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PART I

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1973, and specifies how they are affected.

Presidential Documents

Title 3—The President

PROCLAMATION 4228

National Student Government Day

By the President of the United States of America

A Proclamation

Fundamental to the American educational ideal is the sense that our schools should be not only centers of learning but also laboratories for democracy. From the primary grades all the way up through the graduate departments of our universities, various forms of self-government and independent decision-making have become an increasingly important factor in the educational process.

Student councils and similar organizations provide students with an opportunity to work together for common purposes, select leaders from among their peers, and deal responsibly with faculty and administrators in their schools. Such opportunities are helping to teach the basic skills of citizenship and to develop the qualities of leadership in the young people who take part. By enhancing the self-respect of students and the mutual respect among groups within a school community, student governments also contribute to that climate of eagerness to learn and grow in which education can best flourish.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby proclaim November 14, 1973, as National Student Government Day. I invite the Governors of the States and of the Commonwealth of Puerto Rico and other officials at the local level to issue similar proclamations.

I also urge all educational institutions to join in appropriate activities to highlight the importance of student government and to encourage wider participation in its activities. I further urge all students in our country to acquaint themselves fully with their own student governments, and to play a constructive role in contributing to their success.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord nineteen hundred seventy-three, and of the Independence of the United States of America the one hundred ninety-seventh.

Richard Nixon

[FR Doc.73-13801 Filed 7-3-73;11:19 am]

Rules and Regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3313 is amended to show that one additional position of Confidential Assistant to the Deputy Under Secretary for Congressional Relations is excepted under Schedule C.

Effective on July 5, 1973 § 213.3313(e)(6) is amended as set out below.

§ 213.3313 Department of Agriculture.

* * * * *

(c) *Office of the Under Secretary.* * * *

(6) Three Confidential Assistants to the Deputy Under Secretary for Congressional Relations.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

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

[F.R. Doc.73-13518 Filed 7-3-73;8:45 a.m.]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 73-901]

PART 545—OPERATIONS

Out-of-State Offices of Service Corporations

JUNE 27, 1973.

The Federal Home Loan Bank Board, in Document No. 73-437, dated March 20, 1973, proposed to amend Part 563 of the rules and regulations for Insurance of Accounts (12 CFR Part 563) by adding a new § 563.9-5 thereto for the purpose of prohibiting insured institutions from making or maintaining an investment in any service corporation or other legal entity which, through its own or a subsidiary's out-of-state office, conducted mortgage lending or servicing activities with respect to loans secured by real estate located outside of the State in which the principal office of such an insured institution was located. Notice of such proposed rule making was duly published in the FEDERAL REGISTER on March 27, 1973, (38 FR 8005) with an invitation for interested persons to submit written comments by April 30, 1973. As stated in said Document No. 73-437, the amendment to Part 563 was proposed "[i]n order to aid the Board in its determination as to whether service corporation lending activities through out-of-state offices is consistent with the safe and sound operation of insured institutions and with the provision of economical home financing for the nation".

On the basis of its consideration of all relevant material presented by interested persons and otherwise available, the Board hereby rejects said proposal and amends § 545.9-1 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.9-1) by revising paragraph (f) thereof to read as set forth below, and by revoking subparagraph (2) of paragraph (i) thereof, effective July 5, 1973.

Prior to the revocation of subparagraph (2) of paragraph (i) of said § 545.9-1 by this amendment, Federal associations were not permitted to invest in service corporations which maintained out-of-state offices or whose subsidiaries maintained such offices. Proposed new § 563.9-5 would have, in substance, extended the application this prohibition to all insured institutions. The revocation of said subparagraph (2) from paragraph (i) removes the prohibition on investment by Federal associations in service corporations which maintain such out-of-state offices. The comments received demonstrated that permitting both Federal and State-chartered associations to make and maintain prudent investments in service corporations having such out-of-state offices is desirable for competitive reasons.

Paragraph (f) of § 545.9-1 is revised by adding further restrictions to the name of a service corporation in order to ensure that the name or other designation of such a service corporation or any office or subsidiary of such a service corporation is not such as to cause it to be identified with any insured institution which has not invested in it. To accomplish this, the phrase "designation of any of whose subsidiaries or offices" and subparagraph (2) are added.

Since the subject and issues involved in the revocation of subparagraph (2) of paragraph (i) of § 545.9-1 were afforded public comment pursuant to proposed new § 563.9-5 and since such revocation relieves restriction, the Board hereby finds that further opportunity for public comment is unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b). The Board hereby finds that publication of this amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date thereof is unnecessary since it relieves restriction, and the Board hereby provides that said amendment shall become effective as hereinbefore set forth.

Since notice and public procedure on the amendment of paragraph (f) of § 545.9-1, by adding a new subparagraph (2) thereto, would delay it from becoming effective for a period of time and since it would be in the public interest that such an amendment become effective as soon as possible, the Board hereby finds that notice and public procedure thereon are contrary to the public interest under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b). The Board hereby finds that publication of the amendment to said paragraph (f) for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date thereof would be contrary to the public interest, and the Board hereby provides that the amendment to said paragraph (f) shall become effective as hereinbefore set forth.

§ 545.9-1 Service corporations.

* * * * *

(f) *Corporate name.* No Federal association may invest in, or retain any investment in, the capital stock, obligations, or other securities of any service corporation whose corporate name or the designation of any of whose subsidiaries or offices (1) includes the words "National", "Federal", or "United States" or the initials "U.S.", or (2) could identify it with any insured institution (as defined in § 561.1 of this chapter) which has not invested in it.

* * * * *

(i) *Limitation on activities.* * * *

(2) [Revoked]

* * * * *

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

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.
Assistant Secretary.

[FR Doc.73-13631 Filed 7-3-73;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Amdt. 12 (Rev. 4)]

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Financing of Disadvantaged Small Concerns

On February 15, 1973, the Small Business Administration ("SBA") published in the FEDERAL REGISTER (38 FR 4519) proposed amendments to 13 CFR Part

107 which would implement the Small Business Investment Act Amendments of 1972, P.L. 92-595, approved October 27, 1972, insofar as they pertain to small business investment companies (SBIC's) which limit their assistance to small concerns owned by disadvantaged persons.

Interested persons were invited to submit written comments on or before March 19, 1973. The comment period was subsequently extended to April 9, 1973 (38 FR 7577). After consideration of the comments received and other factors, SBA has decided to adopt the proposed amendments with certain modifications, as set forth below.

Information. As adopted, the amendments make abbreviating and clarifying changes to the proposed regulations which are not intended to change their substance, and the following substantial changes:

1. A definition of the term "Leverage" has been added denoting financial assistance from SBA.

2. The definition of "Section 301(d) Licensee" has been shortened. Section 301(d) Licensees must comply with all regulations governing Licensees in general, except where special provisions apply to them. For special provisions applying only to Section 301(d) Licensees, see, for example §§ 107.101(c) (1), (2) and (3); 107.101(d)(2); 107.202(a)(2) and (c); 107.205; 107.301(c)(4); 107.702; 107.805(a), third proviso; 107.813; 107.1001(g); and 107.1002(d), §§ 107.301 (a), proviso; 107.812; and 107.1001(a), first proviso are also of special interest to Section 301(d) Licensees.

3. The regulation concerning the use of nonprivate funds to capitalize a Section 301(d) Licensee has been made prospective only, so that existing Section 301 (d) Licensees capitalized with nonprivate funds will be eligible for SBA Leverage if such nonprivate funds were irrevocably committed before the effective date of these amendments. Also, Treasury Regulations governing leverage for "revenue sharing" funds, published April 10, 1973, have been taken into account.

4. § 107.202(a) is amended to differentiate between the Venture Capital ratio required of Licensees other than Section 301(d) Licensees (65 percent), and Section 301(d) Licensees (30 percent). A conforming amendment has been made to § 107.202(c). Proposed § 107.202(d) could thus be eliminated.

5. Proposed §§ 107.205 and 107.206, dealing with preferred securities and debentures, respectively, have been consolidated into one new § 107.205 dealing with all forms of Leverage. The charter requirements, which will apply to Section 301(d) Licensees irrespective of the form of Leverage employed, have been changed.

(a) To give existing Section 301(d) Licensees 90 days from [the effective date of these amendments] to include the investment policy described in Section 301(d) of the Act in their charter;

(b) To eliminate, as an SBA regulatory requirement, the charter provision concerning "Classes of Stock", since the subject is adequately covered in the several State corporation statutes;

(c) To combine the provision for cumulative preferred 3 percent dividends with the requirement, at SBA's option, for repayment of the dividend subsidy (i.e. the difference between dividends paid, and what would have been payable under the 15-year debenture formula of Section 303(b) of the Act), before any distribution other than to SBA;

(d) To relate the Licensee's right to redeem SBA's preferred securities to its obligations to pay dividends to SBA;

(e) To redefine SBA's priority rights as preferred securities holder, to make clear that a Section 301(d) Licensee need not redeem SBA's preferred securities before paying regular dividends to others than SBA, but that such securities must be redeemed, the interest subsidy (i.e. the difference between the interest rate reduced by Section 317 of the Act, and the interest rate prescribed by Section 303(b) of the Act), and, at SBA's option, the dividend subsidy must be repaid, before any nondividend distributions to stockholders other than SBA;

(f) To eliminate the limitation on debt, while retaining the requirement of SBA approval for distributions of assets, and salary increases. The provision concerning repayment of the interest subsidy proposed as § 107.206(b), is now § 107.205(c).

6. Section 107.702 has been divided into subsections and paragraphs for clarity, but the substance remains unchanged.

7. The amendment to present § 107.805 has been reworded to authorize the issuance of stock by a Section 301(d) Licensee for portfolio securities of another SBIC, under certain conditions and within limits.

8. The provision for Section 301(d) Licensee formation by regular SBIC's has been recaptioned and changed to make clear that the capital contribution by a parent-SBIC to a subsidiary Section 301(d) Licensee may not result in excess Leverage for the parent-SBIC.

9. The foregoing change has made possible the deletion of the restriction on capital contributions by Licensees whose debentures were guaranteed by SBA after 1970 (i.e. debentures without right of prepayment).

10. The amendments to interpretative §§ 107.1403 and 107.1404 have been eliminated, since forthcoming Revision 5 will not include such regulations.

11. The information section of the notice of proposed rulemaking, 38 FR 4520, stated that forthcoming Revision 5 would repeal the maximum investment ("overline") exception [§ 107.301(c)(4)], and the capital impairment exception [§ 107.1002(d)] for Section 301(d) Licensees (therein called MESBIC's). In the light of comments received it was decided not to repeal these provisions at this time.

Effective date. In view of the determination made that it is in the public interest that these amendments be applied promptly to the Small Business Investment Company program, they shall become effective on July 5, 1973.

Pursuant to authority contained in section 308(c) of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 687(c), Part 107 of Chapter I of Title 13 of the Code of Federal Regulations (revised as of January 1, 1973) is hereby amended as follows:

1. By amending the definition of "Debtor Licensee" in § 107.3;

* * * * *

2. By adding to § 107.3, immediately after the definition of "Investment Adviser", a new paragraph captioned "Leverage";

3. By amending the definition of "*Minority Enterprise Small Business Investment Company (MESBIC)*," in § 107.3;

4. By adding to § 107.3, immediately after the definition of "Real estate investment", a new paragraph captioned "Section 301(d) Licensee", to read as set forth below:

§ 107.3 Definition of terms.

* * * * *

Debtor Licensee. "Debtor Licensee" means a Licensee which has Leverage from SBA.

* * * * *

Leverage. "Leverage" means financial assistance provided to a Licensee by SBA, either through the purchase or guaranty of debentures, or through the purchase of preferred securities (see §§ 107.201 to 107.205).

* * * * *

"Minority Enterprise Small Business Investment Company (MESBIC)." Wherever in this part the term MESBIC appears, it shall be deemed to refer to a Section 301(d) Licensee.

* * * * *

Section 301(d) Licensee. "Section 301 (d) Licensee" means a Licensee organized under a State business or nonprofit corporation statute, and licensed pursuant to Section 301(d) of the Act, investment policy of which is limited to making investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

* * * * *

5. By redesignating paragraph (d) of § 107.101 as paragraph (d)(1) and adding a new paragraph (d)(2) that reads as follows:

§ 107.101 Operational requirements.

* * * * *

(d)(1) *Minimum capital.* * * *

(2) *Nonprivate funds for Section 301 (d) Licensees.* (i) A Section 301(d) Licensee may include funds granted under Title VII of the Economic Opportunity Act of 1964, as amended, or other nonprivate funds, in its combined private paid-in capital and paid-in surplus for

purposes of Sections 302(a), 303(c) and 306 of the Act: *Provided, however,* (A) That the minimum capital of $150,000 specified by Section 302(a)(1) of the Act may not include such funds and, (B) That for leverage purposes such funds may be included in the combined paid-in capital and paid-in surplus in excess of such $150,000 only to the extent that an additional amount of at least ten percent (10%) of such funds is also included which does not consist of nonprivate funds. The limitation of the foregoing proviso shall not apply to nonprivate funds received by or irrevocably committed to a Section 301(d) Licensee before [July 5, 1973].

(ii) For purposes of this subsection, "nonprivate funds" shall mean funds obtained, directly or indirectly, from an agency or department of the Federal Government or from any State, or subdivision thereof, except as limited by P.L. 92-512 (commonly known as the General Revenue Sharing Act) and regulations of the Treasury Department, 31 CFR Pt. 51, 38 FR 9132 (1973). As used herein, "State" shall mean the several states, the territories and possessions of the United States, the Commonwealth of Puerto Rico and the District of Columbia.

6. By amending § 107.202 so that it reads as follows:

§ 107.202 Leverage in excess of 200 percent.

(a) *General.* (1) *Licensees other than Section 301(d) Licensees.* In order to qualify for Leverage exceeding 200 percent of combined paid-in capital and paid-in surplus pursuant to section 303(b)(2) of the Act, at least 65 percent of the Licensee's total funds available for investment must be invested or committed in Venture Capital financing of small concerns.

(2) *Section 301(d) Licensees.* In order to qualify for Leverage exceeding 200 percent of combined paid-in capital and paid-in surplus pursuant to sections 303(c)(2)(iii) and 303(c)(4) of the Act, at least 30 percent of the section 301(d) Licensee's total funds available for investment must be invested or committed in Venture Capital financing of small concerns.

* * * * *

(c) *Maintenance of Venture Capital ratio.* Any Licensee which has received Leverage pursuant to paragraph (a) of this section shall maintain at least the ratio prescribed for it by paragraph (a)(1) or (2) of this section as of the end of each of its fiscal years: *Provided, however,* That subject to SBA approval, a Licensee may temporarily maintain a lesser ratio. Approval may be granted to the extent necessary in appropriate cases, including prepayments of Venture Capital investments, raising of additional private capital, and Leverage recently provided.

7. By amending § 107.203(a) so that it reads as follows:

§ 107.203 SBA purchase, sale, or guaranty of securities evidencing Leverage, and events of default.

(a) SBA may, upon such conditions and for such consideration as it deems reasonable, sell, assign, transfer, or otherwise dispose of any preferred security, debenture, or other evidence of debt or security held in connection with Leverage provided to a Licensee. In such event and upon notice thereof by SBA, Licensee will make all payments of principal and of dividends or interest as shall be directed by SBA. Licensee shall hold SBA harmless from all damage or loss which SBA may sustain by reason of such disposal, limited, however, to the extent of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

* * * * *

8. By amending § 107.204 so that it reads as follows:

§ 107.204 Collection or compromise of claims relating to Licensee's Leverage.

SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all legal and equitable rights relating to Leverage provided to a Licensee.

9. By adding immediately after § 107.204, new § 107.205 to read as follows:

§ 107.205 Leverage for section 301(d) Licensees.

(a) *General.* Section 303(c) of the Act authorizes SBA to purchase nonvoting preferred securities, and to purchase or guarantee debentures issued by section 301(d) Licensees, which may be subordinated in accordance with section 303(b) of the Act. Application for such purchases shall be made on SBA Form 1022A[1] (for purchase of preferred securities and debentures), on SBA Form 1022B[1] (for exchange of debentures for preferred securities), or on SBA Form 1022[1] (for guaranty of debentures) in accordance with accompanying instructions. Before providing Leverage in excess of 100 percent of combined private paid-in capital and paid-in surplus, SBA may require the Licensee to demonstrate the need for such Leverage to SBA's satisfaction.

(b) *Conditions of Leverage.* SBA may, in its discretion, purchase shares of nonvoting preferred securities, or purchase or guarantee debentures issued by a section 301(d) Licensee, pursuant to section 303(c) of the Act, and subject to the conditions prescribed in this paragraph. The matters set forth below shall be appropriately provided for in the charter:

(1) *Investment policy.* Statement of investment policy in conformity with section 301(d) of the Act. A Section 301(d) Licensee licensed before [July 5, 1973] shall comply with this requirement no later than 90 days from such date.

(2) *Payment of dividends to SBA.* Subject to the sound discretion of the board of directors, SBA shall be paid an annual dividend from retained earnings equivalent to three (3) percent of par value of its preferred securities. Such dividends shall be payable before any amount shall be set aside or paid to any other class of stock, and shall be preferred and cumulative so that, in the event retained earnings in any fiscal year are insufficient to pay said dividends to SBA, they shall be payable on a preferred basis from subsequent retained earnings to the extent of such deficiency, without interest thereon. Before a declaration of dividends or any other kind of distribution (other than to SBA), SBA in its discretion may also require the preferred payment of the difference between dividends paid on its preferred securities, and cumulative dividends payable at a rate equal to the interest rate determined at the time of SBA's purchase of such preferred securities pursuant to section 303(b) of the Act for debentures with a term of fifteen years, without interest on such difference, such rate to be inscribed on the certificates offered to SBA.

(3) *Redemption rights.* A section 301(d) Licensee shall be entitled at its option to redeem in whole or in part preferred securities purchased by SBA on any dividend date (after giving at least thirty (30) days' written notice), by paying SBA the par value of such securities, but not less than $50,000 par value in any one transaction, and giving SBA an undertaking to pay the additional amounts which SBA may require pursuant to paragraph (b)(2) of this section.

(4) *SBA's priority rights in event of redemption, liquidation, or distribution of assets to other stockholders.* On or before redemption in whole or part of any class of stock not purchased by SBA, or liquidation in whole or part, or any distribution of assets which is not a dividend paid out of retained earnings (to stockholders other than SBA), SBA shall be entitled to preferred payment in full of (i) the par value of its preferred securities; (ii) any amounts due pursuant to paragraph (b)(2) of this section; and (iii) any amounts due pursuant to subsection (c) of this section.

(5) *SBA approval required to distribute assets to other stockholders or increase salaries.* Without prior written SBA approval, a Section 301(d) Licensee may not (i) make a distribution to stockholders other than SBA except for dividends paid out of retained earnings; or (ii) increase the salaries or other compensation of any officer, director, or employee beyond amount previously approved by SBA.

(6) *Prior SBA approval required to amend charter.* The charter shall not be amended for any purpose without SBA's prior written approval.

(c) *Interest subsidy.* A Section 301(d) Licensee applying for SBA purchase of its debentures shall be entitled to a reduced interest rate according to Section 317 of the Act. Such debentures shall specify the interest rates prescribed by

[1] Forms filed as part of the original document.

Sections 317 and 303(b) of the Act, together with the dates between which each applies. With respect to payment of such interest, SBA shall have the same priority as applies to debentures purchased or guaranteed by SBA under Section 303(b) of the Act. The interest rate as reduced by Section 317 of the Act applies only to debentures purchased by SBA, and does not apply to debentures guaranteed by it under Section 303(c) of the Act. A Licensee which has received the benefit of the rate computed pursuant to Section 317 shall not pay dividends or make any other distribution (other than to SBA), unless it has first paid SBA the difference between the two rates for the relevant period, without interest on such difference.

(d) *Exchange of outstanding debentures for preferred stock.* A Section 301(d) Licensee meeting the requirements of paragraph (b) of this section may, in SBA's discretion, retire debentures outstanding pursuant to Section 303(b) of the Act simultaneously with the issuance to SBA of preferred securities, in order to remain within the Leverage limits of Section 303(c)(2)(iii) of the Act, but not otherwise.

(e) *Preferred securities other than stock.* A Section 301(d) Licensee may issue to SBA preferred securities other than stock only if applicable law precludes the issuance of preferred stock.

(f) *State law.* SBA does not intend that provisions of this section not mandated by the Act shall supersede existing State law. Whenever a party claims that a conflict exists, it shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

10. By amending § 107.702 so that it reads as follows:

§ 107.702 Common control.

A Licensee shall not have:

(a) An officer or director who at the same time is:

(1) An officer or director of any other licensee (except a common manager approved in advance by SBA in writing), or,

(2) An officer or director of any person which directly or indirectly controls, or is controlled by, or is under common control with, another Licensee, nor

(b) Any stockholder owning or controlling, directly or indirectly, 10 or more percent of any Licensee's stock, if such stockholder:

(1) Is an officer or director of another Licensee or,

(2) Owns or controls, directly or indirectly, 10 or more percent of the stock of another Licensee:

Provided, however, That officerships or directorships in, or ownership or control of stock of, a Section 301(d) Licensee shall be excepted from the foregoing provisions.

11. By amending the caption of § 107.805(a) and by (1) substituting a colon for the period at the end of the second proviso and (2) adding immediately thereafter a third proviso, so that it reads as follows:

§ 107.805 Consideration for issuance of Licensee securities.

(a) *General.* * * *: *And provided,* also, That a Section 301(d) Licensee which has received portfolio securities from a participant Licensee pursuant to § 107.813(e), may issue stock for such securities at their cost or fair market value, whichever is lower.

12. By amending § 107.813 so that it reads as follows:

§ 107.813 Section 301(d) Licensee wholly or partly owned by Licensee companies.

(a) *General.* A Section 301(d) Licensee may be licensed to operate as the wholly or partly owned subsidiary of one or more Licensee companies ("participant Licensee"), with or without non-Licensee participation, subject to the following conditions:

(b) *Application.* In reviewing a license application which includes one or more participant Licensees as proposed stockholders, SBA will consider the effect of their capital contribution to the proposed Section 301(d) Licensee: *Provided, however,* That (1) such capital contribution shall, for purposes of the participant Licensee's Leverage, be treated as a reduction of its capital, and (2) no such contribution may result in excess leverage for a participant Licensee.

(c) *Participant Licensees.* Each participant Licensee shall own at least 20 percent of the voting securities of the proposed Section 301(d) Licensee, and such ownership shall constitute a presumption of active participation. Licensees proposing to own less than 20 percent of such voting securities may demonstrate to SBA's satisfaction that they will be active participants.

(d) *Capital contribution.* The capital contribution of a participant Licensee which is not part of the statutory minimum capital of $150,000, may be represented, in whole or in part, by securities of small concerns eligible for investment by a Section 301(d) Licensee, at cost or fair market value, whichever is lower. (See § 107.805(a), third proviso.) Assumption by the proposed Section 301(d) Licensee of such participant Licensee's indebtedness held or guaranteed by SBA, in whole or in part, will not be permitted.

13. By amending § 107.1001(b) so that it reads as follows:

§ 107.1001 Prohibited uses of funds.

No funds may be provided by Licensee for:

* * * * *

(b) *Financing Licensees.* Use by a small concern, directly or indirectly, to purchase stock in or otherwise to provide capital for a Licensee, or to repay an indebtedness to accomplish such purpose.

Dated: June 28, 1973.

ANTHONY G. CHASE,
Acting Administrator.

[FR Doc.73-13562 Filed 7-3-73;8:45 am]

[Amdt. 3]

PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

Miscellaneous Amendments

On December 9, 1971, there was published in the FEDERAL REGISTER (36 FR 23400) a notice that the Small Business Administration proposed to change its procedures involving nondiscrimination in Financial Assistance Programs by amending 13 CFR Part 113. Interested parties were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed amendment.

The amendment reflects parallel changes proposed for Part 112, Code of Federal Regulations effectuating Title VI of the Civil Rights Act of 1964.

Part 113 of Chapter 1 of Title 13 CFR is hereby amended by:

1. Adding the following paragraph (c) to § 113.3:

§ 113.3 Discrimination prohibited.

* * * * *

(c) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of this regulation.

2. Revising § 113.5(d) thereof to read as follows:

§ 113.5 Compliance information.

* * * * *

(d) *Information to the public.* Each recipient shall make available to persons entitled under this part to protection against discrimination by the recipient such information as SBA may find necessary to apprise them of their rights to such protection.

(1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under § 113.3(c) to provide information as to the availability of equal opportunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal

opportunity fully available to racial and nationality groups previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial or nationality groups. In such circumstances a recipient may properly give special consideration to race, color, or national origin to make the opportunities more widely available to such groups.

3. Revising § 113.6(b) thereof to read as follows:

§ 113.6 Conduct of investigations.

* * * * *

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may, by himself or by a representative, file with SBA a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by SBA.

* * * * *

4. Revising § 113.7(d) thereof to read as follows:

§ 113.7 Procedure for effecting compliance.

* * * * *

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until:

(1) SBA has determined that compliance cannot be secured by voluntary means.

(2) The action has been approved by the Administrator or his designee.

(3) The applicant or recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

(4) The expiration of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the applicant or recipient or other person to comply with this part and to take such corrective action as may be appropriate.

5. Revising § 113.8(d)(1) thereof to read as follows:

§ 113.8 Hearings.

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing, decision and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554 through 557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules or procedures as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, request for findings and other related matters. Both SBA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

* * * * *

6. Adding to § 113.9 the following paragraph (f):

§ 113.9 Decisions and notices.

* * * * *

(f) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the Administrator to restore fully its eligbility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the Administrator determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Administrator denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Administrator. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

7. Revising § 113.10(a) and (c) thereof to read as follows:

§ 113.10 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders or like directions heretofore issued by SBA which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color or national origin and which authorize the suspension or termination of a refusal to grant to or to continue financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction or like direction prior to the effective date of this part.

* * * * *

(c) *Supervision and coordination.* The Administrator may from time-to-time assign to officials of SBA or to officials of other agencies of the Government, with the consent of such agencies, responsibilities in connection with the effectuation of the purposes of this part (other than responsibility for first decisions as provided in § 113.9) including the achievement of effective coordination and maximum uniformity within SBA and within the executive branch of the Government in the application of this part and of comparable regulations issued by other agencies of the Government to similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Administrator of SBA.

Effective Date: July 5, 1973.

Dated: February 9, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-13514 Filed 7-3-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 12574; Amdt. No. 103-17]

PART 103—TRANSPORTATION OF DANGEROUS ARTICLES AND MAGNETIZED MATERIALS

Carriage of Radioactive and Other Hazardous Materials

The purpose of these amendments to Part 103 of the Federal Aviation Regulations is to specifically set forth the manner in which the distribution of packages of radioactive materials being transported in aircraft may be considered in determining the distance the packages must be kept from a space that is occupied by a person or an animal, to ensure that articles subject to Part 103 are adequately safeguarded to prevent their becoming a hazard by shifting and to assure their inaccessibility to anyone but crewmembers.

These amendments are based on a notice of proposed rulemaking (Notice 73-7) published in the FEDERAL REGISTER on March 12, 1973 (38 FR 6690). Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all comments received in response to that Notice. Except as specifically discussed hereinafter, these amendments and the reasons therefor are the same as those contained in Notice 73-7. Fourteen public comments were received in response to the Notice. Comments were also received from the United States Atomic Energy Commission (USAEC), the Department of Transportation's Office of Hazardous Materials (OHM) and the National Transportation Safety Board. Representatives of the

USAEC and OHM have met with FAA personnel and furnished extensive advice and technical guidance with respect to the regulation adopted herein.

The regulation as adopted differs from what was proposed in the Notice in regard to the distance required between packages in cases where the procedure for controlled distribution as described in § 103.23(b) is being employed. This change came about as the result of further study of levels of radiation that result from one package being placed in close proximity to another. The FAA realizes that there is a modest increase in the level of radiation when two packages are so placed; however, it has been advised by the USAEC that the increase in the level of radiation that occurs as a result of placement of packages the distance from each other that was required by the proposed rule can be virtually eliminated by separating the packages a distance calculated by increasing the basic distance by a factor of three. Accordingly, the regulation adopted herein is different from that proposed in Notice 73–7 with respect to the distance required between packages in cases where the distance between a package and a space occupied by persons is adjusted on the basis of the fact that the packages are separated from each other. Table II has been added to § 103.23(a) containing minimum distances in feet suitable for separation between one package and another; however, each distance is three times greater than the distance proposed in the Notice. In this way, the increase in the level of radiation caused by the mere proximity of two or more packages to each other is virtually eliminated.

Four of the public comments received in response to the Notice indicated that studies have shown that there are increases in levels of radiation when packages are separated from each other by the minimum distance proposed in the Notice. Since the regulation adopted herein requires increased spacing between packages equal to three times that proposed, and since the USAEC has assured the FAA that this increased separation distance between packages will eliminate any increase in the level of radiation caused by packages being too close to each other, these comments have been answered satisfactorily.

The Air Line Pilots Association's Hazardous Materials Subcommittee opposed the change proposed in the Notice, since it believes that there will be an increase in the level of exposure to both passengers and crewmembers. In this regard, the USAEC has assured the FAA that the one factor discussed above in some detail, that is, the cumulative effect of spacing packages in too close proximity to each other, can be virtually eliminated by the tripling of the horizonatal distances required between packages by the Notice. Accordingy, with this additional safety factor the FAA believes that the level of radiation that will be created by the placement of packages in accordance with the regulation as adopted herein will eliminate any significant increase in the level now believed reasonably conservative.

With respect to the recommendation of one commentator that increased shielding of individual packages be employed to reduce external radiation, it is to be noted that, since the transport index on any package of radioactive materials is based on the radiation dose rate in terms of millirem per hour, a reduction in the transport index of any package by increased shielding would merely result in an increase in the number of packages that could be carried. Since the FAA believes that the regulations adopted herein provide an adequate level of safety and, since it also believes that the regulations of the Hazardous Materials Regulations Board (49 CFR Part 170 et seq.) provide shielding sufficient to confine radioactive materials at the levels indicated when properly marked, it does not believe that increased shielding is necessary.

One commentator, the Society of Nuclear Medicine, represents more than 4,000 physicians in research, clinical practice and medical education; scientists in the fields of physics, electronics, engineering, chemistry and pharmacy, as well as technical personnel. That commentator urged the adoption of the amendment and stated that the uninterrupted flow of short-lived radioactive drugs is absolutely essential to effective medical practice throughout the United States. Comment from the Society pointed out that about five million patients received radioactive materials for diagnostic purposes in 1972. To keep the radiation dose to the patient as low as possible, short-lived isotopes must be used. If these short-lived substances were shipped exclusively on cargo-only aircraft, only 100 airport communities across the United States would be served. Of these airports, only 22 have freight service over the weekend. Because these radioactive pharmaceuticals are presently carried on passenger-carrying aircraft, a total of 550 airports are now being used in their delivery.

The Air Transportation Association of America suggested a number of clarifying changes to the wording of the regulation. One suggestion, that the minimum distance column of the table of distances in § 103.23(a) be relabeled to add "and to other packages" is no longer necessary, since the distance between packages will now be determined by using Table II. A second suggestion, that the term "radioactive materials" in § 103.31 be further delineated to read "radioactive yellow II and radioactive yellow III" has been incorporated into the section, since those are the only two classes of radioactive materials affected by § 103.23. A third clarification, that it be made clear that the transport index of any group of packages is the sum of the individual transport index numbers, has also been incorporated in the regulation adopted herein. A final suggestion, that the word "secured" in § 103.31(e) be replaced since it connotes physical tiedown, has resulted in a substitution of the words "safeguarded" and "safeguards", since these terms are consistent with those used in Part 121 of the Federal Aviation Regulations concerning cargo control.

Noting the requirement in § 103.31(f) that hazardous materials must be inaccessible to persons other than crewmembers, one commentator observed that this requirement would in effect ban their carriage on single-level passenger-carrying aircraft such as the FH–227, F–27 and the YH–11. The FAA recognizes that the regulation as adopted will have such an effect. Nevertheless, in the interest of safety, the FAA believes that hazardous materials should not be carried in areas in passenger-carrying aircraft that are accessible to persons other than crewmembers during flight.

The FAA will continue its surveillance of the transportation of radioactive materials by air and, as in other areas relating to safety in air commerce, will initiate additional rule-making action at any time available information indicates such action is necessary in the interest of safety.

Accordingly, since the FAA has established that an adequate level of safety is provided by the regulations adopted herein, and, since the carriage of radioactive pharmaceuticals on passenger-carrying aircraft supports the needs of effective medical treatment throughout the United States, it has concluded that the regulations adopted herein are in the public interest and will not adversely affect the safety of persons aboard aircraft.

The U.S. District Court for the District of Columbia stayed for a period of 30 days the effective date of its Order dated June 12, 1973, concerning § 103.23(a) to to permit the agency to complete this rule making action and adopt a final rule. Therefore, I find that good cause exists for making this amendment effective on less than 30 days' notice.

(Secs. 313(a), 601, 604, 902, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1424, and 1472; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

In consideration of the foregoing, Part 103 of the Federal Aviation Regulations is amended, effective July 11, 1973, as follows:

1. By amending § 103.23 to read as follows:

§ 103.23 Special requirements for radioactive materials.

(a) No person may place a package labeled "radioactive yellow, II" or "radioactive yellow III" in an aircraft closer to a space that is occupied by a person or by an animal or a package containing undeveloped film (if so marked), than the minimum distance prescribed in table I of this paragraph. The distance is measured from the package surface nearest the compartment occupied by a person or an animal to the inside limiting surface of the compartment, that is, the surface nearest the space occupied by a person or an animal. If more

than one package of radioactive materials is aboard an aircraft, the minimum separation distance for each individual package may be determined either from the following table on the basis of the sum of the transport index numbers shown on the labels of each of the individual packages in the aircraft or in accordance with paragraph (b) of this section.

TABLE I

Total transport index	Minimum distance in feet to area of persons or animals	Minimum separation distances in feet to nearest undeveloped film for various times of transit				
		Up to 2 hours	2-4 hours	4-8 hours	8-12 hours	Over 12 hours
None	0	0	0	0	0	0
0.1 to 1.0	1	1	2	3	4	5
1.1 to 5.0	2	3	4	6	8	11
5.1 to 10.0	3	4	6	9	11	15
10.1 to 20.0	4	5	8	12	16	22
20.1 to 30.0	5	7	10	15	20	29
30.1 to 40.0	6	8	11	17	22	33
40.1 to 50.0	7	9	12	19	24	36

Table II

Total transport index	Minimum distance in feet between packages or groups of packages if the procedure for controlled distribution is used
None	0
0.1 to 1.0	3
1.1 to 5.0	6
5.1 to 10.0	9
10.1 to 20.0	12
20.1 to 30.0	15
30.1 to 40.0	18
40.1 to 50.0	21

(b) When an individual package of radioactive material is separated from each other such package by at least the minimum distance prescribed in Table II in paragraph (a) of this section for the package having the largest transport index, the minimum distance to a space occupied by persons or animals may be determined from Table I in paragraph (a) of this section solely on the basis of the transport index shown on the label of that package. When individual packages of radioactive materials are grouped together, the transport index of the group (the sum of the transport index numbers shown on the labels of each of the individual packages), and the appropriate separation distance of each group may be determined as for an individual package.

(c) In addition to the reporting requirements of § 103.28, the carrier shall also notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving radioactive materials shipments. Aircraft in which radioactive materials have been spilled may not be again placed in service or routinely occupied until the radiation dose-rate at any accessible surface is less than 0.5 millirem per hour and there is no significant removable radioactive surface contamination (see 49 CFR 173.397). In these instances, the package or materials should be segregated as far as practicable from personnel contact. If radiological advice or assistance is needed, the U.S. Atomic Energy Commission should also be notified. In case of obvious leakage, or if it appears likely that the inside container may have been damaged, care should be taken to avoid inhalation, ingestion, or contact with the radioactive materials. Any loose radioactive materials should be left in a segregated area pending disposal instructions from qualified persons.

2. By adding new paragraphs (e) and (f) to § 103.31 to read as follows:

§ 103.31 Cargo location.

* * * * *

(e) No person may carry articles subject to the requirements of this part in an aircraft unless they are suitably safeguarded to prevent their becoming a hazard by shifting. For packages labeled "radioactive yellow II" or "radioactive yellow III", such safeguards must prevent movement that would permit the package to be closer to a space that is occupied by a person or an animal, or to other packages or groups of packages than is permitted by § 103.23.

(f) No person may carry an article subject to the requirements of this part that is acceptable for carriage in a passenger-carrying aircraft unless it is located in the aircraft in a place that is inaccessible to persons other than crewmembers.

Issued in Washington, D.C., on June 28, 1973.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.73-13646 Filed 7-3-73;8:45 am]

Title 17—Commodity and Securities Exchange

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-385]

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Revision of Fee Schedule for Investment Advisers

The Securities and Exchange Commission announced today that it has adopted an amendment to Rule 203-3 (Fee Schedule) [17 CFR 275.203-3] under the Investment Advisers Act of 1940. One purpose of the amendment is to comply with the Congressional mandate that Federal agencies review their fee schedules and charges with a view to making increases or adjustments to offset the increasing direct appropriations for agency operating costs. (See S. Rep. No. 1375, 90th Cong., 2d Sess., 3, (1968)). Another purpose of the proposed amendment is to make the fee schedule for investment advisers more equitable to registrants. The proposal to adopt this amendment was set forth in Investment Advisers Act Release No. 369 which was issued on April 6, 1973.

The newly adopted amendment provides that any investment adviser who files a notice of withdrawal on or before June 30 of any year shall be required to pay one half (or $50) of the annual assessment before such withdrawal is permitted to become effective. The newly adopted amendment provides also that any investment adviser who files a notice of withdrawal on or after July 1, of any year must pay the full annual assessment ($100) before he will be permitted to withdraw. Further, the amended rule provides a $100 late payment fee for failing to pay the full annual assessment when and as required.

Comments directed to the Commission on the proposal to amend Rule 203-3 asked that the Commission remind registrants of the amount and due date of such assessment by sending such registrants an "invoice", "bill" or other "notice" in advance of the deadline for paying the assessment.

In light of such comments, the Commission will send all registrants a reminder of the requirement to pay an assessment approximately 30 days in advance of the January 31, deadline for paying such assessments. The Commission reiterates, however, that each registrant has the responsibility of paying all fees and assessments when and as required, whether or not he receives a reminder or notice from the Commission. Appropriate enforcement action will be taken for failure to pay such fees and assessments.

The following is the text of Rule 203-3 before Amendment as it was adopted on January 25, 1972, effective on March 1, 1972 in Release IA-306, 37 FR 1473:

Section 275.203-3. *Fees for registration and applicants.* (a) At the time of filing by an investment adviser of an application for registration under the Act, the applicant shall pay to the Commission a fee of $150, no part of which shall be refunded.

(b) Every registered investment adviser shall pay a $100 assessment to the Commission while its registration is effective. Such assessment must be paid by each registrant by January 31 of the year following the end of the calendar year in which the investment adviser has been registered: *Provided, however,* For the year 1971 the fee shall be paid not later than April 1, 1972. No part of this assessment will be refunded.

(c) All payments of fees shall be made in cash, certified check, personal check or by United States Postal Money Orders, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name and title of any official of the Commission.

Pursuant to the authority in Sections 203, 204 and 211 of the Investment Advisers Act of 1940 and in Title V of the

Independent Offices Appropriation Act, 1952, the Securities and Exchange Commission hereby amends § 275.203–3 of Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

§ 275.203–3. Fees for registrants and applicants.

(a) At the time of filing by an investment adviser of an application for registration under the Act, the applicant shall pay to the Commission a fee of $150, no part of which shall be refunded.

(b) Every registered investment adviser shall pay a $100 assessment annually to the Commission while its registration is effective. Such assessment must be paid by each registrant by January 31 of the year following the end of the calendar year in which the investment adviser has been registered: *Provided, however,* For the year 1971 the fee shall be paid not later than April 1, 1972. No part of this assessment will be refunded.

(c) Any registered investment adviser who files a notice of withdrawal on or before June 30 of any year shall pay one half ($50) of the annual assessment to the Commission before such notice of withdrawal becomes effective. No part of such assessment shall be refunded.

(d) Any registered investment adviser who files a notice of withdrawal on or after July 1, of any year shall pay the full annual assessment ($100) to the Commission before such notice of withdrawal becomes effective. No part of this assessment shall be refunded.

(e) Every registered investment adviser who fails to pay an assessment as and when required by this rule shall pay a late payment fee of $100 to defray the administrative costs incurred as a result of such failure.

(f) All payments of fees shall be made in cash, certified check, personal check or by United States Postal Money Orders, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name and title of any official of the Commission.

(Secs. 203, 211, 54 Stat. 850, 855, secs. 2–5, 13, 74 Stat. 885, 887, sec. 24, 84 Stat. 1430, 15 U.S.C. 80b–3, 80b–11; sec. 501, 65 Stat. 290, 31 U.S.C. 483a)

The foregoing action was taken pursuant to Title V of the Independent Offices Appropriations Act, 1952, and Sections 203, 204 and 211 of the Investment Advisers Act of 1940. The amendments to Rule 203–3 will take effect on September 1, 1973 and apply to all fees and assessments due on or after that date.

By the Commission.

[SEAL] SHIRLEY E. HOLLIS,
Recording Secretary.

[FR Doc.73–13597 Filed 7–3–73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Thiabendazole

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (15–875V) filed by Merck Sharp and Dohme Research Laboratories, Division of Merck and Co., Inc., Rahway, NJ 07065, proposing additional claims for use of thiabendazole in animal feed. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)), and under authority delegated to the Commissioner (21 CFR 2.120), § 135e.26(g) is amended in the table in the "Indications for use" column by revising the text for items 1, 2, and 3 to read as follows:

§ 135c.26 Thiabendazole.

* * * * *

(g) *Conditions of use.*

Principal ingredient	Amount	Limitations	Indications for use
1. Thiabendazole	* * *	* * *	Control of infections of gastrointestinal roundworms (genera *Trichostrongylus spp., Haemonchus spp., Ostertagia spp., Nematodirus spp., Oesophagostomum radiatum*).
2. Thiabendazole	* * *	* * *	Control of severe infections of gastrointestinal roundworms (genera *Trichostrongylus spp., Haemonchus spp., Ostertagia spp., Nematodirus spp., Oesophagostomum radiatum*); control of infections of *Cooperia* species.
3. Thiabendazole	* * *	* * *	Control of infections of gastrointestinal roundworms (genera *Trichostrongylus spp., Haemonchus spp., Ostertagia spp., Cooperia spp.; Nematodirus spp., Bunostomum spp., Strongyloides spp., Chabertia spp.*, and *Oesophagostomum spp.*); also active against ova and larvae passed by sheep from 3 hours to 3 days after the feed is consumed (good activity against ova and larvae of *T. colubriformis* and *axei, Ostertagia spp., Bunostomum spp., Nematodirus spp., Strongyloides spp.*; less effective against those of *Haemonchus contortus* and *Oesophagostomum spp.*).
* * *	* * *	* * *	* * *

Effective date. This order shall be effective July 5, 1973.

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

Dated: June 27, 1973.

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

[FR Doc.73–13399 Filed 7–3–73;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Maryland Plan

1. *Background.* Part 1902 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) whereby the several States may submit for approval, under the requirements of that section, plans to assume responsibility for the development and enforcement of State occupational safety and health standards.

The State of Maryland submitted a plan pursuant to Part 1902, requesting approval of the plan by the Assistant Secretary for Occupational Safety and Health to the Regional Administrator, December 8, 1972. On January 8, 1973, the plan was formally submitted to the Assistant Secretary, and on January 22, 1973, a notice was published in the FEDERAL REGISTER (38 FR 2189) concerning the submission of the plan and the fact that the question of its approval was in issue before the Assistant Secretary. The plan includes provisions for making changes in the State's current occupational safety and health program that appear necessary to bring it into full conformity with the requirements of section 18(c) of the Act and 29 CFR Part 1902.

The Division of Labor and Industry in the Department of Licensing and Regulation is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues on the basis of Major Groups in the Standard Industrial Classification (SIC) Manual of the Office of Management and Budget of the Executive Office of the President. The Commissioner of the Division of Labor and Industry promulgated the Federal standards existing as of February 2, 1973. These standards were effective in Maryland as of March 8, 1973, and they will be enforced according to current State legislative authority before the effective date of Maryland's enabling legislation, July 1, 1973. The State will also adopt those portions of Federal Standards applicable to ship repairing, shipbuilding, shipbreaking and longshoring except where prohibited by exclusive Federal maritime jurisdiction. Subsequent revisions to Federal standards will

be considered by the State Occupational Safety and Health Advisory Board that will make recommendations on adoption to the Commissioner within six months after Federal adoption. Maryland also included in its plan State boiler and elevator standards where pertinent.

During review of the Maryland plan, the State legislature passed the Maryland Occupational Safety and Health Act of 1973 and it was signed by the Governor. The effective date of the legislation, amending Article 89, sections 28 to 49A of the Annotated Code of Maryland, is July 1, 1973. Under the legislation the Division of Labor and Industry has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exception of maritime workers in the areas of exclusive Federal jurisdiction; employees of the United States; and employees whose working conditions are protected under enumerated Federal laws.

The legislation contains procedures for inspections in response to complaints; protection from discharge or discrimination; consideration of standards by an Occupational Safety and Health Advisory Board; promulgation of recommended standards by the Commissioner of the Division of Labor and Industry; emergency temporary standard setting and rulemaking authority by the Commissioner; sanctions; imminent danger abatement; and review of citations and penalties by the Commissioner.

The major provisions of the plan and the proposed schedule for its development are summarized in a new Subpart O of 29 CFR Part 1952. Included in the plan is a statement of legal opinion that the legislation meets the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of Maryland. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 at the end of three years after the commencement of operation under the plan.

Interested persons were afforded thirty days from the date of publication to submit written comments concerning the plan. Further, interested persons were afforded an opportunity to request an informal hearing with respect to the plan or any part thereof by setting out particularized substantial objections to the contents of the plan.

2. *Issues.* Pursuant to the notice of submission of the plan comments were received from the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). Comments were also received after the close of the comment period from Mr. Harold Gordon, counsel for the Construction Industry Safety Advisory Committee. There were no requests for a hearing.

These comments and our review of the plan raised several significant issues which were addressed by Maryland in supplementing letters and documents from the Commissioner of the Division of Labor and Industry dated February 9, 1973; March 6, 1973; March 22, 1973; May 2, 1973; and May 21, 1973; which clarified and modified the plan and are incorporated as part of the plan. The Maryland plan presents a system of coordination involving three agencies. While ultimate responsibility rests with the designee, the Division of Labor and Industry, the Commissioner must coordinate fire safety and occupational health programs with the State Fire Marshal in the Department of Public Safety, and the Department of Health and Mental Hygiene. In addition, the implementation of the agricultural safety and health program will be coordinated with the Department of Agriculture. In all of these inter-agency relationships, the Division of Labor and Industry will retain enforcement authority including the issuance of citations and penalties. The other agencies will provide inspection and consultation service. The degree of reliance on another agency is greatest with respect to the Fire Marshal because as explained in a letter of May 2, 1973, the State Fire Marshal will exercise his authority directly in 19 counties and through deputies, in Anne Arundel, Baltimore, Montgomery and Prince George's counties. He will further negotiate an agreement with Baltimore City that will require the city to enforce all applicable occupational fire safety rules and regulations to the same extent as required of the Fire Marshal.

The impact of inter-agency coordination and delegation of responsibility on the effectiveness of the Maryland Plan will be noted in subsequent evaluations but as presently described, the program meets the requirements of Part 1902.

As a result of comments on the standard-setting procedures, Maryland made clarifications and modifications in the plan. Maryland's legislation describes a two-step standard-setting procedure which provides for public input at all levels. In addition, the State Administrative Procedure Act, incorporated as part of the plan, specifically provides that any interested person may petition for adoption of any rule or regulation. Maryland will adopt procedures for standard-setting in August 1973. In the Maryland law, public hearings are provided before the Occupational Safety and Health Advisory Board with 30 days notice in newspapers of general circulation and through a mailing list. In addition, once the Board has recommended standards to the Commissioner, he may hold another hearing. The plan narrative has been amended to make it clear that the Board will hold a hearing on all standards before making its recommendations to the Commissioner. In addition, the Act specifically provides that the Board can only recommend standards that are or will be at least as effective as Federal standards, and since the Commissioner cannot change the recommendations of the Board, he in turn must adopt at least as effective standards or return them to the Board with his objections. To assure that standards indeed remain at least as effective, the plan narrative, which constitutes part of the agreement between the State and the Department of Labor, has been revised to read that subsequent revisions to Federal standards will be considered by the Advisory Board and recommendations on adoption by Maryland made to the Commissioner within six months after Federal adoption. By law, the Commissioner then has 45 days to act on the recommendations.

Technical work on the standards will be the responsibility of employees in the planning section of the Division of Labor and Industry and they will have expertise in safety and health standards. In addition, the Board and the Commissioner can also appoint special committees and other consultants to obtain the technical information necessary to adopt standards. These procedures will supplement the activities of the full Board. The draft legislation was amended by the legislature with respect to the membership of the Board to include a member representing agriculture and a representative of the businesses regulated by the Public Service Commission. The total membership is now 11 with two from labor, two from industry, two from the health professions, three public members and one each from agriculture and Public Service businesses. Because of the vital responsibility the Board has in developing at least as effective standards, and the potential for a greater representation of industry on the Board, the results of the standard-setting procedures in Maryland will be closely evaluated to ensure that their operation is at least as effective.

Several other clarifications with respect to standards and hearings, in general, were made by the State. The legislation now provides that emergency temporary standards, promulgated by the Commissioner, will remain in effect for a period determined by the Commissioner, not to exceed six months, or until superseded by a permanent standard. Also, by making the State Administrative Procedure Act part of the plan, any hearing conducted by the Board or the Commissioner will be on the record and not on the basis of other information the State may obtain unless it too is made part of the record.

Maryland's authority to adopt standards that contain appropriate provisions for furnishing employees information regarding hazards in the workplace has been carefully reviewed. Maryland's legislation as enacted does not specifically mention medical examinations made available at no cost to the employee, nor does it specify who would have access to the medical records. The legislation does have all the other items that are required for appropriate inclusion in standards by section 6(b)(7) of the Federal Act and § 1902.4(b)(2)(vi). The Commissioner of the Division of Labor and Industry, supported by the Maryland Attorney General, maintains that the specificity of Maryland law on requirements for standards does not preclude reliance on general legislative authority

that requires the Advisory Board to recommend or propose any standards necessary for the protection and improved safety and health of employees including, but not limited to, standards which are or will be at least as effective as any standard promulgated under the Federal Act for necessary standards elements. In addition, the State law provides for adoption by reference of established Federal standards and this procedure could perforce permit Maryland to adopt Federal standards without regard to any deficiencies in independent State standard-setting authority that may exist.

Any limitation on Maryland's standard-setting authority resulting from the interpretation of State law with regard to medical examinations will be closely evaluated. Indeed, Maryland has agreed in letters included as part of the plan that if any difficulties are subsequently encountered in the enforcement of required medical examination provision, or if it is demonstrated that the State is unable to meet this effectiveness criterion, the Division of Labor and Industry will propose legislation to remove any legal impediment. On the basis of this assurance and Maryland's interpretation of its own law, the plan is considered to meet the requirements of this index.

Another issue of legislative interpretation deals with the finality of non-contested citations and the exclusion of these citations from judicial review. The legislation as enacted does not state that non-contested citations are not subject to judicial review by any court or agency but only that they are final orders of the Commissioner. Judicial review may be sought by any person adversely affected or aggrieved by an order of the Commissioner. However, the State Administrative Procedure Act limits judicial review of orders to contested cases; i.e., after an administrative hearing has been held. Reading these two laws together, Maryland interprets its authority as requiring exhaustion of administrative remedies before court review, therefore, a non-contested citation could not be appealed and if it were the agency would move to dismiss the case for failure to exhaust administrative remedies. Of course if later court interpretations provide that non-contested citations could indeed be successfully appealed and a successful assault on the finality of non-contested citations inhibited the enforcement program to the point of making it less effective than its Federal counterpart, Maryland would be required to make the necessary legislative changes.

In cases where judicial review is appropriate, the State Administrative Procedure Act provides for further appeal to the Court of Appeals from a final judgment of the circuit court or the Baltimore City Court as required in the State safety and health law. Based on these assurances and legal interpretations, the plan meets the requirements of the relevant indices of effectiveness.

As enacted, Maryland's penalty provisions mirror those of the Federal Act with respect to those penalties directly related to enforcement. The sole divergence from the Federal penalty structure is the State provision for a maximum $5,000 fine for false statements where the Federal Act has $10,000 maximum. In all other respects the penalty for false statements is identical in scope and includes a possible 6 month term of imprisonment. As stated in the South Carolina decision, the mere fact that there is a difference in the penalty level for making false statements cannot be said at this time to render Maryland's overall system of sanctions less effective than the Federal system (37 FR 25933).

Finally, Maryland has agreed to review its merit system classifications, specifications and salary ranges within one year of plan approval. In addition, any requirements limiting job opportunity to those with experience in the Division of Labor and Industry or other cooperating agencies will be deleted.

The comments submitted on behalf of the Construction Industry Safety Advisory Committee raise several issues applicable to State plans in general. Therefore, even though they were not filed within the period specified in the notice of plan submission, and normally would not need to be considered in the decision approving the State plan, it was felt that these questions of such general interest should be discussed at this time. The issues include the effect of the decision in *AFL–CIO* v. *Hodgson* C.A. No. 2517–72 (U.S. D.C. January 2, 1973) on pre-emption of state standards where a plan was not approved prior to December 29, 1972; the applicability of a State Administrative Procedure Act (APA) to the regulations to be promulgated under a plan and to the plan document itself; and the necessity for environmental impact statements under the National Environmental Policy Act (NEPA) 42 U.S.C. 4332 when State plans are approved.

According to CISAC comments, pre-emption of State enforcement of occupational safety and health standards under existing State law after December 29, 1972, means that those State laws are repealed until a State enacts new legislation pursuant to an approved plan. Federal jurisdiction would be the exclusive means for enforcing safety and health standards until new legislation was passed. Maryland, however, has enacted such new legislation with a subsequent effective date and adopted Federal standards under its prior legislation before approval of its plan, permitting the State to assume jurisdiction over occupational safety and health under section 18 of the Act.

The decision by the U.S. District Court in the District of Columbia did not directly deal with the question of pre-emption of State laws where no approved plan was in existence before December 29, 1972. In any event, the effect of preemption would not have been to repeal existing State law but, as held in *Home Utilities Co.* v. *Revere Copper and Brass*, 122 A 2d 199 (1956), "the state statute is in effect, merely unenforceable or superseded by the existence of the Federal legislation and consequently the repeal of the Federal statute [in this case withdrawal of Federal pre-emption by plan approval] reinstates or revises the state law without express re-enactment by the state legislature." Such a conclusion is in conformity with the intent of Congress to encourage proper and developing state assumption of jurisdiction over occupational safety and health matters covered by the Act.

A second comment related to the applicability of the State Administrative Procedure Act to the plan itself as well as any regulations or standards issued pursuant to the plan. In line with the response to the first comment on pre-emption, any regulation or standards issued under existing legislative authority would be revived with plan approval. These regulations and standards had been promulgated in accordance with State law prior to approval of a State plan and at that time the public could participate in the rulemaking procedure. Any new regulation or standards required by the plan would be subject to the applicable rule-making proceedings as prescribed in the State APA and the occupational safety and health enabling legislation. Maryland will adopt future regulations and standards in this manner.

As for the plan itself being subject to rule-making proceedings including public hearings, the plan sets out what rules, regulations, standards or procedures the State plans to adopt but it does not constitute a rulemaking proposal to adopt those regulations. That procedure would occur subsequent to approval of the plan when specific rules are proposed to be adopted as outlined in the developmental schedule.

Nor is the plan a contested case as stated in the CISAC comments, involving the legal rights, duties, or privileges of specific parties in a proceeding before the agency. A plan is a general program for occupational safety and health. Parts of the plan and the legislation do contain procedures for employers to contest specific cases before the agency where citations are issued for violations of safety and health standards.

This does not mean that the public has no opportunity to participate in the plan approval process. Public input in the plan document is incorporated in Federal regulations 29 CFR Part 1902 which provide for public comments and hearing requests upon submission of the plan. Notices on the opportunity for public comment are also published in the State. These procedures were followed for the Maryland plan.

The final comment submitted on behalf of CISAC that is relevant to the Maryland plan is the necessity for submitting an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4332, which requires such statements for "major Federal actions significantly affecting the human environment." The approval of a State plan may perhaps be considered "major

Federal action." Approving a plan gives permission to a State to adopt and enforce its own safety and health standards (substantive rules) without being preempted by Federal standards bearing upon the same issues. (29 U.S.C. Section 667.) But the approval or disapproval of the plan itself does not affect the environment. If there is any possible affect on the environment, it lies with the adoption and application of standards under the plan. And, the adoption and application of standards by a State are State actions not requiring filing of environmental impact statements under NEPA. Cf. *Kings County Association* v. *Hardin*, 5 ERC 1383 (9th Cir. April 16, 1973).

Also, it should be emphasized that the requirement of the National Environmental Policy Act are applied to the fullest extent possible in the adoption of standards at the Federal level whenever standards significantly affect the quality of human environment. See, for example, the application of NEPA to the adoption of standards for certain organophosphorous pesticides (38 FR 1075, May 1, 1973) and certain carcinogens (38 FR 10929, May 3, 1973). Consequently, when environmental effects are involved, they are considered. The State standards under a plan are either the same as the Federal standards or have equivalent effectiveness, and would seem therefore to involve essentially the same environmental considerations that are already examined, or will be examined in adopting Federal standards.

3. *Decision.* After careful consideration of the Maryland plan and comments submitted regarding the plan, the plan is hereby approved under section 18 of the Act and Part 1902.

This decision incorporates requirements of the Act and implementing regulations applicable to State plans generally. It also incorporates intentions as to continued Federal enforcement of Federal standards in areas covered by the plan and the State's developmental schedule as set out below.

Pursuant to § 1902.20(b)(1)(iii) of Title 29, Code of Federal Regulations, the present level of Federal enforcement in Maryland will not be diminished at this time because of the developmental nature of Maryland's enforcement program particularly in the areas of occupational health and agriculture. Among other things the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its Target Safety and Target Health programs, an inspect a cross-section of all industries on a random basis. No later than 6 months following this approval, an evaluation of the State plan, as implemented, will be made to assess the appropriate level of Federal enforcement activity. Federal enforcement activity will continue to be exercised to the degree necessary to assure occupational safety and health protection to employees in the State of Maryland. Part 1952 is hereby amended by adding thereto a new Subpart O reading as follows:

Subpart O—Maryland

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

Subpart O—Maryland

§ 1952.210 Description of the plan.

(a) The Division of Labor and Industry in the Department of Licensing and Regulation is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues on the basis of Major Groups in the Standard Industrial Classification (SIC) Manual of the Office of Management and Budget of the Executive Office of the President. The Commissioner of the Division of Labor and industry promulgated the Federal standards existing as of February 2, 1973. These standards were effective in Maryland as of March 8, 1973, and they will be enforced according to current State legislative authority prior to the effective date of Maryland's enabling legislation, July 1, 1973. Maryland also intends to adopt those Federal standards applicable to ship repairing, ship building, ship breaking and longshoring except where prohibited by exclusive Federal maritime jurisdiction. Subsequent revisions to Federal standards will be considered by the State Occupational Safety and Health Advisory Board which will make recommendations on adoption of at least as effective standards to the Commissioner within 6 months after Federal promulgation. Maryland also includes in its plan State boiler and elevator standards where applicable.

(b)(1) The plan included draft legislation which has been passed by the State legislature and signed by the Governor. The legislation as enacted has been included as a supplement to the plan. Under the legislation, effective July 1, 1973, the Division of Labor and Industry in the Department of Licensing and Regulation has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exception of maritime workers in the areas of exclusive Federal jurisdiction; employees of the United States; and employees whose working conditions are protected under enumerated Federal laws.

(2) The legislation brings the plan into conformity with the requirements of 29 CFR Part 1902 in areas such as procedures for granting or denying temporary and permanent variances to rules, regulations or standards by the Commissioner; protection of employees from hazards including provision for medical examinations made available by the employer or at his cost; procedures for the development of standards by the Occupational Safety and Health Advisory Board; promulgation of these standards as recommended by the Commissioner; promulgation of emergency temporary standards by the Commissioner with referral to the Board to develop a permanent standard; procedures for prompt restraint or elimination of imminent danger situations by issuance of a "red-tag" order with court review as well as by court injunction.

