ton) for 21 days. On day 21 the swine were orally infected with *Salmonella choleraesuis* ( $2.1 \times 10^8$  CFU) via stomach tube, following a 24-hour fast. Treatment was with nitrofurazone (110 parts per million in drinking water) when the first clinical signs of salmonellosis appeared.

(b) *AHI's summary of the results.* The highest mortality (30 percent) occurred in the group of swine receiving no penicillin feed and no subsequent treatment as compared with 10 percent in the group receiving penicillin in feed but no subsequent treatment. No mortality occurred in the groups receiving nitrofurazone treatment, regardless of whether penicillin was absent or present in the diet. The scouring index was higher in the negative control group receiving neither penicillin in the diet nor nitrofurazone treatment, while it was significantly lower in the remaining groups. Weight gain and feed efficiency were higher in the medicated groups than in the control groups.

Although differences in mortality between groups was not significant when other parameters, such as weight gain, feed efficiency, and scour index are observed, AHI concluded that the subtherapeutic feeding of procaine penicillin at 30 grams/ton will not compromise subsequent nitrofurazone therapy of artificially included *Salmonella choleraesuis* in swine.

(c) *Director's analysis.* Any study of compromise of therapy requires a determination of whether the subtherapeutic use of a drug results in an increase in the number of bacteria bearing R-plasmids that are capable of donating these R-plasmids to pathogens. The object of the AHI swine study was ostensibly to determine whether the subtherapeutic use of penicillin would compromise nitrofurazone therapy. However, the resistances most commonly found to result from penicillin use in *E. coli* are resistance to ampicillin, tetracycline, sulfonamides, and streptomycin in various combinations. Rarely will the subtherapeutic use of penicillin result in an increased incidence of transferable resistance to nitrofurazone (Ref. 1). For this reason a study that attempts to measure compromise of therapy against nitrofurazone alone will be biased by design against showing a compromise. The nitrofurazone group is useful to show that the disease is treatable by an antibacterial. However, the study requires a group treated with a drug whose resistance is frequently mediated by R-plasmids to measure any compromise of therapy, particularly because penicillin would not be used to treat an *S. choleraesuis* infection. Even though nitrofurazone may be one drug of choice for treatment of *S. choleraesuis* infection in swine, its use alone in the study of compromise of therapy is inappropriate because nitrofurazone resistance is not one that would ordinarily become a problem from penicillin use; moreover, because of questions about carcinogenicity, the Director,

in a notice published in the FEDERAL REGISTER of August 17, 1976 (41 FR 34899), proposed to withdraw approval of NADA's for the use of nitrofurazone on the grounds that it has not been shown to be safe.

The study should have been designed with treatment of the disease by a drug to which subtherapeutic use of penicillin may cause increased resistance, e.g., ampicillin or tetracycline, to provide a more accurate reflection of what may occur in the field. This study is of no value in showing that subtherapeutic penicillin feed does not compromise therapy by related drugs such as ampicillin or by drugs to which resistance would commonly occur along with that of resistance on an R-plasmid. For example, ampicillin, tetracycline, sulfonamide, and streptomycin resistance are commonly linked on R-plasmids.

4. *Questions Raised by FDA Funded Research.* Due to the complexity and importance of the compromise of therapy issue, FDA sponsored a study to develop a disease model with antibiotic susceptible organisms in a manner that would provide susceptible pathogenic *E. coli* with the opportunity to interact in the intestinal tract with R-plasmid-bearing organisms and develop drug resistance (Ref. 2). A University of Missouri survey for a tetracycline-susceptible pathogenic *E. coli*, however, failed to locate a susceptible strain in swine, and a compromise of therapy experiment using tetracycline-resistant pathogenic *E. coli* was performed according to the following design.

(a) *Experimental design.* Swine were fed an unmedicated diet and two diets containing subtherapeutic levels of the combination chlortetracycline, sulfamethazine, and penicillin; the investigators then measured the effectiveness of therapeutic levels of chloramphenicol and chlortetracycline.

	Number of animals	Infection with <i>E. coli</i>	Oral therapeutic agent (per kilogram of animal)
DIET 1—Unmedicated			
Group:			
1.....	18	No.....	None.
2.....	20	Yes.....	Do.
3.....	28	Yes.....	Chloramphenicol—50 mg.
4.....	30	Yes.....	Chlortetracycline—50 mg.
DIET 2—Chlortetracycline (30 g/ton of feed), sulfamethazine (20 g/ton of feed), and penicillin (10 g/ton of feed)			
Group:			
1.....	17	Yes.....	None.
2.....	21	Yes.....	Chloramphenicol—50 mg.
3.....	23	Yes.....	Chlortetracycline—50 mg.
DIET 3—Chlortetracycline (100 g/ton of feed), sulfamethazine (100 g/ton of feed), and penicillin (50 g/ton of feed)			
Group:			
1.....	14	Yes.....	None.
2.....	10	Yes.....	Chloramphenicol—50 mg.
3.....	12	Yes.....	Chlortetracycline—50 mg.