(3) The legislation provides for inspections in response to complaints; gives employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; protection of employees against discharge or discrimination in terms and conditions of employment by filing complaints with the Commissioner who will seek court action; adequate safeguards to protect trade secrets; provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements through the issuance and posting of citations; a system of sanctions against employers for violations of standards; employer right of review and employee participation in review proceedings before the Commissioner with subsequent judicial review; and coverage of employees of the State and political subdivisions in a separate program supervised by the Commissioner in accordance with the requirements described in the North Carolina decision (38 FR 3041).

(c) Included in the plan is a statement of legal opinion that the law, which was supported by the Governor in accordance with the requirements of Part 1902, meets the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of Maryland. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 at the end of three years after the commencement of operations under the plan. Personnel will be employed under the existing State merit system with the revisions in qualifications as stated in supplements to the plan, and the voluntary compliance program for on-site consultation meets the conditions set forth in the issues discussed in the Washington decision (38 FR 2421).

(d) The plan includes the following documents as of the date of approval.

(1) The plan document in two volumes.

(2) Maryland Occupational Safety and Health Act of 1973, effective July 1, 1973.

(3) "A Program for Control of Occupational Health Hazards in Maryland" by Johns Hopkins University Department of Environmental Medicine.

(4) Letters from the Division of Labor and Industry dated February 9, 1973; March 6, 1973; March 22, 1973; May 2, 1973 and May 21, 1973.

(5) Maryland's Administrative Procedure Act Article 41 sections 244 et seq.

§ 1952.211 Where the plan may be inspected.

A copy of the complete plan may be inspected and copied during normal business hours at the following locations: Office of the Commissioner, Division of Labor and Industry, 203 East Baltimore Street, Baltimore, Maryland 21202; Regional Administrator, Occpuational Safety and Health Administration, U.S. Department of Labor, Suite 410, Penn Square Building, 1317 Filbert Street, Philadelphia, Pa., 19107; and the Office of Federal and State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room 305, Railway Labor Building, 400 First Street, N.W., Washington, D.C. 20210.

§ 1952.212 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii) of Title 29 Code of Federal Regulations, the present level of Federal enforcement in Maryland will not be diminished presently because of the developmental aspects of Maryland's enforcement program in the areas of occupational health and agriculture. Among other things the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its Target Safety and Target Health programs, and inspect a cross-section of all industries on a random basis.

§ 1952.213 Developmental schedule.

(a) Occupational health study accepted and implementation begun July, 1973;

(b) Compliance Manual developed by July, 1973;

(c) Agreement with the Fire Marshal within 30 days of plan approval.

(d) Training in compliance procedures by August, 1973;

(e) Promulgation of standard-setting procedures, August, 1973;

(f) Inspection and enforcement program, except as provided in paragraph (k), in September, 1973;

(g) Staff of hearing examiners and review procedures set up in September, 1973;

(h) Variance procedures and emergency temporary standard-setting procedures promulgated October, 1973;

(i) Review of appeal procedures to see if it should be continued or modified, July, 1974;

(j) Review of job qualifications within one year of plan approval;

(k) Inspection and enforcement program in agriculture and agreement with the State Department of Agriculture operational, December, 1974;

(l) Fully operational occupational health program, July, 1975;

(m) Fully implemented public employees program, December, 1975;

(n) Management Information System, December, 1975;

(o) Adoption of maritime standards, December, 1975.

Signed at Washington, D.C. this 28th day of June, 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-13628 Filed 7-3-73;8:45 am]

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Tennessee Plan

1. *Background.* Part 1952 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) whereby the states may submit for approval, under the requirements of this section, plans to assume responsibilities for the development and enforcement of state occupational safety and health standards.

On January 31, 1973, the State of Tennessee submitted a comprehensive developmental occupational safety and health plan in accordance with these procedures and on March 2, 1973, a notice was published in the FEDERAL REGISTER (38 FR 5702) concerning the submission of the plan to the Assistant Secretary and the fact that the question of approval was in issue before him. Written comments concerning the plan were submitted by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). No other written comments were received and there were no requests for an informal hearing.

The plan identifies the Department of Labor and the Department of Health as the agencies responsible for the administration of the plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2(c)(1) of Chapter XVII, Title 29, Code of Federal Regulations. The plan includes legislation passed by the Tennessee Legislature during its 1972 Session which became effective July 1, 1972. It also includes legislation enacted and approved April 5, 1973. The plan further includes proposed draft amendments to be considered by the State Legislature during its 1974 session amending certain provisions of its enabling legislation, Title 50, Chapter 5 of the Tennessee Code Annotated, that appear necessary or desirable to bring them into conformity with the requirements of section 18(c) of the Act and 29 CFR Part 1902. The proposed amendments are accompanied by a statement of the Governor's support for them and an opinion from the Attorney General's Office that they will meet the requirements of the Occupational Safety and Health Act of 1970 and are consistent with the Constitution and laws of the State.

2. *Issues.* The public comments and our review of the plan raised several significant issues which have been addressed by Tennessee in supplementary letters submitted to the Office of Federal and State Operations of the Occupational Safety and Health Administration on February 14, 1973, May 30, 1973, and June 15, 1973, which clarified and modified the plan and are incorporated as part of the plan.

(a) *Employee discrimination.* The Tennessee Act did not appear to provide adequate protection for employees against discharge or discrimination in terms or conditions of employment because an employee has exercised basic rights under the Act, as required under 29 CFR 1902.4(c)(2)(v). The State's legislation provided only that an employer who discriminates against any employee who has filed a complaint or testified in regard to a violation would be subject to a criminal misdemeanor penalty of up to $500. There were no alternative provisions which would provide a remedy as effective as the Federal remedy which can ensure reinstatement or rehiring with back pay. The State proposes to bring its employee protection provisions up to the Federal level by submitting a proposed amendment to its law which would provide these protections in the same manner as they are provided for at the Federal level. In addition, the criminal penalty of up to $500 against any employer who discriminates against any employee who has filed a complaint or testified in regard to a violation will remain in effect.

(b) *Sanctions.* The sanctions proposed by Tennessee presented some substantial differences compared to those at the Federal level. There was no statutory sanction for non-serious violations. The Tennessee Compliance Manual provided for non-serious violations as if they were a discretionary $1,000 sanction, but there was no statutory authority for it. Accordingly, Tennessee has proposed an amendment authorizing a discretionary $1,000 civil sanction for non-serious violations.

In the area of willful or repeated violations, Tennessee's Act provided a criminal sanction of $5,000 for any "person who willfully and repeatedly violates * * *" certain provisions of the Act. In the first place, it was apparent that employees might be subject to this sanction as they come within the purview of "any person." Secondly, a willful or repeated violation had to be willfull and repeated in order to result in a sanction. This is a much narrower definition than that of the Federal Act, where a violation can come under the category of either willful or repeated. Finally, the Tennessee sanction was criminal as compared with the comparable Federal civil sanction. Due to the nature of criminal prosecution proceedings with their problems of proof, including shifting the burden of contesting from the violator, it appears that the Tennessee criminal sanction would lack the effectiveness of the Federal civil sanction in dealing with both willful or repeated violations. Because of all of these problems, the State has promised to amend its law to change this penalty

to conform to that in the Act which provides a civil penalty of not more than $10,000 for any employer who willfully or repeatedly violates any of the provisions of the Act.

In addition, the State has agreed to seek legislation amending its law to substitute a civil sanction, as under the Act, for the criminal sanction in its law for violations of posting requirements. The State has also given assurances that it will substitute the criminal penalty for recordkeeping and reporting under its law with its procedures for non-serious violations when assessing penalties for violation of recordkeeping and reporting regulations. Finally, the State has agreed to amend its law to increase the penalty for false statements from $500 to $10,000 and to provide for a more severe criminal penalty after first conviction for convictions for willful violations which result in the death of an employee.

(c) *Permanent variances.* Section 13 of the Tennessee Act did not appear to meet the requirements of 29 CFR Part 1902.4(b)(2)(iv) concerning permanent variances. There was no statutory provision or regulation providing for permanent variances. The Tennessee law provided only for the issuance of temporary variances. Such variances are limited to the period required to come into compliance or one year, whichever is shorter, and could be renewed only once. Consequently, employers could not permanently protect employees from a hazard through alternative means but must comply with all standards. This provision might present some serious difficulty for an employer who might have an alternative or better means to come into compliance with a standard, and would present enforcement problems where an employer had been granted a variance from Federal standards under section 6(d) of the Act. The State has agreed to sponsor legislation amending its law to provide for the issuance of permanent variances under the same conditions as provided under section 6(d) of the Act.

(d) *Imminent danger.* Tennessee's statutory definition of imminent danger is "an immediate and substantial danger." The Tennessee Compliance Manual provides that the State would act in imminent danger situations where the hazard was either immediate or so imminent that normal enforcement procedures would not be adequate to deal with the situation. We do not question the State's authority to interpret this definition as it has in its Compliance Manual, and it is expected to follow this interpretation upon Plan approval.

In answer to public comments, however, the State has agreed to seek legislation amending its law to statutorily provide for this interpretation by adopting the definition of an imminent danger in the Act as one "which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by" the Act.

Additionally, since plan submittal, the State legislature passed an amendment to its Occupational Safety and Health Law which provides for "stop orders" by the Commissioner of Labor or the Commissioner of Health if he finds a "hazardous condition at a place of employment that presents an imminent threat to life or limb of an employee." This provision became effective on May 11, 1973. Taken as a whole, the Tennessee procedures to counteract imminent danger situations appear to be more effective than the Federal provisions.

(e) *Employee participation in review proceedings.* The Tennessee Act provides that employees may contest citations issued to an employer, including contesting the reasonableness of an abatement period proposed by the Commissioner of Labor or the Commissioner of Health. Under the Federal program, employees do not have the right to contest the citations and proposed penalties, but only the right to contest the reasonableness of an abatement period fixed in the citation.

As pointed out in the Minnesota decision (38 FR 5076), State plans may provide for more stringent enforcement than the Act if such additional provisions appear to be reasonably calculated to increase the effectiveness of the State's program and are consistent with the intent of the Act. The Tennessee employee contest provisions appear to meet that test in that they would serve as an added check to secure enforcement of safe and healthful working conditions. Any undue burden on the administrative process resulting from them would bring about a reconsideration in the course of evaluation of the actual operation of the plan.

(f) *Standards.* Our review and the public comments expressed some concern over the Tennessee provisions relating to employee exposure to toxic substances, access to records, monitoring and measuring exposure and protective equipment, as provided for under 29 CFR 1902.4(b)(2)(vi) and 1902.4(b)(2)(vii). Questions were raised that under Tennessee law an exposure must have been "biologically significant" to warrant the promulgation of standards providing these employee rights. The State intends to adopt all Federal standards immediately upon approval of the plan by the Assistant Secretary and all future standards promulgated by this Department. In addition, the State has authority to promulgate its own standards and has provided assurances that if either the Commissioner of Labor as or the Commissioner of Health promulgates a state occupational safety or health standard where there is no comparable Federal standard, the term "biologically significant" will not operate to preclude providing for the employee rights outlined above where appropriate.

(g) *Prohibition against advance notice.* In the area of advance notice, the Tennessee Compliance Manual provided an exception to the prohibition against advance notice for which there was no comparable Federal provision in that advance notice may be given "to permit maintenance of an accident site where a catastrophe or fatality has occurred." Section 1902.3(f) of 29 CFR provides that any exceptions to the prohibition may be no broader than those under the Federal program. Such a blanket exception is not provided under the Federal program and the State has agreed to delete this exception from its compliance operations manual.

(h) *Inspections.* The Tennessee Compliance Operations Manual provides an opportunity for walkarounds by employer and employee representatives during the course of an inspection in the same manner as that provided for in the Federal program. However, the public comments questioned the adequacy of section 8(c) of the Tennessee Act as a basis for ensuring sufficient opportunity to employees for accompanying an inspector during the inspection. The Tennessee Act provides that employer and employee representatives would be given an opportunity to "consult with or accompany" the inspector. The public comments indicated that this provision might be interpreted in a narrower manner than was originally intended. In order to preclude any misunderstanding as to its intentions and to prevent and future adoption of regulations which might restrict this walk-around privilege, the State has voluntarily agreed to submit a proposed amendment to its Legislature deleting the phrase "consult with" from its walk-around provision while retaining the provision providing for consultation with employees where there is no authorized employee representative.

3. *Decision.* After careful consideration of the Tennessee plan and comments submitted regarding the plan, the plan is hereby approved under section 18 of the Act and 29 CFR Part 1902.

This decision incorporates requirements of the Act and implementing regulations applicable to State plans generally. It also incorporates our intentions as to continued Federal enforcement of Federal standards in areas covered by the plan and the State's Developmental schedule as set out below.

Pursuant to § 1902.20(b)(1)(iii), the present level of Federal enforcement will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f) of the Act, continue its Target Safety and Health Programs, and inspect a cross-section of all industries on a random basis.

An evaluation of the State plan as implemented will be made to assess the appropriate level of Federal enforcement activity. Federal enforcement activity will continue to be exercised to the degree necessary to assure occupational safety and halth protection to employees in the State of Tennessee.

The Tennessee Plan is developmental. The following is the schedule of the developmental steps provided by the plan.

Formal adoption of Federal Standards immediately upon approval of State plan.

(Existing State standards were repealed by the enabling legislation). Enforcement of standards commences immediately upon promulgation.

(b) Amendments to legislation to be submitted to 1974 State legislative session.

(c) Regulations for record keeping and reporting will be promulgated upon plan approval.

(d) Regulations for inspections, citations, and proposed penalties will be promulgated immediately upon plan approval.

(e) Variances regulations will be promulgated within 60 days of the plan approval.

(f) Manual Management data system operational July 1, 1973. Automated Management data system operational January 1, 1974.

Pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Part 1952 is hereby amended by adding a new subpart P, as follows:

Subpart P—Tennessee

Sec.
1952.220 Description of the plan.
1952.221 Where the plan may be inspected.
1952.222 Level of Federal enforcement.
1952.223 Developmental schedule.

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

Subpart P—Tennessee

§ 1952.220 Description of the plan.

(a) The plan identifies the Department of Labor and the Department of Health as the agencies designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. All standards, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, ship building, ship breaking and longshoring) will be adopted and enforced immediately upon approval of the plan by the Assistant Secretary.

(b)(1) The plan includes legislation passed by the Tennessee Legislature during its 1972 session which became effective July 1, 1972. Under the law, the Department of Labor and the Department of Public Health will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State with the exception of employees of the United States or employees protected under other Federal occupational safety and health laws such as the Atomic Energy Act of 1959 (42 U.S.C. 2011 *et seq.*). The Federal Coal Mine Safety Act of 1969 (30 U.S.C. 801), the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721 *et seq.*) railroad employees covered by the Federal Safety Appliances Act (45 U.S.C. 1 *et seq.*) and the Federal Railroad Safety Act (45 U.S.C. 421 *et seq.*), the Longshoremen's and Harbor Workers' Compensation Act, as amended (33 U.S.C. 901 *et seq.*), domestic workers, and any employee engaged in agriculture who is employed on a family farm. The Act further provides for the protection of employees from hazards, procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; procedures for prompt restraint or elimination of imminent danger situations.

(2) The Act also insures inspections in response to complaints; employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representative when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; adequate safeguards to protect trade secrets; provisions for prompt notice to employers and employees of alleged violations of standards and abatement requirements; a system of sanctions against employers for violations of standards; employer right of review with employee participation in review proceedings, and coverage of employees of political subdivisions. Legislation which became effective on April 5, 1973, providing for "stop orders" for cases of imminent danger situations is also included.

(c)(1) The plan further includes proposed amendments submitted by the State which will be presented to the 1974 session of the State legislature to bring its Occupational Safety and Health Act into conformity with the requirements of 29 CFR Part 1902. These amendments pertain to such areas as permanent variances, employee protection against discharge or discrimination in terms and conditions of employment, imminent danger situations, sanctions, and walkaround. A statement of the Governor's support for the proposed amandments and a statement of legal opinion that they will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of the State are included in the plan.

(2) The plan provides a comprehensive description of personnel employed under the State's merit system and assurances of sufficient resources. The plan further sets out goals and provides a timetable to bring it into full conformity with the requirements of Part 1902 of this chapter.

(d) The Tennessee plan includes the following documents as of the date of approval:

(1) The plan description documents including the Tennessee Occupational Safety and Health Act, the proposed amendments to the Act and appendices in three (3) volumes;

(2) Letter from Ben O. Gibbs, Commissioner of Labor to Henry J. Baker, Project Officer, Office of State and Federal Operations, February 14, 1973, submitting additions and deletions to the plan.

(3) Letter from Edward C. Nichols, Jr., Staff Attorney for the Department of Labor, to Henry Baker, May 30, 1973, submitting a "red tag" provision which was signed into law by the Governor of Tennessee on April 5, 1973.

(4) Letter from Ben O. Gibbs, Commissioner of Labor and Eugene W. Fowinkle, Commissioner of Public Health, to Thomas C. Brown, Director, Office of Federal and State Operations, June 15, 1973, submitting proposed amendments and clarifications to the plan.

(e) The public comments will also be available for inspection and copying with the plan documents.

§ 1952.221 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 Federal and State Operations, OSHA, Room 305, 400 First Street, N.W., Washington, D.C. 20210; Regional Office, OSHA, Room 587, 1875 Peachtree Street, N.E., Atlanta, Georgia 30309; Commissioner of Labor Office, Room C-1-100, Cordell Hull Building, 5th Avenue North, Nashville, Tennessee 37219.

§ 1952.222 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii) of this chapter, the present level of Federal enforcement in Tennessee will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f) of the Act, continue its Target Safety and Target Health programs, and inspect a cross-section of all industries on a random basis.

§ 1952.223 Developmental schedule.

The Tennessee state plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Formal adoption of Federal Standards immediately upon approval of State plan. (Existing State standards were repealed by the enabling legislation). Enforcement of standards commences immediately upon promulgation.

(b) Amendments to legislation to be submitted to 1974 State legislative session.

(c) Regulations for recordkeeping and reporting will be promulgated upon plan approval.

(d) Regulations for inspections, citations, and proposed penalties will be promulgated immediately upon plan approval.

(e) Variances regulations will be promulgated within 60 days of plan approval.

(f) Manual Management data system operational July 1, 1973. Automated Management data system operational January 1, 1974.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Washington, D.C. this 28th day of June, 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-13629 Filed 7-3-73;8:45 am]

Title 36—Parks, Forests and Memorials

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Craters of the Moon National Monument, Idaho; Wilderness

A proposal was published on pages 12628 and 12629 of the FEDERAL REGISTER of July 2, 1971, to amend Part 7 of Title 36 of the Code of Federal Regulations and to add § 7.86 as set forth below.

The purpose of the amendment is to establish special regulations for visitor use in that area within the monument which has been set aside for administration as a part of the national wilderness preservation system.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions or objections have been received and the proposed amendment is hereby adopted without change as set forth below. This amendment shall take effect on August 6, 1973.

(5 U.S.C. 553; 16 U.S.C. 3; 16 U.S.C. 1133; 16 U.S.C. 1132, note)

Part 7 of Title 36 of the Code of Federal Regulations is amended by adding § 7.86 as set forth below:

§ 7.86 Craters of the Moon National Monument.

(a) *Wilderness.* A map of the park portion designated as wilderness may be inspected at the office of the Superintendent. Except in emergencies involving the health and safety of persons within the area, the following special regulations apply in the designated wilderness area: (1) The possession or use of a vehicle, motor vehicle, snowmobile, portable motor, or engine-driven equipment or machine is prohibited. (2) The possession or use of any device moved by animal or by human power, on one or more wheels, in, upon, or by which any person or property is or may be transported or drawn on land, is prohibited.

ROBERT B. MOORE,
Acting Director,
Pacific Northwest Region.

[FR Doc.73-13529 Filed 7-3-73;8:45 am]

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

DELETION OF PARTS

The amendments contained herein consist of deletions from this title of various parts which do not contain information of general applicability and legal effect as to the public and which are not required to be published in the FEDERAL REGISTER. They relate generally to internal rules, instructions, and procedures of the Postal Service.

Accordingly, effective on July 3, 1973, the following parts are deleted.

1. Part 111—What This Chapter Covers.

2. Part 148—Revenue Deficiencies Developed by Audit.

3. Part 256—Employees' Claims.

4. Part 747—Equal Employment Opportunity.

(39 U.S.C. 401.)

ROGER P. CRAIG,
Deputy General Counsel.

JUNE 29, 1973.

[FR Doc.73-13588 Filed 7-3-73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 20—MIGRATORY BIRD HUNTING

Administrative and Miscellaneous Provisions

By notice of proposed rulemaking published in the FEDERAL REGISTER of January 30, 1973 (38 FR 2765), it was proposed to add a new § 10.133 to subpart L to provide a framework within which States could establish regulations for hunting common crows. Comments were invited through March 23, 1973.

It was determined that subchapter B should be reorganized and restructured into a more logical format of subparts and sections and retitled to more accurately describe its contents. This revision was published as a proposed rulemaking in the FEDERAL REGISTER of April 25, 1973 (38 FR 10208), and notice was given that current Part 10—Migratory Birds—would be redesignated Part 20—Migratory Bird Hunting, and current § 10.133 would be redesignated § 20.133. This publication of April 25, 1973 (38 FR 10234) invited comments through May 25, 1973.

It is determined that Part 20 should be added to subchapter B at this time to facilitate the adoption of regulations by States with respect to the hunting of crows, and to make provisions for persons in Alaska to take snowy owls and cormorants for subsistence purposes. These three species are now federally protected by virtue of having been added in March 1972, to those families of birds which are protected under the terms of the Convention with the United Mexican States for the Protection of Migratory Birds and Game Mammals (50 Stat. 1311). Since both of these matters are proposed to be included in subpart L (see proposed rulemaking published April 25, 1973, in 38 FR 10227), it is desirable that this subpart be included in Part 20 at this time with other subparts being reserved for addition in the near future.

After consideration of comments received and other data presented, the enforcement problems expected, and the difficulty of distinguishing the common crow from other crows, it is determined that it is impractical to restrict the open season to common crows only. Prior to the addition of the family Corvidae to those afforded federal protection, crows could be hunted without federal restrictions or control of any kind. This regulation will provide federal controls for crow hunting for the first time. Since the crow is an endangered species in Hawaii (alala) no hunting of crows will be permitted in that State.

With respect to the taking of some species of migratory birds in Alaska for subsistence purposes, the Convention with Great Britain (for Canada) for the Protection of Migratory Birds (39 Stat. 1702), provides that Eskimos and Indians may take, at any season, auks, auklets, guillemots, murres, and puffins, and their eggs for food and their skins for clothing, but the sale of, or offer to sell, birds and eggs so taken is prohibited. (Art. II, Sec. 3). Snowy owls and cormorants could be taken by Eskimos and Indians as well as by all other persons, as these two species were not protected by federal law or treaty prior to their addition to those families of birds protected by the Convention with Mexico (supra). Without some provision being made by regulation, which is authorized by Article I of the Convention with Mexico, snowy owls and cormorants cannot be utilized in Alaska for food or clothing, as has always been the custom. After consideration of all relevant matters presented, including the request of the Commissioner of the Alaska Department of Fish and Game, it is determined that a paragraph (b) be added to § 20.133 which will permit any person to utilize snowy owls and cormorants for subsistence purposes in Alaska.

1. Accordingly, subchapter B of 50 CFR, Chapter I, is retitled subchapter B—Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife.

2. Part 20 is added to 50 CFR, Chapter I, to read as follows:

Subparts A–K [Reserved]

Subpart L—Administrative and Miscellaneous Provisions

Sec.
20.131 Extension of seasons.
20.132 Subsistence use in Alaska.
20.133 Hunting regulations for crows.

Subpart M—[Reserved]

AUTHORITY: 40 Stat. 755 (16 U.S.C. 704).

Subpart L—Administrative and Miscellaneous Provisions

§ 20.131 Extension of seasons.

Whenever the Secretary shall find that emergency State action to prevent forest fires in any extensive area has resulted in the shortening of the season during which the hunting of any species of migratory game bird is permitted and that compensatory extension or reopening the hunting season for such birds will not result in a diminution of the abundance of birds to any greater extent than that contemplated for the original hunting season, the hunting season for the birds so affected may, subject to all other provisions of this subchapter, be extended or reopened by the Secretary upon request of the chief officer of the agency of the State exercising administration over wildlife resources. The length of the extended or reopened season in no event shall exceed the number of days during

which hunting has been so prohibited. The extended or reopened season will be publicly announced.

§ 20.132 Subsistence use in Alaska.

(a) In Alaska, Eskimos and Indians may take, possess, and transport, in any manner and at any time, auks, auklets, guillemots, murres, and puffins and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

(b) In Alaska, any person may, for subsistence purposes, take, possess, and transport, in any manner and at any time, snowy owls and cormorants and their eggs for food and their skins for clothing, but the birds so taken shall not be sold or offered for sale.

§ 20.133 Hunting regulations for crows.

(a) Crows may be taken, possessed, transported, exported, or imported, only in accordance with such laws or regulations as may be prescribed by a State pursuant to this section.

(b) Except in the State of Hawaii, where no crows shall be taken, States may by statute or regulation prescribe a hunting season for crows. Such State statutes or regulations may set forth the method of taking, the bag and possession limits, the dates and duration of the hunting season, and such other regulations as may be deemed appropriate, subject to the following limitations for each State:

(1) Crows shall not be hunted from aircraft;

(2) The hunting season or season on crows shall not exceed a total of 124 days during a calendar year;

(3) Hunting shall not be permitted during the peak crow nesting period within a State; and

(4) Crows may only be taken by firearms, bow and arrow, and falconry.

These amendments relieve existing restrictions and thus are within the provisions of 5 U.S.C. 553(d)(1) and become effective on July 9, 1973.

SPENCER H. SMITH,
Director, Bureau of Sport Fisheries and Wildlife.

JUNE 29, 1973.

[FR Doc.73-13590 Filed 7-3-73;8:45 am]

Title 49—Department of Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 73-18; Notice 1]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires, Tire Selection and Rims for Passenger Cars

This amendment adds certain tire size designations to Federal Motor Vehicle Safety Standard No. 109 (49 CFR 571.109) and adds alternative rim sizes and test rims to Federal Motor Vehicle Safety Standard No. 110 (49 CFR 571.110).

On October 5, 1968, guidelines were published in the FEDERAL REGISTER (33 FR 14964) by which routine additions could be made to Appendix A, Standard No. 109, and to Appendix A, Standard No. 110. Under these guidelines the additions become effective 30 days from publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rulemaking procedures for the issuance of motor vehicle safety standards (49 CFR Part 553) are followed.

Accordingly, Appendix A of Federal Motor Vehicle Safety Standard No. 109 (49 CFR 571.109), and Appendix A, of Federal Motor Vehicle Safety Standard No. 110 (49 CFR 571.110), are amended subject to the 30 day provision indicated above, as specified below.

Effective date: August 2, 1973, if objections are not received.

A. The following changes are made to Appendix A of § 571.109, Standard No. 109; New Pneumatic Tires:

AMENDMENTS REQUESTED BY THE RUBBER MANUFACTURERS ASSOCIATION

7. In Table I-G, the following new tire size designation and corresponding values are added:

TABLE I-G

TIRE LOAD RATINGS, TEST RIMS, MINIMUM SIZE FACTORS, AND SECTION WIDTHS FOR "70 SERIES" TYPE "R" RADIAL PLY

Tire size designation	MAXIMUM TIRE LOADS, (pounds) at various cold inflation pressures (psi)													Test rim width (inches)	Minimum size factor (inches)	Section width (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
CR70-13	840	890	950	1000	1050	1100	1140	1190	1230	1270	1320	1360	1400	5½	31.65	7.88

2. In Table I-V, the following new tire size designations and corresponding values are added:

TABLE I-V

TIRE LOAD RATINGS, TEST RIMS, MINIMUM SIZE FACTORS, AND SECTION WIDTHS FOR "50 SERIES" BIAS PLY TIRES

Tire size designation	MAXIMUM TIRE LOADS, (pounds) at various cold inflation pressures (psi)													Test rim width (inches)	Minimum size factor (inches)	Section width (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
B50-13	780	840	890	930	980	1030	1070	1110	1150	1190	1230	1270	1300	6½	30.84	9.15
C50-14	1100	1180	1250	1310	1380	1440	1500	1560	1620	1680	1730	1780	1830	8	35.29	10.95
M50-14	1420	1520	1610	1700	1780	1860	1940	2020	2090	2160	2230	2300	2370	9	38.51	12.55
L50-15	1340	1430	1520	1600	1680	1750	1830	1900	1970	2040	2100	2170	2230	8	37.94	11.65

AMENDMENTS REQUESTED BY THE EUROPEAN TYRE AND RIM TECHNICAL ORGANISATION

1. In Table I-N, the 175/70R12 new tire size designation and corresponding values are added:

AMENDMENTS REQUESTED BY VOLKSWAGEN OF AMERICA

1. In Table I-N, load values at the 16 and 18 psi inflation pressures are added for the 175/70R15 tire size designation.

TABLE I-N

TIRE LOAD RATINGS, TEST RIMS, MINIMUM SIZE FACTORS, AND SECTION WIDTHS FOR "70 SERIES" RADIAL PLY TIRES

Tire size designation	MAXIMUM TIRE LOADS, (pounds) at various cold inflation pressures (psi)													Test rim width (inches)	Minimum size factor (inches)	Section width (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
175/70R12			780	805	830	855	880	900	925	950	970	995	1020	5	28.21	6.93
175/70R15	890	915	940	965	990	1015	1040	1065	1090	1115	1140	1165	1190	5	31.36	6.93

B. The following changes are made to Appendix A of § 571.110, Standard No. 110; Tire Selections and Rims.

AMENDMENTS REQUESTED BY THE RUBBER MANUFACTURERS ASSOCIATION

1. In Table I–A, the 5½–JJ alternative rim size is added for the 6.00–13 tire size designation.

2. In Table I–B, the 7–JJ alternative rim size is added for the H70–14 tire size designation.

3. In Table I–G, the 5½–JJ test rim and the 5–JJ alternative rim size are added for the CR70–13 tire size designation. The 7–JJ alternative rim size is added for the HR70–14 tire size designation. The 7–JJ alternative rim size is added for the HR70–15 tire size designation. The 5–JJ alternative rim size is added for the BR70–13 tire size designation.

4. In Table I–M, the 4½–JJ alternative rim size is added for the DR78–14 tire size designation. The 7–JJ alternative rim size is added for the HR78–14 tire size designation. The 5½–JJ alternative rim size is added for the JR78–15 tire size designation.

5. In Table I–V, the 6½–JJ test rim is added for the B50–13 tire size designation. The 8–JJ test rim is added for the G50–14 tire size designation. The 9–JJ test rim is added for the M50–14 tire size designation. The 8–JJ test rim is added for the L50–15 tire size designation.

AMENDMENTS REQUESTED BY THE EUROPEAN TYRE AND RIM TECHNICAL ORGANISATION

1. In Table I–N, the 4½–JJ alternative rim size and the 5–JJ test rim size are added for the 175/70R12 tire size designation.

AMENDMENTS REQUESTED BY VOLKSWAGEN OF AMERICA

1. In Table I–N, the 5½–JJ alternative rim size is added for the 175/70R15 tire size designation.

FMVSS No. 110 APPENDIX A

TABLE I

(Following is a Tabulation of Changes Made By This Amendment)

Tire Size:	*Rims*
TABLE I–A	
600–13	5½–JJ
TABLE I–B	
H70–14	7–JJ
TABLE I–G	
BR70–13	5–JJ
CR70–13	5–JJ, 5½–JJ
HR70–14	7–JJ
HR70–15	7–JJ
TABLE I–M	
DR78–14	4½–JJ
HR78–14	7–JJ
JR78–15	5½–JJ
TABLE I–N	
175/70R12	4½–JJ, 5–JJ
175/70R15	5½–JJ
TABLE I–V	
B50–13	6½–JJ
G50–14	8–JJ
M50–14	9–JJ
L50–15	8–JJ

Italic designations denote test rims. Where JJ rims are specified in the above tables, J and JK rim contours are permissible. Table designations refer to tables listed in Appendix A of Standard No. 109 (§ 571.109).

(Secs. 103, 119, 201, and 202, Public Law 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407, 1421, and 1422; delegation of authority at 38 F.R. 12147)

Issued on June 26, 1973.

JAMES E. WILSON,
Associate Administrator
Traffic Safety Programs.

[FR Doc.73–13406 Filed 7–3–73;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1102; Amdt. 2]

PART 1033—CAR SERVICE

Delaware and Hudson Railway Co. and Penn Central Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of June 1973.

Upon further consideration of Service Order No. 1102 (37 FR 13697 and 28634), and good cause appearing therefor:

It is ordered, That § 1033.1102 *Service Order No. 1102* (Delaware and Hudson Railway Company and Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees, authorized to assume joint supervisory control over railroad operations of Albany Port District Commission, Albany, New York) be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., November 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m. June 30, 1973.

(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.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73–13616 Filed 7–3–73;8:45 am]

[S.O. 1116, Amdt. 1]

PART 1033—CAR SERVICE

Lehigh Valley Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 25th day of June 1973.

Upon further consideration of Service Order No. 1116 (38 F.R. 1508), and good cause appearing therefor:

It is ordered, That § 1033.1116 *Service Order No. 1116* (Lehigh Valley Railroad Company (John F. Nash and Robert C. Haldeman, trustees) authorized to operate over tracks of West Pittston-Exeter Railroad Company) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., June 30, 1973.

(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.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73–13617 Filed 7–3–73;8:45 am]

[3rd Rev. S.O. 1121]

PART 1033—CAR SERVICE

Demurrage and Free Time at Ports

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of June 1973.

It appearing, that an acute shortage of covered hopper cars, gondola cars, and boxcars exists throughout the country; that certain carriers are unable to furnish an adequate supply of these cars to shippers located on their lines; that these shortages of covered hopper cars, gondola cars, and boxcars are impeding both the domestic and export movement of agricultural, mineral, forest, and manufactured products and other commodities; that certain existing tariff rules and regulations provide excessive free-time periods for loading or unloading at ports, and demurrage, detention or storage rates at levels below those applicable to domestic freight; that such rules, regulations, and demurrage, detention or storage rates are ineffective in securing prompt release of cars held at the ports. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1121 Demurrage and free time at ports.

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service.

(1) *Application.* (i) The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(ii) This order shall apply to all freight cars which are listed in the Official Railway Equipment Register, I.C.C. R.E.R. 386, issued by W. J. Trezies, or successive issues thereof, as having one of the mechanical designations shown on pages 1154 and 1155 under the headings:

Class "X"—Box Car Type—All Class "X" except "XT."
Class "G"—Gondola Car Type—All Class "G" except "GW."
Class "L"—Special Car Type—"LC", "LO", "LU", only.

(iii) This order shall apply to all freight cars described herein which are held by or for shippers, consignees, or their designated agents, at ocean, Great Lakes, or river ports; or at any station outside of such ports because of any condition attributable to the shipper, consignee, or his designated agent, and regardless of whether moved on rates designated as export or as rail-water, or moved on rates also applicable to other traffic.

(iv) Ocean, Great Lakes, or river ports are hereby defined as being any station at which shipments are transferred between rail carriers and water carriers, whether by direct car-vessel transfer or by intermediate handling through a port elevator, wharf, dock, or warehouse capable of both the loading and unloading of rail cars and the loading and unloading of vessels.

(v) Multiple-car shipments are hereby defined as shipments made under tariff provisions specifically requiring the loading of two or more cars in order to qualify for the rate.

(vi) Constructive placement is hereby defined as the holding of a car by the carrier because of the inability of the consignee or shipper to receive it.

(vii) The terms "loading", "unloading", and "forwarding directions" as defined in Demurrage Rule 2, Item 905 of General Car Demurrage Tariff 4–J, I.C.C. H–59, issued by B. B. Maurer, supplements thereto, or reissues thereof, shall apply to cars subject to this order.

(viii) The term "holidays" means holidays as listed in Item 25 of General Car Demurrage Tariff 4–J, I.C.C. H–59, issued by B. B. Maurer, supplements thereto, or reissues thereof.

(ix) *Exception:* Exceptions to this order may be authorized to carriers by the Railroad Service Board. Request for exceptions must be submitted in writing to R. D. Pfahler, Chairman, Railroad Service Board, Interstate Commerce Commission, Washington, D.C. 20423. Each such request must specifically identify the type of cars for which an exemption is desired and must clearly state the reasons why such cars cannot be utilized in other services.

(x) *Exception:* This order shall not apply to cars of Mexican ownerships held at Texas Gulf ports.

(xi) *Exception:* This order shall not apply to emergency relief supplies, other than bulk grain or soybeans, when billed to an agency of the United States Government.

(2) *Free time.* (i) Not more than a total of 72 hours' free time, excluding Saturdays, Sundays, and holidays, shall be allowed for loading or unloading freight cars described in Part (1), paragraph (ii) of this order at ocean, Great Lakes, or river ports with freight requiring transfer between rail and water carriers, either direct or through port elevators, wharves, docks, or warehouses.

(ii) When freight cars described in Part (1), paragraph (ii) of this order are held by rail carriers at any point outside the port because of any condition attributable to the shipper or consignee, the combined total of the free time allowed at the port at the point where cars are held shall not exceed 72 hours, excluding Saturdays, Sundays, and holidays.

(iii) If the maximum free time authorized in applicable tariffs is less than the 72-hour period described in paragraph (i) of this section, the free-time periods provided in such tariffs shall apply.

(3) *Demurrage, detention, or storage charges—cars not subject to average demurrage basis.* (i) After the expiration of the free-time period described in Part (2) of this order, demurrage charges shall be assessed at the following rates, until car is released:

$10.00 per car per day, or fraction of a day, for each of the first two days.
$20.00 per car per day, or fraction of a day, for each of the next two days.
$30.00 per car per day, or fraction of a day, for each of the next two days.
$50.00 per car per day, or fraction of a day, for each subsequent day.

(ii) Except as provided in Demurrage Rule 6, Section B of General Car Demurrage Tariff 4–J, I.C.C. H–59, the applicable demurrage charges provided herein will accrue on all Saturdays, Sundays, and holidays subsequent to the free time, or without free time when none is provided, including a Saturday, Sunday, or holiday immediately following the day on which the last day of free time begins, provided such last day of free time begins to run at or before 7:00 a.m. or expires at or before 11:59 p.m., of the day immediately prior to the Saturday, Sunday, or holiday.

(4) *Cars subject to average demurrage basis.* (i) One credit will be allowed for each car released before the expiration of the first twenty-four (24) hours of free time. After the expiration of forty-eight (48) hours' free time (or the adjusted free time if provided in applicable tariffs), one debit per car per day, or fraction of a day, will be charged for each of the first two days. In no case shall more than one credit be allowed on any one car, and in no case shall more than two credits be applied in cancellation of debits accruing on any one car. When a car has accrued two debits, a charge of $20.00 per car per day, or fraction of a day, will be made for each of the next two days, or fraction of a day, and $30.00 per car per day, or fraction of a day, for each of the next two days, and $50.00 per car per day, or fraction of a day, will be made for all subsequent detention. In computing time under this rule, all Saturdays, Sundays, and holidays will be counted after the free time, including a Saturday, Sunday, or holiday immediately following the day on which the last day of free time begins.

(ii) Credits earned on cars held for loading shall not be used in offsetting debits accruing on cars held for unloading, nor shall credits earned on cars held for unloading be used in offsetting debits accruing on cars held for loading.

Credits earned on cars loaded and unloaded in intraplant switching service shall not be used to offset debits accruing on cars handled in other services; nor shall credits earned on cars handled in other services be used to offset debits accruing on cars loaded and unloaded in intraplant switching service.

NOTE: The term "intraplant switching service" will be applied as defined in the applicable tariffs, and will include cars of grains, seeds, or soybeans, handled in "set-back service."

(iii) Credits cannot be earned by private cars subject to Rule 1, section B, Paragraph 4(a) of General Car Demurrage Tariff 4–J, I.C.C. H–59, issued by B. B. Maurer, supplements thereto, or reissues thereof or to similar rules in other

tariffs, but debits charged on such cars while under constructive placement may be offset by credits earned on other cars.

(iv) At end of the calendar month the total number of applicable credits will be deducted from the total number of debits at the ratio of two credits for one debit, and $10.00 per debit will be charged for the remainder. (See Note.) If the total number of debits are offset by credits through deduction at the above ratio of two credits for one debit, no charge will be made for the detention of the cars except as otherwise provided herein for detention beyond the second debit day, and no payment will be made on account of such excess of credits; nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

NOTE: For the purpose of applying Part (iv) of this paragraph, when an odd number of credits is earned, one of such credits will be disregarded in the computation.

(5) If the demurrage, detention, or storage rates authorized in the applicable tariffs are greater than those described herein, such higher rates shall apply.

(6) Existing tariff rules requiring the placement or release, as a unit, of all cars in a multiple-car shipment shall remain in effect.

(7) The demurrage, detention, or storage rates provided herein shall supersede all published storage charges expressed in cents per hundred-weight, per bushel, or other unit of measure, for all freight held at ports in cars in excess of the free-time periods provided herein.

(8) *Notices of arrival, constructive placement, etc.* (i) Existing tariff provisions defining constructive placement and establishing the requirements for the placement, adjustment of run-arounds, the giving of arrival or constructive placement notice on freight destined for unloading or trans-shipment at the ports shall apply.

(ii) If no such rules with respect to arrival, run-around, or constructive placement are published in the applicable tariffs, the rules published in General Car Demurrage Tariff 4-J, I.C.C. H-59, issued by B. B. Maurer, supplements thereto, or reissues thereof, shall apply.

(b) *Rules and regulations suspended.* The operation of all rules and regulations, including rates, rules, and free-time periods granted by authority of Part I, Section 22 of the Interstate Commerce Act, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Effective date.* This order shall become effective at 7:00 a.m., July 1, 1973.

(d) *Expiration date.* This order shall expire at 6:59 a.m., October 1, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

(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 order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order 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.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-13618 Filed 7-3-73;8:45 am]

[S.O. 1131, Amdt. 1]

PART 1033—CAR SERVICE

Chicago, Rock Island and Pacific Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of June 1973.

Upon further consideration of Service Order No. 1131 (38 FR 9232), and good cause appearing therefor:

It is ordered, That § 1033.1131 *Service Order No. 1131* (Chicago, Rock Island and Pacific Railroad Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., June 30, 1973.

(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.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-13619 Filed 7-3-73;8:45 am]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program

On February 9, 1973, there was published in the FEDERAL REGISTER a notice of proposed rule making to revise the regulations governing the Food Stamp Program. The notice set forth a proposal to amend the regulations to permit averaging, over a 12-month period, of income which is regularly expected to be received during a period of more than 8 months but less than 12 months of each calendar year.

Interested persons were given 30 days in which to submit written comments, suggestions or objections regarding the proposed amendment.

Comments were received from approximately 40 interested persons and organizations. The principal objections are that the amendment, as proposed, would be too difficult to administer because of the imprecise language, and that it might exclude households whose regular flow of income was unexpectedly interrupted.

After careful consideration of all comments received, the Department has decided to revise the proposed amendment to more clearly define those households for which it was intended. In addition, the requirement that income be received in more than 8 months but less than 12 has been deleted. The amendment now refers to individuals who receive income from a contract which is renewable each year or longer.

Section 271.3(c)(2) is amended to add a new subdivision (iv) to read as follows:

§ 271.3 **Household eligibility.**

* * * * *

(c) *Income and resource eligibility standards of other households.* * * *

(2) *Handling of income.* * * *

(iv) To determine the eligibility of households with members who receive compensation on other than an hourly or piecework basis under a contract which is renewable on a yearly or longer basis (such as, but not limited to, school employees), such members shall be deemed to be receiving compensation continuously for an entire year even though predetermined nonwork (vacation) periods are involved or actual compensation payments are scheduled for payment during work periods only. For such persons, compensation received under such contracts shall be averaged over a 12-month period.

* * * * *

This provision shall not apply in situations where the other party to the contract cannot or will not make payments specified in the contract, or where the flow of earnings specified in the contract is otherwise interrupted.

(Catalog of Federal Domestic Assistance Programs No. 10.551, National Archives Reference Services)

This amendment shall be effective on July 1, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

JUNE 29, 1973.

[FR Doc.73-13639 Filed 7-3-73;8:45 am]

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

[Valencia Orange Regulation 439]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period July 6-July 12, 1973. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908. The quantity of Valencia oranges so fixed was arrived at after consideration of the total available supply of Valencia oranges, the quantity of Valencia oranges currently available for market, the fresh market demand for Valencia oranges, Valencia orange prices, and the relationship of season average returns to the parity price for Valencia oranges.

§ 908.739 Valencia Orange Regulation 439.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the respective quantities of Valencia oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Valencia orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Valencia oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Valencia oranges continues to remain slow. Prices f.o.b. averaged $3.16 per carton on a sales volume of 513 carlots during the week ended June 28, 1973, compared with $3.13 per carton on sales of 593 carlots a week earlier. Track and rolling supplies at 303 cars were down 45 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Valencia oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 2, 1973.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period July 6, 1973, through July 12, 1973, are hereby fixed as follows:

(i) District 1: 115,000 cartons;

(ii) District 2: 342,000 cartons;

(iii) District 3: 68,000 cartons.

(2) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: July 3, 1973.

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

[FR Doc.73-13803 Filed 7-3-73;11:46 am]

[Apricot Reg. 6, Amdt. 3.]

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Container Regulation

This authorizes the use of closed LA lugs and equivalent cartons in the shipment of Washington apricots if they are row-faced or tray-packed. It also permits shipment of the currently authorized closed container (with inside dimensions 3¾-4¼x10½x15 inches) if tray-packed or row-faced. Currently this container may be used only in the shipment of row-faced apricots.

Notice was published in the FEDERAL REGISTER on June 15, 1973 (38 FR 15730) that consideration was being given to a proposed amendment of the container regulation for fresh shipments of apricots as recommended by the Washington Apricot Marketing Committee, established under the marketing agreement, as amended, and Order No. 922, as amended (7 CFR Part 922), regulating the handling of apricots grown in designated counties in Washington, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The notice afforded interested persons until June 22, 1973, to submit written data, views, or arguments in connection with said amendment. None were received.

After consideration of all relevant matters presented, including that in the notice, and other available information, it is hereby found that the amendment, as hereinafter set forth, is in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (i) the handling of fruit will soon begin and to be of maximum benefit the provisions of this amendment should be effective upon the date hereinafter specified, (ii) the effective date hereof will not require of handlers any preparation that cannot be completed prior thereto, (iii) this amendment was recommended by members of the Washington Apricot Marketing Committee in an open meeting at which all interested persons were afforded opportunity to submit their views, (iv)

the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and (v) this amendment relieves restrictions on the handling of apricots grown in Washington.

LA lugs and cartons are well known, commonly used lidded fruit containers in the Northwest. Tray-packing is a common practice which allows for a definite packing pattern and fruit count, desirable to the fruit trade. This amendment permitting the use of these packs for Washington Apricots is in accordance with the desires of the industry.

Therefore, paragraph (a)(3) of § 922.306 is amended to read as follows:

§ 922.306 Apricot Regulation 6.

(a) * * *

(3) In closed containers with inside dimensions of 3¾–4¼x10½x15 inches and containing not less than 14 pounds, net weight of apricots, or in closed LA lugs (inside dimensions of 5¾x13½x16⅛ inches) or their carton equivalents: *Provided*, That apricots packed in such containers shall be row-faced or tray-packed; or

* * * * *

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

Dated, June 28, 1973, to become effective July 1, 1973.

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

[FR Doc.73–13551 Filed 7–3–73;8:45 am]

Proposed Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Ch. I]

[CGD 72-245P]

CONSTRUCTION REQUIREMENTS FOR TANK SHIPS

Advance Notice of Proposed Rulemaking

The Coast Guard published in the January 26, 1973 FEDERAL REGISTER (38 FR 2467) an Advance Notice of Proposed Rulemaking regarding "Construction Requirements for Tank Ships."

Over sixty comments have been received. They present complex issues and a careful analysis of these comments must be made.

Section 7(C) of Title II of the Ports and Waterways Safety Act of 1972 (P.L. 92-340, 46 U.S.C. 391a(7)(C)) provides for the establishment of rules and regulations consonant with international treaties, conventions or agreements. The IMCO International Conference on Marine Pollution is scheduled for October of this year and it will have a direct bearing on the actions of the Coast Guard under Title II.

Accordingly, the Coast Guard will await the outcome of the Conference before taking any further action on this proposed rulemaking.

Dated: June 27, 1973.

T. R. SARGENT,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc.73-13556 Filed 7-3-73;8:45 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-EA-43]

VOR FEDERAL AIRWAYS

Proposed Revocation, Alteration, and Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation regulations that would restructure 26 VOR Federal Airways in the Washington, D.C., Metropolitan Area.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before July 20, 1973 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would revoke, alter, and designate the following VOR Federal Airways:

A. Airways to be revoked:

1. V-123 between Washington, D.C., and the intersection of Washington 043°T (050°M) and Kenton, Del., 262°T (271°M) magnetic radials.
2. V-140 between Casanova, Va., and Modena, Pa.
3. V-143 North Alternate between Martinsburg, W. Va., and Lancaster, Pa.
4. V-144 between Linden, Va., and Manassas, Va., Intersection.
5. V-174 between Blue Ridge, Va., and Manassas, Va., Intersections.
6. V-223 between Harrisburg, Pa., and Brandy, Va., Intersection.
7. V-265 between Reno, Md., and Riverdale, Md., Intersections.
8. V-308 between Moorefield, W. Va., and Hobbs, Md., Intersections.
9. V-433 between Washington, D.C., and the intersection of the Washington 043°T (050°M) and Kenton, Del., 262°T (271°M) magnetic radials.

B. The following compulsory low altitude reporting points would be revoked:

1. Herndon, Va.
2. Hampton, Pa.
3. Norris, Pa.

C. Airways to be altered as follows:

1. V-3 between Flat Rock, Va., and Modena, Pa., via Flat Rock direct Gordonsville, Va., direct Linden, Va., direct Front Royal, Va., direct Martinsburg, W. Va., direct Westminster, Md., direct Modena, Pa., thence via present alignment.
2. V-4 between Front Royal, Va., and Herndon, Va., via Front Royal 105°T (111°M) radial to its intersection with Casanova, Va., 047°T (053°M) radial where the airway would terminate.
3. V-8 between Martinsburg, W. Va., and Washington, D.C., including the North alternate airway between Hagerstown, Md., and Ashburn, Va., intersection, via Martinsburg direct Washington, and the North alternate via Hagerstown 157°T (164°M) radial to its point of intersection with the Martinsburg 130°T (137°M) radial where the airway would terminate.
4. V-16 between Roanoke, Va., and Kenton, Del., including revoking the north alternate between Roanoke and Gordonsville, Va., and the South alternate between Lynchburg, Va., and Gordonsville, Va. The main airway would be realigned via Roanoke direct Lynchburg, direct Flat Rock, Va., direct Richmond, Va., thence via the intersection of Richmond 039°T (045°M) and Patuxent, Md., 228°T (235°M) radials, direct Patuxent, direct Kenton, thence via the present alignment.
5. V-39 between Gordonsville, Va., and Lancaster, Pa., including the east alternate between Gordonsville and Herndon, Va. The main airway would be realigned via Gordonsville direct Linden, Va., direct Front Royal, Va., direct Martinsburg, W. Va., direct Lancaster, Pa., thence via its present alignment. The east alternate would be realigned from Gordonsville direct Casanova, Va., direct Linden.
6. V-93 between Baltimore, Md., and Lancaster, Pa., by adding an east alternate via Baltimore 034°T (042°M) and Lancaster 181°T (190°M) radials.
7. V-143 between Martinsburg, W. Va., and Lancaster, Pa., by adding a south alternate airway from Martinsburg direct Westminster, Md., direct Lancaster.
8. V-155 between Flat Rock, Va., and Front Royal, Va., via Flat Rock direct Brooke, Va., where it would terminate.
9. V-157 between Richmond, Va., and New Castle, Del., via Richmond, then the intersection of Richmond 039°T (045°M) and Patuxent, Md., 228°T (235°M) radials, direct Patuxent, direct Kenton, Del., direct New Castle, thence via the present alignment. Also, would delete the exclusions relating to R-4001 and R-6612.
10. V-162, by extending the airway from Harrisburg, Pa., to the intersection of Harrisburg 204°T (212°M) and Martinsburg, W. Va., 130°T (137°M) radials.
11. V-222 between Lynchburg, Va., and Ironsides, Md., Intersection by adding a north alternate from Lynchburg direct Gordonsville, Va., direct Ironsides where the alternate airway would terminate.
12. V-286 by realigning the airway from Casanova, Va., to Moorefield, W. Va., Intersection, via the Casanova 284°T (290°M) to Moorefield Intersection where the airway would terminate.
13. V-501 between Martinsburg, W.Va. and St. Thomas, Pa., via Martinsburg direct Hagerstown, Md., direct St. Thomas.

D. New airways to be designated:

1. V-375 from Roanoke, Va., direct Gordonsville, Va., direct to Brandy, Va., Intersection, including a north alternate from Roanoke, via the intersection of Roanoke 035°T (039°M) and Montebello, Va., 250°T (255°M) radials, direct Montebello, direct Gordonsville.
2. V-376 from Richmond, Va., via the intersection of Richmond 009°T (015°M) and Nottingham, Md., 238°T (245°M) radials (Ironsides) where the airway would terminate.
3. V-377 from Kessel, W. Va., via the intersection of Kessel 055°T (061°M) and Hagerstown, Md., 267°T (274°M)

radials, direct Hagerstown, direct Harrisburg, Pa.

4. V-378 from Baltimore, Md., via the intersection of Baltimore 034°T (042°M) and Modena, Pa., 236°T (245°M) radials, direct to Modena.

5. V-379 from Nottingham, Md., direct Kenton, Del.

A joint FAA/industry working group met from January 8 to April 27, 1973, to conduct an overall procedural review of the Air Traffic Control System in the Washington Metropolitan Area with a view towards increasing the efficiency and safety of air traffic control in this area. The committee recommended that numerous changes be made to the airway configuration serving the Washington area.

These changes would eliminate a maze of unused airways, which would result in less congestion and confusion on the charts. Also, this modification would provide:

1. More direct routes.
2. Reduced route mileage.
3. Optimum altitude for arriving turbojets.
4. Uninterrupted climbs to departing aircraft.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348 (a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on June 27, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-13513 Filed 7-3-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1005]

[Ex Parte 263 (Sub-No. 2)]

LOSS AND DAMAGE CLAIMS

Net Weights for Determining Losses

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 20th day of June 1973.

By notice dated March 19, 1973, and published in the FEDERAL REGISTER on March 28, 1973, 38 FR 8108, it was stated that a petition had been filed by Louis Padnos Iron & Metal Company seeking the institution of an investigation into the lawfulness of the practice of certain railroads in utilizing a comparison of gross weights to determine the extent of loss on shipments of scrap iron and steel. The petition was docketed for administrative handling as No. 35767, Louis Padnos Iron & Metal Co.—Petition for Investigation of Practices of Rail Carriers Respecting Handling of Loss Claims on Scrap Iron and Steel. As stated below, we have decided to institute an investigation as requested; however, we have also decided to consider the advisability of prescribing rules and regulations governing the voluntary disposition of loss claims. Therefore, we have docketed the proceeding with the number and title captioned above.

In the notice, we advised that petitioner asserts that it is entitled to reimbursement of its "full and actual loss", pursuant to section 20(11) of the Interstate Commerce Act and that such loss lawfully should be measured by the difference between origin and destination net weights. Petitioner states that it is the practice of certain railroads to pay only those claims for loss established by a comparison of gross weights.

In the past, we have had occasion to consider several matters which are necessarily connected with this petition. For example, as long ago as 1913, In re Weighing of Freight by Carrier, 28 I.C.C. 7, it was noted that inaccuracies in weighing can result in discrimination between shippers as much as do differences in rates themselves. Cognizance was taken there of the fact that accuracy in the matter of weight in connection with claims for loss becomes of increasing importance in proportion to the value of the article being transported. A prolific source of error in ascertaining correct weights was found to be improper tare weights stenciled upon cars, but it was also stated to be of great importance that cars were being delivered for loading which contain foreign substances (thereby increasing the "light" weight of the car.)

More recently, in Consignees' Obligation to Unload, 340 I.C.C. 405, we found that Rule 27 of the Uniform Freight Classification imposes upon consignees the obligation of unloading railcars with exceptions. The carriers are on notice that cars not completely unloaded must either be left on demurrage or pulled under rates for the transportation of refuse. However, petitioner has, in other representations before this Commission, given reason to believe that such is not always the case with respect to cars used for the movement of scrap iron and steel.

In Loss and Damage Claims, 340 I.C.C. 515, we determined that we have the requisite authority to prescribe rules and regulations governing the voluntary processing of loss and damage claims. While we could proceed to consider the advisability of detailed rules with respect to weighing and to completion of unloading, we believe that, if warranted, a simple rule requiring the settlement of loss claims to be based upon a comparison of net weights will best accomplish the protection of the public interest. However, if it should later appear that the proceeding should be broadened for the consideration of more detailed rules, we will take under advisement the possibility of prescribing a net-weight rule on an interim basis pending the completion of more detailed proceedings.

Wherefore, and for good cause:

It is ordered, That, to the extent indicated below, the petition be, and it is hereby, granted; and that, in all other respects not inconsistent with this order, the petition be, and it is hereby, denied.

It is further ordered, That, upon petition and the Commission's own motion, pursuant to the authority of the National Transportation Policy (49 U.S.C. proceeding section 1) parts I, II, III, and IV of the Interstate Commerce Act (49 U.S.C. § 1, 301, 901, and 1001, et seq.), including more specifically sections 1, 2, 3, 6, 12, 13, 15, and 20; 204, 208, 216, 217, 218, 219 and 220; 304, 305, 306, 307, 313, 315, and 316; 403, 404, 405, 406, 409, 412, 413, and 417; and as may be applicable, sections 553, 556, 557, and 599 of the Administrative Procedure Act (5 U.S.C. § 551, et seq.): (a) An investigation be, and it is hereby, instituted into the lawfulness of the practice of common carriers of determining their liability for the loss of scrap iron and steel by a comparison of gross weights at origin and destination; and (b) a rulemaking proceeding be, and it is hereby, instituted for the purpose of considering the following addition to the Commission's rules and regulations governing the voluntary disposition of loss and damage claims and processing salvage, 49 CFR 1005, et seq.:

§ 1005.7 Weight as a measure of loss.

Where weight is used as a measure of loss, the settlement of claims shall be based upon a comparison of net weights at origin and destination.

It is further ordered, That all common carriers subject to the Interstate Commerce Act be, and they are hereby, made respondents to this proceeding.

It is further ordered, That any person other than those who responded to the notice issued in connection with No. 35767 intending to participate in this proceeding shall notify this Commission by filing with the Commission's Office of Proceedings, Room 5342, 12th Street and Constitution Avenue, NW., Washington, D.C. 20423, on or before July 31, 1973, an original and one copy of a statement of his intention to participate; and that a revised service list shall then be prepared and made available to persons responding to this order and to the notice issued in connection with No. 35767, containing the names and addresses of all parties to this proceeding, upon whom copies of all pleadings must be served; thereafter, the nature of further proceedings will be designated.

And it is further ordered, That notice of this proceeding be given by posting a copy in the office of the Commission's Secretary for public inspection and by delivering a copy to the Director, Division of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested parties.

This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-13615 Filed 7-3-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Proposed Definition of Small Special Trade Contractor

The purpose of this proposal is to give interested parties an opportunity to file written comments on a decrease in the construction size standard for special trade contractors for the purposes of bidding on Government procurements and obtaining a Small Business Administration (SBA) loan.

The present definitions of small business for construction, including special trade contractors, are average annual receipts of $7½ million or less for the 3 preceding fiscal years for the purpose of bidding on Government contracts and $5 million for the purpose of obtaining an SBA loan.

SBA policy is to limit SBA assistance to concerns that are struggling to become or remain competitive and who are at a competitive disadvantage because of size. Based on the latest available data, we find that the present construction definitions of small business are unreasonable under current SBA size standards policy. We think that, where a very limited number of concerns in an industry containing many concerns falls within a certain size class and these concerns individually have output or receipts which are much higher in relation to the industry's total output than the vast majority of concerns, it is reasonable to conclude, in the absence of evidence to the contrary, that such firms are not disadvantaged because of size. For all but three special trade contractors industries, the use of such criteria would not support a finding that companies having more than $1 million are completely disadvantaged because of size. For example, in SIC 1751, "Carpentering and Flooring," There are 137,001 companies and 99.9 percent have annual receipts of less than $1 million; in fact, 99.6 percent have annual receipts of less than $500,000. Less than 0.1 percent have annual receipts exceeding $5 million, and these firms account for less than 2 percent of the industry's total sales.

Based on the foregoing, we find that a $1 million average annual receipts size standard is more reasonable and sufficient to carry out the Agency's policy objectives for most special trade contractors. However, there are three special trade contractors industries, namely, SIC Industry No. 1711, are three special trade contractors in- "Plumbing, Heating (Except Electric), and Air Conditioning," SIC Industry No. 1741, "Electrical Work," and SIC Industry No. 1791, "Structural Steel Erection," in which companies with annual receipts of less than $1 million account for a somewhat lesser percentage of their industry's total sales than other special trade contractors. In these industries, concerns with annual receipts of less than $1 million account for approximately 60 percent of their industry's total sales, whereas the other industries' percentage of total sales accounted for by firms with annual receipts of less than $1 million ranged from 72.7 percent to 90 percent.

Further, the companies in these three industries appear to be somewhat larger than in the other special trade industries. In all other special trade contractors industries, more than 90 percent have annual receipts of less than $5 million, whereas, in these three industries about 85 percent have under $5 million. Therefore, we find that these three industries should have a higher size standard than the proposed $1 million annual receipts size standard for other special trade contractors, but should fall well below $5 million. On this basis, we are proposing a $2 million annual receipts size standard for the aforesaid industries.

Accordingly, notice is hereby given that the Administrator of the Small Business Administration proposes to amend part 121 of Chapter I of title 13 of the Code of Federal Regulations by:

1. Revising § 121.3–8(a)(1) to read as follows:

§ 121.3–8 Definition of small business for Government procurement.

* * * * *

(a) *Construction.* Any concern bidding on a contract for work which is classified in Division C, Contract Construction, of the Standard Industrial Classification Manual, as amended, prepared and published by the Office of Management and Budget, Executive Office of the President, is:

(1) Small if its average annual receipts for its preceding 3 fiscal years do not exceed $7½ million provided, however, that, if the requirements of the contract are classified in an industry set forth in Schedule H of this part, it is small if it does not exceed the size standard established therein for such industry.

* * * * *

2. Adding new Schedule H to Part 121 to read as follows:

SCHEDULE H—ANNUAL RECEIPTS SIZE STANDARDS FOR PURPOSE OF BIDDING ON PROCUREMENTS FOR CONSTRUCTION—SPECIAL TRADE CONTRACTORS

Census Classification Code	Industry, Subindustry, or Class of Products	Annual Sales Size Standard (maximum, in millions)
1711	Plumbing, Heating (Except Electric), and Air Conditioning	$2.0
1721	Painting, Paper Hanging, and Decorating	1.0
1731	Electrical Work	2.0
1741	Masonry, Stone Setting, and Other Stonework	1.0
1742	Plastering, Drywall, Acoustical and Insulation Work	1.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	1.0
1751	Carpentering and Flooring	1.0
1752	Floor Laying and Other Floorwork, Not Elsewhere Classified	1.0
1761	Roofing and Sheet Metal Work	1.0
1771	Concrete Work	1.0
1781	Water Well Drilling	1.0
1791	Structural Steel Erection	2.0
1793	Glass and Glazing Work	1.0
1794	Excavating and Foundation Work	1.0
1795	Wrecking and Demolition Work	1.0
1796	Installation or Erection of Building Equipment, Not Elsewhere Classified	1.0
1799	Special Trade Contractors, Not Elsewhere Classified	1.0

3. Revising § 121.3–10(a) to read as follows:

§ 121.3–10 Definition of small business for SBA loans.

* * * * *

(a) *Construction.* Any construction concern is small if its average annual receipts do not exceed $5 million for the 3 preceding fiscal years provided, however, that, if it is primarily engaged in an industry set forth in Schedule I of this part, it is small if its annual receipts do not exceed the size standard established therein for that industry.

* * * * *

4. Adding new Schedule I to read as follows:

SCHEDULE I—ANNUAL RECEIPTS SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN CONSTRUCTION (SPECIAL TRADE CONTRACTORS)

(The following size standards are to be used when determining the size status of special trade construction contractors for the purpose of SBA business loans, displaced business loans, economic opportunity loans, and as alternate standards for sections 501 and 502, and SBIC assistance. If a code is followed by a letter, the size standard applies only to the class of product designated.)

Census Classification Code	Industry, Subindustry, or Class of Products	Annual Sales Size Standard (maximum, in millions)
1711	Plumbing, Heating (Except Electric), and Air Conditioning	$2.0
1721	Painting, Paper Hanging, and Decorating	1.0
1731	Electrical Work	2.0
1741	Masonry, Stone Setting, and Other Stonework	1.0
1742	Plastering, Drywall, Acoustical and Insulation Work	1.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	1.0
1751	Carpentering and Flooring	1.0
1752	Floor Laying and Other Floorwork, Not Elsewhere Classified	1.0
1761	Roofing and Sheet Metal Work	1.0
1771	Concrete Work	1.0
1781	Water Well Drilling	1.0
1791	Structural Steel Erection	1.0
1793	Glass and Glazing Work	1.0
1794	Excavating and Foundation Work	1.0
1795	Wrecking and Demolition Work	1.0
1796	Installation or Erection of Building Equipment, Not Elsewhere Classified	1.0
1799	Special Trade Contractors, Not Elsewhere Classified	1.0

Interested parties may file with the Small Business Administration on or before August 6, 1973, written statements of facts, opinions, or arguments concerning the proposal.

All correspondence shall be addressed to:

William L. Pellington
Director, Office of Industry Studies and Size Standards
Small Business Administration
1441 "L" Street, N.W.
Washington, D.C. 20416

Dated: June 21, 1973.

ANTHONY G. CHASE,
Acting Administrator.

(Catalog of Federal Domestic Assistance Program Nos. 59.001, Displaced Business Loans;

59.002, Economic Injury Disaster Loans; 59.003, Economic Opportunity Loans for Small Businesses; 59.004, Lease Guarantees for Small Business; 59.006, Minority Business Development—Procurement Assistance; 59.009, Procurement Assistance to Small Businesses; 59.010, Product Disaster Loans; 59.011, Small Business Investment Companies; 59.012, Small Business Loans; 59.013, State and Local Development Company Loans; 59.014, Coal Mine Health and Safety Loans; 59.017, Meat and Poultry Inspection Loans; 59.018, Occupational Safety and Health Loans.)

[FR Doc.73-13595 Filed 7-3-73;8:45 am]

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Proposed Revision of Procedures for Protesting Concerns' Eligibility

Pursuant to authority contained in section 6 of the Small Business Act, as amended, notice is hereby given that the Small Business Administration proposes to amend the Small Business Size Standards regulation establishing procedures for protesting the small business eligibility of a bidder on a Government procurement. The proposed change would permit a bidder or offeror or other interested party to initiate a size protest by *telephoning* the contracting office, provided that the contracting officer thereafter receives a confirming letter of protest postmarked no later than 1 day following the date of the telephoned protest.

Under the proposed change it still will be permissible to file a protest by mail or telegram. However, any protest so filed must be received by the contracting office within the 5-day period allotted. It is proposed to rescind the current rule which provides that a protest shall be considered timely if sent by registered or certified mail or telegram and the postmark or date and time line, respectively, indicates that such protest would have been delivered within the time frame allotted but for delays beyond the control of the protestant.

Specifically, it is proposed to amend part 121 of Chapter I of title 13 of the Code of Federal Regulations by revising § 121.3-5(a) to read as follows:

§ 121.3-5 Protest of small business status.

(a) *How to protest.* Any bidder or offeror or other interested party may challenge the small business status of any other bidder or offeror on a particular Government procurement or sale. In order to apply to the procurement in question, such protest must be filed prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and local holidays after bid or proposal opening, except that, in the case of negotiated procurements, a protest may be filed within 5 days exclusive of Saturdays, Sundays, and legal holidays after receipt from the contracting officer of notification of the identity of the offeror being protested. Such filing must be delivered to the contracting office by hand, by telegram, or by mail within the 5-day period allotted provided, however, that a protest shall be considered timely if made by telephone to the contracting officer within the 5-day period allotted, and the contracting office thereafter receives a confirming letter (1) within such 5-day period *or* (2) postmarked no later than 1 day after the date of such telephoned protest.

Interested persons may submit written data, views, or comments regarding the proposed amendment to:

William L. Pellington
Director, Office of Industry Studies and Size Standards
Small Business Administration
1441 "L" Street, N.W.
Washington, D.C. 20416

on or before July 20, 1973.

Dated: June 21, 1973.

ANTHONY G. CHASE,
Acting Administrator.

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Business.)

[FR Doc.73-13596 Filed 7-3-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Notice of Meeting

The United States Advisory Commission on International Educational and Cultural Affairs will meet in open session on Friday, July 20, 1973, at the Department of State, Room 1207, from 2:00 p.m. to 3:00 p.m. The agenda will include continuing discussion of the Commission's objectives and the possible need to seek private sector funding. For purposes of fulfilling building security requirements, anyone wishing to attend the open session must advise the Staff Director by telephone in advance of the meeting. Telephone: 632-2764.

From 9:00 a.m. to 12:00 noon the Advisory Commission will meet in closed session, as provided for by 5 USC 552(b)(1).

Dated: June 26, 1973.

MARGARET G. TWYMAN,
Staff Director,
Commission Secretariat.

[FR Doc.73-13522 Filed 7-3-73;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T. D. 73-178]

FOREIGN CURRENCIES

Certification of Rates

The appended table shows the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), which are applicable to the currencies of the countries listed in § 16.4(d), Customs Regulations (19 CFR 16.4(d)), for the period from June 18 through June 22, 1973. This table is published for the information and use of Customs officers and others concerned, and denotes those currencies which vary by 5 per centum or more from the quarterly rate published in T.D. 73-108.

[SEAL] G. H. HEIDBREDER,
Director, Appraisement and
Collections Division.

Country	Currency	June 18	June 19	June 20	June 21	June 22
Australia	Dollar	Q	Q	Q	Q	Q
Austrian	Schilling	$0.0529	$0.0528	$0.052550	$0.0526	$0.0532
Belgium	Franc	.026625	.026595	.026500	.026700	.026780
Canada	Dollar	Q	Q	Q	Q	Q
Ceylon	Rupee	Q	Q	Q	Q	.1655
Denmark	Krone	.1724	.1712	.1718	.1718	.1726
Finland	Markka	Q	Q	Q	Q	Q
France	Franc	.2358	.2355	.2357	.2363	.2367
Germany	Deutsche Mark	.3904	.3893	.3894	.3910	.3919
India	Rupee	Q	Q	Q	Q	Q
Ireland	Pound	Q	Q	Q	Q	Q
Italy	Lira	Q	Q	Q	Q	Q
Japan	Yen	Q	Q	Q	Q	Q
Malaysia	Dollar	Q	Q	Q	Q	Q
Mexico	Peso	Q	Q	Q	Q	Q
Netherlands	Guilder	.3682	.3663	.3668	.3689	.3695
New Zealand	Dollar	Q	Q	Q	Q	Q
Norway	Krone	.1831	.1825	.1821	.1824	.1830
Portugal	Escudo	.0425	.0423	.0422	.0423	.0425
Republic of South Africa	Rand	Q	Q	Q	Q	1.4900
Spain	Peseta	Q	Q	Q	Q	Q
Sweden	Krona	.2380	.2365	.2372	.2373	.2384
Switzerland	Franc	.3286	.3272	.3264	.3287	.3289
United Kingdom	Pound	Q	Q	Q	Q	Q

Q—Use quarterly rate published in T.D. 73-108; daily rate did not vary by 5 per centum or more.

[FR Doc.73-13479 Filed 7-3-73;8:45 am]

Internal Revenue Service

[Order 137]

CHURCHES, CONVENTIONS, AND ASSOCIATIONS OF CHURCHES

Approval of Request To Examine Books of Account and Religious Activities

1. Pursuant to the authority vested in the Commissioner of Internal Revenue under 26 CFR 301.7701-9 and 26 CFR 301.7605-1(c), there is hereby delegated to the following officials the authority to approve a request to examine books of account and religious activities of a church or convention or association of churches:

Assistant Commissioner (Compliance)
Regional Commissioners

2. This authority may not be redelegated.

Issue date: June 27, 1973.

Effective date: June 27, 1973.

[SEAL] DONALD C. ALEXANDER,
Commissioner.

[FR Doc.73-13641 Filed 7-3-73;8:45 am]

Office of the Secretary

COLD ROLLED STAINLESS STEEL SHEET AND STRIP FROM FRANCE

Antidumping; Determination of Sales at Less Than Fair Value

Information was received on August 24, 1972, that cold rolled stainless steel sheet and strip from France are being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act").

A "Withholding of Appraisement Notice" issued by the Assistant Secretary of the Treasury was published in the FEDERAL REGISTER of April 4, 1973 (38 FR 8603).

I hereby determine that for the reasons stated below, cold rolled stainless steel sheet and strip from France are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of reasons on which this determination is based. The information before the Bureau of Customs indicates that the proper basis of comparison for fair value purposes is between purchase price and the adjusted home market price of such or similar merchandise.

Purchase price was calculated on the basis of an f.o.b. French port price, or a discounted f.o.b. French port price, as appropriate, with deductions for sales commissions and foreign inland freight and an addition for duties rebated by reason of the exportation to the United States.

Adjusted home market price was calculated on the basis of a weighted-average of f.o.b. discounted delivered prices in France with deductions for inland freight and sales commissions and adjustments for differences in selling expenses, technical assistance, credit costs and packing charges.

Using the above criteria, purchase price was found to be lower than the adjusted home market price of such or similar merchandise.

The United States Tariff Commission is being advised of this determination.

This determination is being published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

JULY 2, 1973.

[FR Doc.73-13742 Filed 7-3-73;9:30 am]

DEPARTMENT OF DEFENSE

Department of the Army

WINTER NAVIGATION BOARD

Notice of Meeting

1. Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Winter Navigation Board at Highwood, Illinois on July 11 and 12, 1973. The meeting to be held at the Ramada Inn will be in session from 1:30 p.m. until 5:30 p.m. on July 11 and from 8:00 a.m. until noon on the following day. The meeting will be open to the public. The purpose of the meeting is to discuss the Fiscal Year 1974 program funding and priority listing consideration and reports in the completion of the Demonstration Program.

2. The Winter Navigation Board is a multi-agency organization which includes representatives of Federal agencies and non-Federal public and private interests. It was established to direct the Great Lakes and St. Lawrence Seaway Navigation Season Extension Demonstration Program being conducted pursuant to Public Law 91-611.

3. Inquiries may be addressed to Mr. C. Argiroff, Department of the Army, Detroit District, Corps of Engineers, P.O. Box 1027, Detroit, Michigan 48231, Telephone—(313) 226-6768.

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

JUNE 26, 1973.

[FR Doc.73-13679 Filed 7-3-73;8:45 am]

Defense Civil Preparedness Agency

REGIONAL DIRECTORS

Delegation of Authority

REFERENCES: (a) Delegations of Authority published at 29 FR 11852-11853, August 19, 1964; (b) Delegation of Authority published at 36 FR 12318, June 30, 1971.

1. The following amendment to reference (a) as amended by reference (b) is hereby approved:

Paragraph (e), Section 4. *Regional Directors* is hereby revised to read as follows:

(e) Procurement of materials, supplies, equipment and services, including the making of necessary findings and determinations with respect thereto for the following DCPA programs for the States: (1) Radiological Defense Maintenance and Calibration (RADEF Maintenance); (2) Community Shelter Planning Officer, State (CSPOS); (3) Civil Defense Education (CDE); (4) Shelter Survey by State Personnel (Survey-State); (5) CSP Emergency Public Information Program (CSP-EPI); (6) National Communications System (Radio) Agreements (NACOM II) or Civil Defense National Radio System (CDNARS) Agreements; (7) Civil Defense University Extension Program (CDUEP); (8) State Training Seminars; and on a case by case basis as authorized by the Director of the Defense Civil Preparedness Agency, for (9) the Professional Advisory Service Program (PAS).

This amendment to the Delegations of Authority shall be effective July 1, 1973.

JOHN E. DAVIS,
Director,
Defense Civil Preparedness Agency.

[FR Doc.73-13593 Filed 7-3-73;8:45 am]

Office of the Secretary of Defense

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, effective January 5, 1973, notice is hereby given that closed Panel meetings of the DIA Scientific Advisory Committee will be held on:

Thursday, July 12, 1973
Tuesday, July 16, 1973
Wednesday, July 17, 1973
Thursday, July 18, 1973
Tuesday, July 24, 1973
Wednesday, July 25, 1973
Thursday, July 26, 1973
Monday, Aug. 21, 1973
Tuesday, Aug. 22, 1973
Wednesday, July 11, 1973

These meetings commencing at 9:00 a.m. will be to discuss classified matters.

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

JUNE 29, 1973.

[FR Doc.73-13605 Filed 7-3-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

[Proposed OCS Order No. 11]

OIL AND GAS PRODUCTION RATES, PREVENTION OF WASTE, AND PROTECTION OF CORRELATIVE RIGHTS

Proposed Production Rates for Gulf of Mexico

Notice is hereby given that pursuant to § 250.11 of Title 30 of the Code of Federal Regulations, the Chief, Conservation Division, Geological Survey, proposes to approve OCS Order No. 11 for the Gulf of Mexico as set forth below.

The purpose of proposed OCS Order No. 11 is to provide requirements for the conservation of oil and gas and the protection of correlative rights on the Outer Continental Shelf in the Gulf of Mexico. The order includes requirements for control of production rates, testing procedures, flaring of gas, location of wells, and reservoir operations involving competitive ownership.

Interested persons may submit written comments, suggestions, and objections concerning the proposed order to the Director, U.S. Geological Survey, GS Building, 18 and F Streets, NW., Washington, D.C. 20244, on or before August 1, 1973.

V. E. MCKELVEY,
Director.

[OCS Order No. 11]

NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES IN THE OUTER CONTINENTAL SHELF, GULF OF MEXICO AREA

OIL AND GAS PRODUCTION RATES, PREVENTION OF WASTE, AND PROTECTION OF CORRELATIVE RIGHTS

This order is established pursuant to the authority prescribed in 30 CFR 250.1, 30 CFR 250.11, and in accordance with all other applicable provisions of 30 CFR Part 250, and the notice appearing in the FEDERAL REGISTER, dated December 5, 1970 (35 FR 18559), to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein. This Order shall be applicable to all oil and gas wells on Federal leases in the Outer Continental Shelf of the Gulf of Mexico; provided, however, that it shall not apply to oil and gas wells on a lease of which any part lies within the disputed area referred to in paragraph 4 of the Supplemental Decree of December 20, 1971, in *United States vs. Louisiana, et al.*, 404 U.S. 388 (1971). All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b). References in this Order to approvals, determinations, and requirements for submittal of information or applications for approval are to those granted, made, or required by the Oil and Gas Supervisor or his delegated representative.

1. *Definition of terms.* As used in this Order, the following terms shall have the meanings indicated:

A. *Waste of oil and gas.* The definition of waste appearing in 30 CFR 250.2(h) shall apply and shall include the failure to timely initiate enhanced recovery operations where such methods would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles.

B. *Correlative rights.* The opportunity afforded each lessee or operator to produce without waste his just and equitable share of oil and gas from a common source of supply.

C. *Maximum Efficient Rate (MER).* The maximum sustainable daily oil or gas withdrawal rate from a reservoir which will permit economic development of that reservoir without detriment to ultimate recovery.

D. *Maximum Production Rate (MPR).* The approved maximum daily rate at which oil may be produced from a specified oil well completion or the maximum approved daily rate at which gas may be produced from a specified gas well completion.

E. *Interested party.* The operators and lessees, as defined in 30 CFR 250.2 (f) and (g), of the lease or leases involved in any proceeding initiated under this Order.

F. *Reservoir.* An oil or gas accumulation which is separated from and not in oil or gas communication with any other such accumulation.

G. *Competitive reservoir.* A reservoir as defined herein containing one or more producible or producing well completions on each of two or more leases, or portions thereof, in which the lease or operating interests are not the same.

H. *Property line.* A boundary dividing leases, or portions thereof, in which the lease or operating interest is not the same.

The boundaries of Federally approved unit areas shall be considered property lines. The boundaries dividing leased and unleased acreage shall be considered property lines for the purpose of this Order.

I. *Oil reservoir.* A reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

J. *Oil well completion.* A well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

K. *Gas reservoir.* A reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

L. *Gas well completion.* A well completed in a gas reservoir or in the gas cap of an oil reservoir with an associated gas cap.

M. *Oil reservoir with an associated gas cap.* A reservoir that contains hydrocarbons in both a liquid and a gaseous state (two-phase).

N. *Producible well completion.* A well which is physically capable of production and which is shut in at the wellhead or at the surface, but not necessarily connected to production facilities, and from which the operator plans future production.

2. *Classification of reservoirs*—A. *Initial classification.* Each producing reservoir shall be classified by the operator, subject to approval by the Supervisor, as an oil reservoir, an oil reservoir with an associated gas cap, or a gas reservoir.

(1) The initial classification of each reservoir from which production is commenced subsequent to the date of this Order shall be submitted for approval with the initial submittal of MER data for the reservoir.

(2) Each reservoir from which production commenced on or prior to the date of this Order shall be classified by the operator, based on existing reservoir conditions. Such classification shall be determined and submitted to the Supervisor within six (6) months of the date of this order.

B. *Reclassification.* A reservoir may be reclassified by the Supervisor, on his own initiative or upon application of an operator, during its productive life when information becomes available showing that such reclassification is warranted.

3. *Oil and gas production rates.*—A. *Maximum Efficient Rate (MER).* The operator shall propose a maximum efficient rate (MER) for each producing reservoir based on sound engineering and economic principles. When approved at the proposed or other rate, such rate shall not be exceeded, except as provided in paragraph 4 of this Order.

(1) *Submittal of initial MER.* Within 45 days after the date of first production or such longer period as may be approved, the operator shall submit a Request for Reservoir MER (Form ------), with appropriate supporting information.

(2) *Revision of MER.* The operator may request a revision of an MER by submitting the proposed revision to the Supervisor on a Request for Reservoir MER (Form ------), with appropriate supporting information. The Operator shall obtain approval to produce at test rates which exceed an approved MER when such testing is necessary to substantiate an increase in the MER.

(3) *Review of MER.* The MER for each reservoir will be reviewed by the operator annually, or at such other required or approved interval of time. The results of the review, with all current supporting information, shall be submitted on a Reqeust for Reservoir MER (Form ------).

(4) *Effective date of MER.* The effective date of an MER, or revision thereof, will be determined by the Supervisor and shown on a Request for Reservoir MER (Form ------) when the MER is approved. The effective data for an initial MER shall be the first day following the completion of an approved testing period. The effective date for a revised MER shall be the first day following the completion of an approved testing period, or if testing is not conducted, the date the revision is approved.

B. *Maximum Production Rate (MPR).* The operator shall propose a maximum production rate (MPR) for each producing well completion in a reservoir together with full information on the method used in its determination. When an MPR has been approved for a well completion, that rate shall not be exceeded, except as provided in paragraph 4 of this Order. The MPR shall be based on well tests and any limitations imposed by (1) reservoir MER; (2) well tubing, safety equipment, artificial lift equipment, surface back pressure, and equipment capacity; (3) sand producing problems; (4) producing gas-oil and water-oil ratios; (5) relative structural position of the well with respect to gas-oil or water-oil contacts; and (6) prudent operating practices. The MPR established for each well completion shall not exceed the rate demonstrated by a well test unless justified by supporting information.

(1) *Submittal of Initial MPR.* The operator shall have 30 days from the date of first continuous production within which to conduct a potential test, as specified under subparagraphs 5.B and 6.B of this Order, on all new and reworked well completions. Within 15 days after the date of the potential test, the operator shall submit a proposed MPR for the individual well completion on a Request for Well Maximum Production Rate (MPR) (Form ------), with the results of the potential test on a Well Potential Test Report (Form ------). Extension of the 30-day test period may be granted. The effective date for any approved initial MPR shall be the first day following the test period. During the 30-day period allowed for testing, or any approved extensions thereof, the operator may produce a new or reworked well completion at rates necessary to establish the MPR. The operator shall report the total production obtained during the test period, and approved extensions thereof, on the Well Potential Test Report (Form ------).

(2) *Revision of MPR Increase.* If necessary to test a well completion at rates above the approved MPR to determine whether the MPR should be increased, notification of intent to test the well at such higher rates, not to exceed a stated maximum rate during a specified test period, shall be filed with the Supervisor. Such tests may commence on the day following the date of filing notification, unless otherwise ordered by the Supervisor. Within 15 days after the specified test period, the operator shall submit a proposed increased MPR on a Request for Well Maximum Production Rate (MPR) (Form ------), and any other available data to support the requested revision, including the results of the potential test and the total production obtained during the test period on a Well Potential Test Report (Form ------). Prior to approval of the proposed increased MPR, the operator may produce the well completion at a rate not to exceed the proposed increased MPR of the well. The effective date for any approved increased MPR shall be the first day following the test period. If testing rates or increased MPR rates result in production from the reservoir in excess of the approved MER, this excess production shall be balanced by underproduction from the reservoir under the provisions of subparagraph 4.B of this Order.

(3) *Revision of MPR Decrease.* When the quarterly test rate for an oil well completion or the semiannual test rate for a gas well completion required under subparagraphs 5.C and 6.C of this Order is less than 90 percent of the existing approved MPR for the well, a new reduced MPR will be established automatically for that well completion equal to the test rate submitted. The effective date for the new MPR for such well completion shall be the first day of the quarter following the required date of submittal of periodic well-test results under subparagraphs 5.C and 6.C of this Order. Also, the operator may notify the Supervisor on a Request for Well Maximum Production Rate (MPR) (Form ------) of, or the Supervisor may require, a downward revision of a well MPR at any time when the well is no longer capable of producing its approved MPR on a sustained basis. The effective date for such reduced MPR for a well completion shall be the first day of the month following the date of notification.

(4) *Continuation of MPR.* If submittal of the results of a quarterly well test for an oil completion or a semiannual well test for a gas well competion, as provided for in subparagraphs 5.C and 6.C of this Order, cannot be timely, continuation of production under the last approved MPR for the well may be autohrized, provided an extension of time in which to submit the test results is requested and approved in advance.

(5) *Cancellation of MPR.* When a well completion ceases to produce, is shut in pending workover, or any other condition exists which causes the assigned MPR to be no longer appropriate, the operator shall notify the Supervisor accordingly on a Request for Well Maximum Production Rate (MPR) (Form ------), indicating the date of last production from the well, and the MPR will be canceled. Reporting of temporary shut-ins by the operator for well maintenance, safety conditions, or other normal operating conditions is not required, except as is necessary for completion of the Monthly Report of Operations (Form 9-152).

C. *MER and MPR relationship.* The withdrawal rate from a reservoir shall not exceed the approved MER and may be produced from any combination of well completions subject to any limitations imposed by the MPR established for each well completion. The rate of production from the reservoir shall not exceed the MER although the summation of individual well MPR's may be greater than the MER.

4. *Balancing of Production.*—A. *Production variances.* Temporary well production rates, resulting from normal variations and fluctuations exceeding a well MPR or reservoir MER shall not be considered a violation of this Order, and such production may be sold or transferred pursuant to paragraph 8 of this Order. However, when normal variations and fluctuations result in production in excess of a reservoir MER, any operator who is overproduced shall balance such production in accordance with subparagraph 4.B below. Such operator shall advise the Supervisor of the amount of such excess production from the reservoir for the month at the same time as Form 9-152 if filed for that month.

B. *Balancing periods.* As of the first day of month following the month in which this Order becomes effective, all reservoirs shall be considered in balance. Balancing periods for overproduction of a reservoir MER shall end on January 1, April 1, July 1, and October 1 of each year. If a reservoir is produced at a rate in excess of the MER for any month, the operator who is overproduced shall take steps to balance production during the next succeeding month. In any event, all overproduction shall be balanced by the end of the next succeeding quarter following the quarter in which the overproduction occurred. The operator shall notify the Supervisor at the end of the month in which he has balanced the production from an overproduced reservoir.

C. *Shut-in for overproduction.* Any operator in an overproduction status in any reservoir for two successive quarters which has not been brought into balance within the balancing period shall be shut in from that Reservoir until the actual production equals that which would have occurred under the approved MER.

D. *Temporary shut-in.* If, as the result of storm, hurricanes, emergencies, or other conditions peculiar to offshore operations, an operator is forced to curtail or shut in production from a reservoir, the Supervisor may, on request, approve makeup of all or part of this production loss.

5. *Oil well testing procedures.*—A. *General.* Tests shall be conducted for not less than four consecutive hours. Immediately prior to the 4-hour test period, the well completion shall have produced under stabilied conditions for a period of not less than six consecutive hours. The 6-hour pretest period shall not begin until after recovery of a volume of fluid equivalent to the amount of fluids introduced into the formation for any purpose. Measured gas volumes shall be adjusted to the standard conditions of 15.025 psi and 60° F. for all tests. When orifice meters are used, a specific gravity shall be obtained or estimated for the gas and a specific gravity correction factor applied to the orifice coefficient. The Supervisor may require a prolonged test or retest of a well completion if such test is determined to be necessary for the establishment of a well MPR or a reservoir MER. The Supervisor may approve test periods of less than four hours and pretest stabilization periods of less than six hours for well completions, provided that test reliability can be demonstrated under such procedures.

B. *Potential test.* Test data to establish or to increase an oil well MPR shall be submitted on a Well Potential Test Report (Form ------). The total production obtained from all tests during the test period shall be reported on such form.

C. *Quarterly test.* Tests shall be conducted on each producing oil well completion quarterly, and test results shall be submitted on a Quarterly Oil Well Test Report (Form ------). Testing periods and submittal dates shall be as follows:

Testing Period	Latest Date for Submittal of Test Results	For Quarter Beginning
September 11–December 10	December 10	January 1.
December 11–March 10	March 10	April 1.
March 11–June 10	June 10	July 1.
June 11–September 10	September 10	October 1.

There shall be a minimum of 45 days between quarterly tests for an oil well completion.

6. *Gas well testing procedures.*—A. *General.* Testing procedures for gas well completions shall be the same as those specified for oil well completions in subparagraph 5.A.

B. *Potential test.* Test data to establish or to increase a gas well MPR shall be submitted on a Well Potential Test Report (Form ------).

C. *Semiannual test.* Tests shall be conducted on each producing gas well completion semiannually, and test results shall be submitted on a Semiannual Gas Well Test Report (Form ------). Testing periods and submittal dates shall be as follows:

Testing Period	For Submittal of Test Results	For Semi-Annual Period Beginning
June 11–December 10	December 10	January 1
December 11–June 10	June 10	July 1

There shall be a minimum of 90 days between semiannual tests for a gas well completion.

D. *Back pressure tests.* When back pressure tests to determine the theoretical open-flow potential of gas wells are conducted at the option of the operator or by request of the Supervisor, the test results shall be filed with the Supervisor.

7. *Witnessing well tests.* The Supervisor may have a representative witness any potential or periodic well tests on oil and gas well completions. Upon request, an operator shall notify the appropriate District office of the time and date of well tests.

8. *Sale or transfer of production.* Oil and gas produced pursuant to the provisions of this Order, including test production, may be sold to purchasers or transferred as production authorized for disposal hereunder.

9. *Bottom-hole pressure tests.* Static bottom-hole pressure test shall be conducted annually on sufficient key wells to establish an average reservoir pressure in each producing reservoir unless a different frequency is approved. The Operator may be required to test specific wells. Results of bottom-hole pressure tests shall be submitted within 60 days after the date of the test.

10. *Flaring and venting of gas.* Oil- and gas-well gas shall not be flared or vented, except as provided herein.

A. *Small-volume or short-term flaring or venting.* Oil- and gas-well gas may be flared or vented temporarily without the approval of the Supervisor in the following situations:

(1) *Gas vapors.* When gas vapors are released from low-pressure, storage, and other production vessels.

(2) *Emergencies.* During temporary emergency situations, such as compressor or other equipment failure, or the relief of abnormal system pressures.

(3) *Well purging and evaluation tests.* During the unloading or cleaning up of a well and during drillstem, producing, or other well evaluation tests not exceeding a period of 24 hours.

B. *Approval for routine or special well tests.* Oil- and gas-well gas may be flared or vented during routine and special well tests, other than those described in paragraph A above, only after approval of the Supervisor.

C. *Gas-well gas.* Except as provided in A and B above, gas-well gas shall not be flared or vented.

D. *Oil-well gas.* Except as provided in A and B above, oil-well gas shall not be flared or vented unless approved by the Supervisor. The Supervisor may approve an application for flaring or venting of oil-well gas for periods not exceeding one year if (1) the operator has initiated positive action which will eliminate flaring or venting, or (2) the operator has submitted an evaluation supported by engineering, geologic, and economic data indicating that rejection of an application to flare or vent the gas will result in an ultimate greater loss of equivalent total energy than could be recovered for beneficial use from the lease if flaring or venting were allowed.

E. *Content of application.* Applications under paragraph D above for existing operations, as of the date of this Notice, shall be filed with this office within three months from the effective date of this Order. Applications under paragraph D(2) above shall include all appropriate engineering, geologic, and economic data in an evaluation showing that absence of approval to flare or vent the gas will result in premature abandonment of oil and gas production or curtailment of lease development. Applications shall include an estimate of the amount and value of the oil and gas reserves that would not be recovered if the application to flare or vent were rejected and an estimate of the total amount of oil to be recovered and associated gas that would be flared or vented if the application were approved.

11. *Disposition of gas.* The disposition of all gas produced from each lease shall be reported monthly on, or attached to, Form 9–152. The report shall be submitted in the following manner:

	Oil-Well Gas (MCF)	Gas-Well Gas (MCF)
Sales		
Fuel		
*Injected		
Flared		
Vented		
Other (Specify)		
Total		

*Gas produced from the lease and injected on or off the lease.

12. *Multiple and selective completions.*—A. *Number of completions.* A well bore may contain any number of producible completions when justified and approved.

B. *Numbering well completions.* Well completions made after the date of this Order shall be designated using numerical and alphabetical nomenclature. Once designated as a reservoir completion, the well completion number shall not change. Appendix A contains a detailed explanation of procedures for naming well completions.

C. *Packer tests.* Multiple and selective completions shall be equipped to isolate the respective producing reservoirs. A packer test or other appropriate reservoir isolation test shall be conducted prior to initiating production and annually thereafter on all multiply completed wells. Should the reservoirs in any multiply completed well become intercommunicative the operator shall make repairs and again conduct reservoir isolation tests unless some other operational procedure is approved. The results of all tests shall be submitted on a Packer Test (Form ------) within 30 days after the date of the test.

D. *Selective completions.* Completion equipment may be installed to permit selective reservoir isolation or exposure in a well bore through wireline or other operations. All selective completions shall be designated in accordance with subparagraph 12.B when the application for approval of such completions is filed.

E. *Commingling.* Commingling of production from two or more separate reservoirs within a common well bore may be permitted if it is determined that, collectively, the ultimate recovery will not be decreased. An application to commingle hydrocarbons from multiple reservoirs within a common well bore shall be submitted for approval and shall include all pertinent well information, geologic and reservoir engineering data, and a schematic diagram of well equipment. For all competitive reservoirs, notice of the application shall be sent by the applicant to all other operators of interest in the reservoirs. The application shall specify the well completion number to be used for subsequent reporting purposes.

13. *Gas-cap well completions.* All existing and future wells completed in the gas cap of a reservoir which has been classified and approved as an associated oil reservoir shall be shut in until such time as the oil is depleted or the reservoir is reclassified as a gas reservoir; provided, however, that production from such wells may be approved when (1) it can be shown that such gas-cap production would not lead to underground waste, or (2) when necessary to protect correlative rights unless it can be shown

that this production will lead to underground waste.

14. *Location of wells*—A. *General.* The location and spacing of all exploratory and development wells shall be in accordance with approved programs and plans required in 30 CFR 250.17 and 250.34. Such location and spacing shall be determined independently for each lease or reservoir in a manner which will locate wells in the optimum structural position for the most effective production of reservoir fluids and to avoid the drilling of unnecessary wells.

B. *Distance from property line.* An operator may drill exploratory or development wells at any location on a lease in accordance with approved plans; provided that no well drilled and completed after the date of this Order in which the completed interval is less than 500 feet from a property line shall be produced unless an exception to such limitation is approved. An operator requesting approval to produce a well located closer than 500 feet from a property line shall furnish the Supervisor with letters expressing acceptance or objection from operators of offset properties.

15. *Enhanced oil and gas recovery operations.* Operators shall initiate enhanced oil and gas recovery operations for all competitive and noncompetitive reservoirs when such operations would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles. A plan for such operations shall be submitted with the results of the annual MER review as required in paragraph 3A(3) of this order.

16. *Competitive reservoir operations.* Development and production operations in a competitive reservoir may be required to be conducted under either pooling and drilling agreements or unitization agreements when the Conservation Manager determines, pursuant to 30 CFR 250.50 and delegated authority, that such agreements are practicable and necessary or advisable and in the interest of conservation.

A. *Competitive reservoir determination.* The Supervisor shall notify the operators when he has made a preliminary determination that a reservoir is competitive as defined in this Order. An operator may request at any time that the Supervisor make a preliminary determination as to whether a reservoir is competitive. The operators, within thirty (30) days of such preliminary notification or such extension of time as approved by the Supervisor, shall advise of their concurrence with such determination, or submit objections with supporting evidence. The Supervisor will make a final determination and notify the operators.

B. *Development and production plans.* When drilling and/or producing operations are conducted in a competitive reservoir, the operators shall submit for approval a plan governing the applicable operations. The plan shall be submitted within ninety (90) days after a determination by the Supervisor that a reservoir is competitive or within such extended period of time as approved by the Supervisor. The plan shall provide for the development and/or production of the reservoir, and may provide for the submittal of supplemental plans for approval by the Supervisor.

(1) *Development plan.* When a competitive reservoir is still being developed or future development is contemplated, a development plan may be required in addition to a production plan. This plan shall include the information required in 30 CFR 250.34. If agreement to a joint development plan cannot be reached by the operators, each shall submit a separate plan and any differences may be resolved in accordance with paragraph 17 of this order.

(2) *Production plan.* A joint production plan is required for each competitive reservoir. This plan shall include (a) the proposed MER for the reservoir; (b) the proposed MPR for each completion in the reservoir; (c) the percentage allocation of reservoir MER for each lease involved; and (d) plans for secondary recovery or pressure maintenance operations. If agreement to a joint production plan cannot be reached by the operators, each shall submit a separate plan, and any differences may be resolved in accordance with paragraph 17 of this order.

C. *Unitization.* The Conservation Manager shall determine when conservation will be best served by unitization of a competitive reservoir, or any reservoir reasonably delineated and determined to be productive, in lieu of a development and/or production plan or when the operators and lessees involved have been unable to voluntarily effect unitization. In such cases, the Conservation Manager may require that development and/or production operations be conducted under an approved unitization plan. Within six (6) months after notification by the Conservation Manager that such a unit plan is required, or within such extended period of time as approved by the Conservation Manager, the lessees and operators shall submit a proposed unit plan for designation of the unit area and approval of the form of agreement pursuant to 30 CFR 250.51.

17. *Conferences, decisions and appeals.* Conferences with interested parties may be held to discuss matters relating to applications and statements of position filed by the parties relating to operations conducted pursuant to this Order. The Supervisor or Conservation Manager may call a conference with one or more, or all, interested parties on his own initiative or at the request of any interested party. All interested parties shall be served with copies of the Supervisor's or Conservation Manager's decisions. Any interested party may appeal decisions of the Supervisor or Conservation Manager pursuant to 30 CFR 250.81. Decisions of the Supervisor or Conservation Manager shall remain in effect and shall not be suspended by reason of any appeal, except as provided in that regulation.

Supervisor.

Approved:

RUSSELL G. WAYLAND,
Chief, Conservation Division.

[OCS Order No. 11]

APPENDIX A

"Subparagraph 12.B *Numbering Well Completions.* Well completions made after the date of this Order shall be designated using numerical and alphabetical nomenclature. Once designated as a reservoir completion, the well completion number shall not change * * *."

The intent of this subparagraph is not necessarily to change the existing well completion names but to change the method of naming well completions after the effective date of this Order in order to insure that a completion in a given reservoir and a specific well bore will be assigned a unique name and will retain that name permanently. For further clarification, the following guidelines and examples are offered:

1. Each well bore will have a distinct, permanent number.

2. Each reservoir completion in a well bore will have a unique permanent designation which includes the well bore number in its nomenclature.

3. For the purpose of this subparagraph, a "completion" is defined as all perforations in a given reservoir in a specific well bore and is not necessarily associated with a tubing string or strings.

4. If more than one completion is made in a well bore, an alphabetical suffix must be used in the nomenclature to differentiate between completions.

5. An alphabetical prefix may be utilized to designate the platform from which the well will be produced.

Example No. 1. The first well drilled from the A Platform is a single completion.

WELL NO. A–1

(Should an operator wish to use an alphabetical suffix with a single completion, he may do so.)

Example No. 2. A well drilled by a mobile rig need not carry an alphabetical prefix.

WELL NO. 1

(If the well is later connected to and produced from a production platform, the well shall be redesignated to reflect an alphabetical prefix.)

Example No. 3. The second well drilled from the A Platform is a triple completion.

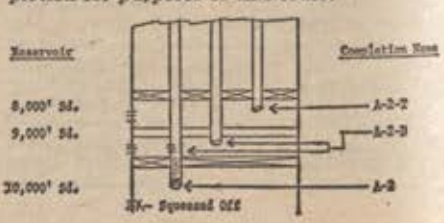
First Completion	*Second Completion*	*Third Completion*
A–2	A–2–D	A–2–T

(In the above example, the letters "D" and "T" were used in naming the second and third completions utilizing current industry practice, although the intent is not to restrict operators to the use of these particular alphabetical suffixes. Any alphabetical suffix may be used as long as it is unique to the completion in that reservoir.)

Example No. 4. The drawing is shown to illustrate the fact that once a completion in a specific well bore is designated in a given reservoir, it will retain that name permanently. Let us consider the A–2 completion shown in Example No. 3. Should a recompletion be made in a different reservoir at a later date, it shall be renamed; however, the production from the reservoir associated with the original A–2 completion will always be identified with the A–2 completion. Once the A–2 completion in the 10,000′ sand is squeezed and plugged off and the recompletion made to the 7,000′ sand, the completion in the 7,000′ sand would be designated A–2–A (or some other alphabetical suffix other than the "D" or "T" presently associated with other completions in the 9,000′ and 8,000′ sands).

The Sundry notice (Form 9–331) submitted to obtain approval for the workover shall be the vehicle for naming the new completion.

Example No. 5. If the A–2 completion in Example No. 4 had been recompleted from the 10,000′ sand to the 9,000′ sand (where the A–2–D is currently completed), the completion would still be named A–2–D as both tubing strings would be considered one completion for purposes of this order.



Form 9-152

Lease No._____
Unit Area_____

UNITED STATES DEPARTMENT OF THE INTERIOR

GEOLOGICAL SURVEY

MONTHLY REPORT OF OPERATIONS, OUTER CONTINENTAL SHELF

Area_____ Block_____ Field _____ Adjacent State_____

The following is a correct report of operations and production (including drilling and producing wells) for the month of_____

API Well No.	Well No.	Days Produced	Barrels of Oil	Barrels of Condensate	Gravity	Cu. Ft. of Gas-Well-Gas (In thousands)	Cu. Ft. of Casinghead Gas (In thousands)	Barrels-Water (If none, so state)	Remarks (If drilling, depth; if shut down, cause; etc.)

Company _____
Address _____ By _____
Title_____ Date_____

There were _____ runs or sales of oil; _____ runs or sales of gasoline; _____ MCF of gas sold; _____ MCF of gas used for fuel; _____ MCF of gas flared; and _____ MCF used for gas injection during the month. (Write "no" where applicable.)

Refer to Outer Continental Shelf Regulations, 30 CFR Part 250.93, when preparing this form.

The United States Criminal Code, 18 U.S.C. 1001, makes it a criminal offense to make a willfully false statement or representation to any Department or Agency of the United States as to any matter within its jurisdiction.

UNITED STATES DEPARTMENT OF THE INTERIOR

GEOLOGICAL SURVEY

Request for Well Maximum Production Rate (MPR)

Operator: _____
Address: _____
_____
Field: _____ Lease No._____

Well Completion No.	API Well Serial No.	Reservoir	Present MPR	Requested MPR	Effective Date

Signed: _____ Date:_____
Approved: _____ Date:_____
Oil and Gas Supervisor
Gulf of Mexico Area

REQUEST FOR RESERVOIR MER

Requested MER _____

Present MER _____

DATE _____
RESERVOIR _____
LEASE _____
FIELD _____
DRIVE MECHANISM* _____
OPERATOR _____

Reservoir Classification:

___ Oil; ___ Oil w/Assoc.Gas Cap; ___ Gas

Reservoir Discovery Year _____

BASIC DATA REQUIRED

1.	Cut offs	Ø Upper	Lower	0.	0.	20.	Kv
		K Upper	Lower md			21.	API @ 60°F
						22.	SG
2.	G/O Interface					23.	Rsi
3.	W/O Interface					24.	μoi
4.	Area @ G/O					25.	μo
5.	Area used to det'n Rock Vol.					26.	Tavg
6.	Oil Zone Rock Volume					27.	Pi
7.	Gas Zone Rock Volume					28.	Pws
8.	H, h					29.	Pb
9.	Ø			0.		30.	Datum Depth
10.	Sw			0.		31.	GOR
11.	Sg			0.		32.	WOR
12.	1-Sw-Sg			0.		33.	Injection Completions
13.	1/Boi					34.	Abandoned Completions
14.	N					35.	No. of Active Completions
15.	Ri			0.			
16.	RiN					36.	Np(1) (Date)
17.	Np/N			0.		37.	Np(2) (Date)
18.	Average Well Depth					38.	Gp(1) (Date)
19.	Kh					39.	Gp(2) (Date)
						40.	Wp(1) (Date)
						41.	Wp(2) (Date)

LIST OF ATTACHMENTS OF GEOLOGIC, GEOPHYSIC, PETROPHYSIC, ENGINEERING, SIMULATION, ECONOMIC DATA AND REPORTS SUBMITTED IN SUPPORT OF RESERVOIR MER

REMARKS: _____

SIGNED: _____ DATE: _____

TITLE: _____

APPROVED: _____ DATE: _____
Oil and Gas Supervisor
Gulf of Mexico Area

DATE EFFECTIVE: _____

* Where more than one recovery mechanism is operating in a reservoir, a summary sheet is to be provided with estimated water influx rates, gas cap expansion rates, etc.

Definitions of basic data required

[*Requested MER:* MER determined from a plot of ultimate recovery versus rate—*Present MER:* Previously approved MER]

1. *ϕ cut-offs*—Upper and lower porosity cut-offs (fractions)
   K cut-offs—Upper and lower cut-offs to air permeability (md)
2. *G/O interface*—Initial gas-oil interface (feet subsea)
3. *W/O interface*—Initial water-oil interface (feet subsea)
4. *Area @ G/O*—Area of gas-oil contact (acres)
5. *Area used to Det's Rock Vol.*—Area @ W/O contact or area of reserve isopach (acres)
6. *Oil zone rock vol.*—Rock volumes used to determine N, (acre-feet)
7. *Gas zone rock vol.*—Rock volume of gas cap, (acre-feet)
8. *H, h*—Average gross, average net pay thickness (feet). Compatible with 5 & 6.
9. ϕ—Effective porosity (fraction)
10. *Sw*—Connate water saturation (fraction)
11. *Sg*—Initial gas saturation (fraction)
12. *1-Sw-Sg*—Initial liquid hydrocarbon saturation (fraction)
13. *1/Boi*—Reciprocal initial flash formation volume factor (fraction)
14. *N*—7758 Ahϕ (1-Sw-Sg) 1/Boi stock tank barrels of oil-in-place
15. *Ri*—Estimated recovery for drive mechanism (fraction)
16. *RiN*—Ultimate recoverable oil for drive mechanism (stocktank barrels)
17. *Np/N*—Depletion of initial oil-in-place (fraction)
18. *Average well depth* $\dfrac{\Sigma \quad T+B}{2N}$

    Σ = the sum of
    T = vertical depth from KB elevation to top of productive oil pay
    B = vertical depth from KB elevation to base of productive oil pay
    N = number of completions
19. *Kh*—Average horizontal air permeability (md)
20. *Kv*—Average vertical air permeability (md)
21. *°API*—Average API gravity of stock tank oil (degrees @ 60°F)
22. *SG*—Specific gravity of gas (air=1.00)
23. *Rsi*—Initial solution gas-oil ratio (SCF/STB)
24. *μoi*—Initial reservoir oil viscosity (cp)
25. *μo*—Reservoir oil viscosity at current reservoir pressure (cp)
26. *Tavg*—Average reservoir temperature (°F)
27. *Pi*—Initial static reservoir pressure at datum (PSIG)
28. *Pws*—Current static reservoir pressure at datum (PSIG)
29. *Pb*—Bubble point pressure (PSIG)
30. *Datum Depth*—Reference depth for static pressure (feet subsea)
31. *GOR*—Producing gas-oil ratio for specified month, scf/stb
32. *WOR*—Producing water-oil ratio for specified month, bbl/stb
33. *Injection Completions*—Number of completions injecting fluid related to drive mechanism
34. *Abandoned Completions*—Number of producing completions abandoned
35. *No. of active Completions*—Number of well completions for requested MER
36. *Np(1)*—Cumulative oil production, STB at last submission
37. *Np(2)*—Cumulative oil production, STB this submission
38. *Gp(1)*—Cumulative gas production, MSCF at last submission
39. *Gp(2)*—Cumulative gas production, MSCF this submission
40. *Wp(1)*—Cumulative water production, BBL at last submission
41. *Wp(2)*—Cumulative water production, BBL this submission

United States
Department of the Interior
Geological Survey

WELL POTENTIAL TEST REPORT

Field _____ Operator _____

Area & Block _____ Lease No. _____ API Well No. _____

Type Well: Oil (__) Gas (__) Well Name and No. _____

Type Test: Init. Comp. (__) Recomp. (__) Rework (__) Retest (__)

Perf. Int. _____ to _____ (MD) Flowing (__) Gas Lift (__) Pumping (__)

Date of First Production (After Comp. or Recomp.) _____

Pretest time _____ hrs. Choke size _____ in.

Date of test _____ No. of hrs. tested _____ hrs. Choke size _____ in.

Production During Test Period:

Oil _____ bbls. Gas _____ MCF Water _____ bbls.

GOR _____ cu.ft./bbls. Water Cut _____ % Flowing Tubing Pressure _____ psig.

Calculated 24 hr. Rate:

Oil _____ bbls. Gas _____ MCF Water _____ bbls.

Oil Gravity _____ Deg. API Specific Gravity of Gas _____

Static Bottom Hole Pressure (if taken prior to test): _____

Cumulative production during entire approved testing period:

Oil _____ bbls. Gas _____ MCF Water _____ bbls.

REMARKS: _____

_____

_____

I hereby certify that the foregoing results are true and correct.

Signed _____ Title _____ Date _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

Field_____
Operator_____
For the period reported_____

All tests reported were made in accordance with the rules and instructions of the USGS. I hereby certify that the following is true and correct.

Signed_____ _____ Date_____
Company agent Title

QUARTERLY OIL WELL TEST REPORT

Lease name	Well completion No.	Producing interval from-to measured depth	API well serial No.	Net oil bbls/day	Choke 64ths	B.S. & W. %	Tubing pres. psig.	G/O ratio cu. ft/bbl	PM	Date of test		Current approved MPR
										Mo.	Day	
20	21 25	26 36	37 49	50 54	55 57	58 60	61 64	65 70	71	72	74	76

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

Field_____
Operator_____
For the Period Reported_____

All Tests Reported Were Made in Accordance With the Rules and Instructions of the USGS. I Hereby Certify That the Following Is True & Correct.

Signed_____ Company Agent _____ Title Date_____

SEMI-ANNUAL GAS WELL TEST REPORT

Lease Name	Well Completion No.	Producing Interval From-To Measured Depth	API Well Serial No.	Gas M.C.F./ Day	Bbls. Per Day		Well Head Press.		Line Press PSIG	Date of Test		Current approved M.P.F.
					Water	Cond.	Flowing Press	Shut-in Press		Mo.	Day	
13	14 18	19 29	30 42	43 48	49 52	53 56	57 61	62 66	67 70	72	74	75

UNITED STATES DEPARTMENT OF THE INTERIOR GEOLOGICAL SURVEY

Packer Test

(To be submitted in duplicate with the District Engineer in whose District the well is located)
Field Name ---------- Area Block ----------
Operator ---------- Lease ---------- Well Comp. No. ----------
U.S.G.S. District ---------- API Serial No. ----------

Test No. 1

Date and time well shut in ---------- (Both Completions)
Data on Producing Completion: Date & Time Well Opened ----------
Completion producing ---------- Reservoir ---------- Choke Size ----- inches
Stabilized shut-in pressure prior to test ---------- psi
Stabilized flowing pressure during test ---------- psi
Length of time required for stabilization of flowing pressure: ---------- hours
Stabilized shut-in pressure at the end of test ---------- psi
Length of time required for obtaining this stabilized shut-in pressure ---------- hours
Data on Shut-In Completion:
Completion shut-in ---------- Reservoir ----------
Stabilized shut-in pressure prior to test ---------- psi
Shut-in pressure during test: Minimum: ---------- psi; Maximum ---------- psi
Stabilized shut-in pressure at the end of the test ---------- psi
Length of time required for obtaining this stabilized pressure at the end of the test: ---------- hours.
Maximum pressure change of shut-in completion during test ------ psi (increase) (decrease)

Test No. 2

Same well bore as in Test No. 1, but with ---------- completion producing and ---------- completion shut-in
Date and time shut-in ----------
Data on Producing Completion: Date & Time Well Opened ----------
Completion producing ---------- Reservoir ---------- Choke Size ------- ins.
Stabilized shut-in pressure prior to test ---------- psi
Stabilized flowing pressure during test: ---------- psi
Length of time required for stabilization of flowing pressure: ---------- hours
Data on Shut-In Completion:
Completion shut-in ---------- Reservoir ----------
Stabilized shut-in pressure prior to test ---------- psi
Shut-in pressure during test: Minimum ---------- psi; Maximum ---------- psi
Maximum pressure change of shut-in completion during test ------ psi (increase) (decrease)
Classification of completion testing, whether oil well or gas well:
Tubing ---------- Casing ----------
Remarks:

I certify that the above is true and correct.

Signed ---------- Title ---------- Date ----------

[FR Doc.73-13445 Filed 7-3-73;8:45 am]

Office of Hearings and Appeals

[Docket No. M 73-65]

UNITED STATES STEEL 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), United States Steel Corporation has filed a petition to modify the application of Section 303(d)(1) of the Act to its Maple Creek Nos. 1 and 2 Mines, located in Washington County, Pennsylvania.

The pertinent part of section 303(d)(1) of the Act reads as follows:

(d)(1) Within three hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section for accumulations of methane with means approved by the Secretary for detecting methane and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards; test by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume velocity; and examine for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require. * * *

Petitioner states that each Maple Creek mines operates two 8-hour production shifts per day, five or six days each week and that the midnight to 8:00 a.m. shift is essentially maintenance and service with limited haulage traffic. There are 14 working sections in operation with one spare and the tracked haulage ways are approximately 46 miles in length. The surface tipple and much of the main track haulage system are common to both mines. Petitioner avers that accepted practice under prior legislation and during the first two or three years of enforcement of the 1969 Act has been to include the main track haulages in the pre-shift examination only before the first shift enters the mine on a coal-producing day, but that Bureau of Mines directives now require that main haulage roads be examined by a certified person designated by the operator, within 3 hours immediately preceding the beginning of each shift in accordance with the above referenced section of the Act.

As an alternative method which will at all times guarantee no less than the same measure of protection afforded the miners by the mandatory safety standard, petitioner proposes that it be allowed to apply eight hours instead of three hours at the time frame for pre-shift examination of main haulage roads, outby the working sections. After idle periods and before one designated shift each day of operation, the examination of such main haulage roads outby the working sections shall continue to include tests for methane of all high places where methane is likely to accumulate in the event ventilation is interrupted. The other examinations of such main haulage roads, where ventilation has not been interrupted since the last prior examination, shall be carried out as a moving examination as covered in Bureau of Mines memorandum concerning pre-shift examination of main haulage roads, dated November 6, 1972.

Petitioner contends that the application of the mandatory safety standard will in fact result in a diminution of safety to the miners because it will be forced to utilize a great number of certified persons in the examination of main haulage roads for succeeding shifts in multiple-shift mines where the possibility of undetected hazards is minimal. Petitioner states that it does not have enough firebosses to perform the presently required pre-shift examinations of main haulage roads and because certified persons must be diverted from other important duties to conduct the examinations, safety to other miners is reduced. Petitioner further contends that such pre-shift examinations as required by the mandatory standard will add needless traffic and congestion to the haulage roads at the busiest times of the producing shifts and that the multiplicity of main haulage road examinations when confined to the three-hour period will tend to discourage the use of one-way traffic in separate main haulage roadways.

Petitioner further contends that the mines will be examined in virtually the same manner from examination to examination. The time interval between the examination of points throughout the main track haulage roads will be eight hours, both under the proposed alternative and the mandatory standard. Under either method, each main haulage road would be examined at least once within eight hours prior to each shift.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 6, 1973. 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.

GILBERT O. LOCKWOOD,
Acting Director,
Office of Hearings and Appeals.

JUNE 20, 1973.

[FR Doc.73-13591 Filed 7-3-73;8:45 am]

[Docket No. M 73-64]

UNITED STATES STEEL 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), United States Steel Corporation has filed a petition to modify the application of section 303(d)(1) of the Act to its Robena Nos. 1, 2, 3 and 4 Mines, all located in Green County, Pennsylvania.

The pertinent part of section 303(d)(1) of the Act reads as follows:

(d)(1) Within three hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section for accumulations of methane with means approved by the Secretary for detecting methane and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards; test by means of an anemometer or other devise approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume velocity; and examine for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require. * * *

Petitioner states that each Robena mine operates three 8-hour production shifts per day, five or six days each week and that maintenance and service takes place on each shift. There are 21 working sections in operation and the track haulage ways are approximately 75 miles in length. The underground tipple and much of the main track haulage system are common to all four mines. Petitioner avers that accepted practice under prior legislation and during the first two or three years of enforcement of the 1969 Act has been to include the main track haulages in the pre-shift examination only before the first shift enters the mine on a coal-producing day, but that Bureau of Mines directives now require that main haulage roads be examined by a certified person designated by the operator, within 3 hours immediately preceding the beginning of each shift in accordance with the above referenced section of the Act.

As an alternative method which will at all times guarantee no less than the same measure of protection afforded the miners by the mandatory safety standard, petitioner proposes that it be allowed to apply eight hours instead of three hours as the time frame for pre-shift examination of main haulage roads, outby the working sections. After idle periods and before one designated shift each day of operation, the examination of such main haulage roads outby the working sections shall continue to include tests for methane of all high places where methane is likely to accumulate in the event ventilation is interrupted. The other examinations of such main haulage roads, where ventilation has not been interrupted since the last prior examination, shall be carried out as a moving examination as covered in Bureau of Mines memorandum concerning pre-shift examination of main haulage roads, dated November 6, 1972.

Petitioner contends that the application of the mandatory safety standard will in fact result in a diminution of safety to the miners because it will be forced to utilize a great number of certified persons in the examination of main haulage roads for succeeding shifts in multiple-shift mines where the possibility of undetected hazards is minimal. Petitioner states that it does not have enough firebosses to perform the presently required pre-shift examinations of main haulage roads and because certified persons must be diverted from other important duties to conduct the examinations, safety to other miners is reduced. Petitioner further contends that such pre-shift examinations as required by the mandatory standard will add needless traffic and congestion to the haulage roads at the busiest times of the producing shifts and that the multiplicity of main haulage road examinations when confined to the three-hour period will tend to discourage the use of one-way traffic in separate main haulage roadways.

Petitioner further contends that the mines will be examined in virtually the same manner from examination to examination. The time interval between the examination of points throughout the main track haulage roads will be eight hours, both under the proposed alternative and the mandatory standard. Under either method, each main haulage road would be examined at least once within eight hours prior to each shift.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 6, 1973. 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.

GILBERT O. LOCKWOOD,
Acting Director,
Office of Hearings and Appeals.