(b) *Director's analysis.* In each diet, chloramphenicol treatment was significantly more effective for the treatment of the disease than was treatment with chlortetracycline. In fact, the results show that chlortetracycline treatment was no more effective than either the untreated control group or the groups fed the combination of subtherapeutic antibiotics in the ration, i.e., the latter were ineffective.

The Missouri study indicates that animal therapy may be compromised where the pathogen is resistant to the antibiotic used for treatment.

5. *Director's Conclusion.* The potential for harm resulting from compromise of therapy is clear, and no evidence has been submitted that adequately addresses the basic issue, the potential for subtherapeutic penicillin use to compromise therapy, since the studies submitted contained design deficiencies. For these reasons, the Director concludes that the sponsors have failed to resolve the issue and thereby show that the subtherapeutic use of penicillin is safe in animal feed.

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6. *Optimal Level of Effectiveness (Animal Health Criterion 4).* This was originally stated as a separate criterion as follows:

The optimum usage level for each indication of use of the antibacterial drug at subtherapeutic levels shall not increase significantly with continued use.

Once the optimum level is established, a study shall continue over succeeding generations or populations of animals to determine if this same level continues to yield the same measurable effect.

No data were submitted on this issue for penicillin or penicillin-containing products. The failure to submit these data was in part due to the inability to design such studies that would be meaningful in the 2-year period designated for study. A study begun in 1972 was submitted by AHI which compares the effectiveness of four antibiotics (chlortetracycline, tylosin, bacitracin, and virginiamycin) to a nonmedicated group in swine (Ref. below). The study was conducted at only one location; tests at several locations are necessary to provide any evidence they may have general application to the swine industry. Moreover, the antibiotics were not fed to the swine at graded dosage levels (dosage titration), which is necessary to determine the optimal level of the drug's effectiveness. That is the first step in attempting to address the concerns. Without that evidence, the Director cannot make any determination about the role of R-plasmid-bearing organisms in the continuing effectiveness and safety of subtherapeutic use of any tested antibiotic in animals, including penicillin.

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#### D. Pathogenicity (Criterion 3)

1. *Background and Criterion.* It is clear that bacterial plasmids contribute significantly to an organism's capacity to produce disease and to survive within the host organism (Ref. 1). The production of enterotoxin, for example, is an essential factor in the pathogenicity of *E. coli* strains of porcine origin, and Smith and Halls (Ref. 2) demonstrated that this property was governed by a plasmid, termed ENT. Similarly, the genetic determinants for enterotoxin production in *E. coli* isolated from calves and lambs have also been shown to be controlled by transmissible plasmid (Ref. 3). Recent studies support the premise that enterotoxin-producing strains of *E. coli* are also responsible for a significant proportion of previously undiagnosed human diarrheal disease (Refs. 4 through 6). Corresponding to these studies in domestic animals, researchers have now shown that the ability of *E. coli* strains of human origin to elaborate enterotoxin is mediated by a transmissible plasmid (Refs. 7 and 8).

In addition to toxins, other plasmid-mediated virulence factors have been described. One of the characteristics of the diarrheal disease caused by enterotoxigenic *E. coli* in man or animals is the ability of large numbers of the bacteria to colonize the small bowel. There is evidence that a surface associated antigen K88, on *E. coli* toxigenic for pigs facilitates colonization since the antigen functions to overcome intestinal motility and other clearing mechanisms (Refs. 9 through 13). Further, Orskov et al. (Ref. 14) showed that K88 production is governed by a transmissible plasmid. A similar antigen, K99, has been described for calves (Refs. 15 through 17). Moreover, these K-antigens play a role in the host specificity of these pathogens. The K88 antigen from porcine isolates is unable to produce adhesion to the calf intestine, and the K99 calf antigen is unable to adhere to the pig intestine (Ref. 15). A similar plasmid-controlled surface antigen has recently been described in a strain of *E. coli*, causing severe human diarrheal disease (Ref. 18).

Another way plasmids can contribute to virulence is exemplified by the colicin V plasmid (Ref. 19). Colicin V is the most common colicin produced by *E. coli*, and pathogenic *E. coli* containing the colicin V plasmid have a greater ability to resist the host species' defense mechanism (Ref. 19). Such *E. coli* also tend to be more refractory to the bactericidal effects of undefined components in serum. In addition, Smith's experiments in chickens and in humans reveal that the colicin V R-plasmid confers on organisms an increased ability to survive in the alimentary tract as well as in the tissue (Ref. 20). On the basis of this evidence, the Director believes that other plasmid-mediated factors that enhance

pathogenicity may well be found in the future.