JUNE 20, 1973.

[FR Doc.73-13592 Filed 7-3-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

MEAT IMPORT LIMITATIONS

Third Quarterly Estimate

Public Law 88-482, approved August 22, 1964 (hereinafter referred to as the Act), provides for limiting the quantity of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled or frozen meat of goats and sheep, except lamb (TSUS 106.20), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of such articles, in the absence of limitations during such calendar year, would equal or exceed 110 percent of the estimated quantity of such articles, prescribed by section 2(a) of the Act.

In accordance with the requirements of the Act, the following third quarterly estimate is published.

1. The estimated aggregate quantity of such articles which would, in the absence of limitations under the Act, be imported during calendar year 1973 is 1,450.0 million pounds.

2. The estimated quantity of such articles prescribed by section 2(a) of the Act during the calendar year 1973 is 1,046.8 million pounds.

Since the estimated quantity of imports continues to exceed 110 percent of the estimated quantity prescribed by section 2(a) of the Act, under the Act limitations for the calendar year 1973 on the importation of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled or frozen meat of goats and sheep (TSUS 106.20), are required to be imposed but may be suspended. Such limitations were imposed by Proclamation 4183 of January 29, 1973, and were suspended during the balance of the calendar year 1973 unless because of changed circumstances further action under the Act becomes necessary.

Done at Washington, D.C., this 29th day of June, 1973.

CLAYTON YEUTTER,
Assistant Secretary of Agriculture.

[FR Doc.73-13627 Filed 7-3-73;8:45 am]

U.S. DEPARTMENT OF COMMERCE

Domestic and International Business Administration

CARNEGIE-MELLON UNIV.

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the

Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73–00026–65–14200. Applicant: Carnegie-Mellon University, 5000 Forbes Avenue, Pittsburgh, PA 15213. ARTICLE: Quantimet 720, Image Analysing Computer, Manufacturer: Metals Research Limited, United Kingdom. Intended use of article: The article is intended to be used in a wide range of research programs some of which include the following:

(1) Quantitative description of the solidification of a dendrite primary stalk and a cellular solid-liquid interface.

(2) Diffusion analysis in engineering materials systems to develop a better understanding of the manner in which research on the scientific aspects of solid-state diffusion may be applied to problems involving engineering materials.

(3) Determination of gain boundary shapes and misorientation across boundaries by analysis of etch pit misorientations.

(4) Automatic quantitative measurement of microstructures in application of "Computer Aided Interpretation of Radiographic Studies of Defects in Engineering Materials."

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The National Bureau of Standards (NBS) advises in its memorandum dated June 8, 1973 that the applicant's studies require quantitative characterization of complex microstructures through analysis of electron micrographs, photomicrographs, radiographs and similar pictorial records. These studies, NBS notes, would be severely limited by manual generation of distributions of the dimensional properties of the structures under analysis. In this connection NBS advises that the foreign article's capability (1) to determine for single objects in the measurement field such characteristics as area, perimeter, Feret diameter, longest dimension, projected length, shape factor and the like and (2) to generate automatically distributions of the number of objects in the measurement field falling within selectable bounds of a desired characteristic or of desired characteristics is pertinent to the applicant's intended research. The most closely comparable domestic instument is the Model QMS quantitative metallurgical system manufactured by Bausch and Lomb. As to the QMS, NBS advises that this instrument can make measurements to determine the characteristics listed above for objects in the field of view that have been identified as being of interest but identification is accomplished by means of a light pen held by the operator. The QMS, therefore, does not automatically generate distributions of single-object characteristics such as described above. Accordingly, we find that the QMS is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used. NBS further advises that it knows of no comparable domestic instrument satisfying the pertinent characteristics.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. Stuart,
Director
Special Import Programs Division.

[FR Doc.73–13523 Filed 7–3–73;8:45 am]

NATIONAL INSTITUTES OF HEALTH

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et. seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 72–00529–01–07520. Applicant: National Institutes of Health, National Heart and Lung Institute, Lab. Biochemistry, NHLI, Bethesda, Md. 20014. Article: Microcalorimetry system. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be use as follows:

(a) To study the interactions of inhibitors and substrates with an enzyme;

(b) To study the interaction of activating cations with an enzyme;

(c) To illustrate separate binding sites for multiple ligands of an allosteric enzyme; and

(d) To obtain kinetic information in certain cases in which conformational change of the protein is involved.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capability for measuring heats of reaction in the range of 0.1 to 11.0 millicalories. The National Bureau of Standards (NBS) advised in its memorandum dated June 12, 1973 that the capability described above is pertinent to the purposes for which the article is intended to be used. NBS also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. Stuart,
Director
Special Import Programs Division.

[FR Doc.73–13524 Filed 7–3–73;8:45 am]

RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et. seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73–00447–33–90000. Applicant: Rush-Presbyterian-St. Luke's Medical Center, Diagnostic Radiology, 1753 West Congress Parkway, Chicago, Ill. 60612. Article: Computerized axial transverse tomography equipment (EMI scanner system). Manufacturer: EMI Ltd., United Kingdom. Intended use of article: The article is intended to be used to study patients with head injury, dizziness and headache and compare these studies with other known tests to determine if the article will detect these diseases earlier or more accurately. Its use in determining conditions, leading to stroke before the paralysis occurs will be investigated. The article's reliability in previously unstudied diseases, such as multiple-sclerosis, will be tested where the diagnosis is difficult by other ordinary methods. In addition the article is to be used to train registered technicians and student technicians in its operation. Interpretation of the images obtained by the article will be taught to residents in radiology, neurology, and neuro-surgery as well as interns and medical students at the University.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated June 8, 1973

that the foreign article is a newly developed instrument which provides the high sensitivity, precision, and minimum x-ray dosage pertinent to the applicant's use in research studies into the detection of brain tumors and hemorrhage, as well as conditions leading to stroke. HEW also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director
Special Import Programs Division.

[FR Doc.73-13525 Filed 7-3-73;8:45 am]

UNIVERSITY OF CINCINNATI

Decision on Application for Duty-Free Entry of Scientific Articles

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et. seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 73-00438-65-46200. APPLICANT: University of Cincinnati, Department of Materials Science and Met. Engineering, 498 Rhodes Hall, Cincinnati, Ohio 45211. ARTICLE: Megapact laboratory vibration mill. Manufacturer: Pilamec, United Kingdom. Intended use of article: The article is intended to be used for the grinding of stainless steel and corrosion resistant alloys to produce metal powders in the form of coating slurries, which will be investigated for particle morphology and impurity. Graduate research will involve development of a prosthetic device to facilitate repair of damaged or severed nerves.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capabilities for processing in gas or liquid by a very efficient process for grinding which utilizes two tubular chambers containing balls which are oscillated in a circular path at 2,800 cycles per minute with an adjustable amplitude from zero to two milliliters. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated June 8, 1973 that the capabilities described above are pertinent to the purposes for which the article is intended to be used. HEW also advised that it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director,
Special Import Programs Division.

[FR Doc.73-13526 Filed 7-3-73;8:45 am]

UNIVERSITY OF CINCINNATI

Decision on Application

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00437-33-46040. Applicant: University of Cincinnati, College of Medicine, Eden and Bethesda Avenues, Cincinnati, Ohio 45219. Article: Electron Microscope, Model EM 301 and accessories. Manufacturer: Philips Electronic Instruments, NVD, The Netherlands. Intended use of article: The article is intended to be used for ultrastructural research on biological material in various studies. Some studies to be undertaken are as follows:

(a) Ultrastructural studies on embryonic chick connective tissue,

(b) Fine structure studies of connective tissue after short term ingestion of cadmium,

(c) Ultrastructural and biochemical analysis of isolated liver mitochondria in diabetic rats,

(d) Study of morphologic changes in testicular interstitial tissue of the rat after cryptorchidism or x-irradiation,

(e) Ultrastructural studies on cultured Hept-2 cells treated with diptheria toxin and cytochalasin B,

(f) Study of ultrastructural morphology, cellular adhesion and mucopoloysaccharide synthesis following treatment with cytochalasin B,

(g) Study of testicular interstitial morphology following chronic cadmium ingestion,

(h) Study of ultrastructural changes within the rat testis and epididymis after surgical interruption of the vas deferens,

(i) Histochemical localization of mucopolysaccharides at the ultrastructural level in the spleens of mice under conditions of erythropoietic stimulation and inhibition and in genetically anemic mice, and

(j) Ultrastructural characterization of hamster corpora lutea during growth and regressive phases.

The article will also be used for educational purposes in the courses Microscopic Techniques wherein students will be assisted and trained on the instrument.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a specified resolving capability of 3 Angstroms. The most closely comparable domestic instrument is the Model EMU-4C electron microscope manufactured by the Forgflo Corporation. The Model EMU-4C has a specified resolving capability of 5 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare in its memorandum dated June 8, 1973 that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU-4C is not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director,
Special Import Programs Division.

[FR Doc.73-13527 Filed 7-3-73;8:45 am]

UNIVERSITY OF RHODE ISLAND, ET AL.

Notice of Applications

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6 (c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, by July 25, 1973.

Amended regulations issued under cited Act, as published in the February 24, 1972 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00550-33-01710. Applicant: University of Rhode Island, Kingston, R.I. 02881. Article: Voltage-Clamp Amplifier. Manufacturer: Hugo Sachs Elektronik K.G., West Germany. Intended use of article: The article is intended to be used in studies of smooth and cardiac muscle wherein membrane potential difference will be clamped at a value corresponding to deplorization by acetylcholine, while the muscle is treated with 5-hydroxtrytamine to determine whether current oscillations and rhythmicity will be established. Application received by Commissoner of Customs: June 4, 1973.

Docket Number: 73-00552-00-65600. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, New Mexico 87544. Article: Accessories to Cockcroft-Walton High Voltage Generator. Manufacturer: Emile Haefeley and Company, Switzerland. Intended use of article: The articles are to serve as spare accessories to two existing Cockcroft-Walton high voltage generators being used to produce 750 kilovolts of potential and at the same time deliver 13 milliamperes of current. Application received by Commissioner of Customs: June 4, 1973.

Docket Number: 73-00553-01-04030. Applicant: University of Masachusetts, Chemistry Department, Amherst, Mass. 01002. Article: Used Variable Temperature Magnetic Susceptibility Balance. Manufacturer: Newport Instruments Ltd., United Kingdom. Intended use of article: The article will be used to make measurements of the magnetic properties of single crystals of coordination compounds of the transition elements (principally those of titanium through copper) over a temperature range from room temperature down to that of liquid nitrogen, using a variable temperature dewar system in conjunction with a variable field electromagnet. The article will also be used in graduate student research work and also to a lesser extent by undergraduates working on honors and senior thesis projects under course numbers, Chem. 388 and Chem. 385. Application received by Commissioner of Customs: June 4, 1973.

Docket Number: 73-00555-01-77040. Applicant: Brooklyn College of the City University of New York, Chemistry Department, Bedford Avenue and Avenue H, Brooklyn, New York 11210. Article: Mass Spectrometer, Model CH-7. Manufacturer: Varian MAT GmbH, West Germany. Intended use of article: The article is intended to be used as a teaching and research instrument in undergraduate and graduate programs involving problems of analysis of organic and inorganic materials. Specific projects will include structural and analysis studies on compounds and mixtures, structural studies of complex organic polymers, polynuclear aromatic hydrocarbons, biopolymers such as peptides, and model organic qualitative analysis unknowns. The article will be used in a course for the development of skills in securing and interpreting data on real unknow problems that have a prior history. Application received by Commissioner of Customs: June 3, 1973.

A. H. STUART,
Director,
Special Import Programs Division.

[FR Doc.73-13528 Filed 7-3-73;8:45 am]

National Oceanic an Atmospheric Administration

METHODS AND DEVICES FOR REDUCING MARINE MAMMAL MORTALITY INCIDENTAL TO COMMERCIAL FISHING

Notice of Hearing

Section 111(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, 86 Stat. 1027 (1972)), directs the Secretary of Commerce to undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. As part of this program, the National Marine Fisheries Service intends to solicit the views of all interested parties, particularly with respect to the problem of the incidental catch of porpoises by tuna fishermen. In this regard, we will request the views of the public concerning the following proposals: (a) requiring the use of a smaller mesh "Medina" panel; and (b) requiring the training of skippers of tuna vessels in the handling of this type gear, including so-called "backing down" procedures.

Accordingly, notice is hereby given, that, on July 31, 1973, at 10:00 a.m. in the penthouse conference room National Marine Fisheries Service, Page Building No. 1, 2001 Wisconsin Avenue, NW., Washington, D.C., and on August 3, 1973, at 10 a.m. in the United Portuguese Club, 2818 Addison Street, San Diego, California, there will be public hearings for the purpose of obtaining the views of interested parties on ways of improving commercial fishing methods and gear so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations.

Individuals and organizations may express their views or opinions by appearing at these hearings or by submitting written comments for inclusion in the record to the Director, National Marine Fisheries Service, Washington, D.C. 20235. Any inquiries with respect to the hearings should be made to the Director. Written comments will be accepted for the official record provided they are postmarked or received no later than midnight on September 3, 1973.

Individuals and organizations may review available portions of the official record prior to September 3, 1973, and the complete record thereafter, at the Office of the Director, National Marine Fisheries Service, Page Building No. 2, 3300 Whitehaven Parkway, Washington, D.C., and at the Southwest Fisheries Center, 8604 La Jolla Shores Drive, La Jolla, California.

Dated: June 29, 1973.

JOSEPH SLAVIN,
Acting Director, National Marine Fisheries Service.

[FR Doc.73-13630 Filed 7-3-73;8:45 am]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U. S. Government and are available for licensing in accordance with the GSA Patent Licensing Regulations.

Copies of Patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22151, at the prices cited. Requests for copies of patent applications must include the PAT-APPL number and the title. Requests for licensing information should be directed to the address cited with each copy of the patent application.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE INTERIOR
Branch of Patents
18th and C Streets, N.W.
Washington, D.C. 20240
PAT-APPL-348 381
Alternating Field Magnetic Separator
Filed 5 Apr 73
PC$3.50/MF$1.45

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Assistant General Counsel for Patent Matters.
NASA—Code GP-2
Washington, D.C. 20546
PAT-APPL-326 327
Battery Testing Device
Filed 24 Jan 73
PC$3.00/MF$0.95
PAT-APPL-339 806
Jet Exhaust Noise Suppressor
Filed 9 Mar 73
PC$3.00/MF$1.45
PAT-APPL-347 953
Insulated Electrocardiographic Electrodes
Filed 4 Apr 73
PC$3.25/MF$1.45
PAT-APPL-351 929
Improved Four Phase Logic Systems
Filed 17 Apr. 73
PC$3.00/MF$1.45
PAT-APPL-352 383
Dual Wavelength Scanning Doppler Velocimeter
Filed 18 Apr 73
PC$3.00/MF$1.45
PAT-APPL-350 249
Clear Air Turbulence Detector
Filed 11 Apr 73
PC$3.50/MF$1.45

U.S. ATOMIC ENERGY COMMISSION

Assistant General Counsel for Patents
Washington, D.C. 20545
PAT-APPL-80 193
Corrosion Resistant Metastable Austenitic Steel
Filed 12 Oct 70
PC$3.50/MF$0.95
PAT-APPL-126 223
Demand Regulated DC to DC Power Supply
Filed 19 Mar 71
PC$3.00/MF$0.95.
PAT-APPL-203 267
Apparatus for Removing Oil and Other Floating Contaminants from a Moving Body of Water
Filed 30 Nov 71
PC$3.00/MF$1.45
PAT-APPL-233 528
A Folded Membrane Dialyzer
Filed 10 Mar 72
PC$3.25/MF$1.45
PAT-APPL-249 585
A High Strength and High Toughness Steel
Filed 2 May 72
PC$3.00/MF$0.95

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
Chief, Patent Branch
Westwood Building
Bethesda, Maryland 20014
PATENT-3,698,560
Balloon Cardiac Assisting Pump Having Intraaortic Electrocardiographic Electrodes
Filed 3 Sept 70, Patented 2 Jan 73
Not available NTIS
PATENT-3,698 560
Hollow Fiber, Artificial Kidney with Disposable Dialyzing Cartridge
Filed 28 Dec 70, Patented 17 Oct 72
Not available NTIS

[FR Doc.73-13446 Filed 7-3-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-600; NDA No. 10-176 etc.]

CERTAIN COMBINATION ANTICHOLINERGIC GASTROINTESTINAL DRUGS

Withdrawal of Approval of New Drug Applications

A notice was published in the FEDERAL REGISTER of March 27, 1973 (38 FR 8011) extending to the holders of the new drug applications listed below, and to any interested person who may be adversely affected, an opportunity for hearing on the proposal of the Commissioner of Food and Drugs to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act, withdrawing approval of the listed applications and all amendments and supplements thereto. The basis of the proposed action was the lack of substantial evidence that the drugs are effective for their labeled indications. Lakeside has stated that marketing of Tridal Tablets has been discontinued.

NDA No.	Drug	NDA Holder
10-176	Tridal Tablets containing piperidolate hydrochloride and pipenzolate bromide.	Lakeside Laboratories, Inc., 1707 East North Ave., Milwaukee, WI 53201.
10-907	Benulone Suspension containing dicyclomine hydrochloride, sodium lauryl sulfate and hydrolyzed sodium carboxymethylcellulose.	Merrell-National Laboratories, Division of Richardson-Merrell Inc., 110 East Amity Rd., Cincinnati, OH 45215.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug applications reviewed and are subject to this notice. See 21 CFR 130.40 (37 FR 23185, October 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, MD 20852.

Neither the holders of the applications nor any other person filed a written appearance of election within the 30 days provided by said notice. The failure to file such an appearance constitutes election by such persons not to avail themselves of an opportunity for hearing.

The Commissioner of Food and Drugs pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1053, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with regard to the drugs, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing finding, approval of new drug applications Nos. 10-176, and 10-907 and all amendments and supplements thereto are withdrawn.

Shipment in interstate commerce of the above-listed drug products or of any identical, related, or similar product, not the subject of an approved new drug application, is henceforth unlawful.

Effective date. This order shall become effective on July 16, 1973.

Dated: June 26, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-13400 Filed 7-3-73;8:45 am]

National Institutes of Health

AD HOC NCI-VA COLLABORATIVE PROGRAM REVIEW COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Ad hoc NCI-VA Collaborative Program Review Committee, National Cancer Institute, July 9, 1973, National Institutes of Health, Building 31, Conference Room 8. This meeting will be closed to the public to review the Transfer Agreement in accordance with the provisions set forth in section 552(b) 4 of Title 5 U.S. Code and 10(d) of P.L. 92-463.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014 (301/496-1911) will furnish summaries of the closed meeting and roster of committee members.

Dr. C. Gordon Zubrod, Executive Secretary, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20014 (301/496-4291) will provide substantive program information.

ROBERT W. BERLINER,
Acting Deputy Director, NIH.

Dated: June 29, 1973.

[FR Doc.73-13680 Filed 7-3-73;8:45 am]

AD HOC TOXICOLOGY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Ad Hoc Toxicology Committee, National Cancer Institute, July 11, 1973, National Institutes of Health, Building 10, Masur Auditorium. This meeting will be open to the public to clarify problem areas for respondees to RFP for Toxicology Prime Contract.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014 (301/496-1911) will furnish summaries of the open meeting and roster of committee members.

Dr. J.A.R. Mead, Executive Secretary, Building 37, Room 5A05, National Institutes of Health, Bethesda, Maryland 20014 (301/496-4386) will provide substantive program information.

Dated: June 29, 1973.

ROBERT W. BERLINER,
Acting Deputy Director, NIH.

[FR Doc.73-13677 Filed 7-3-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-73-237]

REGIONAL DIRECTORS OF FEDERAL DISASTER ASSISTANCE

Redelegation of Authority

Each Regional Director of Federal Disaster Assistance is authorized to exercise the power and authority of the Secretary with respect to Federal Disaster Assistance pursuant to Section 1 of Executive Order entitled, "Transfer of Certain Functions of the Office of Emergency Preparedness," signed June 27, 1973, E.O. 11725, 38 F.R. 17175, except the authority (1) to issue rules and regulations; (2) to make recommendations to the President concerning major disaster declarations; (3) to determine that a major disaster is imminent pursuant to Section 221 of the Disaster Relief Act of 1970, 42 U.S.C. 4401 et seq. (the "Act"); (4) to provide assistance for the suppression of fires pursuant to Section 225 of the Act; and (5) to enter into agreements pursuant to Section 207(b) of the Act with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service and other relief or disaster assistance organizations.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); E.O. 11725, 38 F.R. 17175, June 27, 1973)

Effective date. This redelegation is effective July 1, 1973.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.73-13584 Filed 7-3-73;8:45 am]

[Docket No. D-73-238]

ADMINISTRATOR OF FEDERAL DISASTER ASSISTANCE

Delegation of Authority

SEC. A. *Authority delegated.* The Administrator of Federal Disaster Assistance is authorized to exercise the power and authority of the Secretary with respect to Federal disaster assistance pursuant to Section 1 of Executive Order entitled, "Transfer of Certain Functions of the Office of Emergency Preparedness," except the authority to make recommendations to the President concerning the issuance of a major disaster declaration. In the event that the Secretary is absent or unavailable, the authority to make such recommendations shall be exercised by the Under Secretary. If both the Secretary and the Under Secretary are absent or are unable to act for any reason, said authority shall be exercised by the Administrator.

SEC. B. *Authority to redelegate.* The Administrator may redelegate to employees of the Department any of the authority delegated in section A.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Reorganization Plan No. 1; E.O. 11725, 38 F.R. 17175, June 27, 1973)

Effective date. This delegation shall be effective as of July 1, 1973.

JAMES T. LYNN,
Secretary of Housing and Urban Development.

[FR Doc.73-13585 Filed 7-3-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 73-106N]

NATIONAL OFFSHORE OPERATIONS INDUSTRY ADVISORY COMMITTEE

Notice of Open Meeting

This is to give notice pursuant to Public Law 92-463, Section 10(a), approved October 6, 1972, that the National Offshore Operations Industry Advisory Committee will conduct open meetings on Wednesday, 11 July at 10:00 a.m. and at 2:00 p.m. in room Consort I of the Houston Oaks Hotel and on Thursday, 12 July 1973 at 9:00 a.m. in the Continental Room of the Houston Oaks Hotel, Houston, Texas. Discussion topics on the agenda are the following:

1. Activities of the Manning and Licensing Subcommittee.
2. Activities of the Environmental Affairs Subcommittee.
3. IMCO and International Activities.
4. Activities of the Law of the Sea Conventions Subcommittee.
5. Activities of the Mobile Drilling Unit Subcommittee.
6. Activities of Offshore Operations Safety Subcommittee.
7. Report on the authority for enforcement of the Occupational Safety and Health Act with respect to offshore platforms and vessels including drilling vessels.
8. Status of ratification of International Convention on Tonnage Measurement of Ships, 1969.
9. Activities of the Portable Tank Subcommittee.
10. Dissolution of Seismographic Subcommittee.
11. Other subjects of interest.

The National Offshore Operations Industry Advisory Committee was first established under the Treasury Department on December 15, 1959, as the National Offshore Operations Advisory Panel. Its function is to provide advice and consultation to the Marine Safety Council of the U.S. Coast Guard with respect to offshore operations including, but not limited to, fairways, sea lanes, and offshore drilling operations. Public members of the Committee serve voluntarily without compensation from the Federal Government, either travel or per diem.

Public attendance at the meeting will be limited to space available. Interested persons may file statements with the committee or request more information by writing the U.S. Coast Guard (GCMC/82), 400 Seventh Street, SW., Washington, D.C. 20590.

Dated June 29, 1973.

W. F. REA, III,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 73-13555 Filed 7-3-73;8:45 am]

Federal Railroad Administration

HIGH SPEED GROUND TRANSPORTATION ADVISORY COMMITTEE

Notice of Meeting

This is to give notice pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, that the High Speed Ground Transportation Advisory Committee will conduct an open meeting on July 12, 1973, at the Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590, Room 10200, beginning at 9 a.m.

The High Speed Ground Transportation Advisory Committee is a seven-member committee established by Public Law 89-220, and extended by Public Law 92-348. The Committee is to advise the Secretary of Transportation with respect to research, development, and demonstrations under the High Speed Ground Transportation Act in order to determine the contribution which high-speed ground transportation could make to a more efficient and economical system of intercity transportation.

The agenda will consist of a review of railroad research and development programs between 9 a.m. and 11:30 a.m.

Any member of the public who wishes to do so may file a written statement with the Committee either before or after the meeting. To the extent that the time available for the meeting permits, members of the public may also be permitted by the Chairman to present oral statements at the meeting.

Interested persons may request information concerning the July 12, 1973 meeting by writing the Executive Secretary, High Speed Ground Transportation Advisory Committee, Federal Railroad Administration, Room 4214, 2100 Second Street, SW., Washington, D.C. 20590, or by calling A/C 202 426-0850.

Dated: June 29, 1973.

JOHN W. INGRAM,
Federal Railroad Administrator.

[FR Doc.73-13642 Filed 7-3-73;8:45 am]

ATOMIC ENERGY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS—WORKING GROUP ON PROVISIONS FOR PROTECTION AGAINST INDUSTRIAL SABOTAGE

Notice of Meeting

JULY 2, 1973.

In accordance with the purposes of sections 29 and 182 b. of the Atomic

Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards' Working Group on Provisions for Protection Against Industrial Sabotage will hold a meeting on July 11, 1973, in Room 1034, 1717 H Street, NW., Washington, D.C.

The Subcommittee will meet to formulate policies and recommendations to the full Committee concerning the future course of the Working Group's activities.

I have determined, in accordance with subsection 10(d) of Public Law 92-463, that the meeting will consist of an exchange of opinions, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and will also involve a discussion of certain documents which are privileged and fall within exemption (4) of 5 U.S.C. 552(b).

It is essential to close the meeting to protect such privileged information and protect the free interchange of internal views and to avoid undue interference with Committee operation.

JOHN C. RYAN,
Acting Advisory Committee Management Officer.

[FR Doc.73-13701 Filed 7-3-73;8:45 am]

[Docket No. 50-321]

GEORGIA POWER CO.

Order Extending Completion Date

Georgia Power Company is the holder of Provisional Construction Permit No. CPPR-65 issued by the Commission on September 30, 1969, for construction of the Edwin I. Hatch Nuclear Plant, Unit 1, a 2436 thermal megawatt boiling water nuclear reactor presently under construction at the Company's site on the south side of the Altamaha River in the northwestern sector of Appling County, Georgia, approximately eleven miles north of Baxley, Georgia, and about 75 miles west of Savannah.

On May 24, 1973, the Company filed a request for an extension of the completion date because construction has been delayed. It has been determined that the delay is due to several interdependent reasons which include (1) the Company's underestimation of the time required for designing and procuring the components of Unit 1; (2) a number of design changes due to the safety review and continuing evolution of safety requirements developed subsequent to the issuance of the construction permit; and (3) material and equipment delays due to stringent quality assurance requirements, additional inspections, and the repair of nozzle welds in the reactor pressure vessel subsequent to an onsite inspection. The Director of Regulation having determined that this action involves no significant hazards considerations, and good cause having been shown, the bases for which are set forth in a memorandum dated June 28, 1973, from V. A. Moore to A. Giambusso:

It is hereby ordered, That the latest completion date for Construction Permit No. CPPR-65 is extended from July 1, 1973 to December 31, 1974, with the earliest completion date being December 1, 1973.

Date of issuance: June 28, 1973.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.73-13587 Filed 7-3-73;8:45 am]

[Docket No. 50-219]

JERSEY CENTRAL POWER & LIGHT CO.

Availability of AEC's Draft Environmental Statement for the Oyster Creek Nuclear Generating Station

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a Draft Environmental Statement, prepared by the Commission's Directorate of Licensing, related to the proposed issuance of a full-term operating license for the Oyster Creek Nuclear Generating Station, Unit 1, located in Lacey Township, Ocean County, New Jersey, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20545, and in the local Public Document Room at the Ocean County Library in Toms River, New Jersey. The Draft Environmental Statement is also being made available at the Division of State and Regional Planning, Department of Community Affairs, P.O. Box 2768, Trenton, New Jersey 08625, and at the Ocean County Planning Board, Court House Square, Toms River, New Jersey 08753. Copies of the Commission's Draft Environmental Statement may be obtained by writing the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

The Applicant's Environmental Report, as amended, submitted by Jersey Central Power & Light Company, is also available for public inspection at the above-designated locations. Notice of availability of the Applicant's Environmental Report was published in the FEDERAL REGISTER on April 12, 1972 (37 FR 7265).

Pursuant to 10 CFR Part 50, Appendix D, interested persons may, on or before August 20, 1973, submit comments on the Applicant's Environmental Report, as amended, and the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Applicant's Environmental Report and the Draft Environmental Statement (local agencies may obtain these documents upon request). When comments thereon by Federal, State and local officials are received by the Commission, such comments will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. 20545, and at the Ocean County Library in Toms River, New Jersey. Comments on the Draft Environmental Statement from interested members of the public should be addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland this 28th day of June 1973.

For the Atomic Energy Commission.

B. J. YOUNGBLOOD,
Chief, Environmental Projects Branch No. 3, Directorate of Licensing.

[FR Doc.73-13586 Filed 7-3-73;8:45 am]

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License

Notice is hereby given that, pursuant to an Initial Decision by the Atomic Safety and Licensing Board, the Atomic Energy Commission (the Commission) has issued Amendment No. 1 to Facility Operating License No. DPR-36 to the Maine Yankee Atomic Power Company. This amendment authorizes operation of the Maine Yankee Atomic Power Station (the facility) at reactor core power levels up to 2440 megawatts thermal (rated power). The facility is a pressurized, light water moderated and cooled reactor located at the licensee's site in Lincoln County, Maine.

The Director of Regulation has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. The application for the license complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Chapter 1.

The amended license is effective as of the date of issuance and shall expire at midnight on October 21, 2008.

A copy of (1) the Board's Initial Decision dated June 26, 1973; (2) Amendment No. 1 to Facility Operating License No. DPR-36, (3) the Addendum to the Safety Evaluation dated March 15, 1973, and other relevant documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine. Copies of the amended license may be obtained upon request addressed to the United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 29th day of June 1973.

For the Atomic Energy Commission.

KARL R. GOLLER,
Chief, Pressurized Water Reactors Branch No. 3, Directorate of Licensing.

[FR Doc.73-13589 Filed 7-3-73;8:45 am]

MATERIAL AND PLANT PROTECTION GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued three guides in its Regulatory Guide series. The Regulatory Guide series has been developed to describe and to make available to the public methods acceptable to the AEC Regulatory staff for implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain information needed by the staff in its review of applications for permits and licenses.

The new guides are in Division 5, "Materials and Plant Protection." Regulatory Guide 5.7, "Control of Personnel Access to Protected Areas, Vital Areas, and Material Access Areas," describes acceptable methods of controlling access to protected areas, vital areas, and material access areas, and acceptable methods of searching personnel for firearms and explosives prior to permitting entry into a protected area and searching for SNM upon exit from material access areas. Regulatory Guide 5.8, "Design Considerations for Minimizing Residual Holdup of Special Nuclear Material in Drying and Fluidized Bed Operations," describes acceptable design features and characteristics for minimizing the residual holdup of special nuclear material in driers and fluidized beds after shutdown, drindown, or cleanout in order to facilitate material control procedures. Regulatory Guide 5.9, "Specifications for GE(Li) Spectroscopy Systems for Material Protection Measurements—Part I: Data Acquisition," details specifications for gamma ray spectroscopy systems which are adequate for use in the measurement of total content and isotopic composition of special nuclear material.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street, Washington, D.C. Comments and suggestions in connection with improvements in the guides are encouraged and should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff. Requests for single copies of the issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated.

Other Division 5 Regulatory Guides currently being developed include the following:

Nuclear Material Control Systems and Procedures for Conversion Facilities
Conduct of Nuclear Material Inventories
Training and Equipping of Guards and Watchman
Safe Secure Vehicles
Quality Assurance Program for Materials Accounting Measurements at a Chemical Reprocessing Plant
Selection and Use of Pressure-Sensitive Seals on Containers for Temporary Storage of SNM
Calibration Techniques for Nuclear Calorimetry
Mass and Scales Calibration
Standard Methods for Chemical, Mass Spectrometric, Spectrochemical, Nuclear and Radiochemical Analyses of Plutonium Nitrate and Plutonium Metal
Armed Escort Duties and Responsibilities
Selection and Use of Pressure-Sensitive Seals on Containers for Onsite Storage of Special Nuclear Material
General Use of Locks in the Protection and Control of Facilities and Special Nuclear Materials
Nondestructive Assay of SNM Scrap and and Waste Inventory Components
Nondestructive Assay of SNM Residue in Process Equipment
Nondestructive Assay of Fissile Content of Low Enriched Uranium Fuel Rods

(5 U.S.C. 552(a))

Dated at Bethesda, Maryland this 28th day of June 1973.

For The U.S. Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.73-13588 Filed 7-3-73;8:45 am]

[Docket Nos. 50-344, 50-344-0]

PORTLAND GENERAL ELECTRIC CO., ET AL.

Order Postponing Prehearing Conference

In the matter of the Trojan Nuclear Plant.

After a telephone conference with the parties respecting a change in circumstances advising a change in the date from July 11 to July 19, 1973, for the Special Prehearing Conference, in the facility operating license proceeding,

Wherefore, *It is ordered*, In accordance with the Atomic Energy Act, as amended and the rules of practice of the Commission, the special prehearing conference on the facility operating license proceeding is postponed from July 11 and in lieu thereof shall convene at 1:00 pm, local time, on Thursday, July 19, 1973, in Room 212, United States Court of Appeals, The Pioneer Courthouse, Sixth and Morrison Streets, SW., Portland, Oregon 97204. The prehearing conference on the section B of Appendix D to 10 CFR Part 50 proceeding, also previously scheduled for July 11, 1973, will be convened on July 19, 1973, in Room 212, immediately following the special prehearing conference on the facility operating license proceeding.

THE ATOMIC SAFETY AND LICENSING BOARD,
ROBERT M. LAZO,
Chairman.

Issued at Washington, D.C., this 28th day of June, 1973.

[FR Doc.73-13536 Filed 7-3-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 25397]

AMERICAN AIRLINES, INC. AND FRONTIER AIRLINES, INC.

Application for Approval of Route Exchange Agreement; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on July 18, 1973, at 10:00 a.m. (local time) in Room 1031, North Universal Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Thomas P. Sheehan.

In order to facilitate the conduct of the conference parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before July 6, 1973, and the other parties on or before July 13, 1973. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., June 29, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-13638 Filed 7-3-73;8:45 am]

[Dockets Nos. 25193, 24873]

CENTURY 2000, INC. ET AL.

Enforcement Proceeding; Postponement of Hearing

Notice is hereby given that the hearing in the above entitled proceeding has been postponed from July 24, 1973, (38 F.R. 15474, June 12, 1973), to August 21, 1973, at 10 a.m. (local time), in Courtroom 209, U.S. Post Office Court House, 300 N.E. First Avenue, Miami, Florida, before the undersigned Administrative Law Judge.

Dated at Washington, D.C., June 29, 1973.

[SEAL] THOMAS P. SHEEHAN,
Administrative Law Judge.

[FR Doc.73-13632 Filed 7-3-73;8:45 am]

[Dockets Nos. 25094, 25095]

GREAT LAKES AIRLINES LTD.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled matters will be held on July 24, 1973 at 10:00 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

For information concerning the issues involved and other details in this proceeding, interested persons are referred

to the report of prehearing conference served June 20, 1973, and other documents which are in the dockets of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., June 29, 1973.

[SEAL] HYMAN GOLDBERG,
Administrative Law Judge.

[FR Doc.73-13637 Filed 7-3-73;8:45 am]

[Docket No. 25252]

TEXAS INTERNATIONAL AIRLINES, INC.

Notice of Prehearing Conference

Application for amendment of the certificate of public convenience and necessity for route 82 so as to delete Lufkin, Texas from segment 4.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on August 1, 1973, at 10:00 a.m. (local time), in Room 503, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Frank M. Whiting.

In order to facilitate the conduct of the conference parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before July 16, 1973, and the other parties on or before July 25, 1973. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., June 29, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-13634 Filed 7-3-73;8:45 am]

[Docket No. 25659; 73-6-119]

LOCAL SERVICE CLASS SUBSIDY RATE

Order Instituting Investigation and Reopening Rate

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of June 1973.

By this order the Board is instituting an investigation directed to the establishment of a revised class subsidy rate for the local service carriers. This order also reopens, as of July 1, 1973, the final subsidy rate presently in effect, Class Rate VI,[1] for those carriers.

Over the past few years the local service industry as a whole has been in a state of depressed earnings. Class Rate VI and its predecessor, Class Rate V,[2] were promulgated to relieve the carriers' then critical financial position. These amended rates, which substantially increased subsidy payments to the local service carriers for fiscal years 1971–1973, have been successful in ameliorating the carriers' depressed financial condition. For calendar year 1971, the carriers reported a system need before taxes of $89.9 million. In 1972, this need was reduced to $63.8 million, constituting a $26.1 million improvement in need. Estimates of earnings and subsidy need through the end of fiscal 1973 indicate a continuing strong financial picture. In view of this improvement in the carriers' financial and economic positions and to continue to base the carriers' subsidy level on reasonable need expected by currently available information, we have decided to institute this investigation for the purpose of establishing a new class rate.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 406, and 1002(b) thereof,

It is ordered, That:

1. An investigation be, and it hereby is, instituted reopening as of July 1, 1973, the current final local service class subsidy rate for the purpose of determining a new final rate or taking such other action as the facts may warrant.[3]

2. Allegheny Airlines, Inc., Frontier Airlines, Inc., Hughes Air Corp. d/b/a Airwest, North Central Airlines, Inc., Ozark Air Lines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., and Texas International Airlines, Inc., are hereby made parites to this investigation.

3. This order shall be served on all of the above-named parties to this proceeding and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-13636 Filed 7-3-73;8:45 am]

[Docket No. 25628; Order 73-6-122]

PAN AMERICAN WORLD AIRWAYS, INC.

Order Granting Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of June 1973.

By application filed on June 18, 1973, Pan American World Airways, Inc., requests that the Board grant it an exemption from the provisions of sections 401 and 403 of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit Pan American to provide transportation for approximately 193 persons from Bombay, India, to Tehran, Iran, on June 19, 1973.

In support of its application Pan American states that due to a strike, Air India is unable to provide transportation for the 193 persons from Bombay to Tehran, and that Air India has requested that Pan American provide this transportation. Pan American states that it would provide this transportation by rerouting Flight 001 from its Delhi-Tehran itinerary to a Delhi-Bombay-Tehran itinerary. Pan American states that it has agreed to accept Air India's assignment of ticket coupons so that the passengers will be charged the same fares which would have been charged on Air India.

In light of the unusual circumstances raised by the instant application, action has been taken pursuant to Rule 410 of the Board's Rules of Practice without awaiting the filing of answers or replies thereto.[1]

Upon consideration of the application and all the relevant facts, the Director of the Bureau of Operating Rights, under delegated authority, granted Pan American an emergency exemption from section 401 of the Act and the terms, conditions and limitations of its certificate for route 132 to the extent necessary to enable Pan American to carry approximately 193 persons from Bombay, India, to Tehran, Iran, on June 19, 1973. Upon these same considerations, we will exempt Pan American nunc pro tunc, from the tariff filing provisions of section 403 of the Act and permit Pan American to provide the transportation in question through the assignment of Air India's ticket coupons for the proposed transportation.

Considerations taken into account which warrant use of the exemption power of the Board are that this application is for transportation on one flight only; that without this exemption the persons involved would not be able to obtain air transportation; that this operation will not adversely affect any other air carrier, and that the expense of a certification proceeding would be disproportionate to the size of the operation. Moreover, it is found that the limited authority requested is inappropriate for certification procedures and that such procedures could not, in any event, be completed in time to permit the transportation of the persons involved as requested by Pan American. Under all these circumstances, the Board finds that the enforcement of sections 401 and 403 of the Act, and the terms and conditions of Pan American's certificate for route 132, insofar as they would otherwise prohibit the operations authorized herein, would be an undue burden on Pan American by reason of the limited extent of,

[1] Class Rate VI was established by Orders 72-6-72, June 16, 1972, and 72-7-82, July 25, 1972. The investigation looks to the establishment of Class Rate VII. There were nine local service carriers when Class Rate VI was established. With the merger of Mohawk Airlines into Allegheny Airlines upon Board approval in Orders 72-4-31 and 72-4-32, March 28, 1972, the local service class now consists of eight carriers.

[2] Class Rate V was established by Orders 71-1-143, January 29, 1971, and 71-3-7, March 1, 1971.

[3] This order is not intended to disturb the service mail rates established under other orders of the Board.

[1] Pursuant to Rule 410(c) of the Board's rules of practice, it is found that the public interest requires that the Board act without notice to other persons or the filing of answers.

and unusual circumstances affecting, the carrier's operations and would not be in the public interest.

Accordingly, it is ordered, That:

1. Pan American World Airways, Inc., be and it hereby is temporarily exempted from the provisions of section 401 of the Act and the terms, conditions, and limitations of its certificate of public convenience and necessity for route 182 insofar as they would otherwise prevent it from carrying approximately 193 persons from Bombay, India, to Tehran, Iran, on June 19, 1973;

2. Pan American World Airways, Inc., be and it hereby is exempted from section 403 of the Act insofar as that section would require the filing of a tariff for the carriage of approximately 193 persons from Bombay, India, to Tehran, Iran, on June 19, 1973; and

3. This order may be amended or revoked at any time without hearing in the discretion of the Board.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-13633 Filed 7-3-73;8:45 am]

[Docket No. 23892; Order 73-6-121]

SHULMAN AIR FREIGHT, INC. AND WTC AIR FREIGHT

Order Deferring Action

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of June 1973.

Agreement filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended.

By Order 71-10-38, October 8, 1971, the Board deferred action and requested comments with respect to a request by Airborne Freight Corporation (Airborne) that it be made a part to a joint-load charter arrangement between Shulman Air Freight, Inc. (Shulman) and WTC Air Freight (WTC).[1]

Subsequent to the issuance of Order 71-10-38, the joint-load agreement, CAB 21800, was superseded by a new Shulman/WTC joint load agreement, CAB 22727. Whereas the first agreement involved the regular sharing of space on a single chartered aircraft, CAB 22727 contemplated joint loading "from time to time" as space may become available on separately chartered aircraft (one each by Shulman and WTC). The two aircraft were to operate back-to-back 5 days a week in the same markets on the same days. Responses to Order 71-10-38 were made generally in cognizance of the superseding agreement.[2]

Upon consideration the Board concludes that the refusal by WTC and Shulman to admit Airborne is inconsistent with the Board's previous expressions[3] of its policy to require open participation in joint-load agreements, based on the belief that certain forwarders in a market cannot combine their resources to obtain cost benefits which they deny to other forwarders in the market by excluding them from the cooperative arrangement. The Board has felt that such a combination of resources works to the competitive detriment of non-participating forwarders, and is at minimum discriminatory.

Presently the Board is conducting the Air Freight Forwarder Charter Investigation, Docket 23287 which includes consideration of the broad issue of charters by air freight forwarders, including the precise issues of whether joint loading on charters should be allowed to air freight forwarders, and whether such joint loading should be open to all forwarders who desire to participate. In this circumstance it would be inappropriate to depart from the previous statements of the Board's policy pertaining to the open ended feature of joint-load agreements unless and until a revision of that policy is articulated in Docket 23287.

Turning from questions of policy, in determining that Airborne should have access to the total capacity represented by the two chartered aircraft, we have concluded as explained below that agreement CAB 22727, involving 2 separately chartered aircraft, is not substantially different from the earlier agreement, CAB 21800, which involved an equal sharing of a single aircraft chartered by Shulman. The question of whether Airborne's equal participation would be required if the two aircraft were factually independently operated, and only occasionally joint loaded, is not before us.

In this respect, it appears that the actual wording of the joint-load agreement fails to properly reflect the de facto cooperative arranagement between Shulman and WTC. In fact, the agreement operates to effectively split in equal proportions all space cumlatively made available to the parties via both chartered aircraft. This split is apparent in the disproportionate number of cancellations by Airlift International, Inc. (Airlift) of Shulman's chartered flights.

For example, during the year October 1, 1971—September 30, 1972, both participants planned approximately 250 flights each, or the equivalent of 5,500 Class A container units apiece. Airlift subsequently cancelled 58 Shulman flights (23.9%) and 3 WTC flights (1.2%). Nevertheless, both parties ultimately had available for their use the equivalent of 4,829 Class A container units. This equalization of available space resulted because, in each case where one of the two flights was cancelled by Airlift, Shulman and WTC shared equally the space on the single remaining aircraft. In most cases, the party with the operating aircraft had to divert its own freight in order to accommodate the other participant. Thus, the "unused" space offered the other party in such circumstances was not space which the offering party could not fill with its own freight,[4] but was space devoted to insure equal sharing of available space.

In this light, the language of CAB 22727 appears gratuitously loose; while CAB 22727 suggests a casual sharing of space, the sharing in fact appears highly regularized and carefully apportioned. On this basis alone, Airborne's participation in the arrangement must be allowed with respect to the full amount of space involved in the two charters.[5] At minimum, CAB 22727 does not reflect the apparent agreement between Shulman and WTC to equally share single operating flights where the other has been cancelled. CAB 22727 should be promptly amended to more properly reflect the sharing of a single operating aircraft, and to reflect the de facto split of space aggregately available from the two charter operations.

Continued Board deferral on Agreement CAB 22727 will be made only to the extent that WTC and Shulman take immediate steps to amend the agreement and to open the joint-load agreement to the equal participation of Airborne.

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[1] Airborne stated that Shulman and WTC had refused to make Airborne a party to the arrangement contrary to a clause in the joint-load agreement providing against exclusion of other participants, and contrary to the Board's policy that all joint-load agreements be open to participation by other forwarders. Airborne stated the Shulman/WTC arrangement afforded those carriers a cost basis 30-40% below that otherwise available to Airborne, and that Airborne's participation was necessary to make it cost competitive. Shulman and WTC responded that the operation was being conducted as full capacity; that Airborne's entry would cause the arrangement to disintegrate; and that neither the Board's policy nor the terms of the joint-load agreement required Shulman and WTC to admit Airborne to the agreement. Order 71-10-38 was issued requesting further information with a view toward temporarily resolving the controversy pending the outcome of the Air Freight Forwarders' Charter Investigation, Docket 23287, in which joint loading by air freight forwarders on chartered aircraft is an issue.

[2] Responses were filed by Shulman, WTC, Airborne, Flying Tiger Line Inc., the Department of Justice and Wings and Wheels Express, Inc. The pertinent Department of Justice comments are discussed below; Wings and Wheels urged that the Shulman/WTC joint-load charter operation be required to be open-ended. Flying Tiger took issue with certain aspects of the Department of Justice comments.

[3] Orders E-22640, E-17369, and E-16367.

[4] CAB 22727 provides: "The chartering party may from time to time make available to other participant(s) in this joint load agreement unused space on the aircraft."

[5] The Department of Justice believes that Airborne should be allowed to participate only with respect to excess space offered by a participating carrier, and then only if Airborne charters its own aircraft. However, in reaching its recommendation, The Department of Justice apparently adopts a premise not accepted here; i.e., that the two aircraft independently chartered by Shulman and WTC are independently operated and thereby involve substantial areas of unilateral, rather than joint, activity.

Accordingly, it is ordered, That:

1. Action on Agreement CAB 22727 be and it hereby is deferred further, provided that no later than 90 days from the date of this order WTC, Shulman, and Airborne shall report to the Board's Director, Bureau of Operating Rights what steps have been taken in conformance with the views expressed herein, after which the Board shall determine whether the agreement shall be approved or disapproved; and

2. This order shall be served on WTC, Shulman and Airborne, and upon Wings and Wheels Express, Inc., The Flying Tiger Line Inc., and the Departments of Justice and Transportation.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-13635 Filed 7-3-73;8:45 am]

CIVIL SERVICE COMMISSION

COMMUNITY PLANNING SERIES

Decision to Revise Prescribed Minimum Educational Requirements

In accordance with section 3308 of Title 5, United States Code, the Civil Service Commission has decided that the previously approved minimum educational requirements for positions in the Community Planning Series, GS-020 (formerly titled the Urban Planning Series, GS-020) should be superseded by revised requirements. Identification of the superseded requirements, the revised requirements, the duties of the positions, and the reasons for the Commission's decision that these requirements are necessary are set forth below.

THE COMMUNITY PLANNING SERIES, GS-020

(All positions GS-5 through GS-15)

Superseded Requirements. The following material supersedes that previously published in 31 FR 246, December 21, 1966.

Minimum Educational Requirements. Candidates for Community Planner positions must show successful completion of the requirements in either A, B, or C below:

A. A full course of study leading to a bachelor's or higher degree with major study in community planning, or in a related field such as architecture, landscape architecture, engineering, sociology, geography, economics, political science, or public administration. The curriculum in the related field must have included or been supplemented by 12 semester hours in the planning process and the socio-economic and physical elements of planning.

B. Four years of education and/or experience including at least 24 semester hours in any combination of the disciplines listed in paragraph A above of which 12 semester hours must have been in the planning process and the socio-economic and physical elements of planning.

C. Successful completion in an accredited college of a full course of study leading to a bachelor's or higher degree in a related professional field such as those listed in paragraph A, provided the candidate has at least one year of work experience in community planning acquired under the supervision and guidance of a community planner. The experience should provide a thorough knowledge of the planning process and of the socio-economic and physical elements to be considered.

The combination of education and experience in B and C must demonstrate that the candidates possess professional knowledges and skills comparable to those normally acquired through the education described in paragraph A above.

Duties. Community planners perform professional work such as the following:

Study and develop planning methods or plans to apply to future needs of communities (urban and rural neighborhoods, villages, towns, cities, counties, regions, States, or the nation) in order to provide for the availability and development of resources, facilities, and services required by the people of the community.

Advise and assist community officials and members to establish goals, priorities, policies, programs, organizations, regulations, and procedures in such areas as the pattern and intensity of land use, the development of transportation facilities, housing, public utilities, public safety, health services, and environmental pollution control.

Coordinate community planning activities and programs at and between the several jurisdictional levels (local, regional, State, and national).

Maintain an overview and evaluate policies and planning programs after initial installation to update them or suggest other approaches.

Reasons for the Requirements. The duties of these positions cannot be performed successfully without specialized training which gives an individual a sound basic knowledge of the principles governing the development of comprehensive plans for the orderly growth and renewal of cities, towns, metropolitan areas, and other population centers. The duties of these positions require the application of specialized knowledge of the political, economic, cultural, and physical factors which must be considered in developing plans covering the most appropriate location and arrangement of land uses and facilities. This required training and these required knowledges can be acquired only through the successful completion of a directed course of study in an accredited college or university, which has comprehensive libraries and thoroughly trained instructors who can competently evaluate the progress of professional training.

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

[FR Doc.73-13517 Filed 7-3-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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 Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Policy Development, Office of Policy Development, Assistant Secretary for Policy Development and Research.

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

[FR Doc.73-13519 Filed 7-3-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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 Housing and Urban Development to fill by noncareer executive assignment in the excepted services the position of Director, Senate Liaison, Office of Legislative Affairs.

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

[FR Doc.73-13520 Filed 7-3-73;8:45 am]

FEDERAL EMPLOYEES PAY COUNCIL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Federal Employees Pay Council met at 2:00 PM on Thursday, June 28, 1973, to continue discussions on the fiscal year 1974 comparability adjustment for the statutory pay systems of the Federal Government.

In accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, it was determined by the Director of the Office of Management and Budget and the Chairman of the Civil Service Commission, who serve jointly as the President's Agent for the purposes of the Federal pay comparability process, that this meeting of the Federal Employees Pay Council would not be open to the public.

For the President's Agent:

FRANK S. MELLOR,
Advisory Committee Management Officer for the President's Agent.

[FR Doc.73-13521 Filed 7-3-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

AMERICAN CYANAMID CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 3F1403) has been filed by American Cyanamid Co., Post Office Box 400, Princeton, NJ 08540, proposing establishment of a tolerance (40 CFR Part 180) for combined residues of the insecticide phorate (*O,O - diethyl S - [(ethylthio) methyl] phosphorodithioate*) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity Bermuda grass straw at 0.5 part per million.

The analytical method proposed in the petition for determining residues of the insecticide and its metabolites is a procedure in which the residue is reacted with metachloroperbenzoic acid and the resulting oxygen analog sulfone is determined gas chromatographically using a flame photometric detector.

Dated: June 29, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-13648 Filed 7-3-73;8:45 am]

BENOMYL

Notice of Reextension of Temporary Tolerance

The E. I. du Pont de Nemours & Co., Inc., Wilmington, DE 19898, was granted a temporary tolerance (PP 1G1038) for residues of the fungicide benomyl-(methyl - (butylcarbamoyl)-2-(benzimidazolecarbamate) in or on the raw agricultural commodity grapes at 10 parts per million on March 18, 1971 (notice was published in the FEDERAL REGISTER of March 24, 1971 (36 FR 5531)). The firm received a 1-year extension of the temporary tolerance on June 15, 1972 (notice was published in the FEDERAL REGISTER of June 22, 1972 (37 FR 12311)). The firm has requested a 1-year reextension of the temporary tolerance for residues of benomyl in or on grapes at 10 parts per million to obtain additional experimental data. It has been determined that:

1. This reextension will protect the public health.

2. The temporary tolerance should be expressed in terms of total residues of benomyl and its metabolites including the the benzimidazole moiety (calculated as benomyl).

The tolerance is therefore reextended as requested on condition that the fungicide be used in accordance with the temporary permit which is being issued concurrently and which provides for distribution under the E. I. du Pont de Nemours & Co., Inc. name.

As reextended, this temporary tolerance expires June 15, 1974.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038).

Dated: June 29, 1973.

HENRY J. FORD,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-13647 Filed 7-3-73;8:45 am]

DOW CHEMICAL CO. AND M. & T. CHEMICALS, INC.

Notice of Filing of Pesticide and Food Additive Petitions

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 408 (d)(1), 409(b)(5), 68 Stat. 512; 72 Stat. 1786; 21 U.S.C. 346a(d)(1), 348(b)(5)), notice is given that a pesticide petition (PP 3F1400) has been filed jointly by The Dow Chemical Co., Post Office Box 1706, Midland, MI 48640 and M. & T. Chemicals, Inc. Post Office Box 1104, Rahway, NJ 07065, proposing establishment of tolerances (40 CFR Part 180) for combined residues of the insecticide tricyclohexyltin hydroxide and its organotin metabolites (calculated as tricyclohexyltin hydroxide) in or on the raw agricultural commodities almond hulls at 50 parts per million; peaches, apricots, and nectarines at 4 parts per million; strawberries at 3 parts per million; plums (fresh prunes) at 1 part per million; almonds and walnuts at 0.3 part per million.

Notice is also given that the same firms have filed a related food additive petition (FAP 3H5036) proposing establishment of a food additive tolerance (21 CFR Part 121) of 4 parts per million for residues of tricyclohexyltin hydroxide including its organotin metabolites (calculated as tricyclohexyltin hydroxide) in dried plums (prunes) resulting from application of the insecticide to growing plums (fresh prunes).

The analytical method proposed in the pesticide petition for determining residues of the insecticide is a procedure where the organotin compounds are converted to an inorganic form measurable by the dithiol colorimetric method at 530 nanometers.

Dated: June 29, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-13649 Filed 7-3-73;8:45 am]

THOMPSON-HAYWARD CHEMICAL CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3H5031) has been filed by the Thompson-Hayward Chemical Co., 5200 Speaker Road, Kansas City, KS 66110, proposing establishment of a tolerance (21 CFR Part 121) of 3 parts per million for residues of the fungicide triphenyltin hydroxide in or on rice hulls to provide for residues that may occur from use of the fungicide in a proposed experimental program involving application to the growing crop rice.

Dated: June 29, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-13650 Filed 7-3-73;8:45 am]

UNIROYAL CHEMICAL

Notice of Filing of Pesticide and Food Additive Petitions

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 408(d)(1), 409(b)(5), 68 Stat. 512, 72 Stat. 1786; 21 U.S.C. 346a(d)(1), 348(b)(5)), notice is given that a petition (PP 3F1402) has been filed by Uniroyal Chemical, Division of Uniroyal, Inc., Bethany, CT 06525, proposing establishment of tolerances (40 CFR Part 180) for residues of the insecticide 2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite in or on the raw agricultural commodities peanut hay at 7 parts per million, figs at 3 parts per million, peanut hulls at 1 part per million, and peanuts at 0.1 part per million (negligible residue).

Notice is also given that the same firm has filed a related food additive petition (FAP 3H5037) proposing establishment of a food additive tolerance (21 CFR Part 121) for residues of 2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite in dried figs at 9 parts per million resulting from application of the insecticide to growing figs.

The analytical method proposed in the pesticide petition for determining residues of the insecticide is gas chromatography using a sulfur detector.

Dated: June 29, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.73-13651 Filed 7-3-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. R-425]

AREA RATES FOR THE ROCKY MOUNTAIN AREA

Order Denying Rehearing and Requests for Clarification

JUNE 7, 1973.

On April 11, 1973, we issued Opinion No. 658 in this docket setting just and reasonable rates for gas sold in the Rocky Mountain Area under contracts dated prior to October 1, 1968, which is produced from wells commenced prior to January 1, 1973. We further ordered, as

an interim step in our movement to national rates, that all other jurisdictional gas sales in the Rocky Mountain Area would be governed by Order No. 435 issued July 15, 1971, in Docket Nos. R–389 and R–389–A.[1]

Motions for rehearing have been filed by Amoco Production Company (Amoco), Aztec Oil & Gas Company (Aztec), a group of "Producer Respondents" composed of Cabot Corporation, Amerada Hess Corporation, Chevron Oil Company, Exxon Corporation, Mobil Company and Texaco Inc. (Producers), and High Crest Oils, Inc. (High Crest). Atlantic Richfield Company (ARCO) and High Crest seek clarification of certain aspects of Opinion No. 658.

Amoco and Aztec contend that we erred in not giving special rate treatment to the San Juan subarea because of specialized cost and market conditions peculiar to that region. The applicants do not argue, nor have they demonstrated from the record, that the effect of our decision to apply uniform rates throughout the Rocky Mountain Area is confiscatory; instead they argue that discrimination results from a refusal to acknowledge the pecularities of San Juan. We do not believe that undue discrimination has been shown. A rate order of industry-wide application cannot fulfill the desideratum of uniform general applicability without resulting in some degree of different impact on different sellers. To safeguard against the possibility that the impact of a general rate order on any individual sale is too great, we recognize the right of a seller to seek individual consideration of his problem, either through a petition for special relief, or, if applicable, through an application under § 2.75 of our regulations. In Opinion No. 658, it was our judgment that a uniform rate throughout the Rocky Mountain Area better served the public interest than a complex and fragmented rate schedule that attempted to adjust for subarea differentials. In arriving at this conclusion, we gave full consideration to the evidence and argument of Amoco, Aztec, the State of New Mexico, and others, that San Juan presented peculiar problems. We concluded that the totality of Opinion No. 658 balanced the needs of San Juan producers, and all other producers in the Rocky Mountain Area, and the consuming public dependent on Rocky Mountain production. We find no error in our conclusion that the San Juan subarea should be accorded uniform rate treatment.

The motions raise no issues, or legal authority, not fully considered by us, and accordingly we deny rehearing.

ARCO asks for clarification of the effective date of Opinion No. 658, and particularly seeks our guidance as to the effective date of rate changes filed thereunder. We provided for an effective date of April 11, 1973, in Opinion No. 658, and it seems clear that § 154.98 of our regulations requires 30 days' notice of rate changes, unless the Commission "upon application and for good cause shown" permits a shortened notice period. ARCO expresses concern that preparation of rate changes will be delayed because of the need to follow Opinion No. 658 with respect to pressure base conversion and calculation of state taxes. If this occurs, a request for waiver under § 154.98 will be entertained, but we see no reason to alter or modify Opinion No. 658.

High Crest requests clarification of the applicability of Opinion No. 658 to production sold under contracts dated after October 1, 1968; High crest expresses concern that its sales under a recent contract, but from wells commenced prior to January 1, 1973, will be at a lower rate than gas sold under an old contract. High Crest finds itself the victim of an anomaly which we acknowledged in Opinion No. 658 (see pp. 3–4). We believe this situation will be rectified upon resolution of the outstanding rulemakings in Docket No. R–389–B[2] and Docket No. R–478.[3] Until then, High Crest is not harmed inasmuch as it is still entitled to the initial rate prescribed in Order No. 435, or (subject to refund) any contractually authorized rate in excess of that level.