Although pathogenicity is generally determined by more than one factor, the addition of a single specific character to a nonvirulent organism can endow that organism with virulence, and the potential dangers of this character being mediated by a transmissible element are apparent. Because R-plasmids and virulence plasmids can reside in the same bacterial cell, the possibility is increasing that plasmids that contribute to pathogenicity may become more widely disseminated among bacterial species due to the selection of the large reservoir of R-plasmids within enteric organisms.

For these reasons, FDA established Human and Animal Health Safety Criterion 3: "The use of low and/or intermediate levels of an antibacterial drug shall not enhance the pathogenicity of bacteria."

FDA's guidelines required a series of well designed studies to determine if the use of antibacterial drugs in animal feeds enhances pathogenicity of Gram-negative bacilli. First, the sponsors were to determine if plasmids coding for toxin production could become linked to an R-plasmid and be transferred *in vitro*. If this was demonstrated in germ-free animals, experiments were to be conducted in conventional animals.

Due to the progressional nature of the studies, the Director did not require the sponsors to complete the studies during the time allotted by § 558.15. The sponsors were committed to conduct such studies and to submit reports on the studies at regular intervals. The AHI did submit a study conducted by Dr. John Walton to examine the association of plasmid-mediated toxin production with R-plasmids, and data were also obtained from FDA contracts with Dr. Stanley Falkow and Dr. Carlton Gyles.

2. *Walton Study.* The Walton study (Ref. 21) reported *in vitro* transfer experiments using a donor organism bearing both the enterotoxin plasmid and R+ factors antibiotic resistance plasmids and a recipient organism that lacks an R-plasmid. Walton concluded that subsequent selection of R+ transconjugants does not select for enterotoxin production.

The Director finds that the study contained major shortcomings in the procedures used, and he rejects Walton's conclusions as inadequately supported. The enterotoxin-producing strains (containing plasmids termed ENT) used in the experiment were inadequately examined for the frequency of transfer of their ENT plasmids and the number of R+ transconjugants tested for ENT transfer (20) was insufficient since only a frequency of 5 percent or greater could be detected. From each mating, 20 transconjugant colonies were pooled and subcultured into 100 milliliters of nutrient broth; then they were grown overnight to obtain cells and supernatant fluid to test for toxin production. However, no positive control was included in the experiment to show that, in screening, 1 known ENT+ colony, out of 20 colonies,

would produce a positive reaction for toxin production. For these reasons, the Director concludes that the study neither conclusively resolves the issue nor even provides adequate evidence to support the conclusion that selection for R+ transconjugants does not select for enterotoxin production.

3. *Falkow Study.* (a) *In vitro transfer.* On the other hand, Falkow (FDA Contract 73-7210) unequivocally demonstrated that ENT and R-plasmids do co-transfer and that drug selection for the R-plasmid and subsequent clonal screening for ENT was an adequate laboratory tool for detection of cotransfer.

In an *in vitro* mating, *E. coli* K12 (containing a bovine ENT plasmid, a K-antigen-determining plasmid (K99), and an R-plasmid coding for tetracycline and streptomycin) was crossed to three drug-sensitive *E. coli* K12 recipient strains. The recipient strains were rifampicin resistant, and the donor was rifampicin sensitive. The rifampicin-resistant recipient that received the tetracycline-streptomycin plasmid were recovered on rifampicin-tetracycline drug plates; these recombinant clones were then scored for coinheritance of ENT and K99. Of 225 clones tested (75 from each of the 3 crosses), 2 clones (0.88 percent) received both ENT and K99+. Thus, cotransfer of K99 and ENT plasmid for pathogenicity with the tetracycline-streptomycin drug resistance plasmid was of a low but detectable incidence.

In another *in vitro* mating study, a bovine enterotoxigenic nonlactose-fermenting *E. coli* isolate (B44) (containing the following plasmids: ENT, K99, and an R-plasmid (R<sub>1</sub>) containing genes coding for ampicillin, chloramphenicol, kanamycin, and streptomycin resistance) was crossed with a lactose fermenting strain of *E. coli*, K93 strain 1485. Lactose-fermenting and chloramphenicol-resistant transconjugants were scored for K99 and ENT.

The incidence of K99 plasmid transfer was 3/37 (8 percent) and the incidence of the ENT plasmid transfer was 9/37 (24.3 percent). Furthermore, the incidence of K99, ENT, and R<sub>1</sub> cotransfer was 3/37 (8 percent).