The Commission orders.

All motions for rehearing and clarification of Opinion No. 658 shall be and the same are hereby denied.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73–13573 Filed 7–3–73;8:45 am]

[Docket No. RP71–7, etc.]

ALABAMA-TENNESSEE NATURAL GAS CO.

Notice of Refunds

JUNE 27, 1973.

Take notice that on May 24, 1973, Alabama-Tennessee Natural Gas Company (Alatenn) tendered for filing a Summary of Refunds made March 28, 1973, in Docket Nos. RP71–7, et al. and supplemented said filing on June 15, 1973, by tendering a Reconciliation of the Amounts Approved and Refunded in Docket Nos. RP71–7, et al.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 12, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73–13566 Filed 7–3–73;8:45 am]

[Docket No. CI73–892]

BELCO PETROLEUM CORP.

Notice of Application

JUNE 27, 1973.

Take notice that on June 14, 1973, Belco Petroleum Corporation (Applicant), 630 Third Avenue, New York, New York 10017, filed in Docket No. CI73–892 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company from acreage in Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to commence the sale of gas on July 1, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for two years from the end of the sixty-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell approximately 5,000 Mcf of gas per day at 55.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] 46 FPC 68, appeal docketed *sub. nom, APGA v. F.P.C.*, No. 71–1812, CADC.

[2] 38 FR 10010.

[3] — FR ———.

unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13567 Filed 7-3-73;8:45 am]

[Docket No. CI73-893]

BELCO PETROLEUM CORP.

Notice of Application

JUNE 27, 1973.

Take notice that on June 14, 1973, Belco Petroleum Corporation (Applicant), 630 Third Avenue, New York, New York 10017, filed in Docket No. CI73-893 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company from acreage in Eddy County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to commerce the sale of gas on July 1, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for two years from the end of the sixty-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell approximately 10,000 Mcf of gas per day at 55.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13568 Filed 7-3-73;8:45 am]

[Docket No. CI73-887]

EMERALD PETROLEUM CORP. ET AL.

Notice of Application

JUNE 27, 1973.

Take notice that on June 13, 1973, Emerald Petroleum Corporation (Applicant), P.O. Box 51325, Lafayette, Louisiana 70501, filed in Docket No. CI73-887 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Southern Natural Gas Company from the Bayou Pigeon Field, Iberia Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 45,000 Mcf of gas per month for one year at 50.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13570 Filed 7-3-73;8:45 am]

[Docket No. E-8272]

CAROLINA POWER & LIGHT CO.

Notice of Interconnection Agreement

JUNE 27, 1973.

Take notice that on June 11, 1973, Carolina Power & Light Company filed with the Federal Power Commission, pursuant to section 35 of the regulations under the Federal Power Act, a contract entitled "Interchange Agreement between South Carolina Public Service Authority and Carolina Power & Light Company" (these parties are referred to below as the "Applicants").

The proposed agreement provides for interconnections between the transmission systems of the Applicants at the following locations in the State of South Carolina: Hemingway, Kingstree, Darlington and Camden. An additional interconnection will be established at the Carolina Power & Light Company's H. B. Robinson Steam Electric Plant. The purpose of these interconnections is to provide the Applicants with mutual assistance in the event of an emergency, as well as energy interchange between the two systems.

Any person desiring to be heard or to make any protests with reference to this application should, on or before July 31, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). Persons wishing to become parties to this proceeding or to participate as a party in any hearing related thereto must file petitions to intervene in accordance with the Commission's rules. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The application referred to above, Docket No. E-8272, is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13574 Filed 7-3-73;8:45 am]

[Docket No. E-7743]

CONNECTICUT LIGHT AND POWER CO.

Notice of Further Postponement of Hearing

JUNE 27, 1973.

On June 26, 1973, Commission Staff Counsel filed a motion for a further postponement of the hearing scheduled to

begin on June 28, 1973, by notice issued June 18, 1973, in the above-designated matter. The motion states that all counsel concur in the motion.

Upon consideration, notice is hereby given that the hearing is postponed to July 31, 1973, at 10 a.m. E.D.T.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13575 Filed 7-3-73;8:45 am]

[Docket No. CP73-216]

EL PASO NATURAL GAS CO.

Notice of Amendment to Application

JUNE 27, 1973.

Take notice that on June 18, 1973, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP73-216 an amendment to the application filed on February 12, 1973, as supplemented on May 4, 1973, in said docket pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon side tap facilities and sales and deliveries of natural gas to Pioneer Natural Gas Company (Pioneer) for resale from said taps, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its application of February 12, 1973, Applicant proposes to abandon 3 taps serving irrigation customers of Pioneer and to use a single existing tap to continue the service rendered by the taps to be abandoned. Applicant now proposes to continue service to Pioneer through the Halsell Farms No. 1 Tap in lieu of the Sand Hills Group Line Tap, proposed in the amendment filed on May 4, 1973, to be used for the continued service.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 23, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Persons who have heretofore filed protests and petitions to intervene need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13576 Filed 7-3-73;8:45 am]

[Docket No. E-7548]

GEORGIA POWER CO.

Notice of Proposed Tariff Revisions

JUNE 27, 1973.

Take notice that on April 23, 1973, Georgia Power Company filed in Docket No. E-7548 revised pages 3, 3A, 3C, 3D, 3H, and 3K to its FPC Electric Tariff. Georgia states that the proposed revisions cover eight new cooperative delivery points, the conversion of one municipal delivery point from rate WR-4 to WR-6, and the addition of one cooperative delivery point (Altamaha No. 7), which was previously omitted from the tariff.

Any person desiring to be heard or to protest Georgia Power Company's filing in this docket should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 16, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Georgia Power Company's filing is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13577 Filed 7-3-73;8:45 am]

[Docket No. CI73-894]

GULF OIL CORP.

Notice of Application

JUNE 27, 1973.

Take notice that on June 15, 1973, Gulf Oil Corporation (Applicant), P.O. Box 1589, Tulsa, Oklahoma 74102, filed in Docket No. CI73-894 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company from the Ross No. 5 Well, in Upton County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on June 5, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for two years from the end of the sixty-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell approximately 13,500 Mcf of gas per month at 45.0 cents per Mcf at 14.65 psia.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13569 Filed 7-3-73;8:45 am]

[Docket No. E-8273]

ILLINOIS POWER CO.

Notice of Agreement for Excess Energy Transaction

JUNE 27, 1973.

Take notice that on June 11, 1973, Illinois Power Company (IPC) tendered for filing an Agreement for Participation Power, dated June 1, 1973, between Tennessee Valley Authority (TVA), Central Illinois Public Service Company (CIPS) IPC and Union Electric Company (UEC), which provides for excess energy sale to TVA in the summers of 1973 and 1974. The Agreement supplements the Interconnection Agreement between the parties dated November 1, 1969, which is currently on file as IPC Rate Schedule FPC No. 48. The Agreement is to become effective on June 1, 1973.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before July 20, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13578 Filed 7-3-73;8:45 am]

[Docket No. E-7563]

MONONGAHELA POWER CO. ET AL.

Notice of Filing of Rate Schedule Supplements

JUNE 27, 1973.

Take notice that the Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny System Companies) on June 6, 1973, tendered for filing rate schedule supplements reflecting the Offer of Settlement approved by the Commission in its order issued May 15, 1973, in this docket. The filing is in purported compliance with that order which required that such supplements be filed within 30 days of the issuance of such order.

The filing is described in the letter of transmittal as follows:

> There are enclosed herewith on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company three executed and nine conformed copies of an Amendment, dated June 1, 1973, reflecting the decrease in the cost of capital used in computing fixed charges in capacity reserve equalization and transmission service from 9 percent to 8 percent as agreed to in the offer of settlement and approved by the Commission. One of the executed copies is filed as a supplement to Monongahela's rate schedule FPC No. 27, the second is filed as a supplement to PE's rate schedule FPC No. 29 and the third is filed as a supplement to West Penn's rate schedule FPC No. 25.

The Allegheny System Companies also state that they have refunded, with 7.5 percent interest, the difference between capacity reserve equalization and transmission charges computed at 9% cost of capital and 8 percent cost of capital for the period between November 2, 1970, and May 15, 1973.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 10, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13571 Filed 7-3-73;8:45 am]

[Docket No. CP73-335]

NATURAL GAS PIPELINE CO. OF AMERICA

Notice of Application

JUNE 27, 1973.

Take notice that on June 18, 1973, Natural Gas Pipeline Company of America (Applicant), 122 Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP73-335 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a compressor station for the compression of gas in the North Custer City Field, Custer County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that reservoir pressures in the North Custer City Field in Custer County, Oklahoma, are declining so that continued production into the gathering system operated at the present pressure will cause accelerated reduction in production rates and premature plugging of some wells. Applicant states further that lowering of the gathering line pressures will permit Applicant to recover an additional 17 million Mcf of gas from this field.

Applicant proposes to construct and operate a compressor station consisting of two 690 horsepower compressors on a site adjacent to its existing dehydration plant in Custer County, Oklahoma. The estimated cost of the proposed construction is $403,000, which will be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 23, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13579 Filed 7-3-73;8:45 am]

[Project No. 1855]

NEW ENGLAND POWER CO.

Issuance of Annual License

JUNE 27, 1973.

On June 23, 1969, New England Power Company, Licensee for Bellows Falls Project No. 1855 located in Windham and Windsor Counties, Vermont, and Cheshire and Sullivan Counties, New Hampshire, on the Connecticut River filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (Sections 16.1–16.6). Licensee also made a supplemental filing pursuant to Commission Order No. 384 on February 24, 1970.

The license for Project No. 1855 was issued effective January 1, 1938, for a period ending June 30, 1970. Since the original date of expiration the project has been under annual license. In order to authorize the continued operation of the project pursuant to section 15 of the Act pending completion of Licensee's application and Commission action thereon it is appropriate and in the public interest to issue an annual license to New England Power Company for continued operation and maintenance of Project No. 1855.

Take notice that an annual license is issued to New England Power Company (Licensee) under Section 15 of the Federal Power Act for the period July 1, 1973, to June 30, 1974, or until Federal takeover; or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Bellows Falls Project No. 1855, subject to the terms and conditions of its license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13580 Filed 7-3-73;8:45 am]

[Docket No. RP73-78]

ORANGE AND ROCKLAND UTILITIES, INC.

Further Postponement of Prehearing Conference

JUNE 27, 1973.

On June 25, 1973, Orange and Rockland Utilities, Inc. filed a motion to extend the date of the prehearing conference as fixed by the notice issued June 1, 1973, in the above-designated matter.

The motion states that no party has any objection to the motion.

Upon consideration, notice is hereby given, that the prehearing conference in the above matter is further postponed until July 19, 1973, at 10:00 a.m. in a hearing room of the Federal Power Commission at 825 North Capitol St., NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13581 Filed 7-3-73;8:45 am]

[Project Nos. 2243, 2273]

PACIFIC NORTHWEST POWER CO. AND WASHINGTON PUBLIC POWER SUPPLY SYSTEM

Reopening the Proceeding and Requiring Further Procedures To Implement the National Environmental Policy Act

JUNE 27, 1973.

The Pacific Northwest Power Company and the Washington Public Power Supply System seek a license to construct a hydroelectric project on the Snake River, between the States of Oregon and Idaho. Although extensive hearings in these proceedings have been conducted over a period of many years, and although environmental issues have been explored at considerable length, we find it necessary to require further procedures, in order to assure full compliance with the National Environmental Policy Act.

Project No. 2243 commenced on March 31, 1958, with the filing by the Pacific Northwest Power Company of an application for a license to construct the High Mountain Sheep Project on the Snake River. Project No. 2273 commenced on March 15, 1960, when the Washington Public Power Supply System filed an application to construct the Nez Perce Project on the Snake, a project that would be in conflict with High Mountain Sheep. The applications were consolidated. Following hearings, which began on November 4, 1960, and ended on September 12, 1961, the Commission on February 4, 1964, granted the application for the High Mountain Sheep Project and denied the application for Nez Perce (31 FPC 247, 1051).

The Commission's action was the subject of an appeal, as a result of which the matter was remanded to the Commission for further hearings (*Udall* v. *F.P.C.*, 387 U.S. 428 (1967)). Soon thereafter the two Applicants filed with us a joint, amended application to construct any one of three hydroelectric projects on the Snake: High Mountain Sheep, Pleasant Valley-Mountain Sheep, or Appaloosa-Mountain Sheep. This joint application was the subject of hearings which ran from September 4, 1968, to March 29, 1970, and an Initial Decision which followed on February 23, 1971. That Initial Decision recommended issuance of a license for the Pleasant Valley-Mountain Sheep Project, with a delay in construction until after September 11, 1975, in order to provide time for the Congress to consider making the Middle Snake River a component of the National Wild and Scenic Rivers System.

The National Environmental Policy Act (NEPA) was approved on January 1, 1970. Although the proceedings commenced well before that date, the parties have sought to comply with the statute and with our regulations issued pursuant to it. Among other things, a Staff draft environmental impact statement was filed in these proceedings on June 8, 1971, and was circulated for comment; notice of its availability was published in the FEDERAL REGISTER for June 24, 1971, and notice of an extension of time for comment appeared in the FEDERAL REGISTER for August 6, 1971; extensive comments have been received. The Applicants filed their environmental statement on July 23, 1971.

The parties have not, however, been afforded an opportunity to conduct cross-examination on the Staff environmental statement. That opportunity must be afforded, in light of the Supreme Court's denial on October 10, 1972, of this Commission's petition for a writ of certiorari to review the decision of the Court of Appeals for the Second Circuit in *Greene County Planning Board* v. *F.P.C.*, 455 F. 2d 412 (1972). *F.P.C.* v. *Greene County Planning Board*, 409 U.S. 849 (1972). Accordingly, it is necessary that we apply the conclusions expressed by the Court of Appeals in that case. Those conclusions concern this Commission's procedures with respect to the implementation of the National Environmental Policy Act. In particular the court held that an environmental statement must be prepared by our Staff in advance of hearing, and such statement must be "subject to the full scrutiny of the hearing process". Our Order No. 415-C, issued December 18, 1972, sets forth our detailed procedures concerning the implementation of NEPA, in light of Greene County. That decision and our order require that we remand this case to the Presiding Administrative Law Judge. A further hearing will be required.

Our favorable action on the applications which form the basis for these proceedings would clearly constitute a "major" Federal action "significantly affecting the quality of the human environment", as that phrase is used in section 102(2)(C) of the National Environmental Policy Act. Recognizing that to be so, the Staff and the Applicants herein each filed environmental statements. The Applicants' statement should now be reviewed by our Staff, following which the Staff may choose to request further information from the Applicants concerning environmental matters. It will be necessary, in any event, for our Staff to take additional steps so as to comply fully with the provisions of Order No. 415-C that pertain to environmental impact statements. It is necessary that a Staff final environmental impact statement be offered in evidence at the reopened hearing, and that the opportunity for cross-examination be afforded.

The Commission further finds:

(1) In order to assure that the parties to this proceeding have available to them all of the procedures and safeguards contained in the National Environmental Policy Act, as construed in *Greene County Planning Board* v. *F.P.C.*, *supra*, and as implemented by Order No. 415-C, it is necessary that the proceeding be remanded to the Presiding Administrative Law Judge and that the hearing be reopened so that a Staff final environmental impact statement may be received in evidence and an opportunity may be afforded for cross-examination thereon.

(2) A further hearing in this proceeding would be in the public interest.

(3) Such further hearing shall not be held until a Staff final environmental impact statement which meets the requirements of our Order No. 415-C has been made available to the parties for a period of time sufficient for their preparation of cross-examination. The final environmental impact statement of the Staff shall be introduced in evidence at the reopened hearing.

The Commission orders:

These proceedings are hereby reopened so that a Staff final environmental impact statement, prepared in accordance with our Order No. 415-C, may be received in evidence and an opportunity may be afforded for cross-examination thereon, and a further public hearing before the Presiding Administrative Law Judge shall be held thereon in Washington, D.C., commencing on such date as the Presiding Administrative Law Judge may, in his discretion, prescribe. The Presiding Administrative Law Judge shall prescribe procedures for such further hearing consistent with the decision in *Greene County Planning Board* v. *F.P.C.*, *supra*, with this order, and with Order No. 415-C. At such reopened hearing, the Staff final environmental impact statement shall be offered in evidence, and cross-examination thereon shall be permitted.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13582 Filed 7-3-73;8:45 am]

[Docket Nos. RP71-130, RP72-58]

TEXAS EASTERN TRANSMISSION CORP.

Petition for Emergency Relief

JUNE 27, 1973.

Public notice is hereby given that a petition for emergency relief was filed on June 13, 1973, by the City of Huntingburg, Indiana (Huntingburg) pursuant to § 1.7(b) of the Commission's rules of practice and procedure and terms of the Commission's order denying rehearing and stay issued January 24, 1973. Huntingburg is seeking an increased annual allotment of at least 10,000 Mcf from its sole supplier, Texas Eastern Transmission Corporation (TETCO).

Huntingburg claims that its current annual allotment of 423,722 Mcf is not sufficient to meet the projected demands of Huntingburg's users. Huntingburg has presented data from the last two years on which its present projection is based. Stating that it used 391,235 Mcf from September 1, 1972, to May 31, 1973, Huntingburg claims that it must have 433,722 Mcf for the 12 months ending August 31, 1973.

Huntingburg states that virtually all of its customers are residential and small commercial users. Only five users, says Huntingburg, fall outside of priority-of-service category (1) established by Commission order no. 467-B, issued March 2, 1973, in Docket No. R-469. They are listed as St. Joseph's Hospital, which uses gas for space heating and cooking, the Southridge High School, which uses gas for space heating, the Southwest DuBois Middle School which uses gas for space heating and cooking, the Huntingburg Brick Company, which uses gas for kiln drying[1] and Food Concepts, Inc., which uses gas for space heating and cooking. Huntingburg states that Food Concepts, Inc. has no acceptable alternate fuel capability.

Huntingburg claims that unless the requested relief is granted it will be forced either to curtail service to its customers or to pay penalty charges of $3.00/Mcf in order to meet its demand. Payment of such a charge, says Huntingburg, would potentially bankrupt its gas system.

Any person desiring to be heard or to make protest with reference to said petition should on or before July 6, 1973, file with the Federal Power Commission, Washington, D.C. 20426 petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The petition is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13541 Filed 7-3-73;8:45 am]

TEXAS GAS TRANSMISSION CORP.

Exchange Agreement

JUNE 28, 1973.

Take notice that on June 11, 1973, Texas Gas Transmission Corporation (Texas Gas) tendered for filing rate schedule X-46 consisting of original sheet nos. 511 through 523, to its FPC Gas Tariff, Original Volume No. 2. Texas Gas states that the rate schedule reflects an exchange agreement between itself and Trunkline Gas Company (Trunkline), as authorized by Commission Order issued April 6, 1973, in Docket No. CP73-112. An effective date of July 15, 1973, is proposed.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 9, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13540 Filed 7-3-73;8:45 am]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Exchange Agreement

JUNE 28, 1973.

Take notice that on June 11, 1973, Transcontinental Gas Pipe Line Company (Transco) tendered for filing the following sheets to its FPC Gas Tariff, original volume No. 2:

Original sheets Nos. 558 through 667 constituting Rate Schedule X-63, an exchange agreement dated October 12, 1972, between Transco and Trunkline Gas Company (Trunkline).

Transco states that the subject exchange arrangement was authorized by the Commission on April 6, 1973, in Docket No. CP73-118, and that a copy of the instant filing has been served upon Trunkline.

The tariff sheets are proposed to become effective July 15, 1973.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 5, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13542 Filed 7-3-73;8:45 am]

[Docket No. RP73-90]

UNION LIGHT, HEAT AND POWER CO.

Notice of Motion to Terminate Proceeding

JUNE 27, 1973.

Take notice that on June 20, 1973, the Commission Staff filed a motion to the Commission to terminate the proceeding in this docket and suspend the procedural dates in the interim, pending further action by the Commission. Staff's motion states that Staff has made a careful review of the filing of Union Light, Heat and Power Company, its supporting data, and, in particular, responses of the Company to Staff data requests, and has concluded that it will not be necessary to put in evidence because the proposed rates are just and reasonable.

Any person desiring to be heard or to protest said motion should file comments or protests with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All such comments or protests should be filed on or before July 6, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this motion are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-13572 Filed 7-3-73;8:45 am]

FEDERAL RESERVE SYSTEM

ALABAMA FINANCIAL GROUP, INC.

Order Approving Acquisition of Bank

The Alabama Financial Group, Inc., Birmingham, Alabama, 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 the successor by merger to Baldwin County Bank, Bay Minette, Alabama ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls five banks, with aggregate deposits of $529.2 million, representing 8.7 per cent of total deposits in commercial banks in Alabama.[1] The acquisition of Bank (deposits of $11.5

[1] Huntingburg Brick Company has been curtailed from an annual usage of about 35,000 Mcf in 1970 to 6,000 Mcf in 1971 and to 1,000 Mcf in 1972.

[1] All banking data are as of June 30, 1972 and represent bank holding company formations and acquisitions approved by the Board through May 31, 1973.

million) would not significantly increase the concentration of banking resources in Alabama.

Bank is located in Baldwin County, which is part of the Mobile Standard Metropolitan Statistical Area ("SMSA").[2] Bank ranks as the eighth largest of the 13 banks located in the Mobile SMSA, (the relevant market), and holds approximately 1.7 per cent of market deposits. One of Applicant's present subsidiary banks, the Commercial Guaranty Bank of Mobile ("Mobile Bank"), is located in Mobile County, approximately 9 miles from the only branch of Bank. Mobile Bank has deposits of $28.5 million and is the fourth largest bank in the market. There is no substantial existing competition between Mobile Bank and Bank; nor, due to the presence of numerous banking alternatives and Alabama's branching statutes, is there substantial likelihood of future competition developing between these institutions. Neither is there any significant possibility of substantial competition developing between any other of Applicant's banking subsidiaries and Bank for similar reasons.

Moreover, consummation of this transaction could have a beneficial effect on competition in the Mobile SMSA. Applicant presently controls but 4 per cent of deposits in this market. Acquisition of Bank would give Applicant a service outlet in an area of the Mobile SMSA in which it is presently not represented (and one in which Mobile Bank may not establish branches). Acquisition of Bank should enable Applicant to provide more effective competition for the much larger banking organizations in the Mobile area with which it must compete. For these reasons, the Board concludes that the competitive factors are consistent with approval of this application.

The managerial and financial resources and future prospects of Applicant, its subsidiary banks, and Bank are regarded as generally satisfactory and consistent with approval of the application. Considerations relating to the convenience and needs of the community to be served are also consistent with approval of the application. The Board concludes that approval of the acquisition is in the public interest.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order, or (b) 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 Atlanta pursuant to delegated authority.

By order of the Board of Governors,[3] effective June 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-13530 Filed 7-3-73;8:45 am]

[2] The relevant banking market is approximated by the Mobile SMSA, which is composed of Mobile and Baldwin Counties.

[3] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher, and Holland.

BANCOHIO CORP.

Order Approving Acquisition of Bank

BancOhio Corporation, Columbus, Ohio, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of the successor by merger to The Imperial State Bank, Vandalia, Ohio ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording an opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the largest bank holding company in Ohio, controls 37 banks with aggregate deposits of approximately $2.4 billion,[1] representing 8.9 per cent of the total commercial bank deposits in the State. Acquisition of Bank would increase Applicant's share of State deposits by only .02 per cent.

Bank (approximately $6 million in deposits as of June 30, 1972) is the twentieth largest of 26 banks operating in the Dayton banking market (approximated by Montgomery and Greene Counties, the southern two-thirds of Miami County, and portions of two other contiguous counties) and accounts for 0.5 per cent of total deposits in commercial banks in the market.

The market appears to be dominated by the three largest banks, which together control approximately 75 per cent of the total commercial bank deposits in the market. Applicant presently has one small office in the market (approximately $1 million in deposits as of June 30, 1972) located 8 miles from Bank's Huber Heights office, and the proposed acquisition would increase Applicant's share of market deposits to only 0.6 per cent. Thus, consummation of the proposed transaction would not result in Applicant's gaining a dominant share of the market's banking resources, although a small amount of present and future competition would be eliminated. The elimination of this competition would not have a substantially adverse effect, however, since the amount of competition is minimal at the present time, and the commuting patterns in the Dayton area, together with Ohio's restrictive branching law, would appear to inhibit the development of more extensive competition between the two banks in the future. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Bank, and of Applicant and its present subsidiary banks are regarded as satisfactory and are consistent with approval of the application. Although the major banking needs of the residents in the area are being adequately served at the present time, the proposed affiliation would provide Bank with an increased lending capacity and assistance in extending its branch system. Considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) 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 Cleveland pursuant to delegated authority.

By order of the Board of Governors,[2] effective June 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-13531 Filed 7-3-73;8:45 am]

[1] Unless otherwise noted, all banking data are as of December 31, 1972, and reflect holding company formations and acquisitions approved through May 31, 1973.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher, and Holland.

FIRST FINANCIAL CORPORATION

Order Approving Acquisition of Banks

First Financial Corporation, Tampa, Florida, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire not less than 80 per cent of the voting shares of The Lewis State Bank, Tallahassee, Florida ("Lewis Bank"), and The Gulf National Bank, Tallahassee, Florida ("Gulf Bank"), a proposed new bank.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. 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 (12 U.S.C. 1842(c)).

Applicant controls 13 banks with aggregate deposits of $835 million, representing 4.2 per cent of the total commercial bank deposits in the State, and is the sixth largest banking organization and bank holding company in Florida. (All banking data are as of December 31, 1972, adjusted to reflect all bank holding company formations and acquisitions approved by the Board through May 31, 1973.) Acquisition of Lewis Bank ($61

million in deposits) would increase Applicant's share of commercial bank deposits in the State by only 0.4 percentage points and its ranking in the State would be unchanged. Since Gulf Bank is a proposed new bank, no existing competition would be eliminated by consummation of this proposal, nor would concentration be increased in any relevant area.

Lewis Bank is the third largest of nine banks competing in the Leon County banking market (which includes the city of Tallahassee) and controls 23.9 per cent of market deposits. The two larger banking organizations in the market hold 28.8 per cent and 24.4 per cent of the deposits in the market. Applicant's subsidiary bank located closest to Lewis Bank is 200 miles southeast of Tallahassee. No significant existing competition would be eliminated as a result of consummation of the proposal as between Lewis Bank and the subsidiaries of Applicant. Furthermore, in view of the distances involved, the number of banks located in intervening areas, the population per banking office (11,900 versus a Statewide average of 13,500), the State prohibition against branch banking, and the financial and managerial limitations of Lewis Bank (which would be carried over to Gulf Bank), it appears unlikely that any significant competition between the banking institutions would develop in the future. Furthermore, with regard to Gulf Bank, it is being established in a lower income area that is not an attractive site for de novo entry and it is the Board's view, from the facts of record, that Applicant is not attempting to preempt a bank site before a need exists. (The Comptroller of the Currency has approved the charter for Gulf Bank.) On the basis of the record before it, the Board concludes that consummation of the proposed acquisitions would not have an adverse effect on competition in any relevant area.

The financial and managerial resources and prospects of Applicant and its subsidiary banks are regarded as generally satisfactory and consistent with approval of the applications, particularly in the light of Applicant's commitment and program to strengthen the capital base of certain of its subsidiaries. Lewis Bank has experienced some capital and management problems. Affiliation with Applicant will enable both Lewis Bank and Gulf Bank to draw upon Applicant's managerial resources and should strengthen Lewis Bank's management and condition and enhance its future prospects. The banking factors lend weight for approval. The banking needs of the Leon County market appear to be adequately served at the present time; however, Applicant proposes to improve, expand, and revitalize those services Lewis Bank is offering to its community, and affiliation will enable Gulf Bank to become a meaningful competitor in a much shorter period of time than if these applications were denied. Considerations relating to the convenience and needs of the community to be served weigh in favor of approval of the applications. It is the Board's judgment that the proposed transactions are in the public interest and should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after that date, and (c) The Gulf National Bank, Tallahassee, Florida, shall be opened for business not later than six months after the effective date of this Order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] effective June 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-13532 Filed 7-3-73;8:45 am]

FIRST FLORIDA BANCORPORATION

Order Approving Acquisition of Bank

First Florida Bancorporation, Tampa, Florida, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 90 per cent or more of the voting shares of Peoples Bank in North Fort Myers, Fort Myers, Florida ("North Fort Myers Bank"). The name of Applicant will be changed to United First Florida Banks, Inc., Tampa, Florida, upon consummation of the Board approved section 3(a)(5) merger between First Florida Bancorporation and United Bancshares of Florida, Inc., Miami, Florida.[1]

Notice of the application affording opportunity for interested persons to submit comments and views has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 34 banks with aggregate deposits of $1.2 billion, representing 6.1 per cent of the total deposits of commercial banks in Florida and is the fifth largest banking organization in Florida. (All banking data are as of December 31, 1972, and reflect acquisitions and formations approved by the Board through June 20, 1973.) The acquisition of North Fort Myers Bank ($17 million deposits) would increase Applicant's share of Florida deposits by one-tenth of one percentage point, and it would become the fourth largest State banking organization.

North Fort Myers Bank is located in the western half of the Lee County banking market. In terms of deposits, it is the sixth largest bank in Lee County, holding 3.94 percent of county deposits. North Fort Myers Bank competes with eight banking organizations, the three largest of which control more than 76 percent of total bank deposits in the market.

Applicant is not presently represented in the Lee County banking market and its closest subsidiary bank is located 25 miles from Fort Myers. Applicant has recently received approval to acquire a proposed new bank 25 miles north of Fort Myers in Punta Gorda, Florida. No meaningful competition exists between these or any of Applicant's present subsidiary banking offices and North Fort Myers Bank, and it does not appear that significant future competition would develop between them in view of the distances, the presence of intervening banks, and State laws restricting branching. Competitive considerations are consistent with approval of the application.

The financial and managerial resources and prospects of Applicant, its subsidiaries, and North Fort Myers Bank are satisfactory in light of Applicant's capital improvement program to increase capital in its subsidiary banks and banking factors are consistent with approval of the application. The major banking needs of the area are satisfactorily served at the present time. However, the proposed affiliation will enable North Fort Myers Bank to offer trust, travel, and international services on a referral basis through Applicant's lead bank in Tampa. Applicant will also assist North Fort Myers Bank in recruiting capable officers. Considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) 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 Atlanta pursuant to delegated authority.

By order of the Board of Governors[2] effective June 25, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-13533 Filed 7-3-73;8:45 am]

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher, and Holland.

[1] 1973 Bulletin 183.

[2] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

FIRST INTERNATIONAL BANCSHARES, INC.

Order Approving Acquisition of Bank

First International Bancshares, Inc., Dallas, Texas, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of the successor by merger to Temple National Bank, Temple, Texas ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, presently the second largest bank holding company in the State, controls two banks [1] with aggregate deposits of approximately $1.7 billion,[2] representing 5.6 per cent of the total commercial bank deposits in the State. Acquisition of Bank would increase Applicant's share of State deposits by .16 per cent and would not result in a significant increase in the concentration of banking resources in the State.

Bank (approximately $48 million in deposits) is the largest of 15 banks in the Killeen-Temple banking market and controls 21 percent of the commercial bank deposits in the market. The second and third largest banks in the market control 20 and 19 percent of the commercial bank deposits, respectively. Consummation of the proposal herein would constitute Applicant's initial entry into the Killeen-Temple banking market.

Applicant's subsidiary bank closest to Bank is located in Dallas, 135 miles from Temple. There is no meaningful present competition between Applicant's subsidiary banks and Bank. Furthermore, in view of the distances involved and Texas' restrictive branching law, there is little probability that any significant amount of competition would develop in the future between these institutions. Although Applicant could enter the market de novo or through the acquisition of a smaller bank, Applicant's acquisition of Bank is not regarded as having a significant adverse competitive effect because size disparity among the top banks is narrow enough so that Applicant's acquisition of Bank would not result in Applicant's gaining a dominant share of the market's banking resources, nor would it appear to preclude the possibility of other holding companies entering the market. The Board concludes, therefore, that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Bank, and of Applicant and its present subsidiary banks, are regarded as satisfactory. Considerations relating to the banking factors are consistent with approval of the application. Although the major banking needs of the residents in the area are being adequately served at the present time, the proposed affiliation is likely to result in expansion of the range of services presently offered by Bank. In addition, affiliation with Applicant would give Bank access to considerable financial resources which will enable it to provide an increased lending capacity. The expanded range of services and the increased lending capacity are necessary in meeting the demands of the growing community. Considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day folowing the effective date of this Order or (b) 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 Dallas pursuant to delegated authority.

By order of the Board of Governors,[3] effective June 25, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-13534 Filed 7-3-73;8:45 am]

[1] In addition to its two subsidiary banks, Applicant indirectly owns interests of between 5 and 25 per cent in 13 banks. Applicant states that it intends to acquire five of these banks, and to divest its minority interest in each of the remaining eight banks.

[2] All banking data are as of June 30, 1972, and reflect holding company formations and acquisitions approved through April 30, 1973.

[3] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

OFFICE OF EMERGENCY PREPAREDNESS

FEDERAL COORDINATING OFFICER

Appointment

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575, December 31, 1970 (36 FR 37, January 5, 1971), to administer the Disaster Relief Act of 1970 (Public Law 91-606, 84 Stat. 1744), I hereby appoint Ronard B. Van Dame as Federal Coordinating Officer to perform the duties specified by section 201 of that Act for the disasters listed below, effective July 1, 1973:

State	Disaster Number	Declaration Date
Mississippi: Vice Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	271	August 18, 1969
Mississippi: Vice Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	302	February 22, 1971
Kentucky: Vice Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	305	May 10, 1971
Tennessee: Vice Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	306	May 18, 1971
Mississippi: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	318	January 19, 1972
Tennessee: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	331	May 15, 1972
Kentucky: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	332	May 15, 1972
Florida: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	337	June 23, 1972
Tennessee: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	366	March 21, 1973
Mississippi: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	368	March 27, 1973
Alabama: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	369	March 27, 1973
Georgia: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	370	April 4, 1973
Kentucky: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	381	May 11, 1973
Tennessee: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	382	May 11, 1973
Florida: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	387	May 26, 1973
Alabama: Vice, Joe D. Winkle, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	388	May 29, 1973

Dated: June 29, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

[FR Doc.73-13610 Filed 7-3-73;8:45 am]

FEDERAL COORDINATING OFFICER

Appointment

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575, December 31, 1970 (36 FR 37, January 5, 1971), to administer the Disaster Relief Act of 1970 (Public Law 91-606, 84 Stat. 1744), I hereby appoint Joe D. Winkle as Federal Coordinating Officer to perform the duties specified by section 201 of that Act for the disasters listed below, effective July 1, 1973:

State	Disaster Number	Declaration Date
Texas: Vice, George E. Hastings, appointed August 7, 1970 (35 F.R. 12862, August 13, 1970).	292	August 4, 1970
Texas: Vice, George E. Hastings, appointed September 25, 1971 (36 F.R.19340, October 2, 1971).	313	September 18, 1971
Texas: Vice George E. Hastings, appointed May 22, 1972 (37 F.R. 10619, May 25, 1972).	333	May 20, 1972
New Mexico: Vice, George E. Hastings, appointed August 2, 1972 (37 F.R. 15897, August 5, 1972).	346	August 1, 1972

State	Disaster Number	Declaration Date
New Mexico: Vice, George E. Hastings, appointed September 26, 1972 (37 F.R. 20352, September 29, 1972).	353	September 20, 1972
New Mexico: Vice, George E. Hastings, appointed November 20, 1972 (37 F.R. 25077, November 25, 1972).	361	November 20, 1972
Texas: Vice, George E. Hastings, appointed March 15, 1973 (38 F.R. 7423, March 21, 1973).	365	March 12, 1973
Louisiana: Vice, George E. Hastings, appointed April 27, 1973 (38 F.R. 11014, May 3, 1973).	374	April 27, 1973
Arkansas: Vice, George E. Hastings, appointed April 27, 1973 (38 F.R. 11013, May 3, 1973).	375	April 27, 1973
New Mexico: Vice George E. Hastings, appointed May 15, 1973 (38 F.R. 13401, May 21, 1973).	380	May 11, 1973
Arkansas: Vice George E. Hastings, appointed May 31, 1973 (38 F.R. 14888, June 6, 1973).	389	May 29, 1973
Oklahoma: Vice George E. Hastings, appointed June 13, 1973 (38 F.R. 15995, June 19, 1973).	392	June 13, 1973

Dated: June 29, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

[FR Doc.73-13611 Filed 7-3-73;8:45 am]

FEDERAL COORDINATING OFFICER

Appointment

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575, December 31, 1970 (36 FR 37, January 5, 1971), to administer the Disaster Relief Act of 1970 (Public Law 91-606, 84 Stat. 1744), I hereby appoint Alfred A. Hahn as Federal Coordinating Officer to perform the duties specified by section 201 of that Act for the disasters listed below, effective July 1, 1973:

State	Disaster Number	Declaration Date
Virginia: Vice Kenneth Edmunds, appointed January 7, 1970 (35 F.R. 403, January 10, 1970).	274	August 23, 1969
West Virginia: Vice Kenneth Edmunds, appointed January, 7, 1970 (35 F.R. 403, January 10, 1970).	278	September 3, 1969
West Virginia: Vice Kenneth Edmunds, appointed January 7, 1970 (35 F.R. 403, January 10, 1970).	279	September 24, 1969
West Virginia: Vice Francis X. Carney, appointed February 28, 1972 (37 F.R. 4477, March 3, 1972).	323	February 27, 1972
Pennsylvania: Vice Francis X. Carney, appointed July 13, 1972 (37 F.R. 14014, July 15, 1972).	340	June 23, 1972
Maryland: Vice Francis X. Carney, appointed August 25, 1972 (37 F.R. 17590, August 30, 1972).	341	June 23, 1972
Pennsylvania: Vice Francis X. Carney, appointed October 2, 1972 (37 F.R. 21207, October 6, 1972).	355	September 28, 1972

Dated: June 29, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

[FR Doc.73-13612 Filed 7-3-73;8:45 am]

NORTH CAROLINA

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 11575 of December 31, 1970; and by virtue of the Act of December 31, 1970, entitled "Disaster Relief Act of 1970" (84 Stat. 1744), as amended by Public Law 92-209 (85 Stat. 742); notice is hereby given that on June 25, 1973, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from severe storms and flooding beginning on or about May 27, 1973, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 91-606. I therefore declare that such a major disaster exists in the State of North Carolina. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575 to administer the Disaster Relief Act of 1970 (Public Law 91-606, as amended), I hereby appoint Mr. Ronard B. Van Dame, OEP Region 4, to act as the Federal Coordinating Officer to perform the duties specified by section 201 of that Act for this disaster.

I do hereby determine the following areas in the State of North Carolina to have been adversely affected by this declared major disaster.

The Counties of:

Ashe	Jackson
Buncombe	Macon
Clay	McDowell
Haywood	Watauga
Iredell	

Dated June 29, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

[FR Doc.73-13606 Filed 7-3-73;8:45 am]

OKLAHOMA

Amendment to Notice of Major Disaster

Notice of Major Disaster for the State of Oklahoma, dated June 13, 1973, and published June 19, 1973 (38 FR 15996); and amended June 14, 1973, and published June 20, 1973 (38 FR 16113), is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1973:

The County of:

Jefferson

Dated: June 28, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

[FR Doc.73-13607 Filed 7-3-73;8:45 am]

TENNESSEE

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 11575 of December 31, 1970; and by virtue of the Act of December 31, 1970, entitled "Disaster Relief Act of 1970" (84 Stat. 1744); notice is hereby given that on June 28, 1973, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms and flooding beginning on or about May 26, 1973, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 91-606. I therefore declare that such a major disaster exists in the State of Tennessee. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575 to administer the Disaster Relief Act of 1970 (Public Law 91-606) I hereby appoint Mr. Ronard B. Van Dane, OEP Region 4, to act as the Federal Coordinating Officer to perform the duties specified by section 201 of that Act for this disaster.

I do hereby determine the following areas in the State of Tennessee to have been adversely affected by this declared major disaster.

The Counties of:

Bledsoe	Morgan
Campbell	Roane
Coffee	Scott
Cumberland	Van Buren
Grundy	Warren

Dated June 29, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

[FR Doc.73-13608 Filed 7-3-73;8:45 am]

TEXAS

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 11575 of December 31, 1970; and by virtue of the Act of December 31 1970, entitled "Disaster Relief Act of 1970" (84

Stat. 1744), as amended by Public Law 92-209 (85 Stat. 742); notice is hereby given that on June 25, 1973, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Texas from severe storms and flooding, beginning about March 23, 1973, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 91-606. I therefore declare that such a major disaster exists in the State of Texas. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575 to administer the Disaster Relief Act of 1970 (Public Law 91-606, as amended), I hereby appoint Mr. Joe D. Winkle, OEP Region 6, to act as the Federal Coordinating Officer to perform the duties specified by section 201 of that Act for this disaster.

I do hereby determine the following areas in the State of Texas to have been adversely affected by this declared major disaster.

The Counties of:

Jefferson	Red River
Orange	Upshur

Dated: June 29, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

[FR Doc.73-13609 Filed 7-3-73;8:45 am]

POSTAL SERVICE

PHASED POSTAL RATES

Continuation of Step I

The Postal Service will not seek an exemption from the current 60 day price freeze. Accordingly, the Notice of Scheduled Increases in Certain Postage Rates (38 FR 13697-98, May 24, 1973) is hereby rescinded. Existing rates will remain in effect until further notice.

(39 U.S.C. 101(d), 401, 403, 404, 3621, 3626, 3627.)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.73-13705 Filed 7-3-73;8:45 am]

POSTAL CONTRACTING MANUAL

Notice of Amendment

Notice is hereby given that the Postal Contracting Manual, Publication 41 (see 39 CFR Part 601), has been amended by the issuance of Transmittal Letter 11, dated April 27, 1973.

This notice is given pursuant to § 601.105 of Title 39, Code of Federal Regulations, which provides that notice of changes made in the Postal Contracting Manual will be periodically published in the FEDERAL REGISTER; that the text of such changes will be filed with the Director, Office of the Federal Register; and that subscribers to the basic Manual will receive amendments from the Government Printing Office. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

Amendments of the Postal Contracting Manual accompanying Transmittal Letter 11 were filed with the Director, Office of the Federal Register, simultaneously with the filing of this document.

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008)

ROGER P. CRAIG,
Deputy General Counsel.

JUNE 29, 1973.

[FR Doc.73-13551 Filed 7-3-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

AVIATION HOLDING CORP.

Order Suspending Trading

JUNE 28, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.01 par value, and all other securities of Aviation Holding Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 11:05 a.m. (EDT) June 28, 1973 through July 7, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-13598 Filed 7-3-73;8:45 am]

[File No. 500-1]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

JUNE 28, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10¢ par value, of Continental Vending Machine Corporation, and the 6% convertible subordinated debentures due September 1, 1976 being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period June 29, 1973 through July 8, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-13599 Filed 7-3-73;8:45 am]

[File No. 500-1]

GLEN EXPLORATIONS, INC.

Order Suspending Trading

JUNE 28, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.10 par value, and all other securities of Glen Explorations, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 11:05 a.m., e.d.t., June 28, 1973 through July 7, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-13600 Filed 7-3-73;8:45 am]

[File No. 500-1]

INTERNATIONAL ASSEMBLIX CORP.

Order Suspending Trading

JUNE 28, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, no par value, and all other securities of International Assemblix Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 12:15 p.m., e.d.t., June 28, 1973 through July 7, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-13601 Filed 7-3-73;8:45 am]

[File No. 500-1]

JEROME MACKEY'S JUDO, INC.

Order Suspending Trading

JUNE 28, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.01 par value, and all other securities of Jerome Mackey's Judo, Inc. being trade otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this

order to be effective for the period from June 29, 1973 through July 8, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-13602 Filed 7-3-73;8:45 am]

[File No. 500-1]

SECURITIES OF AMERICA, INC.

Order Suspending Trading

JUNE 26, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock and all other securities of Securities of America, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10:15 a.m., e.d.t., on June 26, 1973 and continuing through July 5, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-13603 Filed 7-3-73;8:45 am]

[File No. 500-1]

STAR-GLO INDUSTRIES INC.

Order Suspending Trading

JUNE 27, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.10 par value, and all other securities of Star-Glo Industries Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities and Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from June 28, 1973 through July 7, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-13604 Filed 7-3-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

MVC, INC.

[License Application No. 05/05-5095]

Notice of Application for License as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by MVC, Inc. (applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1973). The officers and directors of the applicant are as follows:

Philip J. Faccenda, President
1237 E. Jefferson Blvd.
South Bend, Indiana 46617
Melvin L. Holmes, Vice President, General Manager
2819 Tomahawk Trail
South Bend, Indiana 46628
Richard J. Van Mele, Vice President
1147 E. Bronson Street
South Bend, Indiana 46615
Thomas S. Landis, Secretary
52701 Arbor Drive
South Bend, Indiana 46635
Robert W. Montague, Treasurer
17811 Bridge View Drive
South Bend, Indiana 46635
George W. Woolridge, Jr., Director
734 N. Twyckenham Drive
South Bend, Indiana 46617
Thomas T. Murphy, Director
1005 Oak Ridge Drive
South Bend, Indiana 46617
Richard F. Lindquist, Director
2500 Topsfield Road
South Bend, Indiana 46614
William W. Sherrill, Director
820 Lincoln Way West
Mishawaka, Indiana 45644

The applicant, an Indiana corporation, with its principal place of business located at Suite 402, First Bank Building, 133 South Main, South Bend, Indiana 46601, will begin operations with $150,000 of paid-in capital consisting of 1500 shares of common stock sold to The University of Notre Dame du Lac, a corporation which was created by legislative act of the General Assembly of the State of Indiana on January 15, 1844.

Applicant will not concentrate its investments in any particular industry. As an applicant for a license pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed licensee. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in South Bend, Indiana.

Dated: June 27, 1973.

JAMES THOMAS PHELAN, *Deputy Associate Administrator for Investment.*

[FR Doc.73-13594 Filed 7-3-73;8:45 am]

COST OF LIVING COUNCIL

HEALTH INDUSTRY ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92-463, 86 Stat. 770), notice is hereby given that the Health Industry Advisory Committee, created by section 6(b) of Executive Order 11695, will meet on July 9, 1973 at the Cost of Living Council offices, 2000 M Street, NW., Washington, D.C.

The morning portion of the meeting, which will be held from 10:00 A.M. to 12:30 P.M. in the second floor auditorium, will be open to the public. The meeting will consist of the opening remarks of the Director of the Cost of Living Council, opening remarks by the new Chairman of the Health Committee, and an introductory briefing by committee staff on the health care inflation problem and the current status of the Economic Stabilization Program in regard to health.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Only members of the committee, and its staff, may question the witnesses. Due to space limitations, it is possible that there will not be enough seating. For that reason, persons will be admitted on a first-come-first-served basis.

While no unscheduled oral presentations will be entertained, anyone may submit a written statement by mailing it to Robert Saner, 2000 M Street, NW., Washington, D.C. 20508.

Any statement received three or more days prior to the meeting will be provided to the Committee before the meeting. Any statement over three pages in length should be submitted with twenty copies.

The afternoon portion of the meeting will be held in the Cost of Living Council Conference Room on the Seventh Floor and will be closed to the public. The matters to be discussed at that meeting relate to the duration of the Freeze and the timing and substance of Phase IV.

Since the afternoon meeting will be discussing the duration of the Freeze and timing and substance of Phase IV and other possible governmental actions therewith, I have determined that the meeting will fall within Exemption 5 of 5 U.S.C. 552(b) and it is essential to close the meeting to protect the free exchange of internal views and to avoid

interference with the operation of the Committee.

Issued in Washington, D. C. on July 3, 1973.

HENRY H. PERRITT, Jr.,
Executive Secretary,
Cost of Living Council.

[FR Doc.73-13804 Filed 7-3-73;12:16 pm]

INTERSTATE COMMERCE COMMISSION

[Notice 290]

ASSIGNMENT OF HEARINGS

JUNE 29, 1973.

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. No amendments will be entertained after the date of this publication.

No. 35803, Burlington Northern, Inc. v. The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transportation Company, now assigned September 12, 1973, at Denver, Colo. is cancelled.

I&S No. 8844, Pulpwood & Woodchips, Within SFA Territory, now being assigned August 21, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

FD-20812, Railway Express Agency, Inc., Notes, is continued to July 26, 1973, at The Offices of The Interstate Commerce Commission, Washington, D.C.

No. 35791, General Increase, February 1973, Bulk Carrier Conference, now being assigned Pre-hearing Conference on July 19, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-13620 Filed 7-3-73;8:45 am]

[Spec. Permission 73-4700, Amdt. 1]

INCREASED RATES AND CHARGES

Exemption From Tariff Filing Requirements To Correct Errors

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 27th day of June, 1973.

By special permission application No. 216, filed by Western Trunk Line Committee, Agent, for and on behalf of carriers parties to tariff X-295, not yet filed with this Commission, authority is sought to amend said Tariff of Increased Rates and Charges for the purpose of correcting specified errors therein, to become effective July 29, 1973, on statutory notice, transmitting copies of the amendment via first class mail to parties of record simultaneously with official filing with the Interstate Commerce Commission in lieu of transmitting copies to such parties seven days in advance of official filing or, in the alternative, effective July 29, 1973, upon 20 days' notice, on condition that copies of the amendment will be transmitted to parties of record via first class mail seven days prior to official filing with the Commission, as set forth in the application. A full investigation of the matters and things involved in the application having been made, which application is hereby referred to and made a part hereof:

It appearing, that, the proposal would result in changes which would be in accord with the representations made by petitioners in their petition and verified statements dated April 20, 1973, as amended May 9, 1973, filed by James L. Tapley and other attorneys for and on behalf of certain rail carriers referred to therein, and on behalf of certain water and motor carriers having joint rates with said railroads, and which the Commission authorized the filing thereof in Ex Parte 295, by order dated June 11, 1973;

And it further appearing, that good cause has been shown for permitting amendment of the tariff as proposed, conditioned, however, upon notification to the parties as hereinafter provided;

It is ordered, That, special permission No. 73-4700, be, and it is hereby, amended, to permit publication of the two changes upon not less than 30 days' notice, effective July 29, 1973, subject to the condition that a copy of the tariff amendment filed hereunder shall be mailed to each of the parties of record by first class mail not later than the date filed with the Commission, and upon further condition that each of the parties of record shall also be notified of the details of the change by telegram not later than the date the amendment is filed with the Commission.

And it is further ordered, That notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commisison at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 2.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-13622 Filed 7-3-73;8:45 am]

[Notice 51]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JUNE 29, 1973.

The following publications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by the new Special Rule 1100.247 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

NOTICES OF FILING PETITIONS

No. MC 3256 (Sub-No. 2) (NOTICE OF FILING OF PETITION TO ADD AN ADDITIONAL CONTRACTING SHIPPER) filed May 29, 1973. Petitioner: BURKHAM BROTHERS, INC. (385 Route #22) Hillside, N.J. 07205 Petitioner's representative: George A. Olsen 69 Tonnele Avenue Jersey City, N.J. 07306 Petitioner presently holds a motor *contract carrier* permit in No. MC-3256 (Sub-No. 2) issued June 7, 1973, authorizing transportation, by motor vehicle, over irregular routes, of *paper, paper products, and products* used in the manufacture of paper (except liquid commodities, in bulk, and commodities which because of size or weight, require the use of special equipment), between Hillside, N.J., on the one hand, and, on the other, points in that part of the New York, N.Y. Commercial Zone as defined in *Commercial Zones and Terminal Areas,* 54 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Act (the "exempt" zone), points in Nassau, Suffolk, Orange, Rockland, and Westchester Counties, N.Y., points in New Jersey, Philadelphia, Pa., and points in Fairfield County, Conn., restricted to a transportation service to be performed under a continuing contract, or contracts with Federal Paper Board Co., Inc., of New York, N.Y., and Rothesay Shipping, Ltd., of Saint John, New Brunswick, Canada. By the instant petition, petitioner seeks to add Rexham Corporation as an additional contract shipper to the authority described herein. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 124211 (Sub-No. 121) (NOTICE OF FILING OF PETITION FOR MODIFICATION OF CERTIFICATE) filed June 6, 1973. Petitioner: HILT TRUCK LINE, INC. P.O. Box 988 Downtown Station Omaha, Nebr. 68101 Petitioner's representative: Frederick J. Coffman 521 South 14th Street P.O. Box 80806 Lincoln, Nebr. 68501 Petitioner presently holds a motor *common carrier* certificate in No. MC-124211 (Sub-No. 121) issued January 8, 1969, authorizing, as pertinent, transportation in interstate or foreign

commerce, over: (A) regular routes, of *paint, paint material, groceries, and grocery store supplies*, serving points in Washington County, Nebr., as intermediate and off-route points in connection with carrier's regular-route operations (1) from Chicago, Ill., to Lincoln, Geneva, and Fairbury, Nebr., and (2) from Brighton, Tipton, and Vinton, Iowa, to Lincoln, Nebr.; (B) regular routes, of *groceries* and *grocery store supplies*, from Chicago, Ill., to Lincoln and Fairbury, Nebr., serving the intermediate and off-route points of Rochelle, Ill., and those in the Chicago, Ill., Commercial Zone as defined by the Commission in 1 M.C.C. 673, restricted to pickup only, and the intermediate point of Fremont, Nebr., restricted to delivery only: (1) from Chicago over Alternate U.S. Highway 30 via Dixon, Ill., to junction U.S. Highway 30, thence over U.S. Highway 30 to Missouri Valley, Iowa, thence over Alternate U.S. Highway 30 to Council Bluffs, Iowa, thence over U.S. Highway 6 to Lincoln, and return over the same route; and (2) from Chicago over Alternate U.S. Highway 30 via Dixon, Ill., to junction U.S. Highway 30, thence over U.S. Highway 30 to Fremont, Nebr., thence over U.S. Highway 77 to Beatrice, Nebr., thence over U.S. Highway 136 to Fairbury, and return over the same route; and (C) irregular routes, of *paint, paint materials, groceries*, and *grocery store supplies*, (except in bulk), between Smith Center, Kans., and points in Nebraska, restricted against tacking or combining directly or indirectly with any other authority in No. MC-124211 (Sub-No. 121) for the purpose of performing a through service.

By the instant petition, petitioner seeks to modify its certificate by substituting "such commodities as are dealt in and used by wholesale and retail food business houses" in lieu of the present commodity description "groceries and grocery store supplies" as described above. Applicant states that the granting of authority in the "grandfather" proceeding to the initial holder of this certificate intended to provide for the transportation of those commodities which the initial holder had been transporting under such authority in the past; and that the Commission's interpretation of this proceeding is lesser in scope than that supported by the underlying record developed in connection with the application of petitioner's predecessor. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 C.F.R. 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11656 (Amendment) (O'BOYLE TANK LINES INCORPORATED—CONTROL—M & M TANK LINES, INC. AND M & M TANK LINES OF VIRGINIA, INC.), published in the September 20, 1972, issue of the FEDERAL REGISTER. By amendment filed June 22, 1973, request is made to amend prior application to include *MERGER*.

No. MC-F-11910. Authority sought for continuance in control by ALLTRANS HOLDINGS (CANADA) LTD., a noncarrier, 16th Floor, 1030 W. Georgia St., Vancouver 5, British Columbia, Canada, of ALLTRANS EXPRESS LTD., 4878 Manor St., North Burnaby British Columbia, Canada. THOMAS NATIONWIDE TRANSPORT LTD., 12-18 Burrows Rd., St. Peters, N.S.W. 2044, controls ALLTRANS INCORPORATED, which controls ALLTRANS EXPRESS CALIFORNIA, INC., which holds authority to operate as a motor common carrier in California. Applicant's attorney: George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. ALLTRANS EXPRESS LTD., has a pending application on file in Docket No. MC-135904 (Sub-No. 2), to operate as a common carrier over regular routes, of general commodities, with the usual exceptions, between Seattle and Tacoma, Wash., on the one hand, and, on the other, Vancouver, British Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11916. Authority sought for purchase by ALL-AMERICAN, INC., 1500 Industrial Ave., Sioux Falls, SD 57104, of a portion of the operating rights of RUSSELL TRANSPORTATION, INC., P.O. Box 546, Quincy, IL 62301, and for acquisition by H. LAUREN LEWIS, also of Sioux Falls, SD 57104, of control of such rights through the purchase. Applicants' attorneys: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603, Michael J. Ogborn, 1500 Industrial Ave., Sioux Falls, SD 57104, and Einar Viren, City Nat'l. Bank Bldg., Omaha, NE 68102. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Brooks, Iowa, and Omaha, Nebr., serving the intermediate and offroute points within 15 miles of Brooks; *general commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, over irregular routes, between points within 25 miles of Shambaugh, Iowa, including Shambaugh, between Blanchard, Iowa, and St. Joseph, Mo., between College Springs, Iowa, and Pumpkin Center, Mo., from Omaha, Nebr., Kansas City, Kans., and St. Joseph, and Kansas City, Mo., to Shambaugh, Iowa and points within 25 miles of Shambaugh; *livestock*, between Shambaugh, Iowa, and points within 25 miles of Shambaugh, on the one hand, and, on the other, Omaha, Nebr., Kansas City, Kans., and St. Joseph and Kansas City, Mo.; *household goods*, as defined by the Commission, and *emigrant movables*, between Shambaugh, Iowa, and points in Iowa within 25 miles of Shambaugh, on the one hand, and, on the other, points in Missouri, Kansas, and Nebraska. Vendee is authorized to operate as a *common carrier*, in Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Michigan, and Wisconsin. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11917. Authority sought for purchase by WILSON TRANSPORTATION SERVICE, INC., 1294 E. Fourth St., Ottawa, Ohio 45875, of the operating rights of J. MYRON WILLIAMS, INC., also of Ottawa, Ohio 45875. Transferee and Transferor are commonly controlled pursuant to order dated December 5, and consummated December 28, 1972, in Docket No. MC-F-11582. Applicants' attorney: A. Charles Tell, 100 E. Broad St., Columbus, Ohio 43215. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods, and commodities in bulk, as a *common carrier* over irregular routes, between Vaughnsville, Ohio and points within 8 miles thereof, on the one hand, and, on the other, points in Ohio. Vendee is authorized to operate as a *common carrier* in Ohio, Indiana, Illinois, Kentucky, Pennsylvania, Michigan, Missouri, Maryland, Massachusetts, New Jersey, New York, Virginia, West Virginia, and Wisconsin. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11918. Authority sought for purchase by LYNDEN TRANSPORT, INC., P.O. Box 433, Lynden, WA, of the operating rights of ALASKA TRANSFER, INC., Box 49, Juneau, AK 99801, and for acquisition by HENRY JANSEN, 8531 Depot Rd., Lynden, WA 98264, of control of such rights through the purchase. Applicants' attorney: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. Operating rights sought to be transferred: *General commodities*, with exceptions, as a *common carrier*, over irregular routes between points within 25 miles of Juneau, Alaska, including Juneau, between points in Alaska south and east of the United States-Canada Boundary line north of Haines, Alaska, between points in Alaska south and east of the United States-Canada Boundary line north of Haines, Alaska, and an east-west extension thereof to the Gulf of Alaska, on the one hand, and, on the other, Anchorage and Fairbanks, Alaska, and all points of the segments of Alaska Highways 1 and 2 extending between Anchorage and Fairbanks and the United States-Yukon, Canada Boundary line, and all points on Alaska Highway 4 between its junction with Alaska Highways 1 and 2, with restriction; *household goods*, as defined by the Commission, between Juneau, Alaska, on the one hand, and, on the other, Anchorage and Fairbanks, Alaska, between those points in

Alaska south and east of the United States-Canada Boundary line located north of Haines, Alaska, on the one hand, and, on the other, Seattle, Wash., with restriction. Vendee is authorized to operate as a *common carrier* in Alaska, California, Idaho, Oregon, and Washington, and as a *contract carrier* in California, Idaho, Montana, Oregon, and Washington. Application has not been filed for temporary authority under section 210a(b).

Finance Docket No. 27420. Authority sought for control by BAY CITIES TRANSPORTATION COMPANY, a water carrier, Pier 50, San Francisco, CA 94107, of MUKLUK FREIGHT LINES, INC., 311 C St., Anchorage, AK 99503, and for acquisition by CROWLEY MARITIME CORPORATION AND THOMAS B. CROWLEY, both of San Francisco, CA 94107, through the acquisition by BAY CITIES TRANSPORTATION COMPANY, of control of MUKLUK FREIGHT LINES, INC. Applicant's attorneys and representative: A. Alvis Layne, 915 Pennsylvania Bldg., Washington, DC 20004, William F. Roush, P.O. Box 3783, Seattle, WA 98124, and Joseph Sheehan, P.O. Box 2551, Fairbanks, AK 99707. Operating rights sought to be controlled: *General commodities*, excepting among others, classes A and B explosives, household goods, livestock, and commodities in bulk, as a *common carrier* over regular routes, between Seward and Homer, Alaska, between Soldotna and Kenai, Alaska, serving all intermediate points; *general commodities*, excepting among others, classes A and B explosives, household goods, livestock, and commodities, over irregular routes, between points on the Kenai Peninsula south of an imaginary line extending through Whittier, Alaska, and the southern boundary of the Turnagain Arm, with restriction; *general commodities*, except those of unusual value, classes A and B explosives, and household goods as defined by the Commission, between points in Alaska (except those on the Kenai Peninsula south of an imaginary line running east-west through Girdwood, Alaska, and those in the Alaska Panhandle south of Haines, Alaska). BAY CITIES TRANSPORTATION COMPANY, also holds a certificate of registration in Docket No. MC-85821 (Sub-No. 1), and is authorized to operate as a common carrier in California. Application has been filed for temporary authority under section 210a(b).

NOTICE

SEABOARD COAST LINE RAILROAD COMPANY, 500 Water Street, Jacksonville, Florida 32202, represented by Mr. Phil C. Beverly of the same address, hereby gives notice that on the 6th day of June, 1973, it filed an application under section 5(2) of the Interstate Commerce Act, assigned Finance Docket Number 27405, seeking authority to permit the Seaboard Coast Line Railroad Company to acquire trackage rights over the Southern Railway's Reeds Branch at Charleston, South Carolina. In order to efficiently utilize the trackage rights, SCL will construct a .22 mile connection track at an estimated expenditure of $138,902. Approval of this application would permit the Seaboard Coast Line to operate over 1.16 miles of track of Southern Railway at Charleston, South Carolina. The proposed operation will permit SCL to operate its trains more advantageously and more economically. Additionally, the trackage rights will eliminate the necessity of SCL trains crossing several busy streets and roads in Charleston, and it will relieve much vehicular traffic congestion in the area caused by SCL trains blocking the street crossings. In the opinion of the applicant, approval of this application will have no significant effect on the quality of the human environment within the scope of Ex Parte 55. The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings.

In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), *Implementation-Nat'l Environmental Policy Act, 1969*, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub-No. 4), supra, Part (b)(1)-(5), 340 I.C.C. 431, 461. Any person opposed to this abandonment application should advise the Commission promptly, with an original and six copies, identifying the docket number, including the sub number, and send a copy of the protest to the above named counsel of the Seaboard Coast Line Railroad. Any protest submitted shall be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER.

SEABOARD COAST LINE RAILROAD COMPANY

NOTICE

SEABOARD COAST LINE RAILROAD COMPANY represented by Mr. Neill W. McArthur, Jr., 500 Water Street, Jacksonville, Florida 32202, hereby gives notice that on the 14th day of June, 1973, it filed an application under Section 5(2) of the Interstate Commerce Act seeking authority to permit the Seaboard Coast Line Railroad Company to operate over 3922 feet of the Southern Railway System's tracks in order to serve the Gifford-Hill & Company, Inc., near Harleyville, in Dorchester County, South Carolina. This application has been assigned Finance Docket No. 27416. Approval of this application would permit the Seaboard Coast Line to operate over some 3922 feet of the Southern Railway System trackage in order to serve Gifford-Hill & Company, Inc., which desires to construct a plant for the processing of Portland cement near Harleyville, South Carolina. The Gifford-Hill & Company, Inc., is the sole industry to be served, such service to be done jointly with the Southern. Seaboard Coast Line's present operation does not allow service to Gifford-Hill & Company because without authority to operate over 3922 feet of Southern's track, Seaboard Coast Line has no access to the plant.

Seaboard Coast Line Railroad Company desires for the sole purpose of serving Gifford-Hill & Company, jointly with Southern to operate over that portion of the Southern owned industrial spur track (said industrial spur track diverges from the Southern's main track at Pregnall, South Carolina), at a point 336.4 feet northwardly to point of connection (in the immediate vicinity of Seaboard Coast Line's milepost KE-397) of trackage of Southern Railway and that of Giant Portland Cement Company.

In the opinion of the applicant, the requested Commission action will not significantly effect the quality of the human environment. In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), *Implementation-Nat'l Environmental Policy Act, 1969*, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub.-No. 4), supra, Part (b) (1)-(5), 340 I.C.C. 431, 461.

The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protests submitted shall be filed no later than 30 days from the date of first publication in the FEDERAL REGISTER.

SEABOARD COAST LINE RAILROAD COMPANY

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-13624 Filed 7-3-73;8:45 am]

MOTOR CARRIER INTRASTATE APPLICATIONS

JUNE 29, 1973.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and

place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

California Docket No. 53898 filed March 16, 1973 Applicant: GUERIN DRAYAGE COMPANY, INC. 233 Industrial Street San Francisco, Calif. 94124 Applicant's representative: J. Donald Kenny 917 Edgewood Road Redwood City, Calif. 94062 Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except petroleum products in bulk in tank vehicles, livestock, fresh fruits and vegetables, commodities of unusual value, uncrated used household goods, and commodities requiring mechanically refrigerated equipment; (A) Between all points in the San Francisco Territory, as more particularly described as follows: SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradera Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road, northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harboard Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo); northerly along U.S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning. (B) Between all points on and within the following routes: (1) U.S. Highway 101, between San Francisco and Sausalito, inclusive; (2) Interstate Highway 80, between San Pablo and Crockett, inclusive; (3) Unnumbered road and route between Crockett and Martinez, inclusive; (4) Unnumbered road and route between Martinez and Pittsburg, inclusive; (5) Unnumbered road and route between Pittsburg and Antioch, inclusive; (6) State Highway 4 between Antioch and the Willow Pass Road Intersection, inclusive; (7) Willow Pass Road between the intersection of Highway 4 and the intersection of State Highway 24, inclusive; (8) State Highway 4 between its intersection with Willow Pass Road and its intersection with Port Chicago Highway, inclusive; (9) Unnumbered road and route between its intersection with State Highway 4 and its intersection with Interstate Highway 680, inclusive; (10) State Highway 4 between its intersection with Port Chicago Highway and its intersection with State Highway 24, inclusive; (11) State Highway 24 between its intersection with State Highway 4 and its intersection with Interstate Highway 680, inclusive; (12) Interstate Highway 680 between its intersection with State Highway 24 and its intersection with U.S. Highway 50 at Dublin, inclusive; (13) Interstate 680 between its intersection with U.S. Highway 50 at Dublin and its intersection at Bernal Avenue, inclusive; (14) Bernal Avenue between its intersection with Interstate Highway 680 and the City of Pleasanton, inclusive; (15) Interstate Highway 680 between its intersection with U.S. Highway 50 at Dublin and its intersection with State Highway 238 at Mission San Jose. (C) Through routes and rates may be established between any and all points specified in paragraphs A and B above. (D) All intermediate points on said routes and all off-route points within the outer perimeters of the routes designated herein may be served. Intrastate, interstate and foreign commerce authority sought.

HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif. 94102, and should *not* be directed to the Interstate Commerce Commission.

New York Docket No. T-863 filed June 11, 1973 Applicant: SHAY'S SERVICE, INC. North Main Street Dansville, N.Y. 14437 Applicant's representative: Herbert M. Canter 201 East Jefferson Street Syracuse, N.Y. 13202 Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities:* Authority is sought as a common carrier to serve all points in Wyoming County as off-route points, in connection with applicant's presently authorized service and beyond by interlining at Buffalo, Rochester, Elmira, Olean and Dansville. Intrastate, interstate and foreign commerce authority sought.

HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, N.Y., 12226, and should *not* be directed to the Interstate Commerce Commission.

New York Docket No. T-9162 filed May 24, 1973 Applicant: PDQ BY LIALS CORP. 25 Willow Park Center Farmingdale, N.Y. Applicant's representative: Friedlander, Gaines, Ruttenberg & Goetz 1140 Avenue of the Americas New York, N.Y. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *express*, between John F. Kennedy International Airport, LaGuardia Airport and McArthur Airport, on the one hand, and, on the other, all points in Nassau and Suffolk Counties, N.Y. Intrastate, interstate and foreign commerce authority sought.

HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, N.Y., 12226, and should *not* be directed to the Interstate Commerce Commission.

Tennessee Docket No. MC 5997 filed June 11, 1973 Applicant: GEORGE A. KING AND MILFORD KING a Partnership, doing business as SELMER EXPRESS 4019 Orleans Memphis, Tenn. 38116. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities* with the exception of household goods, explosives, commodities requiring special equipment and commodities in bulk, from Memphis, Tenn., over Highway 72 to Collierville, Tenn., thence over Highway 57 to junction Highway 45, thence Highway 45 to Selmer, Tenn., and return over the same route serving no intermediate points. Intrastate, interstate and foreign commerce authority sought.

HEARING: July 31, 1973, at the Commission's Court Room, C–1 Cordell Hull Building, Nashville, Tenn., at 9:30 A.M. Requests for procedural information should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn., 37219, and should *not* be directed to the Interstate Commerce Commission.

Texas Docket No. 252 filed June 12, 1973 Applicant: VALLEY TRANSIT COMPANY, INC., Lessee, joined by VALLEY BUS COMPANY, INC., Lessor Post Office Box 1870 Harlingen, Tex. 78550 Applicant's representative: Phillip Robinson P.O. Box 2207 Austin, Tex. 78767 Certificate of public convenience and necessity sought to operate a passenger service as follows: Transportation of *passengers and their baggage*, between the International Boundary Line of the United States of America and the Republic of Mexico, located at or near Hidalgo, Texas, and San Antonio, Texas, as follows: From the International Boundary Line of the United States of America and the Republic of Mexico, located at or near Hidalgo, Tex., over U.S. Highway 281 to San Antonio, Tex., and return over the same route, serving the intermediate points of McAllen and Edinburg, Tex. Additionally, applicant seeks authority to originate charter or special party transportation at points along the above-described routes which it is authorized to serve, or within the territory adjacent thereto which is not served by any other motor bus company. NOTE: Applicant proposes to tack and coordinate the proposed additional services authorized in intrastate commerce under Certificates issued by the Railroad Commission of Texas and with all services now authorized in interstate and foreign commerce under authorities granted in Docket No. MC–74 and all subs thereunder. Intrastate, interstate and foreign commerce authority sought. HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the Railroad Commission of Texas, Capitol Station, P.O. Drawer 12967, Austin, Tex. 78711, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73–13623 Filed 7–3–73;8:45 am]

[Notice 87]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 27, 1973.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67, (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 11722 (Sub-No. 35 TA) filed June 19, 1973. Applicant: BRADER HAULING SERVICE, INC. P.O. Box 655 Zillah, Wash. 98953 Applicant's representative: Douglas A. Wilson 203 East D Street Yakima, Wash. 97901 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty containers, metal or plastic, and parts thereof*, (A) from Richmond, Calif., to points in Oregon, Washington and Idaho and (B) from Tacoma, Wash., to points in Oregon, Idaho and California, for 180 days. SUPPORTING SHIPPER: Rheem Manufacturing Company, 801 Chesley Ave., Richmond, Calif. 94804. SEND PROTESTS TO: District Supervisor W. J. Huetig, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Bldg., 319 S.W. Pine St., Portland, Oreg. 97204.

No. MC 107107 (Sub-No. 427 TA) filed June 18, 1973 Applicant: ALTERMAN TRANSPORT LINES, INC. 12805 NW 42nd Avenue Post Office Box 425 Opa Locka, Fla. 33054 Applicant's representative: Ford W. Sewell (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery, and related advertising and promotional materials* when moving with such commodities, from Macon, Ga., to points in Alabama, Louisiana, Mississippi and Florida, for 180 days. SUPPORTING SHIPPER: Crown Candy Corporation, 4145 Mead Road, POB 6273, Macon, Ga. 31208. SEND PROTESTS TO: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, 5720 S.W. 17th Street, Room 105, Miami, Fla. 33155.

No MC 113908 (Sub-No. 277 TA) filed June 18, 1973 Applicant: ERICKSON TRANSPORT CORPORATION 2105 East Dale Street P.O. Box 3180 Glenstone Station Springfield, Mo. 65804 Applicant's representative: B. B. Whitehead (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinegar and vinegar stock*, in bulk, in tank and hopper-type vehicles, from Kansas City, Mo. and Memphis, Tenn., to Terre Haute, Ind., for 180 days. SUPPORTING SHIPPER: Speas Company, 2400 Nicholson Avenue, Kansas City, Mo 64120. SEND PROTESTS TO: John V. Barry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 600 Federal Office Building, 911 Walnut St., Kansas City, Mo. 64106.

No. MC 117883 (Sub-No. 178 TA) filed June 15, 1973 Applicant: SUBLER TRANSFER, INC. 791 East Main Street P.O. Box 62 Versailles, Ohio 45380 Applicant's representative: Edward J. Subler (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except frozen foods and commodities in bulk), from Decatur, Ind., to points in Connecticut, Delaware, Illinois Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Central Soya Company, Inc., 1300 Ft. Wayne National Bank Bldg., Fort Wayne, Ind. 46802. SEND PROTESTS TO: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514–B Federal Bldg., 550 Main Street, Cincinnati, Ohio 45202.

No. MC 123993 (Sub-No. 27 TA) filed June 19, 1973 Applicant: FOGLEMAN TRUCK LINE, INC. 1724 West Mill Street P.O. Box 1504 Crowley, La. 70526 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Non-alcoholic beverages*, in containers, from Gretna, La., to points in Alabama, Arkansas, Florida, Mississippi, Missouri and Texas, for 180 days. SUPPORTING SHIPPER: The Louisiana Coca-Cola Bottling Company, Ltd., P. O. Box 50400, New Orleans, La. 70150, Mr. J. P. Byrne, Vice President—Operations. SEND PROTESTS TO: Paul D. Collins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, T–9038 U.S. Postal Service Bldg., 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 128217 (Sub-No. 9 TA) filed June 18, 1973 Applicant: REINHART MAYER doing business as MAYER TRUCK LINE 1203 South Riverside Drive Jamestown, N. Dak. 58401 Applicant's representative: James B. Hovland 425 Gate City Building Fargo, N. Dak. 58102 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, for the account of Clark Equipment Co.—Melroe Division, from Burns Harbor, Ind.; Joliet, Chicago Heights and Broadview, Ill; the Chicago, Ill. and the Minneapolis, Minn. Commercial Zones, to the plantsite and facilities of Clark Equipment Co.—Melroe Division, at Bismarck, N. Dak., for 180 days.

SUPPORTING SHIPPER: Clark Equipment Company—Melroe Division, Gwinner, N. Dak. 58040. SEND PROTESTS TO: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 129974 (Sub-No. 8 TA) filed June 18, 1973 Applicant: THOMPSON BROS., INC. P.O. Box 457 Toronto, S. Dak. 57268 Applicant's representative: F. H. Kroeger 2288 University Ave. St. Paul, Minn. 55114 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, conduit, cement containing asbestos fibre, and accessories for the installation thereof*, from the plantsite and storage facilities of Certain-Teed Products Corporation at or near Bellefontaine Neighbors and Riverview, Mo., to points in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming, for 180 days. SUPPORTING SHIPPER: Certain-Teed Products Corporation, Pipe and Plastics Group, 750 E. Swedsford Road, Valley Forge, Pa. 19481, Thomas F. McGrath, General Traffic Manager. SEND PROTESTS TO: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 134405 (Sub-No. 12 TA) filed June 18, 1973 Applicant: BACON TRANSPORT COMPANY a Corporation P.O. Box 1134 Ardmore, Okla. 73401 Applicant's representative: Wilburn L. Williamson 280 National Foundation Life Bldg. 3535 N.W. 58th Street Oklahoma City, Okla. 73112 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing materials*, except composition roofing, from the plantsite of Trumbull Asphalt Co., Del City, Okla., to points in Arkansas and Missouri, for 180 days. SUPPORTING SHIPPER: Trumbull Asphalt Co., Ezra L. West, Plant Supt., P.O. Box 15153—3400 N.E. 4th, Oklahoma City, Okla. 73115. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 240–Old P.O. Building, 215 NW Third, Oklahoma City, Okla. 73102.

No. MC 136989 (Sub-No. 3 TA) filed June 1, 1973 Applicant: R. F. BOX doing business as R. F. BOX TRUCKING 1401 Dartmouth, NE Albuquerque, N. Mex. 87106 Applicant's representative: Edwin E. Piper, Jr., 1115 Simms Bldg. Albuquerque, N. Mex. 87101 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Floor covering* (except carpeting and rugs), from the plant site of GAF Corporation at or near Allentown (Whitehall Tonwship), Pa., to points in Arizona, New Mexico, Nevada, Utah, California, Oregon, and Washington; and El Paso County, Tex.; Montezuma, La Plata, Archuleta, Conejos, Costilla, and Las Animas Counties, Colo., for the account of GAF Corporation and (B) *Floor covering* (except carpeting and rugs), from the plant site of GAF Corporation at or near Allentown (Whitehall Township), Pa., to points in Utah and Colorado for the account of L. D. Brinkman & Co., for 180 days. SUPPORTING SHIPPERS: GAF Corporation, General Traffic Dept., South Bound Brook, N.J. 08880 and L. D. Brinkman & Co., Post Office Box 47586, Dallas, Tex., 75247. SEND PROTESTS TO: District Supervisor William R. Murdoch, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue, SW, Albuquerque, N. Mex. 87101.

No. MC 138824 TA filed June 18, 1973. Applicant: REDWAY CARRIERS, INC., 411 11th Street, North Chicago, Ill. 600064 Applicant's representative: Paul J. Maton Suite 1620 Ten South LaSalle St. Chicago, Ill. 60603 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cranberries and and cranberry products*, in containers, *and machinery, materials, supplies and equipment* incidental to or used in the processing, canning, bottling, preserving, freezing, distribution and sale of cranberries, and *cranberry products* for the account of Ocean Spray Cranberries, Inc., whose plant sites and warehouses are located in Kenosha County, Wis. and North Chicago, Ill., to points in Indiana, Ohio, Kentucky, Tennessee, Illinois, and those points in Missouri on and east of U.S. Highway 65 (except Springfield, Mo.), for 180 days. SUPPORTING SHIPPER: Ms. Florence Quick, Traffic Manager, Ocean Spray Cranberries, Inc., 7800 South 60th Avenue, Kenosha, Wis. 53140. SEND PROTESTS TO: District Supervisor W. J. Gray, Jr., Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 138825 TA filed June 19, 1973 Applicant: AMERICAN INTERNATIONAL DRIVEAWAY OF INDIANA, INC. 316 South 13th Street Decatur, Ind. 46733 Applicant's representative: James Jackson (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor homes and campers*, in driveaway service, between points in McDonough County, Ill. and Paxinos, Pa., on the one hand, and, on the other, points in the United States, for 180 days. SUPPORTING SHIPPER: Fleetwood Enterprises, Inc., 3125 Myers Street, P.O. Box 7638, Riverside, Calif. 92503. SEND PROTESTS TO: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, Ind. 46802.

No. MC 138836 TA filed June 19, 1973 Applicant: JERALD HEDRICK doing business as HEDRICK & SON TRUCKING R.R. 1 Warren, Ind. 46792 Applicant's representative: Alki E. Scopelitis 815 Merchants Bank Bldg. Indianapolis, Ind. 46204 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer solutions*, from Lima, Ohio, to points in Indiana, for 180 days. SUPPORTING SHIPPER: Federal Fertilizer Sales, Peru, Ind. 46970. SEND PROTESTS TO: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne St., Room 204, Fort Wayne, Ind. 46802.

By The Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.13625 Filed 7-3-73;8:45 am]

[Notice 88]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 28, 1973.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a (a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67, (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIER OF PROPERTY

No. MC 3101 (Sub-No. 3 TA) filed June 20, 1973 Applicant: SCHAUM TRANSFER COMPANY 410 East Davis Street St. Louis, Mo. 63111 Applicant's representative: Ernest A. Brooks II 1301 Ambassador Building St. Louis, Mo. 63101 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, unground or other than ground or pulverized, and *sand ground* or pulverized under contract with Obear-Nester Glass-An Indiana Head Company, from points in St. Louis and Jefferson Counties, Mo., to East St. Louis, Ill., for 180 days. SUPPORTING SHIPPER: Obear Nester Glass, 20th and Broadway, East St. Louis, Ill. 62205. SEND PROTESTS TO: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, Mo. 63101.

No. MC 107403 (Sub-No. 853 TA) filed June 19, 1973 Applicant: MATLACK, INC. 10 West Baltimore Ave. Lansdowne, Pa. 19050 Applicant's representative: Harry C. Ames 666 Eleventh Street, N.W. Washington, D.C. 20001 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in bulk, in tank vehicles, from Richmondale, Ohio, to Aurora, Ind., for 180 days. SUPPORTING SHIPPER: Carl F. Weiffenbach, Secretary-Treasurer, The Keener Sand & Clay Company, 79 E. State Street, Columbus, Ohio 43215. SEND PROTESTS TO: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, William J. Green, Jr. Federal Building, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 107496 (Sub-No. 898 TA) filed June 19, 1973 Applicant: RUAN TRANSPORT CORPORATION Third and Keosauqua Way P.O. Box 855 (Box zip 50304) Des Moines, Iowa 50309 Applicant's representative: E. Check (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tallow and grease*, in bulk, in tank vehicles, from Muskego, Wis., to Chicago, Ill., for 180 days. SUPPORTING SHIPPER: Muskego Rendering Co., Inc., S81 W21392 Wauer Lane, Muskego, Wis. 53150. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 107993 (Sub-No. 27 TA) filed June 20, 1973 Applicant: J. J. WILLIS TRUCKING COMPANY Mlg: P. O. Box 20096 2608 Electronic Lane Dallas, Tex. 75220 Applicant's representative: Joe P. Willis (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron or steel articles*, from points in Maricopa County, Ariz., to all points in Colorado, for 180 days. Note: Carrier does not intend to tack authority. SUPPORTING SHIPPER: Marathon Steel Company, P. O. Box 6598, Phoenix, Ariz. 85005. SEND PROTESTS TO: Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex.

No. MC 108449 (Sub-No. 356 TA) filed June 20, 1973 Applicant: INDIANHEAD TRUCK LINE, INC. 1947 West County Road C St. Paul, Minn. 55113 Applicant's representative: V. L. Wellbaum (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Equilibrium catalyst*, in bulk, in tank vehicles, from St. Paul Park, Minn., to Sugar Creek, Mo., for 180 days. SUPPORTING SHIPPER: Northwestern Refining Co., P. O. Drawer 9, St. Paul Park, Minn. 55071. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Bureau of Operations, Interstate Commerce Commission, 448 Federal Bldg., 110 South 4th Street, Minneapolis, Minn. 55401.

No. MC 112223 (Sub-No. 90 TA) filed June 21, 1973 Applicant: QUICKIE TRANSPORT COMPANY 501 11th Avenue South Minneapolis, Minn. 55415 Applicant's representative: Earl Hacking 503 11th Avenue South Minneapolis, Minn. 55415 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coke*, in bulk, from points in Ramsey County, Minn., to points in Illinois and Michigan, for 180 days. SUPPORTING SHIPPER: Koppers Company, Inc., 1000 Hamline Ave. N., St. Paul, Minn. 55104. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 113908 (Sub-No. 277 TA) filed June 14, 1973. Applicant: ERICKSON TRANSPORT CORPORATION 2105 East Dale Street P.O. Box 3180 Glenstone Station Springfield, Mo. 65804 Applicant's representative: B. B. Whitehead (same address as applicant) Authority sought to operate as a *common carrier*, by a motor vehicle, over irregular routes, transporting: (1) *Vinegar and vinegar stock*, in bulk, in tank and hopper type vehicles, and (2) *fermented, quick process and distilled vinegar, vinegar malt, naphtha* (ethyl acetate), *salt* (calcium acetate), *vinegar acid* (acetic acid), and *vinegar wine*, etc., between the following points and commercial zone thereof, except that no transportation service shall be provide wholly within the same or one state in Rogers, Ark.; Delta and Denver, Colo.; Chicago, Ill.; Hutchinson and Wichita, Kans.; Bailey, Belding and Freemont, Mich.; St. Paul, Minn.; Kansas City, Marionville and Nixa, Mo.; Lyndonville and North Rose, N.Y.; Charlotte, N.C.; Oklahoma City, Okla.; Memphis, Tenn.; Dallas, Houston and Paris, Tex.; and Wenatchee and Yakima, Wash., for 180 days. SUPPORTING SHIPPER: Speas Company, 2400 Nicholson Avenue, Kansas City, Mo. 64120. SEND PROTESTS TO: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut St., Kansas City, Mo. 64106.

No. MC 114457 (Sub-No. 153 TA) filed June 21, 1973 Applicant: DART TRANSIT COMPANY 780 N. Prior Avenue St. Paul, Minn. 55104 Applicant's representative: Michael P. Zell (Same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, from Little Falls and Clearwater, Minn., and Hudson, Wis., to points in the United States (excluding Alaska and Hawaii), restricted against the transportation of commodities in bulk, for 180 days. SUPPORTING SHIPPER: T. O. Plastics, Inc., 2901 E. 78th St., Minneapolis, Minn. 55420. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Bureau of Operations, Interstate Commerce Commission, 448 Federal Bldg., 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 126555 (Sub-No. 24 TA) filed June 20, 1973 Applicant: UNIVERSAL TRANSPORT, INC. P.O. Box 268 Rapid City, S. Dak. 57701 Applicant's representative: Truman A. Stockton, Jr. The 1650 Grant Street Bldg. Denver, Colo. 80203 Authority sought to operate as a *common carrier*, by motor vehicle, over irregulate routes, transporting: *Coal and charcoal*, charred, powdered, crushed or granulated, in bulk, in tank vehicles, from points in Montana, and North Dakota to points in South Dakota, for 180 days. SUPPORTING SHIPPER: Stearns Roger Corporation, South Highway 79, Rapid City, S. Dak. 57701, J. E. Alton, Purchasing Agent. SEND PROTESTS TO: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 128114 (Sub-No. 3 TA) filed June 20, 1973 Applicant: PAUL E. SAVAGE, doing business as SAVAGE TRANSPORTATION CO. Building 141 Pasco, Wash. 99302 Applicant's representative: Donald A. Ericson 708 Old National Bank Building Spokane, Wash. 99201 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, poultry feed and feed ingredients*, between points in Walla Walla County, Wash., on the one hand, and, on the other, points in Idaho and Oregon, for 180 days. SUPPORTING SHIPPER: Pacific Kenyon Corporation, P.O. Box 2483, Pasco, Wash. 99302 (Mailing Address Plant) Port of Walla Walla, Burbank, Wash. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Bldg. Seattle, Wash. 98104.

No. MC 138835 TA filed June 21, 1973 Applicant: EASTERN REFRIGERATED TRANSPORT, INC. P.O. Box 1052 Harrisonburg, Va. 22801 Applicant's representative: Francis W. McInerny 1000 Sixteenth Street, N.W. Washington, D.C. 20036 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and materials and supplies* used in the manufacture thereof, from points in Maine, New Hampshire, Vermont, Kentucky, Indiana, Ohio, Michigan, Tennessee, West Virginia, Illinois, Virginia, Minnesota, Wisconsin, Connecticut, Delaware, District of Columbia, New York, Massachusetts, New Jersey, Pennsylvania, and Rhode Island, to the warehouse and plant facilities of Morton Frozen Foods, Division of Continental Baking Company, at Crozet, Va., for 180 days. SUPPORTING SHIPPER: Morton Frozen Foods, Division of Continental Baking Company, Inc., P.O. Box 731, Rye, N.Y. 10580. SEND PROTESTS TO: Clatin M. Harmon, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue, S.W., Roanoke, Va. 24011.

No. MC 138835 (Sub-No. 1 TA) filed June 21, 1973 Applicant: EASTERN REFRIGERATED TRANSPORT, INC. P.O. Box 1052 Harrisonburg, Va. 22801 Applicant's representative: Francis W. McInerny 1000 Sixteenth Street, N.W. Washington, D.C. 20036 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plant site and warehouse facilities of Morton Frozen Foods, Division of Continental Baking Company, at Crozet, Va., to points in North Carolina, South Carolina, Georgia, Maryland, Missouri, Iowa, Kentucky, Indiana, Michigan, Ohio, Tennessee, West Virginia, Maine, New Hampshire, Vermont, Wisconsin, New York, Illinois, Virginia, Minnesota, Connecticut, Delaware, New Jersey, Massachusetts, District of Columbia, Pennsylvania and Rhode Island, for 180 days. SUPPORTING SHIPPER: Morton Frozen Foods, Division of Continental Baking Company, Inc., P.O. Box 731, Rye, N.Y. 10580. SEND PROTESTS TO: Clatin M. Harmon, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue, S. W., Roanoke, Va. 24011.

No. MC 138836 TA filed June 13, 1973 Applicant: WILLIAM A. ADDISON & L. O. MCCULLOUGH doing business as: AD MAC TRUCKING CO 854 Forest Lake Drive South Macon, Ga. 31204 Applicant's representative: Andrew W. McKenna 200 American Federal Bldg. Macon, Ga. 31202 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Box and crate material woodwire knocked down, lumber hardboard, particle board, masonite, plywood and other manufactured building materials*, from forest products, and (B) *pipe, rail and track, piling, highway products and construction materials*, (except loose bulk or liquid products and in tank vehicles), from Macon, Ga., to point in the United States (including Georgia, Florida, Alabama, Tennessee, North Carolina, South Carolina, Kentucky, Virginia, Maryland, Ohio, Pennsylvania, Minnesota, Illinois, Indiana, Michigan and Wisconsin), for 180 days. SUPPORTING SHIPPER: Maxwell Wirebound Box Co., 710 Lower Poplar Road, Macon, Ga. 31202. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree Street, NW, Room 309, Atlanta, Ga. 30309.

No. MC 138837 TA filed June 19, 1973 Applicant: MINATTA TRANSPORTATION COMPANY 8150 Gravenstein Highway Cotati, Calif. 94928. Applicant's representative: Marvin J. Colangelo 660 Market Street San Francisco, Calif. 94104 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Laminated beams, arches and timbers, wooden*, from Shiloh Road, Santa Rosa, Calif., to points in Arizona, Nevada and New York, for 180 days. SUPPORTING SHIPPER: Standard Structures, Inc., P. O. Box K, Santa Rosa, Calif. 95402. SEND PROTESTS TO: A. J. Rodriguez, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.73-13626 Filed 7-3-73;8:45 am]

MOVERS WHO FAIL TO PICK UP SHIPMENTS

Warning

JUNE 27, 1973.

The Interstate Commerce Commission has received information and shipper complaints that some of the nation's largest movers are failing to pick up and transport household goods shipments on dates previously agreed upon by the shipper and the mover. This "overbooking" practice occurs particularly during the busy season in June, July and August and is the result of a mover accepting more orders for service than it is capable of handling.

The failure of a motor common carrier to pick up and transport shipments of household goods on agreed dates or periods of time constitutes a violation of consumer regulations adopted by the Commission requiring the performance of reasonable dispatch. Such carriers are not generally considered to be in violation when the failure to timely pickup is related to a condition totally beyond their control.

Movers were warned today that the Commission will not tolerate these improper practices. Complaints will be thoroughly investigated by the Bureau of Operations. In addition, movers who recently have received Commission cease and desist orders and who are overbooking subject their operating rights to further suspension, possible revocation and face heavy fines.

Although Commission regulations require movers to notify shippers of delay or failure to pick up as agreed upon, such notification does not release movers from the obligation and requirement to provide reasonable dispatch. Shippers, therefore, who incur additional expenses due to carrier negligence to timely pickup may desire to file an "inconvenience claim" with the mover seeking reimbursement for the related expenses.

Such expenses normally include reasonable lodging costs and a portion of incurred food expenses. (Receipts should be obtained where possible.) While the Commission is not presently authorized to settle disputed claims it does render assistance if needed.

Motor common carriers of household goods were cautioned not to give undue preference or unjust discrimination toward any type of traffic or class of shipper (government, military, national account and individual C.O.D.) in assigning and reassigning pickup service dates. This practice is prohibited by the Interstate Commerce Act.

If the improper booking practices are not promptly discontinued, the Commission will consider requesting the issuance of appropriate restraining orders from the courts.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.73-13621 Filed 7-3-73;8:45 am]

CUMULATIVE LISTS OF PARTS AFFECTED—JULY

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

FEDERAL REGISTER PAGES AND DATES—JULY

Pages	*Date*
17705–17817	July 3
17819–18004	5

federal register

THURSDAY, JULY 5, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 128

PART II

Nondiscrimination in Federally Assisted Programs

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to d–4, prohibits discrimination on the ground of race, color or national origin in programs and activities receiving Federal financial assistance. At present, 21 Federal agencies have regulations implementing Title VI.[1]

Each of these agencies has adopted amendments to its Title VI regulation.[2] In addition, four agencies, the Civil Service Commission, Environmental Protection Agency, Federal Home Loan Bank Board, and National Foundation on the Arts and the Humanities, have adopted initial Title VI regulations. The regulation amendments of the 21 agencies and the four initial regulations have been approved by the President (FR Doc. 73–13407)[2a], in accord with section 602 of Title VI, 42 U.S.C. 2000d–1.

The background of the amendments and the new regulations is as follows: On December 9, 1971, uniform amendments to the Title VI regulations of 20 agencies and the initial regulation of the National Foundation on the Arts and the Humanities were published in the FEDERAL REGISTER as proposed rule making. See 36 FR 23447. Comments on the proposals were submitted to the Department of Justice which has responsibility, under Executive Order 11247, for coordinating implementation of Title VI by Federal agencies. On the basis of the comments, the Department of Justice recommended that agencies with major Title VI responsibilities adopt certain additional amendments.

As a result of the above steps, the original uniform amendments are, with limited exceptions, included in each set of amendments to existing regulations and in each of the four initial regulations.[3] The most important of these provisions involve: prohibiting discrimination in the selection of sites for facilities of Federally assisted programs, requiring affirmative action to overcome the effects of past discrimination, and providing that discriminatory employment practices are prohibited by Title VI to the extent that such practices tend to cause discrimination in the services provided to beneficiaries.

In addition, the amendments of 13 agencies with major Title VI responsibilities[4] include provisions which the Department of Justice had recommended on the basis of public comments. These additional provisions relate to: prohibiting discrimination in the selection of members of planning and advisory bodies, referring to the obligation of recipients of Federal funds to maintain racial and ethnic data with regard to program beneficiaries, and extending (from 90) to 180 days the time for filing complaints.

The regulation amendments and the four initial regulations will take effect on July 5, 1973.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 900—INTERGOVERNMENTAL PERSONNEL ACT GRANT PROGRAM

The purpose of this amendment adding Subpart D to Part 900 of the regulations of the Civil Service Commission is to implement section 601 of the Civil Rights Act of 1964.

Notice of proposed rulemaking concerning these regulations was published in the FEDERAL REGISTER of February 3, 1972. The purpose of that publication was to give interested persons an opportunity to submit written comments, objections, or suggestions. After consideration of all comments, objections, and suggestions as were presented by interested persons, § 900.404(b)(6) has been changed in order to clarify the affirmative action requirement of § 900.404.

Section 601 of the Civil Rights Act of 1964 forbids discrimination on the ground of race, color, or national origin under any program or activity that receives Federal financial assistance. Section 602 of the Act authorizes and directs each Federal department or agency that is empowered to assist any program or activity to issue regulations implementing section 601. Accordingly, the Commission is adopting Subpart D of Part 900 to accomplish this legislative directive.

In consideration of the foregoing, Part 900 of title 5 of the Code of Federal Regulations is amended by adding a new Subpart D as follows. This Subpart D shall become effective on July 5, 1973.

Pursuant to section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), this regulation has been approved by the President.

The authority statement now in Part 900 appearing in the FEDERAL REGISTER [FR Doc. 71–12016] of August 17, 1971 on page 15515 is deleted and a new authority statement should be added immediately after the headings for Subparts A, B, and C as follows:

AUTHORITY: Sec. 503, 84 Stat. 1926.

Subpart D—Nondiscrimination in Federally Assisted Programs in the U.S. Civil Service Commission—Effectuation of Title VI of the Civil Rights Act of 1964

AUTHORITY: The provisions of this Subpart D issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

Subpart D—Nondiscrimination in Federally Assisted Programs in the U.S. Civil Service Commission—Effectuation of Title VI of the Civil Rights Act of 1964

§ 900.401 Purpose.

The purpose of this subpart is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as title VI) to the end that a person in the United States shall not, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under a program or activity receiving Federal financial assistance from the Commission.

§ 900.402 Application of this subpart.

(a) This subpart applies to each program for which Federal financial assistance is authorized under a law administered by the Commission, including the federally assisted programs listed in Appendix A to this subpart. It also applies to money paid, property transferred, or other Federal financial assistance extended under a program after the effective date of this subpart pursuant to an application approved before that effective date. This subpart does not apply to:

(1) Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under a program before the effective date of this subpart, except when the assistance was subject to the title VI regulations of an agency whose responsibilities are now exercised by the Commission;

(3) Assistance to any individual who is the ultimate beneficiary under a program; or

(4) Employment practices, under a program, of an employer, employment agency, or labor organization, except to the extent described in § 900.404(c).

The fact that a program is not listed in Appendix A to this subpart does not

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[1] Title VI regulations are presently in effect for the Departments of Agriculture, Commerce, Defense, HEW, HUD, Interior, Labor, Justice, State and Transportation and the following agencies: AID, AEC, CAB, GSA, NASA, NSF, OEO, OEP, SBA, TVA and VA.

[2] The amendments of four agencies, Commerce, HUD, OEO and OEP, are in the form of complete reissuance of their respective regulations.

[2a] Filed with the Office of the Federal Register.

[3] Subsequent to December 9, 1971, the regulations of the Civil Service Commission, Environmental Protection Agency and Federal Home Loan Bank Board and amendments to the Department of Transportation regulation were published in the FEDERAL REGISTER as proposed rule making.

[4] These agencies are the ten departments and OEO, SBA and VA.

mean, if title VI is otherwise applicable, that the program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this subpart.

(b) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under that property are included as part of the program receiving that assistance, the nondiscrimination requirement of this subpart extends to a facility located wholly or in part in that space.

§ 900.403 Definitions.

Unless the context requires otherwise, in this subpart:

(a) "Applicant" means a person who submits an application, request, or plan required to be approved by the Commission, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means that application, request, or plan.

(b) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(c) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in the property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient; and

(5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) "Primary recipient" means a recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) "Program" includes a program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training or other services whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance are deemed to include a service, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet the matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or non-Federal resources.

(f) "Recipient" may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under a program.

(g) "Chairman" means the Chairman of the U.S. Civil Service Commission, or any person to whom he has delegated his authority in the matter concerned.

§ 900.404 Discrimination prohibited.

(a) *General.* A person in the United States shall not, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, a program to which this subpart applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under a program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin—

(i) Deny a person a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of a service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies an admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided a service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under a program or the class of persons to whom, or the situations in which, the services, financial aid, other benefits, or facilities will be provided under a program, or the class of persons to be afforded an opportunity to participate in a program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include a service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(5) Examples demonstrating the application of the provisions of this section to certain programs receiving Federal financial assistance from the Commission are contained in Appendix C of this subpart.

(6) (i) In administering a program regarding which the recipient had previously discriminated against persons on the ground of race, color, or national origin, the recipient shall take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of prior discrimination a recipient in administering a program shall take affirmative action as required by the Commission to overcome the effect of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(iii) Any affirmative action under this paragraph shall be consistent with the principles stated in the Intergovernmental Personnel Act of 1970, 84 Stat. 1909.

(c) *Employment practices.* (1) When a primary objective of a program of Federal financial assistance to which this subpart applies is to provide employment, a recipient or other party subject to this subpart shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to part III of Executive Order

11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Commission which have as a primary objective the providing of employment include those set forth in Appendix B to this subpart.

(3) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in the employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under, the program receiving Federal financial assistance. The provisions of paragraph (c)(1) of this section apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benfits of, or subjecting them to discrimination under, a program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI or this subpart.

§ 900.405 Assurances required.

(a) *General.* (1) An application for Federal financial assistance to carry out a program to which this subpart applies, except a program to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this subpart. Every program of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. The Commission shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. When no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by the Commission to revert title to the property in the event of a breach of the covenant where, in the discretion of the Commission, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on property for the purposes for which the property was transferred, the Commission may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.

(b) *Assurances from government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible Commission official if the applicant establishes, to the satisfaction of the responsible Commission official, that the practices in other agencies or parts or programs of the governmental unit will in no way affect (1) its practices in the program for which Federal financial assistance is sought, or (2) the beneficiaries of or participants in or persons affected by the program, or (3) full compliance with this subpart as respects the program.

(c) *Assurance from academic and other institutions.* (1) In the case of an application for Federal financial assistance by an academic institution, the assurance required by this section extends to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible Commission official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in the program. If the assistance sought is for the construction of a facility or part of a facility, the assurance shall extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this subpart applies (including the programs listed in Appendix A to this subpart) shall as a condition to its approval and the extension of Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with the requirements imposed by or pursuant to this subpart, and (2) provide or be accompanied by provision for methods of administration for the program as are found by the Commission to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under the program will comply with the requirements imposed by or pursuant to this subpart.

§ 900.406 Compliance information.

(a) *Cooperation and assistance.* The Commission, to the fullest extent practicable, shall seek the cooperation of recipients in obtaining compliance with this subpart and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

(b) *Compliance reports.* Each recipient shall keep records and submit to the Commission timely, complete, and accurate compliance reports at the times, and in the form and containing the information the Commission may determine necessary to enable it to ascertain whether the recipient has complied or is complying with this subpart. In the case of a program under which a primary recipient extends Federal financial as-

sistance to other recipients, the other recipients shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.

(c) *Access to sources of information.* Each recipient shall permit access by the Commission during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this subpart. When information required of a recipient is in the exclusive possession of another agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this subpart and its applicability to the program under which the recipient received Federal financial assistance, and make this information available to them in the manner, as the Commission finds necessary, to apprise the persons of the protections against discrimination assured them by title VI and this subpart.

§ 900.407 Conduct of investigations.

(a) *Periodic compliance reviews.* The Commission may from time to time review the practices of recipients to determine whether they are complying with this subpart.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the Commission a written complaint. A complaint shall be filed not later than 90 days after the date of the alleged discrimination, unless the time for filing is extended by the Commission.

(c) *Investigations.* The Commission will make a prompt investigation whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with this subpart. The investigation will include, when appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this subpart, the Commission will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in § 900.408.

(2) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section, the Commission will so inform, in writing, the recipient and the complainant, if any.

(e) *Intimidatory or retaliatory acts prohibited.* A recipient or other person shall not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by section 601 of title VI or this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential; except to the extent necessary to carry out the purposes of this subpart, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder.

§ 900.408 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this subpart, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this subpart may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by other means authorized by law.

(2) Other means may include, but are not limited to, (i) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under a law of the United States (including other titles of the Civil Rights Act of 1964), or an assurance or other contractual undertaking, and (ii) an applicable proceeding under State or local law.

(b) *Noncompliance with § 900.405.* If an applicant fails or refuses to furnish an assurance required under § 900.405 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Commission shall not be required to provide assistance in that case during the pendency of the administrative proceedings under this paragraph. Subject, however, to § 900.412, the Commission shall continue assistance during the pendency of the proceedings where the assistance is due and payable pursuant to an application approved prior to the effective date of this subpart.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* An order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall not become effective until—

(1) The Commission has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by informal voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart;

(3) The action has been approved by the Commission pursuant to § 900.410 (e); and

(4) The expiration of 30 days after the Chairman of the Civil Service Commission has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for the action.

An action to suspend or terminate or refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been so found.

(d) *Other means authorized by law.* An action to effect compliance with title VI by other means authorized by law shall not be taken by the Commission until—

(1) The Commission has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of a notice to the recipient or person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take corrective action as may be appropriate.

§ 900.409 Hearings.

(a) *Opportunity for hearing.* When an opportunity for a hearing is required by § 900.408(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of notice within which the applicant or recipient may request of the Commission that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is deemed to be a waiver of the right to a hearing under section 602 of title VI and § 900.408(c) and consent to the making of a decision on the basis of the information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Commission in Washington, D.C., at a time fixed by the Commission unless it determines that the convenience of the applicant or recipient or of the Commission requires that another place be selected. Hearings shall be held before the Commission, or at its discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Commission have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and an administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with the rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Commission and the applicant or recipient are entitled to introduce relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. Decisions shall be based on the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this subpart with respect to two or more programs to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal departments or agencies issued under title VI, the Commission may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this subpart. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with § 900.410.

§ 900.410 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Commission for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Commission his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Commission may, on its own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that it will review the decision. On the filing of the exceptions or of notice of review, the Commission shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision, subject to paragraph (e) of this section, shall constitute the final decision of the Commission.

(b) *Decisions on record or review by the Commission.* When a record is certified to the Commission for decision or the Commission reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or when the Commission conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Commission will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to § 900.409, a decision shall be made by the Commission on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Commission shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Commission.* A final decision by an official of the Commission other than by the Commissioners, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or title VI, shall promptly be transmitted to the Commission, which may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of title VI and this subpart, including provisions designed to assure that Federal financial assistance will not thereafter be extended under the programs to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this subpart, or to have otherwise failed to comply with this subpart, unless and until it corrects its noncompliance and satisfies the Commission that it will fully comply with this subpart.

(g) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with ths subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) An applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Commission to restore fully its eligibility to receive Federal financial assistance. A request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g) (1) of this section. If the Commission determines that those requirements have been satisfied, it shall restore the eligibility.

(3) If the Commission denies a request, the applicant or recipient may submit a reqquest for hearing in writing, specifying why it believes the Commission is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by the Commission. The applicant or recipient shall be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g) (1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section remain in effect.

§ 900.411 Judicial review.

Action taken pursuant to section 602 of title VI is subject to judicial review as provided in section 603 of title VI.

§ 900.412 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this subpart by the Commission which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin under a program to which this subpart applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the require-

ments, are superseded to the extent that discrimination is prohibited by this subpart, except that nothing in this subpart relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this subpart. This subpart does not supersede any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this subpart is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Commission shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies, and for which it is responsible.

(c) *Supervision and coordination.* The Commission may from time to time assign to officials of the Commission, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI and this subpart (other than responsibilities for final decision as provided in § 900.410), including the achievement of effective coordination and maximum uniformity within the Commission and within the executive branch in the application of title VI and this subpart to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by the Commission.

APPENDIX A

ACTIVITIES TO WHICH THIS SUBPART APPLIES

1. Use of grants made in connection with the Intergovernmental Personnel Act of 1970 (P.L. 91-648, 84 Stat. 1909).

2. Personnel mobility assignments of Commission personnel pursuant to title 5, U.S.C. chapter 33 and 5 CFR Part 334 (36 FR 6488).

APPENDIX B

ACTIVITIES TO WHICH THIS SUBPART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. None at this time.

APPENDIX C

APPLICATION OF SUBPART D, PART 900, TO PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE OF THE U.S. CIVIL SERVICE COMMISSION

Nondiscrimination in Federally assisted programs or projects:

Examples. The following examples without being exhaustive illustrate the application of the nondiscrimination provisions of the Civil Rights Act of 1964 of this subpart in programs receiving financial assistance under programs of the U.S. Civil Service Commission.

(1) Recipients of IPA financial assistance for training programs or fellowships may not differentiate between employees who are eligible for training or fellowships on the ground of race, color, or national origin.

(2) Recipients of IPA financial assistance for training programs may not provide facilities for training with the purpose or effect of separating employees on the ground of race, color, or national origin.

Issued in Washington, D.C., on July 3, 1973.

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

[FR Doc.73-13295 Filed 7-3-73;8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 15—NONDISCRIMINATION

Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

UNIFORM REVISIONS

The following proposed amendments to 7 CFR, Subtitle A, Part 15, Subpart A, primarily represent uniform revisions being jointly adopted by the various Departments and Agencies of the U.S. Government to put into effect clarifications to the regulations issued pursuant to Title VI of the Civil Rights Act of 1964.

Title 7, CFR, Subtitle A, Part 15, Subpart A, is hereby amended as follows:

1. Section 15.1(a) is amended by inserting the language "of an applicant or recipient" immediately following the words "under any program or activity" so that the phrase reads "under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof."

2. Section 15.1(b) is amended to read as set forth below.

§ 15.1 Purpose and application of part.

(a) [Amended]

(b) The regulations in this part apply to any program or activity of an applicant or recipient for which Federal financial assistance is authorized under a law administered by the Department including, but not limited to, the Federal financial assistance listed in the appendix to this part. They apply to money paid, property transferred, or other Federal financial assistance extended to an applicant or recipients for its program or activity after the effective date of these regulations pursuant to an application approved or statutory or other provision made therefor prior to such effective date. The regulations in this part do not apply to (1) any Federal finanical assistance by way of insurance or guaranty contract, (2) money paid, property transferred, or other assistance extended prior to the effective date of the regulations in this part, (3) any assistance to an applicant or recipient who is an ultimate beneficiary under any such program, or (4) except as provided in § 15.3(c), any employment practice of any employer, employment agency or labor organization. The fact that a specific kind of Federal financial assistance is not listed in the appendix shall not mean, if Title VI of the Act is otherwise applicable, that such Federal financial assistance is not covered. Other Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice approved and issued by the Secretary and published in the FEDERAL REGISTER.

3. Section 15.2(d) is amended to read as follows:

§ 15.2 Definitions.

* * * * *

(d) 'Hearing Officer' means a hearing examiner appointed pursuant to 5 U.S.C. 3105, and designated to hold hearings under the regulations in this part or any person authorized to hold a hearing and make a final decision under the regulations in this part.

* * * * *

4. Section 15.3(a) is amended by inserting the language "or activity of the applicant or recipient" immediately following the language "under any program" so that the phrase reads "under any program or activity of the applicant or recipient to which these regulations apply."

5. Section 15.3(b) (1) is amended by inserting a new subdivision (vii) reading as set forth below.

6. Section 15.3(b) is further amended by inserting a new subparagraph (3) reading as set forth below.

7. In § 15.3(b), subparagraphs (3) and (4), are renumbered (4) and (5) respectively, and the renumbered subparagraph (4) is amended to read as set forth below.

8. Section 15.3(b) is further amended by adding the following new subparagraph (6) at the end thereof, reading as set forth below.

9. Section 15.3(c) is amended by adding a statement at the end thereof, reading as set forth below.

§ 15.3 Discrimination prohibited.

(a) [Amended]

(b) *Specific discriminatory actions prohibited.* (1) * * *

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

* * * * *

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any of its activities or programs to which the regulations in this part apply, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and the regulations in this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program or activity of an

applicant or recipient receiving Federal financial assistance shall be deemed to include any and all services, financial aid, or other benefit provided in or through a facility provided or improved in whole or part with the aid of Federal financial assistance.

* * * * *

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) * * * Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulations in this part, tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity of the applicant or recipient to which these regulations apply, the foregoing provisions of this § 15.3(c) shall apply to the employment practices of the recipient or other persons subject to these regulations, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries. The requirements applicable to construction employment under any program or activity of the applicant or recipient shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it.

* * * * *

10. Section 15.4(a) (1) and (2) and (b) are amended to read as set forth below, and paragraph (e) of that section is amended by substituting for the language "U.S. Commissioner of Education" and "Commissioner", where said language appears, the language "responsible official of the Department of Health, Education, and Welfare", and by inserting the phrase "within the earliest practical time" immediately following the language "determines is adequate to accomplish the purposes of the Act and this part" in the first sentence.

§ 15.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which these regulations apply, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility, shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the applicant's program or activity will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to the Act and the regulations in this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein, or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The Agency shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, successors in interest and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures, or improvements thereon, or interests therein, which was acquired through Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved through Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Agency to revert title to the property in the event of a breach of the covenant where, in the discretion of the Agency concerned, such a condition and right of reverter is appropriate to the purposes of the Federal financial assistance under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Agency may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

* * * * *

(b) Every application by a State or a State Agency, including a State Extension Service, but not including an application for aid to an institution of higher education, to carry out its program or activity involving continuing Federal financial assistance to which the regulations in this part apply shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Agency to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to the regulations in this part: *Provided*, That where no application is required prior to payment, the State or State Agency, including a State Extension Service, shall, as a condition to the extension of any Federal financial assistance, submit an assurance complying with the requirements of paragraph (b) (1) and (2) of this section.

* * * * *

(e) [Amended]

11. Section 15.5(b) is amended by adding the following to the end thereof:

§ 15.5 Compliance.

* * * * *

(b) * * * In general, recipients should have available for the Agency racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federally assisted programs.

* * * * *

§ 15.6 [Amended]

12. Section 15.6 is amended by deleting 90 days and substituting 180 days therefore.

§ 15.9 [Amended]

13. Section 15.9(d) is amended by substituting for the language "Sections 5–8 of the Administrative Procedure Act", where said language appears, the language "5 U.S.C. 554–557".

14. Section 15.10 is amended by adding the following new paragraph (g) at the end thereof:

§ 15.10 Decisions and notices.

* * * * *

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if its brings itself into compliance with the Act and the regulations in this part and provides reasonable assurance that it will fully comply there-

with. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 15.4 (a), (b), or (d) shall be restored to full eligibility to receive Federal financial assistance if it complies with the requirements of a § 15.4(e) and is otherwise in compliance with the Act and the regulations in this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the denial to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure set forth in Subpart C of this part. The applicant or recipient will be restored to such eligibility if it proves at such a hearing, that it has satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 15.12 [Amended]

15. Section 15.12(a) is amended by substituting for the language "(1) Executive Orders 10925 and 11114" where such language appears the language "(1) Executive Order 11246"; and paragraph (c) of that section is amended by adding the following new sentence at the end thereof: "Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting under this paragraph shall have the same effect as though such action had been taken by the Secretary or an Agency of this Department."

16. The introductory heading of the appendix to the regulations in this part is revised to read as follows: "Federal Financial Assistance of the Department of Agriculture Covered by Title VI of the Civil Rights Act of 1964".

This amendment issued under section 602, 78 Stat. 252, 42 U.S.C. 2000d, and the laws referred to in the appendix.

Dated: July 27, 1972.

EARL L. BUTZ,
Secretary of Agriculture.

[FR Doc.73-13282 Filed 7-3-73;8:45 am]

Title 10—Atomic Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE IV OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

§ 4.12 [Amended]

1. A new paragraph (c) is added to § 4.12 of 10 CFR Part 4 to read as follows:

(c) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

2. Present paragraphs (c) and (d) of § 4.12 of 10 CFR Part 4 are relettered paragraphs (d) and (e), respectively.

3. A new paragraph (f) is added to § 4.12 of 10 CFR Part 4 to read as follows:

(f) This part does not prohibit the consideration of race, color or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

4. Section 4.13 of 10 CFR Part 4 is amended to read as follows:

§ 4.13 Employment practices.

(a) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (1) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (2) to provide work experience which contributes to the education or training of such individuals. (Examples of such programs are nuclear training equipment grants, grants and loans of materials for training, and fellowship programs.) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(b) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to this part tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to this part to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

§ 4.21 [Amended]

5. Paragraph (b) of § 4.21 of 10 CFR Part 4 is amended to read as follows:

(b) In the case of real property, structures or improvements thereon, or interests therein, which was acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the AEC to revert title to the property in the event of a breach of the covenant where, in the discretion of the AEC, such a condition and right of reverter is appropriate to the program and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the AEC may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as the AEC deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

6. Section 4.22 of 10 CFR Part 4 is amended to read as follows:

§ 4.22 Continuing State programs.

Every application by a State or a State agency for continuing Federal financial assistance shall require the submission of and every grant, loan, or contract to or with a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the grant, loan or contract, contain or be accompanied by, a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and shall provide or be accompanied by provision for such methods of administration for the program as are found by the responsible AEC official to give reasonable assurance that the recipient and all other recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

7. Paragraph (b) of § 4.23 of 10 CFR Part 4 is amended to read as follows:

§ 4.23 Elementary and secondary schools.

* * * * *

(b) Submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time, and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purpose of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such plan, such plan shall be revised to conform to such final order, including any future modification of such order.

§ 4.25 [Amended]

8. New paragraphs (d) and (e) are added to § 4.25 of 10 CFR Part 4 to read as follows:

(d) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 4.34 to provide information as to the availability of the program or activity, and the rights of beneficiaries under this part, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will ensure that groups previously subjected to discrimination are adequately served.

(e) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

9. Section 4.49 of 10 CFR Part 4 is amended to read as follows:

§ 4.49 Other means authorized by law.

No action to effect compliance by any other means authorized by law shall be taken until (a) the responsible AEC official has determined that compliance cannot be secured by voluntary means, (b) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (c) the expiration of at least ten (10) days from the mailing of such notice to the recipient or other person. During this period of at least ten (10) days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 4.51 [Amended]

10. Paragraph (d) of § 4.51 of 10 CFR Part 4 is amended to read as follows:

(d) An applicant or recipient may file an answer, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek Commission review in accordance with the provisions of §§ 4.71–4.74. At the time an answer is filed the applicant or recipient may also submit written information or argument for the record if he does not request a hearing.

11. Paragraph (f) of § 4.51 of 10 CFR Part 4 is amended to read as follows:

(f) The failure of an applicant or recipient to file an answer within the period prescribed, or, if he requests a hearing, his failure to appear therefor, shall constitute a waiver by him of a right to (1) a hearing under section 602 of the Act and § 4.48, (2) conclusions of law, and (3) seek Commission review. In the event of such waiver, the responsible AEC official may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

§ 4.63 [Amended]

12. The first sentence of paragraph (a) of § 4.63 of 10 CFR Part 4 is amended to read as follows:

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such procedures as are proper (and not inconsistent with §§ 4.61–4.64) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 4.51, taking of testimony, exhibits, arguments and briefs, requests for finding, and other related matters. * * *

13. A new § 4.75 is added to 10 CFR Part 4 to read as follows:

§ 4.75 Posttermination proceedings.

(a) An applicant or recipient adversely affected by an order issued under § 4.74 shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file an assurance of compliance with §§ 4.11–4.14 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 4.23, and provides reasonable assurance that it will comply with this court order or plan.

(b) Any applicant or recipient adversely affected by an order entered pursuant to § 4.74 may at any time request the responsible AEC official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (a) of this section. If the responsible AEC official determines that those requirements have been satisfied, he shall restore such eligibility.

(c) If the responsible AEC official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible AEC official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, the sanctions imposed by the order issued under § 4.74 shall remain in effect.

§ 4.91 [Amended]

14. Section 4.91 of 10 CFR Part 10 is amended by changing the last sentence thereof to read as follows:

* * * Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (a) Executive Orders 10925,

11114, and 11246 and regulations issued thereunder, or (b) Executive Order 11063 and regulations issued thereunder and any other regulations or instructions insofar as such order, regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

§ 4.93 [Amended]

15. Section 4.93 of 10 CFR Part 4 is amended by adding the following sentence at the end thereof:

* * * Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the responsible AEC official.

16. The title of Appendix A of 10 CFR Part 4 is amended to read as follows:

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES [1]

17. Footnote 1. to Appendix A of 10 CFR Part 4 is amended to read as follows:

[1] Categories of assistance may be added to Appendix A from time to time by notice published in the FEDERAL REGISTER. This part shall be deemed to apply to all grants, loans or contracts entered into under any such category of assistance on or after the effective date of the inclusion of the category of assistance in Appendix A.

18. Paragraph (b) of Appendix A of 10 CFR Part 4 is amended to read as follows:

(b) *Nuclear training equipment grants.* Grants of used equipment to colleges, universities, hospitals and eleemosynary or charitable institutions to help equip and modernize their scientific laboratories with respect to nuclear instrumentation and related equipment, with the objective of improving the conduct of educational and training activities in nuclear fields.

19. Paragraph (c) of Appendix A of 10 CFR Part 4 is amended to read as follows:

(c) *Grants of materials for training.* Grants of nuclear and other materials and of informational matter including slides and manuals to educational institutions for training and educational programs in nuclear fields.

20. Paragraph (d) of Appendix A of 10 CFR Part 4 is amended to read as follows:

(d) *Special fellowships.* Fellowship programs, providing for AEC payment of an educational allowance in lieu of tuition and fees to educational institutions as well as stipends and dependency allowances to the individual fellows, to encourage highly qualified individuals to prepare for careers in atomic energy and to assist educational institutions in developing nuclear science capabilities, as follows:

(1) AEC special fellowships in nuclear science and engineering.