(b) *In vivo transfer.* Falkow fed B44 *E. coli* bearing resistance (R<sub>1</sub>), ENT, and K99 plasmids to baby calves, and *in vivo* transfer of the (R<sub>1</sub>) plasmid to indigenous microflora was monitored. In one experiment, ENT plasmid was cotransferred at an incidence of 3/39 (7.7 percent); however, K99 was not transferred. In another *in vivo* transfer experiment, the ENT was cotransferred at an incidence of 1/88 (1.1 percent) and cotransfer of K99 did not occur. But detection of K99 cotransfer was hampered by the autoagglutination of 50 percent of the transconjugants when slide agglutinations with K99 antisera were performed.

From these experiments, Falkow concluded that possession of an R-plasmid by an enteropathogenic strain does not guarantee cotransfer of ENT or K99; nevertheless, the implications of cotransfer at even a low incidence in the intesti-



nal tract of an animal, should the animal be exposed to the same antibiotics to which the enteropathogen is resistant, has potent public health consequences.

#### 4. Questions raised by other studies.

(a) Naturally occurring toxigenic strains of *E. coli* are often multiply resistant, and during a recent hospital outbreak of infantile diarrhea in Texas, Wachsmuth et al. (Ref. 23) reported that plasmid-mediated toxin production and multiple antibiotic resistance was demonstrated. Transfer of a  $67 \times 10^6$  and  $30 \times 10^6$  dalton plasmid was associated with the transfer of resistances and enterotoxin production, respectively. Moreover, when antibiotics were used to select *E. coli* K12 recipients from a one-step bacterial cross, all the resistances were concurrently transferred, and 36 percent of these drug-resistant recipient organisms also transferred their ENT plasmids and produced enterotoxin. Clearly, the Director must conclude that R-plasmid transfer can enhance the possibility of ENT transfer and the production of enterotoxin.

(b) Translocation is believed to be the primary mechanism for the dissemination of resistance genes in vivo. Under FDA Contract 223-73-7210, Falkow has been able to show the translocation of antibiotic resistance genes to ENT plasmids in vitro. He also demonstrated that ENT plasmids can acquire resistance genes from R-plasmids if they inhabit the same cell. Ampicillin, sulfonamide, and streptomycin plasmids constructed in vitro by translocation are indistinguishable from such ampicillin plasmids obtained from clinical isolates of *E. coli* and *Salmonella* (Ref. 24).

More recently, Gyles (FDA Contract 223-73-7219) demonstrated the in vivo transfer of ENT plasmids in the intestinal tract of pigs, using the selection of tetracycline-resistant recipient organisms as a basis for screening ENT+ recipient colonies. All of the 35 tetracycline-resistant recipient colonies obtained were shown to bear the ENT plasmid. Gyles also showed that tetracycline resistance and enterotoxin biosynthesis reside on the same plasmid.

5. Director's Conclusions. The evidence from both in vitro and in vivo experiments demonstrates that ENT plasmids and R-plasmids can become linked. Only Dr. Walton's study describes data to the contrary; however, his study is inadequate for the reasons discussed. Accordingly, the Director concludes that the existing evidence demonstrates that R-plasmids can increase the pathogenicity of organisms, and inadequate evidence has been submitted to prove the contrary.

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#### E. Tissue Residues (Criterion 4)

1. Background. FDA has established zero tolerances in tissues of chickens, swine, pheasants, and quail, in milk and eggs for penicillin, its salts and residues. Negligible tolerances of 0.05 part per million exist for the uncooked edible tissues of cattle and turkeys. In all cases the tolerances are a function of the lowest limit that the penicillin assay methods can reliably measure; therefore, the agency in effect permits no residue of penicillin in human food. FDA established these "zero" tolerances because there is no scientific evidence to support a no-effect level for penicillin or its metabolites on the human or animal intestinal flora or on the induction of hypersensitivity. Violative, over tolerance, penicillin residues are regularly reported by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service residue monitoring programs. The FDA followup investigations on the reported violations demonstrate that two routes of administration are primarily responsible for the violations, injection and feed use; and most of the violations are caused by the product misuse, including failure to follow the labeled withdrawal period.

2. Criterion. FDA's guidelines requested the following for antibiotics:

Controlled studies . . . to determine whether or not an antibacterial drug used as subtherapeutic levels in the feed of animals results in residues of the parent compound, metabolites, or degradation products in the food ingested by man which are capable of causing (1) an increase in the prevalence of pathogenic bacteria; (2) an increase in the resistance of pathogenic bacteria to antibacterial drugs used in human clinical medicine.