(2) AEC special fellowships in radiation science and protection.

(3) AEC traineeships for graduate students in nuclear engineering.

21. Paragraph (f) of Appendix A of 10 CFR Part 4 is amended to read as follows:

(f) *Loan of nuclear and other materials for education and training.* Provision of AEC-owned materials, such as natural and enriched uranium, plutonium, and heavy water, to educational institutions, on a loan basis, without full-cost recovery; and loans of films, slides, manuals, and other materials to educational institutions, without full-cost recovery.

22. Paragraph (i) of Appendix A of 10 CFR Part 4 is amended to read as follows:

(i) *Fuel cycle assistance for nuclear reactors for research and training.* Research reactor fuel cycle assistance, without full-cost recovery, designed to aid nonprofit educational institutions having science and engineering programs to maintain nuclear reactors for research and training purposes, and providing the following principal forms of aid:

(1) Loan of enriched uranium;

(2) Funds for fuel element fabrication and spent fuel shipments; and

(3) Fuel processing service.

23. A new paragraph (q) is added to Appendix A of 10 CFR Part 4 to read as follows:

(q) *Loan of employees of AEC cost-type contractors.* Loan of personnel to colleges, universities, or other institutions or organizations, to teach or provide other assistance in furthering AEC policies, programs, and activities.

24. Present paragraph (q) of Appendix A of 10 CFR Part 4 is relettered paragraph (r) and is amended to read as follows:

(r) *AEC assistance provided through AEC cost-type contractors.* Agreements by AEC laboratories, other AEC cost-type contractors and universities operating nuclear reactors, to provide assistance, at AEC expense and without full-cost recovery, in connection with AEC programs or activities, of the types designated in this section.

25. Present paragraphs (r) and (s) of Appendix A of 10 CFR Part 4 are relettered paragraphs (s) and (t) respectively.

(Sec. 602, 78 Stat. 252. Interpret or apply Atomic Energy Act of 1954, as amended, 68 Stat. 919; 42 U.S.C. 2011)

Dated at Germantown, Maryland, this 26th day of June 1972.

For the Atomic Energy Commission.

JAMES R. SCHLESINGER,
Chairman.

[FR Doc.73-13293 Filed 7-3-73;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

[No. 72-616]

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 529—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

MAY 25, 1972.

Whereas, by Resolution No. 72-33, dated January 4, 1972, which was duly published in the FEDERAL REGISTER on February 1, 1972 (37 FR 2447), the Federal Home Loan Bank Board proposed to amend Subchapter B of Chapter V of Title 12, CFR, by adding a new Part 529—Nondiscrimination in Federally Assisted Programs, for the purpose of effectuating the provisions of Title VI of the Civil Rights Act of 1964, which requires the issuance of such regulations to apply to programs of Federal financial assistance administered by this Board (such as the Housing Opportunity Allowance Program);

Whereas, the text of such proposed regulations was developed pursuant to recommendations of an interagency committee with the objective of achieving uniform Title VI regulations; and

Whereas, all relevant material presented by interested persons or otherwise available has been considered by this Board;

Now, therefore, be it resolved, that this Board hereby adopts the amendment as so proposed and published, with the following changes:

1. In § 529.3, the second sentence is changed by substituting a comma for the period and adding at the end thereof the following words: "and to any such assistance extended under the Housing Opportunity Allowance Program, pursuant to Part 529 of this subchapter, since the inception of such program."

2. In paragraph (b) of § 529.7, the number "90" is changed to read "180".

3. In paragraph (a) of § 529.8, the second sentence is revised to read as set forth below.

And, be it further resolved, that the above amendment shall not become effective unless and until such Part 529 is approved by the President and duly published in the FEDERAL REGISTER.

By the Federal Home Loan Bank Board.

Sec.

AUTHORITY: Sec. 602, Public Law 88-352, 78 Stat. 252; 42 U.S.C. 2000d-1; Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 529.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Federal Home Loan Bank Board.

§ 529.2 Definitions.

Unless the context requires otherwise, as used in this part—

(a) "Applicant" means a person who submits an application, request, or plan required to be approved by the Board, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) "Board" means the Federal Home Loan Bank Board or, except in § 529.10 (e), any person to whom it has delegated its authority in the matter concerned.

(c) "Facility" includes all or any part of structures, equipment, or other real or personal property of interests therein, and the provision of facilities includes the construction, expansion, renovation remodeling, alteration or acquisition of facilities.

(d) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) "Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(f) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) "Recipient" may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

§ 529.3 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Board, including the Federally assisted programs and activities listed in Appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that effective date, and to any such assistance extended under the Housing Opportunity Allowance Program, pursuant to Part 529 of this subchapter, since the inception of such program. This part does not apply to:

(a) Any Federal financial assistance by way of insurance or guaranty contracts;

(b) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part;

(c) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(d) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 529.4(c).

The fact that a program or activity is not listed in Appendix A to this part shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to Appendix A to this part.

§ 529.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin—

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited descrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.

Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of subparagraph (1) of this paragraph shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Location of facilities.* A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

§ 529.5 Assurances required.

(a) *General.* Every application for Federal financial assistance to carry out a program to which this part applies and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Board shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Real property.* In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Board to revert title to the property in the even of a breach of the covenant where, in the discretion of the Board, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Board may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

§ 529.6 Compliance information.

(a) *Cooperation and assistance.* The Board shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Board timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Board may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Board during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Board finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 529.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The Board shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Board a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, un-

less the time for filing is extended by the Board.

(c) *Investigations.* The Board will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Board will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 529.8.

(2) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section, the Board will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by secton 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 529.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, (2) a proceeding brought under the Board's cease-and-desist authority pursuant to Part 550 or Part 566 of this chapter, and (3) any applicable proceeding under State or local law.

(b) *Noncompliance with § 529.5.* If an applicant fails or refuses to furnish an assurance required under § 529.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Board shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, the Board shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until—

(1) The Board has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Board pursuant to § 529.10(e); and

(4) The expiration of 30 days after the Board has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken by this Board until—

(1) The Board has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 529.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 529.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Board that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under § 602 of the Act and § 529.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Board in Washington, D.C., at a time fixed by the Board unless it determines that the convenience of the applicant or recipient or of the Board requires that another place be selected. Hearings shall be held before the Board, or at its discretion, before a hearing examiner appointed in accordance with § 3105 of Title 5, United States Code, or detailed under § 3344 of Title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Board shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of Title 5, United States Code, and in accordance with Part 509 of the General Regulations of the Federal Home Loan Bank Board (12 CFR Part 509), to the extent said Part 509 is consistent with this Part 529, and with such other regulations that may be be necessary or appropriate for the conduct of hearings pursuant to this Part 529.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other

Federal departments or agencies issued under Title VI of the Act, the Board may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 529.10.

§ 529.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Board for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Board his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Board may, on its own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that it will review the decision. Upon the filing of such exceptions or of notice of review, the Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Board.

(b) *Decisions on record or review by the Board.* Whenever a record is certified to the Board for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Board conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions and a written copy of the final decision of the Board shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 529.9, a decision shall be made by the Board on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Board shall set forth his or its ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Board.* Any final decision by an official of the Board, other than the Board itself, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Board itself, which may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Board that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Board to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g) (1) of this section. If the Board determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If the Board denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Board to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Board. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g) (1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 529.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 529.12 Effect on other regulations.

(a) Nothing in this part supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Board shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which it is responsible.

(c) *Supervision and coordination.* The Board may from time to time assign to officials of the Board, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 529.10), including the achievement of effective coordination and maximum uniformity within the Board and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by this Board.

APPENDIX A—ACTIVITIES TO WHICH THIS PART APPLIES

1. Use by a member institution of a Federal Home Loan Bank of funds the interest charges on which have been adjusted pursuant to the Housing Opportunity Allowance Program (Pub. Law 91-351, July 24, 1970, 101).

[FR Doc.73-13299 Filed 7-3-73;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Amdt. 2]

PART 112—NONDISCRIMINATION ON FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

On December 9, 1971, there was published in the FEDERAL REGISTER (36 FR 23452) a notice of uniform revisions being adopted by SBA jointly with all Federal agencies with Title VI responsibilities to put into effect clarification of SBA regulations adopted pursuant to Title VI of the Civil Rights Act of 1964. Nonuniform amendments resulted from new responsibilities under Section 312 of the Housing Act of 1964, Section 7(e) of the Small Business Act and the adoption of a definition of "subrecipient." Having carefully considered all aspects of the proposal and comment thereon, it has been decided to adopt the proposal and also to change the time for filing complaints from 90 days to 180 days.

Accordingly, Part 112 of Chapter I of Title 13 of the Code of Federal Regulations is hereby amended by:

1. Revising § 112.2 (a) and (c) to read as follows:

§ 112.2 Application of this part.

(a) Financial assistance activities: Except as hereinafter noted, this part applies to business activities or other activities receiving financial assistance pursuant to:

(1) Title IV of the Economic Opportunity Act of 1964;

(2) Sections 501 and 502 of the Small Business Investment Act of 1958;

(3) Sections 303, 304, and 305 of the Small Business Investment Act of 1958;

(4) Section 7(b)(1) of the Small Business Act involving individuals or organizations, whether or not operated for profit, which provide medical care or education or which conduct other activities of special significance to health, safety or welfare;

(5) Section 312 of the Housing Act of 1964;

(6) Section 7(e) of the Small Business Act; and

(7) Any other financial assistance program which, though not specifically referred to herein, is covered by Title VI of the Civil Rights Act of 1964; whether extended directly or in cooperation with banks or other lenders through agreements to participate on an immediate basis. Other financial assistance programs under statutes now in force or hereafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

* * * * *

(c) The terms "applicant" and "recipient" mean, respectively, one who applies for and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section. The term "recipient" also shall be deemed to include "subrecipients" of SBA financial assistance, i.e., concerns which secondarily receive financial assistance from the primary recipients of such financial assistance.

2. Adding the following subparagraph (3) to § 112.3(b):

§ 112.3 Discrimination prohibited.

* * * * *

(b) * * *

(3) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

3. Revising § 112.4 thereof to read as follows:

§ 112.4 Discrimination in employment.

Small business concerns and development companies which apply for or receive any financial assistance of the kind described in § 112.2(a)(1) and (2), including concerns which are identifiable beneficiaries of loans made under § 112.2(a)(2), may not discriminate on the grounds of race, color, or national origin in their employment practices. Such assistance is deemed to have as a primary objective the providing of employment. Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of § 112.7(a) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity and nondiscriminatory treatment.

4. Adding paragraphs (d)(1) and (2) to § 112.7:

§ 112.7 Illustrative applications.

* * * * *

(d) *Affirmative action.* (1) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of equal opportunity. If the efforts required of the applicant or recipient under § 112.3(b)(3) to provide information as to the availability of equal opportunity, and the rights of individuals under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make equal opportunity fully available to racial and nationality groups previously subjected to discrimination.

(2) Even though an applicant or recipient has never used discriminatory policies, the opportunities in the business it operates may not in fact be equally available to some racial or nationality groups. In such circumstances a recipient may properly give special consideration to race, color, or national origin to make opportunity more widely available to such groups.

5. Revising § 112.9(d) thereof to read as follows:

§ 112.9 Compliance information.

* * * * *

(d) *Information to the public.* Each recipient shall make available to persons entitled under the Act and under this part to protection against discrimination by the recipient such information as SBA may find necessary to apprise them of their rights to such protection.

6. Revising paragraph (b) of § 112.10 thereof to read as follows:

§ 112.10 Conduct of investigations.

* * * * *

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may, by himself or by a representative, file with SBA a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by SBA.

* * * * *

7. Revising § 112.11(d) thereof to read as follows:

§ 112.11 Procedure for effecting compliance.

* * * * *

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) SBA has determined that compliance cannot be secured by voluntary means; (2) the action has been approved by the Administrator or his designee; (3) the applicant or recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and (4) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient or othe rperson. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient or other person to comply with this part and to take such corrective action as may be appropriate.

8. Revising § 112.12(d)(1) thereof to read as follows:

§ 112.12 Hearings.

* * * * *

(d) Procedures, evidence, and record. (1) The hearing, decisions, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554 through 557 inclusive (Sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, request for finds, and other related matters. Both SBA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

* * * * *

9. Adding to § 112.13 the following paragraph (f):

§ 112.13 Decisions and notices.

* * * * *

(f) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for

such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the Administrator to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f) (1) of this section. If the Administrator determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Administrator denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules and procedure issued by the Administrator. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f) (1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

10. Revising § 112.15 (a) and (c) thereof to read as follows:

§ 112.15 Effect on other regulations; forms and instructions.

* * * * *

(a) *Effect on other regulations.* All regulations, orders or like directions heretofore issued by SBA which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin and which authorize the suspension or termination of or refusal to grant to or to continue financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Order 11246 and regulations issued thereunder, or (2) any other orders, regulations or instructions, insofar as such order, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable or prohibit discrimination on any other ground.

* * * * *

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of SBA or to officials of other agencies of the Government with the consent of such agencies, responsibilities in connection with the effectuation of the purpose of Title VI of the Act and this part (other than responsibility for final decision as provided in § 112.13), including the achievement of effective coordination and maximum uniformity within SBA and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Administrator of SBA.

Effective date: July 5, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-13306 Filed 7-3-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

[Reg. SPR-55; Amdt. 2]

PART 379—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE BOARD—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

Part 379 of the Board's Special Regulations effectuates the provisions of Title VI of the Civil Rights Act of 1964. Pursuant to recommendations of the interagency committee for uniform Title VI regulation amendments, certain amendments to Part 379 were adopted by the Board[1] and forwarded to the Attorney General who, under Executive Order 11247, has been assigned the responsibility for coordinating the enforcement of Title VI. Thereafter, it was determined to publish SPR-41 as a proposed rule[2] along with similar amendments and rules which had already been adopted by a total of 20 Federal departments and agencies. The public was invited to file comments with the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530, rather than with the particular issuing agency or department.

We have been advised by the Department of Justice that none of the filed comments were directed specifically to the amendments proposed by the Board, but that a number of general comments were filed. We have now decided, after reviewing those general comments, to adopt the within amendments, as proposed, without modification, in accordance with the recommendation of the Attorney General, exercising his Title VI coordinating responsibility. Pursuant to section 602 of Title VI, 42 U.S.C. 2000d-1, these amendments will not become effective until they have been approved by the President and published in the FEDERAL REGISTER.

[1] SPR-41 adopted November 24, 1970.
[2] 36 FR 23453, December 9, 1971.

Accordingly, the Civil Aeronautics Board hereby amends Part 379 of the Special Regulations (14 CFR Part 379) as follows:

1. Amend § 379.2 to read as follows:

§ 379.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Board, including the payment of compensation by the Board under section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376). It applies to money paid or other Federal financial assistance extended under any such program after the effective date of the part pursuant to a Board order, whether issued prior to or subsequent to such effective date, establishing a rate of compensation under section 406, or pursuant to an application for any other such Federal payment or financial assistance, whether approved prior to or subsequent to such effective date. This part does not apply to (a) money paid or other assistance extended under any such program before the effective date of this regulation, or (b) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 379.3(c).

2. Amend § 379.3 by redesignating present § 379.3(b) as § 379.3(b)(1), and adding new §§ 379.3(b) (2) and (3) and § 379.3(c). As amended, § 379.3(b) and § 379.3(c) will read as follows:

§ 379.3 Discrimination prohibited.

* * * * *

(b) *Specific discriminatory actions prohibited.* (1) No air carrier shall subject any person to discrimination on the ground of race, color, or national origin in connection with any airtransportation for which such carrier is receiving or has claimed compensation payable by the Board under section 406 of the Federal Aviation Act of 1958.

(2) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Civil Rights Act of 1964 or this part.

(3) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which the part ap-

plies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Civil Rights Act of 1964.

(c) *Employment practices.* Where discrimination on the grounds of race, color, or national origin in the employment practices of the recipient under any program to which this part applies tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, then to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries, that recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees).

3. Amend paragraphs (b) and (d)(1) of § 379.8 to read as follows:

§ 379.8 Hearings.

* * * * *

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Board in Washington, D.C., at a time fixed by the Board unless it determines that the convenience of the applicant or recipient or of the Board requires that another place be selected. Hearings shall be held before the Board or, at its discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both the Board and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

4. Amend § 379.9 by adding a new § 379.9(f) to read as follows:

§ 379.9 Decisions and notices.

* * * * *

(f) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the Board to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the Board determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If the Board denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Board to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with the procedures set forth in § 379.8. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) shall remain in effect.

5. By amending § 379.11(c) to read as follows:

§ 379.11 Effect on other remedies; coordination.

* * * * *

(c) *Supervision and coordination.* The Board may from time to time assign to officials of the Board, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Civil Rights Act of 1964 and this part (other than responsibility for final decision as provided in § 379.9), including the achievement of effective coordination and maximum uniformity within the Board and with other departments and agencies of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Board.

(Sec. 602, 78 Stat. 252; and secs. 102, 204, 404, 406, and 1002, Federal Aviation Act of 1958; 72 Stat. 740, 743, 760, 763, and 788; 49 U.S.C. 1302, 1324, 1374, 1376, and 1482)

Effective date: July 5, 1973.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.73-13294 Filed 7-3-73;8:45 am]

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

1. Paragraphs (g) and (j)(2) of § 1250.102 are revised to read as follows:

§ 1250.102 Definitions.

* * * * *

(g) "Principal Compliance Officer" means the Director, Equal Employment Opportunity Office, Office of Organization and Management, NASA Headquarters, or any successor officer to whom the Administrator should delegate authority to perform the functions assigned to the Principal Compliance Officer by this part.

* * * * *

(j) * * *

(2) Each Director of a field installation which makes or administers grants and contracts of the kind listed in Appendix A, or any officer to whom he has delegated authority to act within the areas of responsibility assigned to him under this part.

2. Paragraph (a) of § 1250.103–2 is amended by the addition of subparagraph (3) and by renumbering subparagraphs (3), (4), (5), (6) as subparagraphs (4), (5), (6), (7); and paragraph (e) is revised, to read as follows:

§ 1250.103–2 Specific discriminatory acts prohibited.

(a) * * *

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

* * * * *

(e) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in § 1250.103–1. This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage,

and to accomplish the purpose of the Act.

3. Paragraph (c) of § 1250.103–3 is revised and paragraph (d) is added as follows:

§ 1250.103–3 Employment practices.

* * * * *

(c) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any Executive order which supersedes it.

(d) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

4. Section 1250.103–4 is amended by the substitution of the title "Illustrative applications" for "Illustrations of discriminatory acts prohibited" and the addition of paragraphs (f) and (g) as follows:

§ 1250.103–4 Illustrative applications.

* * * * *

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 1250.105 to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

5. Paragraphs (e) through (g) of § 1250.104 are revised and a new paragraph (h) is added as follows:

§ 1250.104 Assurances.

* * * * *

(e) *Instrument effecting or recording transfers of real property.* The instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible NASA official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

(f) *Assurances for transfer of surplus real property.* Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(g) *Form of assurances.* The responsible NASA officials shall specify the form of assurances required by this § 1250.104 and the extent to which like assurances will be required by subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(h) *Requests for proposals.* Any request for proposals issued by NASA which relates to covered financial assistance listed in Appendix A shall have set forth therein or have attached thereto the assurance prescribed in accordance with paragraph (g) of this section, and shall require that the proposer either include the assurance as a part of his signed proposal or identify and refer to an assurance already signed and submitted by the proposer.

§ 1250.107 [Amended]

6. Paragraph (d) of § 1250.107 is revised as follows: Subparagraph (2) is revoked, subparagraphs (3) and (4) are renumbered (2) and (3).

7. Paragraphs (b) and (d) of § 1250.108 are amended as follows:

§ 1250.108 Hearings.

* * * * *

(b) *Time and place of hearing.* Hearings shall be held at NASA Headquarters in Washington, D.C., at a time fixed by the Principal Compliance Officer unless he determines that the convenience of the applicant or recipient or of NASA requires that another place be selected. Hearings shall be held before the Administrator, or, at his discretion, before a hearing examiner designated in conformity with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (section 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both NASA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

8. Section 1250.109 is amended by the addition of paragraph (g) as follows:

§ 1250.109 Decisions and notices.

* * * * *

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Principal Compliance Officer to restore fully the eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the Principal Compliance Officer determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Principal Compliance Officer denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Principal Compliance Officer. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1250.111 [Amended]

9. Section 1250.111 is amended as follows:

a. In paragraph (a) the number 11114 is deleted and the number 11246 is substituted.

b. In paragraph (b) the word "programs" is deleted and the words "financial assistance" are substituted.

c. In paragraph (c) the sentence "Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action has been taken by the responsible official of this agency" is added at the end of the paragraph.

10. Appendix A is amended by the substitution of "NASA Federal Financial Assistance To Which This Part Applies" for "Programs of NASA To Which This Part Applies."

GEORGE M. LOW,
Acting Administrator.

[FR Doc.73-13301 Filed 7-3-73;8:45 am]

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE

PART 8—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF COMMERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Department of Commerce, in 1965, adopted regulations implementing Title VI. Thereafter a number of amendments were approved and the regulations, as amended, were published in the FEDERAL REGISTER of December 9, 1971, at page 23456.

Since that time, several additional amendments and language changes have been recommended by the Department of Justice which, by Executive Order, has authority to coordinate the Federal agencies in their execution of Title VI. These include: A provision ensuring nondiscrimination in the selection of members for planning and advisory bodies, which differs slightly from the one Commerce originally proposed (§ 8.4(b)(1)(viii)); reference to a recipient's responsibility to collect data on the race of beneficiaries (§ 8.7(b)); modification of the language of the affirmative action provision (§ 8.4(b)(6)); and changing the time from 90 to 180 days for the filing of discrimination complaints (§ 8.8). The Department of Commerce agrees that all the changes are appropriate.

In consideration of the foregoing, Part 8 of Subtitle A of Title 15 of the Code of Federal Regulations is revised and such revision will become effective on July 5, 1973.

Subpart A—General Provisions: Prohibition; Nondiscrimination Clause; Applicability to Programs

Sec.

AUTHORITY: Section 602, Civil Rights Act of 1964 (42 U.S.C. 2000d-1).

Subpart A—General Provisions; Prohibitions; Nondiscrimination Clause; Applicability to Programs

§ 8.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Department of Commerce. This part is consistent with achievement of the objectives of the statutes authorizing the financial assistance given by the Department of Commerce as provided in section 602 of the Act.

§ 8.2 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the federally assisted programs listed in Appendix A to this part and as said Appendix may be amended. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 9, 1965, pursuant to an application approved prior to such effective date.

(b) This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program before January 9, 1965, except where such assistance was subject to the title VI regulations of this Department or of any other agency whose responsibilities are now exercised by this Department, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization except to the extent described in § 8.4(c). The fact that a program is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to the list by notice published in the FEDERAL REGISTER.

§ 8.3 Definitions.

(a) "Department" means the Department of Commerce, and includes each and all of its operating and equivalent other units.

(b) "Secretary" means the Secretary of Commerce.

(c) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(d) "Person" means an individual in the United States who is or is eligible to be a participant in or an ultimate beneficiary of any program which receives Federal financial assistance, and includes an individual who is an owner or member of a firm, corporation, or other business or organization which is or is eligible to be a participant in or an ultimate beneficiary of such a program. Where a primary objective of the Federal financial assistance to a program is to provide employment, "person" includes employees or applicants for employment of a recipient or other party subject to this part under such program.

(e) "Responsible department official" with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. It also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under this part.

(f) "Federal financial assistance" includes (1) grants, loans, or agreements for participation in loans, of Federal funds, (2) the grant or donation of Federal property or interests in property, (3) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or in property in which the Federal Government has an interest, without consideration, or at a nominal consideration, or at a consideration which is reduced, for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient, (4) waiver of charges which would normally be made for the furnishing of Government services, (5) the detail of

Federal personnel, (6) technical assistance, and (7) any Federal agreement, arrangement, contract, or other instrument which has as one of its purposes the provision of assistance.

(g) "Program" includes any program, project, or activity for the planning or provision of services, financial aid, property, other benefits, or facilities for furnishing services, financial aid, property, or other benefits, whether provided by the recipient or by others through contracts or other arrangements with the recipient, with the aid of Federal financial assistance, or with the aid of any non-Federal funds, property, facilities or other resources which are provided to meet the conditions under which Federal financial assistance is extended or which utilizes federally assisted property, facilities or resources.

(h) "Facility" includes all or any portion of structures, equipment, vessels, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, contract for use, or acquisition of facilities.

(i) "Recipient" means any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which is an applicant for Federal financial assistance, or to whom Federal financial assistance is extended directly or through another recipient for or in connection with any program. Recipient further includes a subgrantee, an entity which leases or operates a facility for or on behalf of a recipient, and any successors, assignees, or transferees of any kind of the recipient, but does not include any person who is an ultimate beneficiary under any program.

(j) "Primary recipient" means any recipient which is authorized or required to extend or distribute Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) "Applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(l) "Other parties subject to this part" includes any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which, like a recipient, is not to engage in discriminatory acts with respect to applicable persons covered by this part, because of his or its direct or substantial participation in any program, such as a contractor, subcontractor, provider of employment, or user of facilities or services provided under any program.

§ 8.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory acts prohibited.* (1) A recipient of Federal financial assistance, or other party subject to this part under any program to which this part applies, shall not participate, directly or through contractual or other arrangements, in any act or course of conduct which, on the ground of race, color, or national origin:

(i) Denies to a person any service, financial aid, or other benefit provided under the program;

(ii) Provides any service, financial aid, or other benefit, to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subjects a person to segregation or separate or other discriminatory treatment in any matter related to his receipt (or nonreceipt) of any such service, financial aid, property, or other benefit under the program.

(iv) Restricts a person in any way in the enjoyment of services, facilities, or any other advantage, privilege, property, or benefit provided to others under the programs;

(v) Treats a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Denies a person an opportunity to participate in the program through the provision of property or services or otherwise, or affords him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section);

(vii) Denies a person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor, subcontractor, or subgrantee when a program is applicable thereto;

(viii) Denies a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, or other party subject to this part under any program, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program, shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect any persons of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or other party subject to this part may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided or made available in or through or utilizing a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipients and other parties subject to this part shall take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, or national origin. Such recipients and other parties subject to this part shall, as may be required by supplemental regulations, develop a written affirmative action program. The requirements applicable to construction employment under any such program shall be in addition to those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it. Federal financial assistance to programs under laws funded or administered by the Department which has as a primary objective the providing of employment include those set forth in Appendix A II of this part.

(2) Where a primary objective of the Federal financial assistance to a program to which this part applies is not to provide employment, but discrimination on the grounds of race, color, or national origin, in the employment practices of the recipient or other party subject to this part, tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any such program, the provisions of subparagraph (1) of this paragraph shall apply to the employment practices of the recipient or other party subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of such persons.

§ 8.5 Nondiscrimination clause.

(a) *Applicability.* Every application for, and every grant, loan, or contract authorizing approval of, Federal financial assistance to carry out a program and to provide a facility subject this part, and every modification or amendment thereof, shall, as a condition to its approval and to the extension of any Federal financial assistance pursuant thereto, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by or pursuant to this part. The assurances shall be set forth in a nondiscrimination clause. The responsibile Department official shall specify the form and contents of the nondiscrimination clause for each program as appropriate.

(b) *Contents.* Without limiting its scope or language in any way, a nondiscrimination clause shall contain, where determined to be appropriate, and in an appropriate form, reference to the following assurances, undertakings, and other provisions:

(1) That the recipient or other party subject to this part will not participate directly or indirectly in the discrimination prohibited by § 8.4, including employment practices when a program covering such is involved.

(2) That when employment practices are covered, the recipient or other party subject to this part will (i) in all solicitations or advertisements for employees placed by or for the recipient, state that qualified applicants will receive consideration for employment without regard to race, color, or national origin; (ii) notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding of the recipient's commitments under this section; (iii) post the nondiscrimination clause and the notice to labor unions in conspicuous places available to employees and applicants for employment; and (iv) otherwise comply with the requirements of § 8.4(c).

(3) That in a program involving continuing Federal financial assistance, the recipient thereunder (i) will state that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (ii) will provide for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that all recipients of Federal financial assistance under such program and any other parties connected therewith subject to this part will comply with all requirements imposed by or pursuant to this part.

(4) That the recipient agrees to secure the compliance or to cooperate actively with the Department to secure the compliance by others with this part and the nondiscrimination clause as may be directed under an applicable program. For instance, the recipient may be requested by the responsible Department official to undertake and agree (i) to obtain or enforce or to assist and cooperate actively with the responsible Department official in obtaining or enforcing, the compliance of other recipients or of other parties subject to this part with the nondiscrimination required by this part; (ii) to insert appropriate nondiscrimination clauses in the respective contracts with or grants to such parties; (iii) to obtain and to furnish to the responsible Department official such information as he may require for the supervision or securing of such compliance; (iv) to carry out sanctions for noncompliance with the obligations imposed upon recipients and other parties subject to this part; and (v) to comply with such additional provisions as the responsible Department official deems appropriate to establish and protect the interests of the United States in the enforcement of these obligations. In the event that the cooperating recipient becomes involved in litigation with a noncomplying party as a result of such departmental direction, the cooperating recipient may request the Department to enter into such litigation to protect the interests of the United States.

(5) In the case of real property, structures or improvements thereon, or interests therein, which are acquired for a program receiving Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(6) In programs receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

(7) That a recipient shall not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(8) Provisions specifying the extent to which like assurances will be required of subgrantees, contractors and subcontractors, lessees, transferees, successors in interest, and other participants in the program.

(9) Provisions which give the United States a right to seek judicial enforcement of the assurances.

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility. That requirement may be waived by the responsible Department official if the party furnishing the assurances establishes to the satisfaction of the responsible Department official that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is or is sought to be provided, or affect the beneficiaries of or participants in such program. If in any such case the assistance is or is sought for the construction of a facility or part of a facility, the assurances shall in any event extend to the entire facility and to facilities operated in connection therewith.

(11) In the case where the Federal financial assistance is in the form of or to aid in the acquisition of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipients, or, in the case of a subsequent transfer, the

transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient or transferee retains ownership or possession of the property, whichever is longer. In the case of any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program.

§ 8.6 Applicability of this part to Department assisted programs.

The following examples illustrate the applicability of this part to programs which receive or may receive Federal financial assistance administered by the Department. The fact that a particular program is not listed does not indicate that it is not covered by this part. The discrimination referred to is that described in § 8.4 against persons on the ground of race, color, or national origin.

(a) *Assistance to support economic development programs.* Discrimination in which recipients and other parties subject to this part shall not engage, directly or indirectly, includes discrimination in (1) the letting of contracts or other arrangements for the planning, designing, engineering, acquisition, construction, rehabilitation, conversion, enlargement, installation, occupancy, use, maintenance, leasing, subleasing, sales, or other utilization or disposition of property or facilities purchased or financed in whole or in part with the aid of Federal financial assistance; (2) the acquisition of goods or services, or the production, preparation, manufacture, marketing, transportation, or distribution of goods or services in connection with a program or its operations; (3) the onsite operation of the project or facilities; (4) services or accommodations offered to the public in connection with the program; and (5) in employment practices in connection with or which affect the program (as defined in § 8.4(c)); in the following programs:

(i) Any program receiving Federal financial assistance for the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage.

(ii) Any program receiving Federal financial assistance in the form of loans or direct or supplementary grants for the acquisition or development of land and improvements for public works, public service or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment.

(iii) In any program receiving any form of technical assistance designed to alleviate or prevent conditions of excessive employment or underemployment.

(iv) In any program receiving Federal financial assistance in the form of administrative expense grants.

(b) *Assistance to support the training of students.* A current example of such assistance is that received by State maritime academies or colleges, by contract, of facilities (vessels), related equipment and funds to train merchant marine officers. In this and other student training programs, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection of persons to be trained and in their treatment by the recipients in any aspect of the educational process and discipline during their training, or in the availability or use of any academic, housing, eating, recreational, or other facilities and services, or in financial assistance to students furnished or controlled by the recipients or incidental to the program. In any case where selection of trainees is made from a predetermined group, such as the students in an institution or area, the group must be selected without discrimination.

(c) *Assistance to support mobile or other trade fairs.* In programs in which operators of mobile trade fairs using U.S. flag vessels and aircraft and designed to exhibit and sell U.S. products abroad, or in which other trade fairs or exhibitions, receive technical and financial assistance, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection or retention of any actual or potential exhibitors, or in access to or use of the services or accommodations by, or otherwise with respect to treatment of, exhibitors or their owners, officers, employees, or agents.

(d) *Assistance to support business entities eligible for trade adjustment assistance.* In programs in which eligible business entities receive any measure or kind of technical, financial or tax adjustment assistance because of or in connection with the impact of U.S. international trade upon such business, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in their employment practices as defined in § 8.4(c).

(e) *Assistance to support research and development and related activities.* In programs in which individuals, educational or other institutions, public governmental or business entities receive Federal financial assistance in order to encourage or foster research or development activities as such, or to obtain, promote, develop, or protect thereby technical, scientific, environmental, or other information, products, facilities, resources, or services which are to be made available to or used by others; but where such programs do not constitute Government procurement of property or services, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination with respect to (1) the choice, retention or treatment of contractors, subcontractors, subgrantees or of any other person; (2) the provision of services, facilities, or financial aid; (3) the participation of any party in the research activities; (4) the dissemination to or use by any person of the results or benefits of the research or development, whether in the form of information, products, services, facilities, resources, or otherwise. If research is performed within an educational institution under which it is expected that students or others will participate in the research as a part of their experience or training, on a compensated or uncompensated basis, there shall be no discrimination in admission of students to, or in their treatment by, that part of the school from which such students are drawn or in the selection otherwise of trainees or participants. The recipient educational institutions will be required to give the assurances provided in § 8.5 (b)(10).

(f) *Assistance to aid in the operations of vessels engaged in U.S. foreign commerce.* In programs in which the operators of American-flag vessels used to furnish shipping services in the foreign commerce of the United States receive Federal financial assistance in the form of operating differential subsidies, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in soliciting, accepting or serving in any way passengers or shippers of cargo entitled to protection in the United States under the Act.

Subpart B—General Compliance

§ 8.7 Cooperation, compliance reports and reviews and access to records.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients and other parties subject to this part in obtaining compliance with this part and shall provide assistance and guidance to recipients and other parties to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient and other party subject to this part shall keep such records and submit to the responsible Department official timely, complete, and accurate compliance reports at such times and in such form and containing such information as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient or such other party has complied or is complying with this part. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, or under which a recipient is obligated to obtain or to cooperate in obtaining the compliance of other parties subject to this part, such other recipients or other parties shall also submit such compliance reports to the primary recipient or recipients as may be necessary to enable them to carry out their obligations under this part.

(c) *Access to sources of information.* Each recipient or other party subject to this part shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascer-

tain compliance with this part. Where any information required of a recipient or other party is in the exclusive possession of another who fails or refuses to furnish this information, the recipient or other party shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient or other party subject to this part shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as this part and the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(e) *Compliance review.* The responsible Department official or his designee shall from time to time review the practices of recipients and other parties subject to this part to determine whether they are complying with this part.

§ 8.8 Complaints.

(a) *Filing complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint shall be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

§ 8.9 Intimidatory or retaliatory acts prohibited.

(a) No recipient or other party subject to this part shall intimidate, threaten, coerce, or discriminate against, any person for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

(b) The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial or other proceeding arising thereunder.

§ 8.10 Investigations.

(a) *Making the investigation.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation shall include, where appropriate, a review of the pertinent practices and policies of the recipient or other party subject to this part, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether there has been a failure to comply with this part.

(b) *Resolution of matters.* (1) If an investigation pursuant to paragraph (a) of this section indicates a failure to comply with this part, the responsible Department official will so inform the recipient or other party subject to this part and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 8.11.

(2) If an investigation does not warrant action pursuant to paragraph (b) (1) of this section, the responsible Department official will so inform the recipient or other party subject to this part and the complainant, if any, in writing.

§ 8.11 Procedures for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractural undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 8.5.* If a recipient or other party subject to this part fails or refuses to furnish an assurance required under § 8.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under said paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application or contract therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the recipient or other party subject to this part of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by such recipient or other party to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 8.13(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient or other party as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other party has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other party. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other party to comply with this part and to take such corrective action as may be appropriate.

§ 8.12 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.11(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient or other party subject to this part. This notice shall advise the recipient or other party of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient or other party may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the recipient or other party that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient or other party may waive a hearing and submit written information and argument for the record. The failure of a recipient or other party to request a hearing under this paragraph of this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 8.11(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official or hearing officer unless he determines that the convenience of the recipient or other party or of the Department requires that another place be selected. Hearings shall be held before the

responsible Department official, or at his discretion, before a hearing officer.

(c) *Right to counsel.* In all proceedings under this section, the recipient or other party and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedures Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the recipient or other party shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 8.13.

§ 8.13 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the recipient or other party subject to this part. Where the initial decision is made by the hearing officer, the recipient or other party may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the recipient or other party a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing officer pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the recipient or other party shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the recipient or other party and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 8.12(a) a decision shall be made by the responsible departmental official on the record and a copy of such decision shall be given in writing to the recipient or other party, and to the complainant, if any.

(d) *Ruling required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the recipient or other party has failed to comply.

(e) *Approval by Secretary.* Any final decision of a responsible Department official (other than the Secretary) which provides for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the recipient or other party determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) Any recipient or other party which is adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any recipient or other party adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the recipient or other party has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the recipient or other party may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules of procedure issued by the responsible Department official. The recipient or other party will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 8.14 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 8.15 Effect on other laws; supplementary instructions; coordination.

(a) *Effect on other laws.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to any recipient or other party subject to this part of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that

nothing in this part shall be deemed to relieve any one of any obligations assumed or imposed under any such superseded regulation, order, instructon, or like direction prior to January 9, 1965. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Order 11246 and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official shall issue and promptly make available to interested parties forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 8.13), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

Dated: July 14, 1972.

PETER G. PETERSON,
Secretary of Commerce.

APPENDIX A

I. FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Loans, grants, technical and other assistance for public works and development facilities, for supplementing Federal grants-in-aid, for private businesses, and for other purposes, including assistance in connection with designated economic development districts and regions, under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 et seq.) and its predecessor Area Redevelopment Act (42 U.S.C. 2501 et seq.).

2. Operating differential subsidy assistance to operators of U.S. flag vessels engaged in U.S. foreign commerce (46 U.S.C. 1171 et seq.).

3. Assistance to operate State Maritime Academies and Colleges to train merchant marine officers (46 U.S.C. 1381–1388).

4. Assistance to trade fair operators (46 U.S.C. 1122b).

5. Trade adjustment assistance to eligible U.S. businesses under the Trade Expansion Act of 1962 (19 U.S.C. 1911–1920).

6. Grants to nonprofit institutions or organizations to further or obtain scientific research to be made available to the public or interested businesses or organizations (e.g., 42 U.S.C. 1891–1893).

7. Assistance to upgrade commercial fishing vessels and gear (16 U.S.C. 742c).

8. Trade adjustment assistance to eligible U.S. businesses under the Automotive Products Trade Act of 1965 (Public Law 89–283, 79 Stat. 1016).

9. Assistance to State projects designed for the research and development of commercial fisheries resources of the nation (16 U.S.C. 779a–779f).

10. Assistance to States in controlling and eliminating jellyfish, other such pests and floating seaweed (16 U.S.C. 1201 et seq.).

11. Assistance to States and other non-Federal interests under cooperative agreements to conserve, develop, and enhance Anadromous and Great Lakes Fisheries (16 U.S.C. 757a et seq.).

12. Assistance to States in the acquisition, development, and propagation of disease resistant oysters (16 U.S.C. 760j–760l).

13. Fishing Development of the South Pacific—Cooperation with State agencies, island governments and educational, industrial or other organizations or individuals in conducting fishing exploration and scientific studies for development and utilization of the high seas fishing resources of the Pacific Ocean (16 U.S.C. 758b).

14. Migratory Marine Fishing Program—Cooperation or contract with State and other institutions or agencies in research and study of migratory marine fish of interest to recreational fishermen (16 U.S.C. 760f).

15. Grants for education and training of personnel in commercial fishing (16 U.S.C. 760d).

16. Grants and other assistance under the National Sea Grant College and Program Act of 1966 (33 U.S.C. 1121–1124).

17. Cooperation with State or local governments, private agencies, organizations or individuals interested in fishery commodities in order to promote the flow of domestic fishery products by conducting an educational service and fishery technological, biological and related research programs (15 U.S.C. 713c–3).

II. A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE LISTED IN APPENDIX AI WHICH IS AUTHORIZED BY EACH OF THE FOLLOWING STATUTES IS TO PROVIDE EMPLOYMENT

1. Public Works and Economic Development Act of 1965, as amended, and predecessor Area Redevelopment Act.

2. Trade Expansion Act of 1962.

[FR Doc.73-13283 Filed 7-3-73;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER II—TENNESSEE VALLEY AUTHORITY

PART 302—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF TVA-EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

1. The entry for § 302.11 in the table of contents for Part 302 is revised to read:

Sec.
302.11 Effect on other regulations; supervision and coordination.

2. Subparagraphs (3) and (4) of paragraph (b) of § 302.3 are renumbered as subparagraphs (4) and (5), respectively, and the following new subparagraphs (3) and (6) are inserted:

§ 302.3 Discrimination prohibited.

* * * * *

(b) * * *

(3) In determining the site or location of facilities, a recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

* * * * *

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

3. Paragraph (b) of § 302.4 is revised to read as follows:

§ 302.4 Assurances required.

* * * * *

(b) In the case of real property, structures or improvements thereon, or interests therein, which is acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer by TVA of real property or interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a trans-

feree of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

4. Paragraph (d) of § 302.7 is revised to read as follows:

§ 302.7 Procedure for effecting compliance.

* * * * *

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

5. Paragraph (d)(1) of § 302.8 is revised to read as follows:

§ 302.8 Hearings.

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

* * * * *

6. A new paragraph (g) is added to § 302.9 as follows:

§ 302.9 Decisions and notices.

* * * * *

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if he satisfies the terms and conditions of that order for such eligibility or if he brings himself into compliance with this regulation and provides reasonable assurance that he will fully comply with this regulation.

(2) Any recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request TVA to restore fully his eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the recipient has met the requirements of subparagraph (1) of this paragraph. If TVA determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a request for a hearing in writing, specifying why he believes TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient will be restored to such eligibility if he proves at such a hearing that he satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

1. The title of § 302.11 is revised, the existing language of the section is designated paragraph (a), and a new paragraph (b) is added, all to read as follows:

§ 302.11 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by TVA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Order 11246 and regulations issued thereunder, or (2) any other regulations or instructions, insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Supervision and coordination.* TVA may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 302.9), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by TVA.

8. The heading of Appendix A is revised to read:

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Effective date. The foregoing amendments will become effective on July 5, 1973.

DATED: June 1, 1972.

TENNESSEE VALLEY AUTHORITY,
LYNN SEEBER,
General Manager.

[FR Doc. 73-13307 Filed 7-3-73;8:45 am]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER O—CIVIL RIGHTS

[Dept. Reg. 108.675]

PART 141—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF STATE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

A notice of proposed rulemaking was published in the FEDERAL REGISTER on December 9, 1971 (36 FR 23464–23466) to amend Part 141 of Title 22 of the Code of Federal Regulations. The amendments were uniform amendments issued for the purpose of effecting necessary clarification to the Title VI regulations proposed by all Government agencies having Title VI responsibilities.

As a result of comments received, certain changes have been made to the proposed amendments to conform to the uniform agency amendments. A new provision (vii) is added to section 141.3 to prohibit discrimination in the selection of planning and advisory boards; the requirement that a recipient take affirmative action to eliminate discrimination is clarified in § 141.5; § 141.5(b) is amended to require that recipients maintain data showing the extent to which minority group persons receive the benefits of Federal financial assistance; and § 141.6(b) is revised to extend the time limit for filing complaints from 90 days to 180 days.

Accordingly, Part 141 is amended as set forth below.

1. Section 141.2 is revised to read as follows:

§ 141.2 Application of this part.

This part applies to any program for which Federal financial assistance, as defined in this part, is authorized under a law administered by the Department including, but not limited to, the Federally

assisted programs and activities listed in Appendix A of this part. It applies to Federal financial assistance of any form, including property which may be acquired as a result of and in connection with such assistance, extended under any such program after the effective date of this regulation, even if the application is approved prior to such effective date. This part does not apply to: (a) Any Federal financial assistance by way of insurance of guaranty contracts; (b) money paid, property transferred, or other asssitance extended under any such program before the effective date of this regulation; (c) any assistance to any individual who is the ultimate beneficiary under any such program; or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 141.3(d), or (e) any assistance to an activity carried on outside the United States by a person, institution, or other entity not located in the United States. The fact that a program or activity is not listed in Appendix A of this part shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Transfers of surplus property in the United States are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

2. In § 141.3, subparagraphs (1)(vi) are amended and a new subparagraph (vii) is added to paragraph (b); paragraph (b)(2) is amended; and new paragraphs (b)(5) and (d) are added to read as follows:

§ 141.3 Discrimination prohibited.

* * * * *

(b) * * *

(1) * * *

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under the program, including the opportunity to participate in the program as an employee in accordance with paragraph (d) of this section.

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the location or site of any facilities, or services, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration or select locations or sites for any facilities or services, which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

* * * * *

(5)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

* * * * *

(d) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is: (i) To reduce the unemployment of such individuals or to help them through employment to meet subsistence needs; (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training; (iii) to provide work experience which contributes to the education or training of such individuals; or (iv) to provide remunerative activity to such individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (d)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

3. In § 141.4, paragraphs (a) and (b)(1) are revised and a new paragraph (c) is added to read as follows:

§ 141.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, shall contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. The assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application.

(2) In any case where the Federal assistance is to provide, or is in the form of personal property, or real property or structures or any interest therein, or such property is acquired as a result of and in connection with such assistance, the assurance shall obligate the recipient, or, in case of subsequent transfers, the transferees, for the period during which the property is used for a purpose for which the Federal assistance was, or is extended, or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Any assurance relating to property provided under or acquired as a result of or in connection with such assistance shall as appropriate require any instrument effecting or recording transfer, title or other evidence of ownership or right to possession, to include a covenant or condition assuring nondiscrimination for the period of obligation of the recipient or any transferee, which may contain a right to be reserved to the Department to revert title or right to possession. Where no transfer of property is involved, but property is improved or any interest of the recipient or transferee therein is increased as a result of a program of Federal financial assistance, the recipient or transferee shall agree to include such covenant or condition in any subsequent transfer of such property. Failure to comply with any such conditions or requirements contained in such assurances shall render the recipient and the transferees, where appropriate, presumptively in noncompliance.

(3) The responsible Departmental official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

* * * * *

(c) *Elementary and secondary schools.* The requirements of paragraph (a)(1) of this section, with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is sub-

ject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurances that it will comply with such order, or (2) submits a plan the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

4. Section 141.5(b) is revised to read as follows:

§ 141.5 Compliance information.

* * * * *

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Departmental official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as a responsible Departmental official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

* * * * *

5. Section 141.6(b) is revised to read as follows:

§ 141.6 Conduct of investigations.

* * * * *

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Departmental official a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his designee.

* * * * *

6. Section 141.7(a) is revised to read as follows:

§ 141.7 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

* * * * *

7. In § 141.8, paragraphs (b), (d), and (e) are amended to read as follows:

§ 141.8 Hearings.

* * * * *

(b) *Time and place of hearing.* Hearings shall normally be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official. Hearings shall be held before an official designated by the Secretary other than the responsible Department official, in accordance with 5 U.S.C. 3105 and 3344 (formerly section 11 of the Administrative Procedure Act).

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted with as much conformity as is practicable with 5 U.S.C. 554–557 (formerly sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(e) *Consolidated or joint hearings; hearings before other agencies.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part, except that procedural requirements of the hearing agency if other than this Department may be adopted insofar as it is determined by the Secretary that variations from the procedures described in this section or elsewhere as may be required under this part do not impair the rights of the parties. The Secretary may also transfer the hearing of any complaint to any other department or agency, with the consent of that Department or Agency, (1) where Federal financial assistance to the applicant or recipient of the other Department or Agency is substantially greater than that of the Department of State, or (2) upon determination by the Secretary that such transfer would be in the best interests of the Government of effectuating this part. Final decisions in all such cases, insofar as this part is concerned, shall be made in accordance with § 141.9.

8. A new paragraph (g) is added to § 141.9 to read as follows:

§ 141.9 Decisions and notices.

* * * * *

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Departmental official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information establishing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Departmental official determines that those requirements have been satisfied, he shall restore such eligibility, but such determination shall be in writing and shall be supported by evidence and findings of fact which shall be retained by the Department.

(3) If the responsible Departmental official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Departmental official. The burden of substantiating compliance with the requirements of paragraph (g)(1) of this section shall be on the applicant or recipient. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

9. In § 141.11, paragraph (b) is amended to read as follows:

§ 141.11 Effect on other regulations; forms and instructions.

* * * * *

(b) *Supervision and coordination.* The Secretary may, from time to time, assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part including the achievement of effectiveness coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Department.

10. In § 141.12, paragraphs (e) and (f) are amended and a new paragraph (j) is added to read as follows:

§ 141.12 Definitions.

* * * * *

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, and (4) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance or other benefits to individuals whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient. Services, financial aid, or other benefits shall include those provided with the aid of or through any facility provided for by the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions in order to receive Federal assistance.

* * * * *

(j) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

11. The title of Appendix A is changed to read as follows:

GRANTS AND ACTIVITIES TO WHICH THIS PART APPLIES

(Sec. 602, Civil Rights Act of 1964, 78 Stat. 252; sec. 4, 63 Stat. 111, as amended; 42 U.S.C. 2000d; 22 U.S.C. 2658)

Effective date. These amendments shall be effective on July 5, 1973.

[SEAL] JOHN N. IRWIN II,
Acting Secretary of State.

AUGUST 31, 1972.

[FR Doc.73-13290 Filed 7-3-73;8:45 am]

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[A.I.D. Reg. 9]

PART 209—NON-DISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

On December 9, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 FR 23466) proposing amendments to Part 209 of title 22, Code of Federal Regulations, for the purpose of effecting necessary clarifications of this Agency's regulations implementing Title VI of the Civil Rights Act of 1964. The proposed amendments were published on behalf of this Agency by the Department of Justice, pursuant to that Department's responsibility under Executive Order 11247, to coordinate enforcement of Title VI.

Interested persons were invited to participate in the consideration of the proposed amendments by submitting written comments to the Assistant Attorney General, Civil Rights Division, Department of Justice, within thirty days of the publication of the notice of proposed rule making.

Comments on these amendments have been received and reviewed by the Civil Rights Division. On the basis of those comments, this Agency has been advised by the Civil Rights Division that no additions are required to be made to the proposed amendments. The Civil Rights Division has recommended that we take the necessary steps to adopt the proposals as final amendments.

Accordingly, the proposed amendments are hereby adopted without change and are set forth below.

Effective date. These amendments shall become effective on July 5, 1973.

Dated May 18, 1972.

JOHN A. HANNAH,
Administrator, Agency for International Development.

§ 209.4 [Amended]

1. The present § 209.4(b)(3) is redesignated as § 209.4(b)(4).

2. The present § 209.4(b)(4) is redesignated as § 209.4(b)(5).

3. The following new paragraph is added to the regulation and is designated as § 209.4(b)(3):

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

4. The following new paragraph is added to the regulation and is designated as § 209.4(b)(6):

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

5. Section 209.5(a)(2) is revised to read as follows:

§ 209.5 Assurance required.

(a) * * *

(2) In the case of real property, structures or improvements thereon, or interests therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Agency to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Agency official, such a condition and right of reverter is appropriate to the program

under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposed to mortgage or otherwise encumber the real property as security for financing construction of new or improvement of existing facilities on such property for the purposes for which the property was transferred, the Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

* * * * *

7. Section 209.8(d) is revised to read as follows:

§ 209.8 Procedure for effecting compliance.

* * * * *

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Agency official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 209.9 [Amended]

8. The last sentence of § 209.9(b) is revised to read as follows: "Hearings shall be held before the Administrator or before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act)."

9. The first sentence of § 209.9(d)(1) is revised to read as follows:

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper and not inconsistent with this section) relating to the conduct of the proper (and not inconsistent with this hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters.

10. The following new paragraphs are added to the regulation and designated as § 209.10(f):

§ 209.10 Decisions and notices.

* * * * *

(f) *Post Termination Proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the responsible Agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Agency official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 209.12 [Amended]

11. The last sentence of § 209.12(a) is revised to read as follows:

"Nothing in this part, however, shall be deemed to supersede any of the following (including future amendment thereof):

"(1) Executive Order 11246, and regulations issued thereunder, or (a) any other regulation or instruction insofar as it prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground."

12. The following new sentence is added to § 209.12 (b) at the end thereof: "Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Agency."

13. The title of Appendix A to the regulation is revised to read as follows:

FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS REGULATION APPLIES

[FR Doc.73-13292 Filed 7-3-73;8:45 am]

Title 24—Housing and Urban Development

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

[Docket No. R-71-107]

PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The purpose of these regulations is to further effectuate the provisions of title VI of the Civil Rights Act of 1964 and to make the Department of Housing and Urban Development's regulations consistent with the uniform amendments being adopted by Federal agencies under that title. On December 9, 1971 (36 FR 23467), the Department published a notice of proposed rule making to amend the existing regulations (29 FR 16280, Dec. 4, 1964, amended 32 FR 14819, Oct. 26, 1967 and 36 FR 8784, May 13, 1971) with comments to be submitted to the Department of Justice.

The comments received have been evaluated by the Department of Justice and HUD, and in response to these comments, the following changes have been made to the proposed regulations as noticed. In other respects, the amendment is adopted as published in the notice of rule making.

In § 1.4(b), a new item (vii) has been added to the list of prohibitions, that of discriminating in the selection of members of planning or advisory boards where the recipient of Federal aid has control over the board and the board is an integral part of the program receiving Federal aid.

Section 1.6(b) has been revised to expressly provide that racial and ethnic data should be made available by the recipient to the Department as part of the information necessary for determining compliance.

Section 1.4(b)(6) has been reworded and divided into two subparagraphs in order to clarify that affirmative action is required in those programs where discrimination as prohibited by § 1.4 has previously occurred, but may also be taken where conditions have resulted in limiting participation in a program to persons of a particular race, color or national origin.

In § 1.7(b) the time allowed a complainant for filing a complaint has been changed from 90 days to 180 days in order to make these regulations consistent with other civil rights laws. (42 U.S.C. 2000e-5(e); 42 U.S.C. 3610(b); 41 CFR 60-1.21)

Accordingly, Part 1 of Subtitle A of Title 24 of the Code of Federal Regulations is amended as follows:

Sec.
1.1 Purpose.
1.2 Definitions.
1.3 Applictaion of Part 1.

AUTHORITY: The provisions of this Part 1 issued under sec. 602, 78 Stat. 252, 42 U.S.C. 2000d–1; sec. 7(d), 79 Stat. 670, 42 U.S.C. 3535(d); and the laws listed in Appendix A to this Part 1.

§ 1.1 Purpose.

The purpose of this Part 1 is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

§ 1.2 Definitions.

As used in this Part 1—

(a) The term "Department" means the Department of Housing and Urban Development.

(b) The term "Secretary" means the Secretary of Housing and Urban Development.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this Part 1, any other Department official to whom the Secretary may hereafter delegate such authority.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants, loans, and advances of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The term "Federal financial assistance" does not include a contract of insurance or guaranty.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

(g) The term "applicant" means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, contract, request, or plan.

§ 1.3 Application of Part 1.

This Part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department, including any program or activity assisted under the statutes listed in Appendix A of this Part 1. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This Part 1 does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in § 1.4(c). The fact that certain financial assistance is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 1.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this Part 1 applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this Part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) (i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered

vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of subdivision (ii) of this subparagraph, this Part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this Part 1.

(4) As used in this Part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this Part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to Part III of Executive Order 11246 or any executive order which supersedes or amends it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this Part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this Part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this Part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

§ 1.5 Assurances required.

(a) *General.* (1) Every contract for Federal financial assistance to carry out a program or activity to which this Part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Part 1 shall extend to any facility located wholly or in part in such space.

(b) *Preexisting contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this Part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) *Preexisting contracts—periodic payments.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965, (1) submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this Part 1 and (2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this Part 1.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the

institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(c) *Elementary and secondary schools.* The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this Part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

§ 1.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject to this Part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part 1.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Part 1. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertainent to ascertain compliance with this Part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Part 1 and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmnt official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Part 1.

§ 1.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this Part 1.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this Part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this Part 1.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this Part 1, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Act or this Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this Part 1, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Part 1 may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1.5.* If an applicant fails or refuses to furnish an assurance required under § 1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to January 3, 1965.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Part 1, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or

terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this Part 1 and to take such corrective action as may be appropriate.

§ 1.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with sections 3105 and 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 and in accordance with the Practice and Procedure for Hearings issues by the Department and published in Part 2 of this subtitle relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part 1, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this Part 1 with respect to two or more programs or activities to which this Part 1 applies, or noncompliance with this Part 1 and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this Part 1. Final decisions in such cases insofar as this Part 1 is concerned, shall be made in accordance with § 1.10.

§ 1.10 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient by certified or registered mail, return receipt requested. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within the period provided for in the rules of Practice and Procedure for Hearings issued by the Department (Part 2 of this subtitle), file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official, in which event a copy shall also be sent to the complainant.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1.9(a) a decision a hearing examiner or responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of a hearing examiner or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Part 1 with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the program or activity involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Part 1, including provisions designed to assure that no Federal financial assistance will thereafter be extended for such program or activity to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Part 1, or to

have otherwise failed to comply with this Part 1, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Part 1.

(f) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibilty or if it brings itself into compliance with this Part 1 and provides reasonable assurance that it will fully comply with this Part 1.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with the Practice and Procedure for Hearings issued by the Department (Part 2 of this subtitle). The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 1.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against persons on the ground of race, color, or national origin under any program or activity to which this Part 1 applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant or recipient for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this Part 1, except that nothing in this Part 1 shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 3, 1965. Nothing in this Part 1, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Orders 11246 and 11375 and regulations issued thereunder, or

(2) Executive Order 11063 and regulations issued thereunder, or any other order, regulations or instructions, insofar as such order, regulations, or instructions, prohibit discrimination on the ground of race, color, or national origin in any program or activity or situation to which this Part 1 is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this Part 1 are issued and promptly made available to interested persons.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this Part 1 (other than responsibility for final decision as provided in § 1.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this Part 1 to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

Effective date. This part shall be effective July 5, 1973.

JAMES T. LYNN,
Secretary of Housing and Urban Development.

JUNE 29, 1973

APPENDIX A

FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO WHICH THIS PART 1 APPLIES

1. Advance Acquisition of Land. Sec. 704, Housing and Urban Development Act of 1965, 42 U.S.C. 3104.

2. Advice and Assistance with respect to Housing for Low and Moderate Income Families. Sec. 106, Housing and Urban Development Act of 1968, as amended by Sec. 903(a) Housing and Urban Development Act of 1970, 12 U.S.C. 1701x.

3. Alaska Housing Assistance. Sec. 1004, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.

4. College Housing Program. Title IV, Housing Act of 1950, 12 U.S.C. 1749.

5. Community Disposition Program, Atomic Energy Community Act of 1955, secs. 11–13, 21, 31–36, 41–43, 51–57, 61–66, 101–103, 111–119, 42 U.S.C. 2301; E.O. 11105, 28 F.R. 3909.

6. Comprehensive Planning Assistance and Comprehensive Planning Research and Demonstration Programs. Sec. 701, Housing Act of 1954, 40 U.S.C. 461.

7. Counselling Service to Mortgagors and Prospective Mortgagors. Sec. 237(e), National Housing Act, 12 U.S.C. 1715z–2.

8. Federal-State Training and City Planning and Urban Studies Fellowship Programs. Title VIII, Housing Act of 1964, 20 U.S.C. 801–807.

9. Grants for Housing Management Training. Sec. 803, Housing Act of 1964, 83 Stat. 393 (1969), 84 Stat. 1809 (1970), 20 U.S.C. 803.

10. Home Ownership for Lower Income Families. Sec. 235, National Housing Act, 12 U.S.C. 1715z.

11. Housing for Elderly or Handicapped. Sec. 202, Housing Act of 1959, 12 U.S.C. 1701q.

12. Loan and Grant Assistance for Planning Housing Projects in Appalachia, sec. 207, Appalachian Regional Development Act of 1965, as amended, 81 Stat. 257, 40 U.S.C. App. 207.