Controlled studies in appropriate test animals shall be conducted to determine whether the consumption of food produced by animals receiving antibacterial drugs will result in:

- An increase in the intestinal flora of the prevalence of pathogenic bacteria;
- An increase in the degree and spectrum of resistance of the intestinal flora to drugs used in human clinical medicine.



Experimental procedures shall include appropriate consideration of maximum use level, minimum withdrawal time and established tolerances.

In addition, a literature survey shall be conducted to determine the incidence of reports of hypersensitivity resulting from antibacterial drugs in food. The literature survey shall include information regarding hypersensitivity reactions occurring as a result of parenteral or topical exposure to antibacterial drugs as well as those ingested in food. When hypersensitivity has been shown, experiments in appropriate laboratory animals must be conducted to develop estimates of what level of antibacterial drugs in food will cause the production of hypersensitivity.

3. *Data submitted.* Because there is a "zero" tolerance for penicillin and no residues are expected when penicillin-containing products are used in accordance with their labeled withdrawal periods, the sponsors of penicillin were exempted by the Director from submitting the test data. Thus, no data have been provided by the sponsors to show whether the consumption of food produced by animals receiving subtherapeutic levels of penicillin will result in an increase of pathogenic bacteria in the intestinal flora of animals or an increase in the degree and spectrum of resistance of the intestinal flora to drugs used in human clinical medicine.

The firms were required and did, in fact, provide literature data on hypersensitivity reactions to penicillin. These documented the well known allergic and anaphylactic reactions occurring from the penicillins and their degradation products. Human reactions to milk residues after treatment of infections of mammary glands with penicillin was a frequent cause of allergic response; consequently, withdrawal periods from drug usage have been developed before edible products are marketed. One instance (Ref. 1) was cited of a severe hypersensitivity reaction to ingested pork containing penicillin residues.

4. *Director's Analysis and Conclusions.* A study carried out by Katz et al. (Ref. 2) examined the effect of feeding penicillin on the development of residues in edible tissues and the nature of the residues. Although no tissues contained detectable penicillin or its degradation products, penicillin and its degradation products were detected in the crop, proventriculus, gizzard, and duodenum, but not in the small intestine from where it might be absorbed into other body tissues. At the same time chicken feces contained high levels of antibiotic-resistant Gram-negative lactose-fermenting organisms (presumably *E. coli*), although no penicillin was present in the feces.

The study, however, raises a question about the safety of penicillin. Although no tissue residues were detected, the feces of broilers fed growth promotant levels of penicillin in their diet exhibited a fairly high percentage of antibiotic-resistant, lactose-fermenting organisms. The resistance was found in spite of the fact that no antibiotic activity could be found in the duodenum of the birds.

Accordingly, Katz undertook to investigate the ability of penicilloic acid, one of the major degradation products, to stimulate the development of resistant organisms in the intestinal tract. Groups of birds on three rations were studied, a basal ration, a ration of 50 grams penicillin per ton of feed, and a ration of 50 grams of penicilloic acid of feed. Two resistance markers, tetracycline and streptomycin, were separately incorporated in the agar to act as indicators of resistance.

The percentage of lactose-fermenting organisms in the feces of birds on the basal ration remained relatively low for the period of the experiment, but the birds on the penicillin and penicilloic acid diets showed a markedly higher level of such organisms in their feces. Although the results exhibit some variation due to several experimental factors, the resistance pattern of the lactose-fermenting organisms isolated showed a continuous rise in the percent resistance as reflected in the streptomycin marker. The resistance pattern reflected by the tetracycline marker was more variable, but definitely present. However, the levels of drug resistant lactose-fermenting organisms found in the feces of birds from both the penicillin and penicilloic acid supplemented feeds are at least four times greater than the levels found from birds fed the basal ration. Although not statistically proven, the marked increase in resistance reflected by the marker strongly supports the premise that penicilloic acid can stimulate the development of resistance.

Accordingly, the Director must conclude that feeding subtherapeutic levels of penicillin to chickens may cause an increase in resistant lactose-fermenting organisms. Since the principal lactose-fermenting organisms are *E. coli*, and antibiotic resistant *E. coli* have been demonstrated to transfer R-factors to pathogens, the Director must conclude that the subtherapeutic use of penicillin may contribute to an increase in the prevalence of pathogenic bacteria in the intestinal flora of chickens which is contrary to the criterion established. No data have been submitted to rebut this, and for this reason also the Director must conclude that penicillin has not been shown to be safe.

#### REFERENCES

1. Tschewschner, I., "Penicillin Anaphylaxis Following Pork Consumption," *Zeitschrift für Haut- und Geschlechts-Krankheiten*, 47: 591, 1972.
2. Katz, S. B., C. A. Fassbender, P. S. Dinerstein, and J. J. Dowling, Jr., "Effects of Feeding Penicillin to Chickens," *Journal of the Association of Official Analytical Chemists*, 57:522-526, 1974.

#### V. EFFECTIVENESS

In the FEDERAL REGISTER of July 17 and 21, 1970 (35 FR 11533, 11647, 11650) FDA announced the conclusions of the National Academy of Sciences/National Research Council Drug Efficacy Study Group concerning the penicillin-containing premixes intended for subtherapeutic and therapeutic use in animal feeds. The

NAS/NRC evaluated these preparations as probably effective for growth promotion and feed efficiency and concluded that for the remaining claims the products lack substantial evidence of effectiveness that each ingredient designated as active makes a contribution to the total effectiveness claimed for the drug.

The agency concurred with these evaluations, and it provided the manufacturers of these products 6 months to submit adequate documentation of the effectiveness.

Section 512 of the act (21 U.S.C. 360b) requires that a new animal drug have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling. For fixed combination drugs, § 514.1(b)(8)(v) (21 CFR 514.1(b)(8)(v)) requires that each ingredient designated as active in any new animal drug combination must make a contribution to the effect in the manner claimed or suggested in the labeling. Furthermore, if in the absence of express labeling claims of advantages for the combination such a product purports to be better than either component alone, the sponsor must establish that the new animal drug has that purported effectiveness. The requirement of effectiveness includes the requirement that the most effective level for each compound be used. In the case of drug combinations for concurrent therapy, the requirement of effectiveness includes the requirement that the dosage of each component is such that the combination is safe and effective for a population of significant size specifically described in the labeling as requiring such concurrent therapy. Therefore, to demonstrate that the penicillin-containing premixes are effective for therapeutic use, the sponsors must submit, in accordance with section 512(d)(3) of the act, substantial evidence consisting of adequate and well controlled investigations, as defined by § 514.111(a)(5) (21 CFR 514.111(a)(5)), including field investigations, satisfying these requirements.

No interested person has ever submitted substantial evidence that the penicillin-containing premixes are effective for the claimed therapeutic uses. For this reason the Director concludes that there is a lack of substantial evidence that the products are effective for therapeutic use in animal feed. Moreover, this action will assure that these levels are not used illegally to replace the subtherapeutic uses that are also being withdrawn.

#### VI. CONCLUSION

Pursuant to § 558.15, the holders of approved NADA's for penicillin-containing drug products intended for subtherapeutic use in animal feeds have the burden of establishing that this use is safe in accordance with the criteria and guidelines established by that regulation in addition to the basic requirements imposed by the general safety provisions of the Federal Food, Drug, and Cosmetic Act. The Director in this notice has set forth in detail the basis for the criteria and guidelines implementing the regu-



lation and this action. The holders of the approved NADA's have failed to satisfy the legal requirements imposed by the regulations, and they have failed to resolve the basic safety questions that underlie the subtherapeutic use of penicillin in animal feed.

(a) The pool of R-plasmid-bearing organisms is widespread in the environment of man and animals, and antibiotic resistance is increasing in pathogenic and nonpathogenic *E. coli* and *Salmonella*. The resistance patterns observed in these *E. coli* and *Salmonella* isolated from animals are similar, and these patterns are similar to the resistance patterns observed in the strains isolated from man. The R-plasmids found in organisms isolated in man and animal are indistinguishable, and common serotypes of these organisms infect both man and animals.

The studies submitted by the holders of approved NADA's through the Animal Health Institute confirm the prevalence of R-plasmid-bearing organisms and the ability of these organisms to transfer R-plasmids to other strains, even in the absence of antibiotic pressure. The AHI studies were also inadequate to measure the duration and prevalence of the *Salmonella* infections because demonstrably inadequate measuring techniques were used to gather the information.

(b) The potential for harm arising from a compromise of therapy is well documented. None of the studies submitted on compromise of therapy address the fundamental issue—the ability of R-plasmid-bearing organisms to interact and donate these plasmids to other organisms in the intestinal tracts of animals and to acquire resistance to a drug related to the subtherapeutic drug given. Furthermore, no evidence was submitted to show that the effectiveness of subtherapeutic penicillin use over time is not being altered by the development of R-plasmid-bearing organisms.

(c) The evidence demonstrates that R-plasmids controlling pathogenicity, drug resistance, and intestinal motility can and do cotransfer in vitro and in vivo.

(d) Subtherapeutic doses of penicillin and penicillanic acid in chickens causes an increase in drug-resistant lactose-fermenting organisms, e.g., *E. coli*, in their feces. This phenomenon demonstrates a potential for harm, and adequate refuting evidence has not been submitted. In addition, inadequate evidence has been submitted to negate questions on the potential for harm associated with penicillin hypersensitivity and subtherapeutic penicillin use.

(e) Under § 558.15, the holders of approved NADA's were required both to file commitments to conduct studies that would conclusively resolve the safety of the subtherapeutic use of antibiotics in animal feeds and actually to conduct those studies. To ensure compliance with the letter requirement, the regulation required holders of the approved NADA to file periodic progress reports on the studies. The Director is proposing to withdraw approval of all NADA's for

which evidence was submitted in accord with § 558.15 purporting to resolve the safety issues, and he is unaware of any sponsor that filed a commitment to conduct the requisite studies but that submitted no evidence. Nevertheless, the Director concludes that the approval of any NADA for which a commitment to conduct appropriate studies was filed but whose holder filed no evidence should be withdrawn on the grounds that the holder of the NADA has failed to establish and maintain records and make reports as required by appropriate regulation.

Additionally, under section 512 of the act, the holders of the approved NADA's have the burden of demonstrating that the products are effective for their indications of use. Based on the evidence now before him, the Director is unaware of any adequate and well controlled investigations demonstrating that the penicillin-containing premixes are effective for the therapeutic uses.

On the basis of the foregoing analysis, the Director is unaware of evidence that satisfies the requirements for the safety of penicillin-containing premixes as required by section 512 of the Federal Food, Drug, and Cosmetic Act and § 558.15 of the agency's regulations. Accordingly, he concludes, on the basis of new information before him with respect to these drug products, evaluated together with the evidence available to him when they were originally approved, that the drug products are not shown to be safe under the conditions of use prescribed, recommended, or suggested in their labeling. The evidence, in fact, indicates that such penicillin use may be unsafe, particularly if the higher or therapeutic levels of penicillin should be used as substitutes for the levels currently used subtherapeutically.

Therefore, the Director announces he is proposing to withdraw all approvals for penicillin-containing premix products intended for use in animal feed whether granted under section 512 of the act or section 108(b) of the Animal Drug Amendments of 1968 (Pub. L. 90-399) on the grounds that they have not been shown to be safe, and lack substantial evidence of effectiveness for therapeutic use. Notice is hereby given to holders of the approvals listed above and to all other interested parties. If a holder of an approval or any other interested person elects to avail himself of an opportunity for hearing pursuant to sections 512(e) (1)(B), 512(e)(1)(C), and 512(e)(2) (A) and § 514.200 (21 CFR 514.200), the party must file with the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, a written appearance requesting such a hearing by September 29, 1977, giving reasons why approval of the application should not be withdrawn and providing a well-organized and full-factual analysis of the scientific and other investigational data that such person is prepared to prove in support of its opposition to the Director's proposal within 60 days. Such analysis shall include all protocols and underlying raw

data and should be submitted in accordance with the requirements of § 314.200 (c)(2) and (d) (21 CFR 314.200 (c)(2) and (d)).

The Director will soon issue a separate notice in the FEDERAL REGISTER proposing to withdraw approval of all tetracycline-containing new animal drug products intended for certain subtherapeutic uses in animal feeds on the grounds that they have not been shown to be safe under section 512(e)(1)(B) of the act and § 558.15. Data addressing the safety and effectiveness issues for the tetracycline component of those products should be submitted at that time.

The failure of a holder of an approval to file timely written appearance and request for hearing as required by § 514.200 constitutes an election not to avail himself of the opportunity for a hearing, and the Director of the Bureau of Veterinary Medicine will summarily enter a final order withdrawing the approvals.

A request for a hearing may not rest upon mere allegations of denials, but it must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person who requests a hearing, making findings and conclusions, denying a hearing.

Four copies of all submissions pursuant to this notice must be filed with the Hearing Clerk. Except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, responses to this notice and copies of published literature cited in this notice not appearing in journals designated by 21 CFR 310.9 and 510.95 may be seen in the office of the Hearing Clerk, Food and Drug Administration, between 9 a.m. and 4 p.m., Monday through Friday.

If a hearing is requested and is justified by the applicant's response to this notice of opportunity for hearing, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will commence will be issued as soon as practicable.

The Director has carefully considered the environmental effects of this action, and because it will not significantly affect the quality of the human environment, he has concluded that an environmental impact statement is not required for this notice. A copy of the environmental impact assessment is on file with the Hearing Clerk. Moreover, in a notice published in the FEDERAL REGISTER of May 27, 1977 (42 FR 2739) the Commissioner of Food and Drugs requested data concerning the potential environmental impact of a series of regulatory actions, including this one, designed to restrict



the subtherapeutic use of antibacterials in animal feeds. If the public discussion and information gathered warrant, a comprehensive environmental impact statement will be prepared, evaluating the impact of all the actions as a single program.

NOTE.—The Director has also carefully considered the inflation impact of the notice, and no major inflation impact, as defined in Executive Order 11821, OMB Circular A-107, and Guidelines issued by the Department of Health, Education, and Welfare, has been found. A copy of the FDA inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

(Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-361 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84).)

Dated: August 24, 1977.

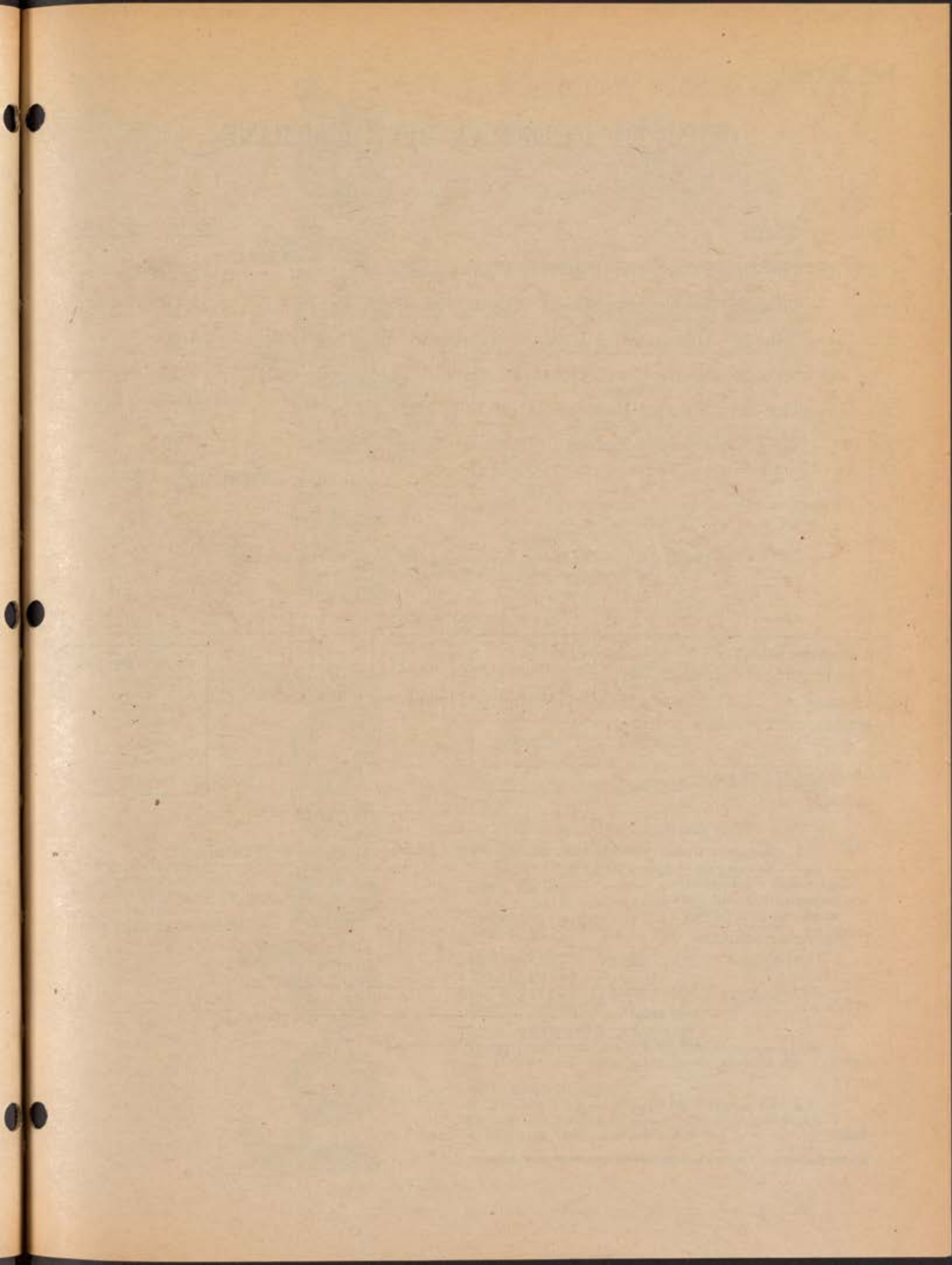
C. D. VAN HOUWELING,  
*Director, Bureau  
of Veterinary Medicine.*

[FR Doc.77-24971 Filed 8-29-77;8:45 am]











# CODE OF FEDERAL REGULATIONS

(Revised as of November 1, 1975)

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