13. Low-Income Housing Demonstration Grant Program. Sec. 207, Housing Act of 1961, 42 U.S.C. 1436.

14. Low-Rent Public Housing Program (including housing in private accommodations). United States Housing Act of 1937, 42 U.S.C. 1401.

15. Model Cities Program. Title I, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301.

16. National Flood Insurance Program. Title XIII, Housing and Urban Development Act of 1968, 42 U.S.C. 4001.

17. Neighborhood Facilities Grants. Sec. 703, Housing and Urban Development Act of 1965, 42 U.S.C. 3103.

18. New Communities. Title IV, Housing and Urban Development Act of 1968, 42 U.S.C. 3901.

19. Loans and Grants for New Community Development Programs. Secs. 710 to 729, Housing and Urban Development Act of 1970, 42 U.S.C. 4511.

20. New Technologies in the Development of Housing for Lower Income Families. Sec. 108, Housing and Urban Development Act of 1968, 12 U.S.C. 1701z.

21. Open-Space Land Programs. Title VII, Housing Act of 1961, 42 U.S.C. 1500. Note.

22. Public Facilities Liquidating Programs. See, generally, title II of Independent Offices Appropriation Act of 1955, Public Law 83–428, 12 U.S.C. 1701g–5.

23. Public Facility Loans Program. Title II, Housing Amendments of 1955, 42 U.S.C. 1491–1497 except 1492(a)(2) Assistance for Mass Transportation Facilities and Equipment (transferred to Secretary of Transportation by Reorganization Plan No. 2 of 1968, 33 F.R. 6965).

24. Public Works Acceleration Act Program. Public Works Acceleration Act, 42 U.S.C. 2641.

25. Public Works Planning Advances. Sec. 702, Housing Act of 1954, 40 U.S.C. 462.

26. Rehabilitation Loan Program. Sec. 312, Housing Act of 1964, 42 U.S.C. 1452b.

27. Rent Supplement Program. Sec. 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

28. Rental and Cooperative Housing for Lower Income Families. Sec. 236, National Housing Act, 12 U.S.C. 1715z–1.

29. Research and Technology. Title V, Housing and Urban Development Act of 1970, 12 U.S.C. 1701z–1—1701z–4.

30. Sale of Surplus Federal Land for Housing, sec. 414, Housing and Urban Development Act of 1969, 40 U.S.C. 484b.

31. Special Assistance Functions. Sec. 305, National Housing Act. 12 U.S.C. 1720, including purchase of below market interest rate mortgages insured by FHA under sec. 221(d)(3). National Housing Act, 12 U.S.C. 1715*l*(d)(3).

32. Technical Assistance to Contractors or Subcontractors. Sec. 911(b), Housing and Urban Development Act of 1970, 15 U.S.C. 694(a). Note.

33. Urban Information and Technical Assistance Services. Title IX, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3351–3356.

34. Urban Mass Transportation Programs (Research, Development and Demonstration

Projects; Grants for Technical Studies; Grants for Research and Training). Secs. 6(a), 9, and 11 of the "Urban Mass Transportation Act of 1964, as amended"; Reorganization Plan No. 2 of 1968, 33 FR 6965; 49 U.S.C. 1605(a), 1607(a), 1609(c).

35. Urban Renewal Demonstration Grant Program. Sec. 314, Housing Act of 1954, 42 U.S.C. 1452a.

36. Urban Renewal Program (Urban Renewal Projects and Neighborhood Development Programs, Code Enforcement Programs, Demolition Programs, Rehabilitation Grants, Interim Assistance Grants, and Community Renewal Programs). Title I, Housing Act of 1949, 42 U.S.C. 1450.

37. Urban Research and Technology. Title III, Housing Act of 1948, 12 U.S.C. 1701e, 1701f; sec. 602, Housing Act of 1956, 12 U.S.C. 1701d–3; and secs. 1010 and 1011, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3372 and 3373.

38. Water and Sewer Facilities Grants. Sec. 702, Housing and Urban Development Act of 1965, 42 U.S.C. 3102.

[FR Doc.73-13286 Filed 7-3-73;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 519–73]

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI

REGULATIONS TO IMPLEMENT TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 WITH RESPECT TO FEDERAL ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE

By virtue of the authority vested in me by section 602 of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–1, Subpart C of Part 42 of Title 28, Code of Federal Regulations, is amended as follows:

§ 42.103 [Amended]

1. Section 42.103 is amended by deleting in the last sentence the phrase "(b) any employment practice concerning which the primary purpose of the Federal assistance is not that of providing employment as described in § 42.104 (c)" and substituting the following: "(b) employment practices except to the extent described in § 42.104(c)."

2. Section 42.104(b) is amended by adding the following new subparagraph (1)(vii) at the end thereof, and by renumbering subparagraphs (3) and (4) as (4) and (5) and adding new subparagraphs (3) and (6) as set forth below. Section 42.104(c) is amended by designating the present provision as subparagraph (1) and adding the following sentence at the end thereof and by adding the following new subparagraph (2):

§ 42.104 Discrimination prohibited.

* * * * *

(b) *Specific discriminatory actions prohibited.* (1) * * *

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

* * * * *

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

* * * * *

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c)(1) * * * The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (c)(1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

3. In § 42.105, paragraph (a) is amended by designating the present provision as subparagraph (1) and by substituting the following for the second sentence of that provision; by adding a new subparagraph (2) reading as set forth below; and by adding a new paragraph (d), reading as set forth below.

§ 42.105 Assurance required.

(a) *General.* (1) * * * In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. * * *

(2) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

* * * * *

(d) *Continuing State programs.* Any State or State agency administering a program which receives continuing Federal financial assistance subject to this regulation shall as a condition for the extension of such assistance (1) provide a statement that the program is (or, in the case of a new program, will be) conducted in compliance with this regulation, and (2) provide for such methods of administration as are found by the responsible Department official to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation.

§ 42.106 [Amended]

4. Section 42.106(b) is amended by inserting the following after the first sentence: "In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs."

§ 42.107 [Amended]

5. Section 42.107(b) is amended by deleting "90 days" and substituting "180 days."

§ 42.109 [Amended]

6. In § 42.109, paragraph (b) is amended by deleting the phrase "section 11 of the Administrative Procedure Act" and substituting the following: "5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act)." Paragraph (d) of § 42.109 is amended by deleting the phrase "sections 5 through 8 of the Administrative Procedure Act (5 U.S.C. 1004 through 1007)" and substituting the following: "5 U.S.C. 554–557 (sections

5–8 of the Administrative Procedure Act)."

7. Section 42.110 is amended by adding the following new paragraph (g) at the end thereof:

§ 42.110 Decisions and notices.

* * * * *

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

8. In § 42.112, paragraph (a) is amended by deleting the phrase "part or of any" and substituting the following: "part or Executive Order 11114 or 11246, as amended, or of any." Paragraph (d) of § 42.112 is amended by substituting "§ 42.110(e)" for "§ 42.110(d)" in the first sentence and by adding at the end the following sentence: "Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Attorney General."

9. Appendix A to Subpart C is amended to read as follows:

APPENDIX A—ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

1. Assistance provided by the Law Enforcement Assistance Administration pursuant to the Law Enforcement Assistance Act of 1965, and title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3711–3781.

2. Assistance provided by the Federal Bureau of Investigation through its National Academy and law enforcement training activities pursuant to title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3744.

3. Assistance provided by the Bureau of Narcotics and Dangerous Drugs pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 872.

Dated: Dec. 19, 1972.

RICHARD G. KLEINDIENST,
Attorney General.

[FR Doc.73-13288 Filed 7-3-73;8:45 am]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 31—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF LABOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

Pursuant to the authority contained in section 602 of title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), part 31 of title 29 of the Code of Federal Regulations is hereby amended.

Part 31 will be amended to reflect current statutory citations and to add several paragraphs, and to redesignate several paragraphs. These amendments incorporate uniform revisions being jointly adopted by Federal agencies to put into effect clarifications to the regulations enacted pursuant to title VI of the Civil Rights Act of 1964. In addition, these amendments reflect other minor changes, such as the deletion of obsolete statutory references and the substitution of new statutory references.

1. In § 31.3 a new subdivision (viii) is added to paragraph (b)(1), paragraph (b)(3) and (4) is redesignated as paragraph (b)(4) and (5), and a new paragraph (b)(3) and (6) is added. Paragraph (c) is deleted, and new paragraphs (c) and (d) are added. Also, § 31.4 is redesignated § 31.3(d)(1), § 31.5 is redesignated § 31.3(d)(2), § 31.6 is redesignated § 31.3(d)(3). As amended, § 31.3 reads as follows:

§ 31.3 General standards.

* * * * *

(b)(1) * * *

(viii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

* * * * *

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the ground of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section the services, financial aid, or other benefit provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program shall take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(7) The following will illustrate the application of the provisions of the foregoing paragraph to programs for which Federal financial assistance is furnished by this Department:

(i) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 31.5(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(ii) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In some circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups not then being adequately served. For example, where an employment service office is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which

this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program including recruitment, examination, appointment, training, promotion, retention or any other personnel action.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provision of the foregoing paragraph shall apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries. Accordingly, the employment practices of recipients under programs enumerated in §§ 31.3(d) (2) and 31.3(d) (3) are subject to the provisions of this paragraph (c) to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, the beneficiaries of the Federal financial assistance. Any action taken by the Department pursuant to this provision with respect to a State or local agency subject to the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, shall be consistent with those standards and shall be coordinated with the United States Civil Service Commission.

(3) The requirements applicable to construction employment under any program for which Federal financial assistance is furnished by this Department shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(d) In order that all parties may have a clear understanding of the applicability of the regulations in this part to their activities, there are listed in this section programs and activities together with illustrations by way of example only, of types of activity covered by the regulations in this part. These illustrations and examples, however, are not intended to be all inclusive. The fact that a particular program is not listed does not, of course, indicate that it is not covered by the regulations in this part. Moreover, the examples set forth with respect to any particular listed program are not limited to that program alone and the prohibited actions described may also be prohibited in other programs or activities whether or not listed below.

(1) *Employment service programs.* (i) The registration, counseling, testing, recruitment, selection and referral of individuals for job openings or training opportunities and all other activities performed by or through employment service offices financed in whole or in part from Federal funds, including the establishment and maintenance of physical facilities, shall be conducted without regard to race, color, or national origin.

(ii) No selection or referral of any individual for employment or training shall be made on the basis of any job order or request containing discriminatory specifications with regard to race, color, or national origin.

(2) *Manpower Development and Training Act, work-incentive under Social Security Act, Area Redevelopment Act, work-training under Economic Opportunity Act and other Government-sponsored training.* (i) The registration, counseling, testing, guidance, selection, referral or training of any individual including employment as an enrollee under title I–B of the Economic Opportunity Act shall be furnished without discrimination because of race, color, or national origin.

(ii) The recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to any trainee or enrollee under the Manpower Development and Training Act, Area Redevelopment Act, or the Economic Opportunity Act while the individual is receiving training or employment shall be without regard to race, color or national origin.

(3) *State and Federal Unemployment Insurance Programs; allowances under Trade Readjustment Assistance Programs, Manpower Development and Training Act, and Area Redevelopment Act.* (i) The filing for, adjudication and payment of benefits, establishment and maintenance of physical facilities and other application of the laws shall be without regard to race, color or national origin.

2. Section 31.7 is redesignated § 31.5 and paragraph (b) is revised. Revised § 31.5 reads as follows:

§ 31.5 Compliance information.

* * * * *

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Secretary timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

* * * * *

3. Section 31.6 is a new section and reads as follows:

§ 31.6 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every contract, subcontract, agreement or arrangement to carry out such program except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility, and every contract, subcontract, agreement or arrangement to provide such a facility shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contract, subcontract, agreement or arrangement contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of

the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purpose for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he deems appropriate, to subordinate such right of reversion to the sum of such mortgage or other encumbrance.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

4. Section 31.8 is redesignated § 31.7 and paragraphs (b) and (d) are revised. As revised § 31.7 reads as follows:

§ 31.7 Conduct of investigations.

* * * * *

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

* * * * *

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 31.8.

* * * * *

§ 31.8 [Redesignated]

5. Section 31.9 is redesignated as § 31.8.

6. Section 31.10 is redesignated § 31.9 and is amended as follows:

§ 31.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 31.8(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this section or to appear at a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 31.8(b) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary or before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

* * * * *

(e) *Consolidated or Joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings or rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 31.10.

7. Section 31.11 is redesignated as § 31.10 and is revised by amending paragraph (c) and by adding a new paragraph (f) to read as follows:

§ 31.10 Decisions and notices.

* * * * *

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 31.9(a) a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.

* * * * *

(f) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (c) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (c) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f) (1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f) (1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 31.11 [Redesignated]

8. Section 31.12 is redesignated as § 31.11.

9. Section 31.13 is redesignated as § 31.12 and is amended as follows: Paragraph (a) is amended, paragraph (b) is renumbered (b) (1) and a new paragraph (b) (2) is added. As revised § 31.12 reads as follows:

§ 31.12 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* All regulations, orders or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligations assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925, 11114 and 11246 and regulations issued thereunder, (2) the "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 23 FR 734, or (3) any other regulation or instruction insofar as it prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* (1) The Secretary may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 31.11), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations.

(2) Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Secretary.

(Sec. 602, 42 U.S.C. 2000d; 42 U.S.C. 501; 29 U.S.C. 49k; and 5 U.S.C. 301)

Signed at Washington, D. C., August 28, 1972.

J. D. HODGSON,
Secretary of Labor.

[FR Doc.73-13289 Filed 7-3-73;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER Q—CIVIL RIGHTS

PART 300—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

The following changes are being made in this part in accordance with uniform regulation amendments being jointly adopted by Federal departments and agencies to clarify their regulations issued pursuant to Title VI of the Civil Rights Act of 1964.

§ 300.3 [Amended]

1. In § 300.3 *Applicability*, the second and third sentence of § 300.3 are changed from "It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this Directive pursuant to approval prior to such effective date. This Directive does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred or other assistance extended under any such program before the effective date of this Directive, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, if any employer, employment agency, or labor organization" to "This Directive applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 7, 1965 pursuant to an application approved prior to such date. This Directive does not apply to (a) any Federal financial assistance by way of insurance guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before January 7, 1965, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as noted in subsection § 300.4(b)(5) below."

2. Section §300.4 *Policy* is amended as follows: a. In paragraph (b)(1) by adding new subdivisions (iii) and (viii) and renumbering subdivisions (iii), (iv), (v) and (vi) as (iv), (v), (vi) and (vii);

b. by amending paragraph (b)(4) and renumbering it as (6) and by adding the new subparagraph (4) and (5) set forth below; The amended portions of § 300.4 read as follows:

§ 300.4 Policy.

* * * * *

(b) * * *

(1) * * *

(iii) In determining the site or location of facilities, a recipient may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(iv) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(v) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(vi) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vii) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

(viii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

* * * * *

(4)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(5) Where a primary objective of the Federal financial assistance is not to provide employment, but nevertheless discrimination on the grounds of race, color or national origin in the employment practices of the recipient or other persons subject to this Directive tends, on the grounds of race, color, or national origin of the intended beneficiaries, to exclude intended beneficiaries from participation in, to deny them benefits of, or to subject them to discrimination under any program to which this Directive applies, the recipient or other persons subject to this Directive are prohibited from (directly or through contractual or other arrangements) subjecting an individual to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising; employment, layoff or

termination; upgrading, demotion or transfer; rates of pay other forms of compensation; and use of facilities), to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of the beneficiaries. Any action taken by a Component pursuant to this provision with respect to a state or local agency subject to Standards for a Merit System of Personnel Administration, 45 CFR Part 70, shall be consistent with those standards and shall be coordinated with the United States Civil Service Commission.

(6) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in paragraph (a) of this section.

3. Section § 300.6 *Assurances required* is amended as follows: a. By designating the first sentence of present paragraph (a)(1) as (1)(i), by amending the second sentence of present paragraph (a)(1) to read as set forth below, by deleting the third sentence of present paragraph (a)(1), and by designating the second sentence and the remainder of the subparagraph as (1)(ii);

b. By deleting present paragraph (a)(2) and substituting the new paragraph (a)(2) set forth below;

c. By amending the first sentence of paragraph (b) to read as set forth below;

d. By adding the new paragraph (d) set forth below.

The amended portions of § 300.6 reads as follows:

§ 300.6 Assurances required.

(a) *General.* (1)(i) * * *

(ii) In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. * * *

(2) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. In programs receiving Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

(b) *Continuing State programs.* Every application by a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part. * * *

* * * * *

(d) *Elementary and secondary schools.* The requirement of paragraph (a), (b), or (c) of this section, with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the said Department officer may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purpose of the Act or this part within the earliest practicable time. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of said order.

§ 300.7 [Amended]

4. In § 300.7 *Compliance information*, paragraph (b) is amended by adding after the first sentence, the following new sentence: "In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs."

§ 300.8 [Amended]

5. In § 300.8 *Conduct of investigations*, the second sentence of paragraph (b) is amended by deleting "90 days" and substituting "180 days."

6. Section 300.11 *Decisions and notices*, is amended by adding new paragraph (g) as follows:

§ 300.11 Decisions and notices.

* * * * *

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this subsection are pending, the sanctions imposed by the order issued under

paragraph (f) of this section shall remain in effect.

Dated: September 20, 1972.

KENNETH RUSH,
Deputy Secretary of Defense.

[FR Doc.73-13284 Filed 7-3-73;8:45 am]

CHAPTER XVII—OFFICE OF EMERGENCY PREPAREDNESS

PART 1704—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Sec.
1704.1 Purpose.
1704.2 Definitions.
1704.3 Application of this part.
1704.4 Further application of this part.
1704.5 Specific discriminatory actions prohibited.
1704.6 Life, health, and safety.
1704.7 Assurances required.
1704.8 Elementary and secondary schools.
1704.9 Assurances from institutions.
1704.10 Compliance information.
1704.11 Conduct of investigations.
1704.12 Procedure for effecting compliance.
1704.13 Hearings.
1704.14 Decisions and notices.
1704.15 Judicial review.
1704.16 Effect on other regulations; forms and instructions.

AUTHORITY: Sec. 602, 78 Stat. 252, Public Law 81-875; 42 U.S.C. 1855-1855g; Public Law 89-769 and Public Law 91-79.

§ 1704.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Office of Emergency Preparedness.

§ 1704.2 Definitions.

As used in this part—

(a) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Director of the Office of Emergency Preparedness or other official of the agency who by law or by delegation has the principal responsibility within the agency for the administration of the law extending such assistance.

(b) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(c) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilites.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible agency official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

§ 1704.3 Application of this part.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by those receiving assistance under the "Federal Disaster Assistance" program (Public Law 91-606, 84 Stat. 1744, 42 U.S.C. 4401; Public Law 92-209, 85 Stat. 742).

§ 1704.4 Further application of this part.

Other programs under statutes hereafter enacted may be covered by this part. This part applies to any program for which Federal financial assistance is authorized under a law administered by the Office of Emergency Preparedness. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 8, 1965 pursuant to an application approved prior to such date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before January 9, 1965, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under such program, of any employer, employment agency, or labor organization, except to the extent described in § 1704.5.

§ 1704.5 Specific discriminatory actions prohibited.

(a) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny any individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which such services, financial aid, other benefits, or facilities will be

provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(c) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(d) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(e) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in § 1704.4.

(f) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

§ 1704.6 Life, health, and safety.

Nothwithstanding the provisions of § 1704.5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with § 1704.3, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health or safety.

§ 1704.7 Assurances required.

Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

§ 1704.8 Elementary and secondary schools.

The requirements of § 1704.7 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purpose of the Act and this part within the earliest practicable time, and provides reasonable assurance that it will carry out such plans; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case to which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

§ 1704.9 Assurances from institutions.

(a) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by § 1704.7 shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision of services or other benefits to such individuals; shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the Director of the Office of Emergency Preparedness that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1704.10 Compliance information.

(a) *Cooperation and assistance.* The responsible official in the Office of Emergency Preparedness shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives

Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this part.

§ 1704.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the National Office or any Regional Office of the Office of Emergency Preparedness a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

(c) *Investigations.* The responsible agency official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review or the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible agency official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1704.12.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible agency official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1704.12 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1704.7.* If an applicant fails or refuses to furnish an assurance required under § 1704.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such subsection except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application thereof approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Director of the Office of Emergency Preparedness pursuant to § 1704.14, and (4) the expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 1704.13 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1704.12(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1704.12(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the National Office of the Office of Emergency Preparedness in Washington, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedures Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedures Act), and in accordance with such rules of procedures as are proper and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant

evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Director of the Office of Emergency Preparedness may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1704.14.

§ 1704.14 Decisions and notices.

(a) *Decision by person other than the responsible agency official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever he conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of his final decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1704.13(a) a decision shall be made by the responsible agency official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible agency official shall set forth his rulings on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible agency official (other than the Director of the agency) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Director of the Office of Emergency Preparedness who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Director of the Office of Emergency Preparedness that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file and assurance of compliance with § 1704.5 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 1704.8, and provides reasonable assurance that it will comply with this court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section above may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible agency official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1704.15 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1704.16 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Office of Emergency Preparedness which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin, under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede Executive Orders 10925, 11114, and 11246 (including future amendments thereof and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable,

or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* (1) The Director of the Office of Emergency Preparedness may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purpose of title VI of the Act and this part (other than responsibility for final decision as provided in § 1704.14), including the achievement of effective coordination and maximum uniformity within the agency and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations.

(2) Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

This Part 1704 supersedes OEP Reg. 5 which was published in the FEDERAL REGISTER on January 9, 1965 (30 F.R. 321). OEP Reg. 5 is hereby revoked.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[F.R. Doc.73-13305 Filed 7-3-73;8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 18—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE VETERANS ADMINISTRATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

Pursuant to recommendations of the Interagency Committee for Uniform Title VI Regulation Amendments for the purpose of putting into effect clarifications to the regulations enacted pursuant to Title VI of the Civil Rights Act of 1964, Part 18, Chapter I of Title 38, Code of Federal Regulations—Nondiscrimination in Federally-Assisted Programs of the Veterans Administration—Effectuation of Title VI of the Civil Rights Act of 1964, is being amended.

The amendments are as follows:

1. Section 18.2 is revised to read as follows:

§ 18.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Veterans Administration, including the federally-assisted programs and activities listed in Appendix A to this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 18.3. The fact that a program or activity is not listed in Appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this part by notice published in the FEDERAL REGISTER.

2. In § 18.3, paragraph (b) is amended to read as follows:

§ 18.3 Discrimination prohibited.

* * * * *

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on grounds of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies on the grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

* * * * *

3. In § 18.4, paragraphs (a) and (b) are amended and paragraphs (c) and (d) are added so that the added and amended material reads as follows:

§ 18.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the

submission of such an assurance. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR Subpart 101–6.2).

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in App. A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible agency official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part. In any case in which the recipient is claiming financial assistance under a continuing program pursuant to arrangements entered into prior to the effective date of this part, the assurances provided by this paragraph shall be included in the first application or claim for assistance on or after the effective date of this part.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible agency official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Extent of application to institution or facility.* In the case where any assurances are required from an academic, a medical care, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility. That requirement may be waived by the responsible agency official if the party furnishing the assurances establishes to the satisfaction of the responsible agency official that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is or is sought to be provided, or affect the beneficiaries of or participants in such program. If in any such case the assistance is or is sought for the construction of a facility or part of a facility, the assurances shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 18.5 [Revoked]

4. Section 18.5 is revoked. See Appendix B of this part.

5. In § 18.6, paragraph (b) is amended to read as follows:

§ 18.6 Compliance information.

* * * * *

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for the agency racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

* * * * *

6. In § 18.7, paragraph (b) is amended to read as follows:

§ 18.7 Conduct of investigations.

* * * * *

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible agency official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

* * * * *

7. In § 18.8, paragraph (d) is amended to read as follows:

§ 18.8 Procedure for effecting compliance.

* * * * *

(d) *Other means authorized by law.* No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by the Veterans Administration until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

8. In § 18.9, paragraphs (b) and (d)(1) are amended to read as follows:

§ 18.9 Hearings.

* * * * *

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Veterans Administration in Washington, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the Veterans Administration requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing decision and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) re-

lating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Veterans Administration and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

* * * * *

9. In § 18.10, paragraphs (a), (b), (c), (d) and (e) are amended and paragraph (g) is added so that the amended and added material reads as follows:

§ 18.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon includng the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitue the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the responsible agency official shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 18.9(a) a decision shall be made by the responsible agency official on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any final decision by a hearing examiner which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

* * * * *

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this section and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible agency official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

10. In § 18.12, paragraphs (a) and (c) are amended to read as follows:

§ 18.12 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Veterans Administration which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 (3 CFR, 1959–1963 Comp., p. 448), 11114 (3 CFR, 1959–1963, p. 774), and 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder, or (2) Executive Order 11063 (3 CFR, 1959–1963 Comp., p. 652) and regulations issued thereunder, or any other orders, regulations or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the grounds of race, color or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

* * * * *

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of the Veterans Administration or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 18.10) including the achievement of effective coordination and maximum uniformity within the Veterans Administration and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action has been taken by the responsible official of this Agency.

11. In § 18.13, paragraphs (c), (f) and (h) are amended and paragraph (i) is added so that the amended and added material reads as follows:

§ 18.13 Definitions.

As used in this part:

* * * * *

(c) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Administrator or other official of the Veterans Administration or an official of another department or agency to the extent the Administrator has delegated his authority to such official.

* * * * *

(f) The term "program," except those specifically excluded in § 18.2, includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals conducted under a law administered by the Veterans Administration, including but not

limited to the programs and activities listed in Appendix A to this part. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

* * * * *

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "applicant" means a person who submits an application, request, or plan required to be approved by the Administrator, or by a recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

12. Appendix B (formerly § 18.5) is added to read as follows:

APPENDIX B

ILLUSTRATIVE APPLICATIONS

The following examples, without being exhaustive, will illustrate the application of the nondiscrimination provisions to certain grants of the Veterans Administration. (In all cases the discrimination prohibited is discrimination on the grounds of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In grants which support the provision of health or welfare services for veterans in State homes, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the State as grantee under the program or by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 18.3(c).

(b) In grants to assist in the construction of facilities for the provision of health or welfare services assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of a State home for furnishing nursing home care, assurances will be required that there will be no discrimination in the admission or treatment of patients. In the case of such grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the nursing home, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith.

(c) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(d) A recipient may not take action that is calculated to bring about in directly what this part forbids it to accomplish directly. Thus a State, in selecting or approving projects or sites for the construction of a nursing home which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishment of the objectives of the Federal assistance program with respect to individuals of a particular race, color, or national origin.

(Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; 38 U.S.C. 641, 644, 5031–5037, 5055, 3402(a)(2), Chapters 31, 34, 35 and 36)

These VA Regulations are effective July 5, 1973.

Approved: August 2, 1972.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.73-13308 Filed 7-3-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER A—GENERAL

PART 7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

On June 2, 1972, the Environmental Protection Agency published (37 FR 11072) proposed regulations to implement title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. The regulations now promulgated as final regulations, after approval by the President pursuant to statutory requirement, reflect changes which have been made to the proposed regulations as a result of public comment which was received.

A provision has been added to § 7.8(e) to permit the Agency to promise that a complainant's name will be kept confidential, within certain limits. In addition, § 7.7(b) has been modified so that compliance reports may be required of applicants for financial assistance as well as recipients, which has been EPA practice. A number of minor changes and technical corrections have also been made. For administrative reasons, these regulations, which were published as proposed regulations for part 5 of title 40 are published as final regulations in part 7 of that title.

Effective date. The regulations of this part 7 shall become effective August 6, 1973, with respect to all grants awarded and assistance extended on or after such date. Grants awarded and assistance extended before such effective date shall continue to be governed by prior uncodified regulations and procedures (see 37 FR 11072), unless this part 7 is made applicable to such grants and assistance through a grant amendment or written agreement with the recipient.

WILLIAM D. RUCKELSHAUS,
Administrator.

Dated September 8, 1972.

Title 40 of the Code of Federal Regulations is amended by adding a new Part 7 to read as follows:

Sec.

AUTHORITY: Sec. 602 of the Civil Rights Act of 1964, 42 U.S.C. 2000d–1.

§ 7.1 Purpose.

The purpose of this part is to effectuate title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Act) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the Environmental Protection Agency (EPA).

§ 7.2 Definitions.

Unless the context requires otherwise, as used in this part the term:

(a) "Administrator" means the Administrator of the Environmental Protection Agency or, except in § 7.11(e), any other Agency official who by delegation may exercise the Administrator's authority.

(b) "Agency" means the Environmental Protection Agency and includes each and all of its organizational components.

(c) "Applicant" means one who submits an application, subagreement, request, plan, or any other document required to be approved by the Administrator, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, subagreement, request, plan, or any other such document.

(d) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the term "provision of facilities" includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(e) "Federal financial assistance" includes:

(1) Grants, loans, and advances of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or for less than adequate consideration for the purpose of assisting the recipient, or in recognition of the public interest to be served by such a sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) "Primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program for which it receives Federal financial assistance.

(g) "Program" includes any program, project, or activity for the provision of services, financial assistance, or other benefits to individuals (including education or training, health, welfare, housing, rehabilitation, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities or other assistance to individuals), or for the provisions of facilities for furnishing services, financial assistance, or other benefits to individuals. The services, financial assistance, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include (i) any services, financial assistance, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and (ii) any services, financial assistance, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-federal resources.

(h) "Recipient" means any State, or any political subdivision or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any individual, in any State to which or whom Federal financial assistance is extended, directly or through another recipient, for any program, or who otherwise participates in carrying out such program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, or any territory or possession of the United States.

§ 7.3 Applicability.

(a) This part applies to any program for which Federal financial assistance is authorized under a statute administered by the Agency, including all EPA grant programs and activities (including, but not limited to, those listed in 40 CFR 30.301–4) and assistance under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq. and the Disaster Relief Act of 1970, 42 U.S.C. 4401 et seq. It applies to any such program or activity to which money was paid, property transferred, or other Federal financial assistance exmoney was paid, property transferred, or other Federal financial assistance extended after the effective date of this part including assistance extended pursuant to an application approved prior to the effective date. This part does not apply to: (1) Any program funded only by Federal financial assistance by way of insurance or guaranty, (2) any such program to which money was paid, property transferred, or other assistance extended only before the effective date of this part except where such assistance was subject to the title VI regulations of an agency whose responsibilities are now exercised by this Agency, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice under any such program of any employer, employment agency, or labor organization, except as provided in § 7.4(c).

§ 7.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this part applies may not, directly or indirectly, on the ground of race, color, or national origin:

(i) Deny a person any service, financial assistance, or other benefit provided under the program;

(ii) Provide to a person any service, financial assistance, or other benefit which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial assistance, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial assistance, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial assistance, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services (or otherwise) or afford him an opportunity to participate in a manner different from that afforded others; or

(vii) Deny a person the opportunity to participate as a member of any planning or advisory body which is an integral part of the program.

(2) A recipient in determining the types of services, financial assistance, or other benefits or facilities which will be provided under any such program or the class of persons to whom, or the situations in which such services, financial assistance, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program may not, directly or indirectly, utilize criteria or methods of administration which have or may have the effect of subjecting a person to discrimination because of race, color, or national origin, or which have or may have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, or national origin.

(3) In any program receiving financial assistance in the form, or for acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space during the period of time stated in § 7.6(a)(2).

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* (1) Where a primary objective of a program receiving Federal financial assistance to which this part applies is to provide employment, a recipient or other person or entity subject to this part shall not discriminate, directly or indirectly, on the ground of race, color, or national origin in its employment practices under such program. Employment practices include recruitment, recruitment advertising employment, layoff, termination, firing, upgrading, demotion, transfer, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees. Each recipient shall take affirmative steps to insure that applicants are employed and employees are treated during employment without regard to race, color, or national origin. Where this part applies to construction employment, the applicable requirements shall be those specified in or pursuant to Part III of Executive Order 11246, as amended, or any Executive order which may supersede it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) of this section apply to the employment prac-

tices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (c)(1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) *Site selection.* A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the ground of race, color, or national origin.

(e) *Construction projects.* An EPA grantee of funds for the location, design, or construction of a demonstration facility or sewage treatment plant may not deny access to, or use of, the facility being constructed or the system of which it is a part of any person on the basis of race, color, or national origin.

§ 7.5 Affirmative action.

(a) Each applicant or recipient must take reasonable steps to remove or overcome the consequences of prior discrimination and to accomplish the purposes of the Act where previous practice or usage has in purpose or effect tended to exclude individuals from participation in, deny them the benefits of, or subject them to discrimination under any program or activity to which this part applies, on the ground of race, color, or national origin.

(b) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by, or denying benefits to, persons of a particular race, color, or national origin.

§ 7.6 Assurances required.

(a) *General.* (1) *Form of assurance.* Every application for Federal financial assistance to a program to which this part applies and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part, and that the applicant shall take affirmative steps to insure equal opportunity and shall periodically evaluate its performance. Like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which express consent to judicial enforcement by the United States.

(2) *Duration of assurance.* In cases where the Federal financial assistance is to provide or is in the form of either personal property or real property or any interest therein or structure thereon, the assurance shall obligate the recipient or in the case of a subsequent transfer, the transferee, for the period during which the property is used for any purpose for which the Federal financial assistance is or was extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program.

(3) *Assistance for construction.* In the case where the assistance is sought for the construction of a facility, or a part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. In particular, if a facility to be constructed is part of a larger system, the assurance shall extend to the larger system.

(4) *Assistance through transfer of real property.* Where Federal financial assistance is provided in the form of a transfer from the Federal Government of real property, structures, any improvements thereon, or any interest therein, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period for which the real property is used for a purpose for which the Federal financial assistnace is or was extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or an interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by the Agency to revert title to the property in the event of a breach of the covenant. Such a condition and right of reverter may be included in covenants for any grants or other assistance that the Administrator in his discretion deems appropriate for such treatment. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, (1) contain or be accompanied by a statement that that program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or under this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Administrator to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or under this part.

(c) *Assurances from educational institutions.* In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

§ 7.7 Compliance information.

(a) *Cooperation and assistance.* Each responsible Agency official shall seek the cooperation of recipients and applicants in obtaining compliance with this part and shall provide assistance and guidance to recipients and applicants to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient or applicant shall keep such records and submit to the responsible Agency official or his designee timely, complete, and accurate compliance reports at such times, in such form, and containing such information, as the responsible Agency official or his designee may determine to be necessary or useful to enable the Agency to ascertain whether the recipient or applicant has complied or is complying with this part. Recipients and applicants shall have available for Agency officials on request racial/ethnic and national origin data showing the extent to which minorities are or will be beneficiaries of the assistance. In the case of any program under which a primary recipient extends or will extend Federal financial assistance to any other recipient such other recipient shall submit such compliance reports to the primary recipient as may be necessary or useful to enable the primary recipient to carry out its obligations as a recipient or applicant under this part.

(c) *Access to source of information.* Each recipient shall permit access by the responsible Agency official or his designee during normal business hours to such of its facilities, books, records, accounts, and other sources of information as may be relevant to a determination of whether or not the recipient is complying with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and such agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it had made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries,

and other interested persons any information pertinent to the provisions of this part and its applicability to the program receiving Federal financial assistance which is necessary or useful to apprise such persons of the protections against discrimination assured them by the Act and by this part.

§ 7.8 Investigations.

(a) *Periodic compliance reviews.* The Administrator shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person or entity who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Administrator a written complaint. This complaint should be filed as promptly as possible after the date of the alleged discrimination.

(c) *Investigations.* The Administrator will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this part.

(d) *Resolution of investigations.* (1) If an investigation indicates a failure to comply with this part, the Administrator will so inform the recipient and complainant, if any, in writing, and the matter will be resolved by informal means whenever possible. If the Administrator determines that the matter cannot be resolved by informal means, action will be taken as provided for in § 7.9.

(2) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section, the Administrator will so inform the recipient and complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Act or by this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Administrator or his designee may agree to keep confidential the identity of any complainant except to the extent that disclosure would be required by law in proceedings for the enforcement of this part.

§ 7.9 Procedure for obtaining compliance.

(a) *General.* If compliance with this part cannot be assured by informal means, compliance with this part shall be effected by termination of or refusal to grant or to continue Federal assistance in accordance with the procedures of paragraph (b) of this section, or by any other means authorized by law in accordance with the procedures of paragraph (c) of this section. Such other means include, but are not limited to, (1) a referral of the matter to the Department of Justice with a recommendation that appropriate judicial proceedings be brought to enforce any rights of the United States under any law or assurance or contractual undertaking, and (2) any applicable proceeding under State or local law. A decision to take action under this section shall conform with "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 CFR 50.3.

(b) *Procedure for termination or refusal to grant or continue assistance.* An order terminating or refusing to grant or continue Federal assistance shall become effective only after:

(1) The Administrator has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or under this part;

(3) The action has been approved by the Administrator pursuant to § 7.11(e); and

(4) The expiration of 30 days after the Administrator has filed with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the program or activity involved, a full written report of the circumstances and the grounds for such action.

The termination or refusal to grant or continue assistance shall be limited to the particular political entity, or part thereof, or other recipient as to which a finding of noncompliance with title VI has been made and shall be limited in its effect to the particular program or part thereof in which such noncompliance has been so found.

(c) *Other means authorized by law.* No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken until:

(1) The Administrator has determined that compliance cannot be secured by voluntary means, and the recipient or other person against whom action will be sought has been notified of such determination; and

(2) The expiration of at least 10 days from the mailing of such notice to the recipient or such other person. During this period of at least 10 days, additional efforts may be made to persuade the recipient or such other person to take such corrective action as may be appropriate.

§ 7.10 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 7.9(b), reasonable notice shall be given by certified mail, return receipt requested, to the affected applicant or recipient. This notice shall fix a date not less than 3 weeks after the date of receipt of such notice within which the applicant or recipient may file with the Administrator a request in writing that the matter be scheduled for hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of th Act and § 7.9(b) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Agency in Washington, D.C., unless the Administrator determines that the convenience of the applicant or recipient or of the Agency requires that another place be selected. Hearings shall be held at a time fixed by the Administrator before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In any proceeding under this section, the applicant or recipient and the Agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (1970).

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute either (1) noncompliance with this part with respect to two or more types of Federal financial assistance to which this part applies, or (2) noncompliance with both this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Administrator may, by agreement where necessary with such other departments or agencies, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this Agency is concerned, shall be made in accordance with § 7.11.

§ 7.11 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* The hearing examiner shall make an initial decision, including his recommended findings and proposed decision, and a copy of such initial decision shall be mailed by certified mail (return receipt requested) to the applicant or recipient. The applicant or recipient may, within 30 days after the receipt of such

notice of initial decision, file with the Administrator his exceptions to the initial decision, and his reasons therefor. In the absence of exceptions, the Administrator may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Administrator shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Administrator.

(b) *Decisions on record on review by the Administrator.* Whenever the Administrator reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, the applicant or recipient, the Agency officials responsible, and the complainant, if any, shall be given reasonable opportunity to file with him briefs or other written statements of their contentions, and a written copy of the final decision of the Administrator shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 7.10(a), a decision shall be made by the Administrator on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any decision by an official of the Agency, other than the Administrator personally, which provides for the termination of, or the refusal to grant or continue, Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator personally, who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the program involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purpose of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to have failed to comply with requirements imposed by or under this part unless and until it corrects its noncompliance and satisfies the Administrator that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance from the Agency if it satisfies the terms and conditions of that order for such eligibility and brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part in the future.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Administrator to restore fully its eligibility to receive Federal financial assistance from the Agency. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Administrator determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Administrator denies any request made under paragraph (g)(2) of this section, the applicant or recipient may submit a request in writing for a hearing, specifying why it believes him to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Administrator. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. Failure to file such a request within 3 weeks after receipt of notice of such denial shall constitute consent to the Administrator's determination.

(4) While proceedings under paragraph (g) of this section are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 7.12 Judicial review.

Action taken under the Act is subject to judicial review as provided therein.

§ 7.13 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Agency, or by any predecessor of such an officer, which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that the discrimination against which they are directed is prohibited by this part, except that nothing in this part shall relieve any person of any obligation assumed or imposed under any such superseded regulations, order, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR 1965 Supp., page 167) and regulations issued thereunder, or (2) any other orders, regulations, or instructions insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Administrator shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of the Agency, or to officials of other departments or agencies of the government with the consent of such departments or agencies, responsibilities in connection with effectuation of the purposes of title VI of the Act and this part including the achievement of effective coordination and maximum uniformity within the Agency and within the Executive Branch of the government in the application of title VI and this part to similar programs and in similar situations. The Administrator may delegate in writing any function assigned (other than responsibility for final decision as provided in § 7.11) to him by the Act or by this part. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment or delegation of responsibility under this paragraph shall have the same effect as though such action had been taken by the Administrator of the Agency. All actions taken pursuant to this part with respect to EPA grants including written communications to or from a grant applicant or grantee shall be effected through the appropriate EPA Grants Officer.

[FR Doc.73-13298 Filed 7-3-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

PART 101-6 MISCELLANEOUS REGULATIONS

Nondiscrimination in Federally Assisted Programs

On pages 23488 through 23491 of the FEDERAL REGISTER of December 9, 1971, there was published a notice of a proposed rule making to issue regulations designed to ensure nondiscrimination in programs for which Federal financial assistance is authorized to be provided by GSA. Interested persons were invited to submit comments, suggestions, or objections regarding the proposed regulations.

Comments were submitted to and reviewed by the Civil Rights Division, Department of Justice, which determined that no additions are required to the GSA regulations. Accordingly, the proposed regulations are hereby adopted without change and are set forth below.

Effective date. These regulations shall be effective July 5, 1973.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

JULY 11, 1972.

The table of contents for Part 101–6 is amended to provide a revised title for Subpart 101–6.2 and new and revised section entries, as follows:

Subpart 101–6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

Sec.

101–6.207	[Reserved]
101–6.208	[Reserved]
101–6.213–7	Post termination proceedings.
101–6.217	Laws authorizing Federal financial assistance for programs to which this subpart applies.

Subpart 101–6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

1. Section 101–6.201 is revised to read as follows:

§ 101–6.201 Scope of subpart.

This subpart provides the regulations of the General Services Administration (GSA) under title VI of the Civil Rights Act of 1964 (52 U.S.C. 2000d—2000d–4) concerning nondiscrimination in federally assisted programs in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA.

2. Section 101–6.203 is revised to read as follows:

§ 101–6.203 Application of subpart.

(a) Subject to paragraph (b) of this section, this subpart applies to any program for which Federal financial assistance is authorized under a law administered in whole or in part by GSA, including the laws listed in § 101–6.217. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program after the effective date of this subpart pursuant to an application approved prior to such effective date. This subpart does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended to any such program before the effective date of this subpart, except to the extent otherwise provided by contract, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 101–6.204–2(d). The fact that a statute which authorizes GSA to extend Federal financial assistance to a program or activity is not listed in § 101–6.217 shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs involving statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(b) The regulations issued by the following Departments pursuant to title VI of the Act shall be applicable to the programs involving Federal financial assistance of the kind indicated, and those Departments shall respectively be responsible for determining and enforcing compliance therewith:

(1) Department of Health, Education, and Welfare—donation or transfer of surplus property for purposes of education or public health (§ 101–6.217 (a)(2) and (b)).

(2) Department of Defense—donation of surplus personal property for purposes of civil defense (§ 101–6.217(a)(2)).

(3) Department of Transportation—donation of property for public airport purposes (§ 101–6.217(c)). GSA will, however, be responsible for obtaining such assurances as may be required in applications and in instruments effecting the transfer of property.

(4) Department of the Interior—disposal of surplus real property, including improvements, for use as a public park, public recreational area, or historic monument (§ 101–6.217(d)(1) and (2)). GSA will, however, be responsible for obtaining such assurances as may be required in applications and in instruments effecting the transfer of property for use as a historic monument.

(5) Department of Housing and Urban Development—disposal of surplus real property for use in the provision of rental or cooperative housing to be occupied by families or individuals of low or moderate income (§ 101–6.217(q)).

(c) Each Department named in paragraph (b) of this section shall keep GSA advised of all compliance and enforcement actions, including sanctions imposed or removed, taken by it with respect to the programs specified in paragraph (b) of this section to which the regulations of such Department apply.

3. Section 101–6.204–2 is amended to read as follows:

§ 101–6.204–2 Specific discriminatory actions prohibited.

(a)(1) In connection with any program to which this subpart applies, a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

* * * * *

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

(4) This subpart does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the ground of race, color, or national origin. Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this subpart applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

* * * * *

(d) (1) Where a primary objective of the Federal financial assistance to a program to which this subpart applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including, but not limited to, recruitment or recruitment advertising; employment; layoff or termination; upgrading, demotion, or transfer; rates of pay or other forms of compensation; selection for training, including apprenticeship; and use of facilities). The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or the corresponding provisions of any Executive order which supersedes it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this subpart tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this subpart applies, the provisions of subparagraph (1) of this paragraph (d) shall apply to the employment practices of the recipient or other persons subject to this subpart, to the extent necessary to insure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

4. Section 101–6.205–1 is amended to read as follows:

§ 101–6.205–1 General.

* * * * *

(b) In the case of real property, structures or improvements thereon, or interests therein, which is acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision

of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by GSA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible GSA official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumberance remains effective.

* * * * *

5. Section 101–6.205–2 is revised to read as follows:

§ 101–6.205–2 Continuing State programs.

Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this subpart applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (a) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this subpart, and (b) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible GSA official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this subpart.

6. Section 101–6.205–3 is revised to read as follows:

§ 101–6.205–3 Elementary and secondary schools.

The requirements of §§ 101–6.205–1 and 101–6.205–2 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this subpart within the earliest practicable time, and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance such responsible official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this subpart. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

7. Section 101–6.206 is amended to read as follows:

§ 101–6.206 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions of this subpart to certain programs for which Federal financial assistance is extended by GSA (in all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin, prohibited by title VI of the Act and this subpart):

* * * * *

(g) In the program involving the transfer of surplus real property for use in the provision of rental or cooperative housing to families or individuals of low or moderate income (§ 101–6.217(q)), discrimination in the selection and assignment of tenants is prohibited.

* * * * *

In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 101–6.209–4 to provide information as to the availability of the program or activity and the rights of beneficiaries under this subpart have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will ensure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

8. Sections 101–6.207, including the subsections thereof, and 101–6.208 are deleted and reserved as follows:

§ 101–6.207 [Reserved]

§ 101–6.208 [Reserved]

9. Section 101–6.211–4 is revised to read as follows:

§ 101–6.211–4 Other means authorized by law.

No action to effect compliance by an other means authorized by law shall be taken until (a) the responsible GSA official has determined that compliance cannot be secured by voluntary means, (b) the recipient or other person has been notified of his failure to comply and of the action to be taken to effect compliance, and (c) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this subpart and to take such corrective action as may be appropriate.

10. Section 101–6.212–2 is revised to read as follows:

§ 101–6.212–2 Time and place of hearing.

Hearings shall be held, at a time fixed by the responsible GSA official, at the offices of GSA in Washington, D.C., unless such official determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings shall be held before the responsible GSA official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 or 3344 (section 11 of the Administrative Procedure Act).

11. Section 101–6.212–4 is amended to read as follows:

§ 101–6.212–4 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 101–6.212–1, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

* * * * *

12. Section 101–6.213–7 is added as follows:

§ 101–6.213–7 Post termination proceedings.

(a) An applicant or recipient adversely affected by an order issued under § 101–6.213–6 shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 101–6.24 shall be restored to full eligibility to receive financial assistance if it files a court order or a plan for desegregation meeting the requirements of § 101–6.205–3 and provides reasonable assurance that it will comply with this court order or plan.

(b) Any applicant or recipient adversely affected by an order entered pursuant to § 101–6.213–6 may at any time request the responsible GSA official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (a) of this section. If the responsible GSA official determines that those requirements have been satisfied, he shall restore such eligibility.

(c) If the responsible GSA official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible GSA official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, the sanctions imposed by the order issued under § 101–6.213–6 shall remain in effect.

13. Section 101–6.215–1 is amended to read as follows:

§ 101–6.215–1 Effect on other regulations.

* * * * *

(a) Executive Orders 10925, 11114, and 11246, and regulations issued thereunder.

(b) Any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this subpart is inapplicable, or prohibit discrimination on any other ground.

14. Section 101–6.215–3 is revised to read as follows:

§ 101–6.215–3 Supervision and coordination.

The Administrator may from time to time assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this subpart (other than responsibility for final decision as provided in § 101–6.213), including the achievement of effective coordination and maximum uniformity within GSA and within the executive branch of the Government in the application of title VI and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the responsible GSA official.

15. Section 101–6.217 is amended to read as follows:

§ 101–6.217 Laws authorizing Federal financial assistance for programs to which this subpart applies.

(a)(1) Donation of surplus personal property to educational activities which are of special interest to the armed services (section 203(j)(2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(j)(2)).

(2) Donation of surplus personal property for use in any State for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(j) (3) and (4) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (j) (3) and (4)), and the making available to State agencies for surplus property, or the transfer of title to such agencies, of surplus personal property approved for donation for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(n) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(n)).

(b) Disposal of surplus real and related personal property for purposes of education or public health, including research (section 203(k)(1) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k)(1)).

(c) Donation of property for public airport purposes (section 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g); section 23 of the Airport and Airway Development Act of 1970, Public Law 91–258).

(d) (1) Disposal of surplus real property, including improvements, for use as a historic monument (section 13(h) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(h)).

(2) Disposal of surplus real and related personal property for public park or public recreational purposes (section 203(k)(2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k)(2).

* * * * *

(q) Disposal of surplus real property for use in the provision of rental or cooperative housing to be occupied by families or individuals of low or moderate income (section 414 of the Housing and Urban Development Act of 1969, Public Law 91–152).

* * * * *

(Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1)

[FR Doc.73–13300 Filed 7–3–73;8:45 am]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 17—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

The following amendments were published as proposed rulemaking in 36 FR 23491 (Dec. 9, 1971). As a result of comments received, certain changes have been made in the proposal to conform to the uniform agency amendments. A new provision (vii) is added to § 17.3(b) to prohibit discrimination in the selection of planning and advisory boards. The requirement that a recipient take affirmative action to eliminate discrimination is clarified in § 17.3(b)(4) (i) and (ii). A sentence has been added to § 17.5(b) to require that recipients maintain data showing the extent to which minority group persons receive the benefits of Federal financial assistance. The time for filing complaints in § 17.6(b) has been extended from 90 to 180 days. Other minor technical corrections have been made in the original proposal.

§ 17.2 [Amended]

1. The present text of § 17.2 is designated as paragraph (a) and paragraphs (a), (b), (c), and (d) thereof are redesignated as subparagraphs (1), (2), (3), and (4).

2. A new paragraph (b), reading as follows, is added to § 17.2:

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of that part shall extend to any facility located wholly or in part of the space.

§ 17.3 [Amended]

3. Paragraph (b) of § 17.3 is amended by adding the following subdivision (vii) to subparagraph (1):

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

4. Subparagraphs (3) and (4) of paragraph (b) of § 17.3 are respectively redesignated as subparagraphs (5) and (6), and new subparagraphs (3) and (4), reading as follows, are added to paragraph (b):

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect if defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4)(i) In administering a program regarding which the recipient has pre-

viously discriminated against persons on the grounds of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

5. Paragraph (c) of § 17.3 is revised to read as follows:

(c) *Employment practices.* (1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246, as amended, or any Executive Order which supersedes it.

(2) The requirements of subparagraph (1) of this paragraph apply to programs under laws funded or administered by the Department where a primary objective of the Federal financial assistance is (i) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals in meeting expenses incident to the commencement or continuation of their education or training, or (iii) to provide work experience which contributes to the education or training of such individuals. Assistance given under the following laws has one of the above purposes as a primary objective: Water Resources Research Act of 1964, Title I, 78 Stat. 329, and those statutes listed in Appendix A to this part where the facilities or employment opportunities provided are limited, or a preference is given, to students, fellows, or other persons in training or related employment.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefit of, or to subject them to discrimination under any program to which this regulation applies, the provisions of subparagraph (1) of this paragraph shall apply to the employment practices of the recipient or other persons subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

6. Paragraph (e) of § 17.3 is deleted.

§ 17.4 [Amended]

7. Paragraph (a) of § 17.4 is revised to read as follows:

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, or impovement of real property or structures, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

§ 17.4 [Amended]

8. In § 17.4(b)(1)(ii), the phrase "the Secretary or his designee" is substituted for the phrase "the head of the bureau or office administering the Federal financial assistance."

9. Subparagraph (2) in the first sentence of § 17.4(c) is revised to read as follows:

(2) Submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible official of the Department of Health, Education and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part.

10. Paragraph (d) of § 17.4 is revised by substituting in subparagraph (2) the phrase "the Secretary or his designee" for the phrase "the head of the bureau or office administering the Federal financial assistance."

11. Section 17.5 is revised to read as follows:

§ 17.5 Compliance information.

(a) *Cooperation and assistance.* The Secretary or his designee shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to

the Secretary or his designee timely, complete and accurate compliance reports, at such times, and in such form and containing such information, as the Secretary or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Secretary or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the Secretary or his designee finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

12. Paragraphs (a), (b), (c) and (d) of § 17.6 are revised read as follows:

§ 17.6 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Secretary, or his designee.

(c) *Investigations.* Whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part, a prompt investigation shall be made. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the recipient shall be informed in writing and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 17.7.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the recipient and complainant, if any, shall be informed in writing.

* * * * *

§ 17.7 [Amended]

13. In subparagraph (1) of paragraph (c) of § 17.7 the phrase "Secretary or his designee" is substituted for the phrase "head of the bureau or office administering the Federal financial assistance."

14. Paragraph (d) of § 17.7 is revised to read as follows:

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Secretary or his designee has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional effort shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 17.8 [Amended]

15. In the second sentence of paragraph (a) of § 17.8 the words "the head of the bureau or office or" are deleted.

16. Paragraph (b) of § 17.8 is revised to read as follows:

(b) *Time and place of hearing.* Hearings shall be held at the Office of Hearings and Appeals of the Department in the Washington, D.C., area, at a time fixed by the hearing examiner to whom the matter has been assigned unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated by the Office of Hearings and Appeals in accordance with 5 U.S.C. 3105 and 3344.

17. In subparagraph (1) of paragraph (d) of § 17.8 the phrase "in conformity with sections 5 through 8 of the Administrative Procedure Act (5 U.S.C. 1004 through 1007)" is amended to read "in conformity with 5 U.S.C. 554–557."

18. Section 17.9 is revised to read as follows:

§ 17.9 Decisions and notices.

(a) *Initial decision by a hearing examiner.* The hearing examiner shall make an initial decision and a copy of such initial decision shall be sent by registered mail, return receipt requested, to the recipient or applicant.

(b) *Review of the initial decision.* The applicant or recipient may file his exceptions to the initial decision, with his reasons therefor, with the Director, Office of Hearings and Appeals, within thirty days of receipt of the initial decision. In the absence of exceptions, the Director, Office of Hearings and Appeals, on his own motion within forty-five days after the initial decision, may notify the applicant or recipient that he will review the decision. In the absence of exceptions or a notice of review, the initial decision shall constitute the final decision subject to the approval of the Secretary pursuant to paragraph (f) of this section.

(c) *Decisions by the Director, Office of Hearings and Appeals.* Whenever the Director, Office of Hearings and Appeals, reviews the decision of a hearing examiner pursuant to paragraph (b) of this section, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contention, and a copy of the final decision of the Director, Office of Hearings and Appeals, shall be given to the applicant or recipient and to the complainant, if any.

(d) *Decisions on record where a hearing is waived.* Whenever a hearings is waived pursuant to paragraph (a) of § 17.8, a decision shall be made by the Director, Office of Hearings and Appeals on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(e) *Rulings required.* Each decision of a hearing examiner or the Director, Office of Hearings and Appeals, shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(f) *Approval by Secretary.* Any final decision of a hearing examiner or of the Director, Office of Hearings and Appeals, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(g) *Content of decisions.* The final decision may provide for the suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it

pursuant to this regulation, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(h) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (g) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (g) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance.

(3) If the Secretary denies any such request, the applicant or recipient may submit to the Secretary a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with the procedures set forth in Part 17a of this Title. The applicant or recipient shall be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph.

(4) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (g) of this section shall remain in effect.

§ 17.11 [Amended]

19. Subparagraph (1) in the second sentence of paragraph (a) of § 17.11 is amended to read, "(1) Executive Orders 10925, 11114 and 11246, as amended, and regulations issued thereunder."

20. In paragraph (b) of § 17.11, the phrase "The Secretary or his designee" is substituted for the phrase "The head of each bureau and office administering Federal financial assistance."

21. Paragraph (c) of § 17.11 is revised by addition of the following as a final sentence: Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of the Interior.

22. Section 17.12 is revised by amending paragraph (c) and adding paragraph (k) to read as follows:

§ 17.12 Definitions.

* * * * *

(c) The term "Secretary" means the Secretary of the Interior or, except in § 17.9(f), any person to whom he has delegated his authority in the matter concerned.

* * * * *

(k) The term "Office of Hearings and Appeals" refers to a constituent office of the Department established July 1, 1970, 35 FR 12081 (1970).

23. In Appendix A, part I(b), item 7 is deleted and item 8 through 21 are redesignated as items 7 through 20.

24. In Appendix A, part III, item 3 is added to read as follows:

3. Sealing and filling of voids in abandoned coal mines, reclamation of surface mine areas, and extinguishing mine fires (79 Stat. 13, as amended, 40 U.S.C., App., § 205).

25. In paragraph (a) of part IV in Appendix A, the heading is amended and items 5 and 7 are revised to read as follows:

(a) Grants of Federal funds.

* * * * *

5. Anadromous Fish Act of 1965 (79 Stat. 1125, 16 U.S.C. 757a–757f).

* * * * *

7. Jellyfish Act of 1966 (80 Stat. 1149, 16 U.S.C. 1201–1205).

26. Items 2 and 3 are deleted from paragraph (b) of part IV in Appendix A and items 4 through 6 are redesignated as items 2 through 4.

27. Items 1, 4 and 5 are deleted from paragraph (c) of part IV in Appendix A and items 2, 3, and 6 are redesignated as items 1, 2 and 3.

28. Item 3 in paragraph (a) of section V in Appendix A is revised and item 9 is added in the same paragraph, to read as follows:

3. Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. § 47a).

* * * * *

9. Outdoor Recreation Programs (78 Stat. 897, as amended, 16 U.S.C. §§ 460*l*–4—60*l*–11).

29. Any rule, order, policy, guideline, finding, determination, authorization, requirement, designation or other action prescribed, issued or taken before the effective date of these amendments under Part 17 shall have the same effect as if these amendments to Part 17 had not been made. No administrative proceeding shall abate by reasons of the taking effect of these amendments. Administrative proceedings initiated under Part 17 prior to these amendments and not finally disposed of prior to such effective date shall be governed by the provisions of Part 17 as amended. In any case under Part 17 where a hearing examiner had rendered an initial or recommended decision, the case shall be concluded in accordance with the provisions of Part 17 as amended.

30. These amendments shall be effective on July 5, 1973.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc. 73-13287 Filed 7-3-73; 8:45 am]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

Amendments to 45 CFR Part 80 are adopted for the purposes indicated below. Revisions similar to those described below (except for revisions described in items numbered 12–14) are uniform changes being adopted by other agencies which provide Federal financial assistance, pursuant to Title VI of the Civil Rights Act of 1964. The revisions described under items 12–14 below are not uniform; they are procedural in nature and designed for the regulation of this agency only. In addition, citations to statutory authority are added immediately after each section of 45 CFR Part 80.

1. A new subparagraph (1) (vii) is added to § 80.3(b) to prohibit discrimination in the selection of persons to planning or advisory bodies.

2. The present subparagraphs (3) and (4) of § 80.3(b) are renumbered (4) and (5), respectively, and a new subparagraph (3) is added to clarify nondiscrimination requirements with respect to the selection of sites and locations for facilities which affect the provision of federally-assisted benefits.

3. A new § 80.3(b)(6) is added as (i) to require recipients to take affirmative action to overcome the effects of prior discrimination, where the recipient has previously discriminated and as (ii) to indicate recipients are not prohibited from taking affirmative action to overcome the effects of conditions which resulted in limited program participation by persons of a particular race, color, or national origin.

4. A subparagraph is added to § 80.3(c) to state the rule concerning discriminatory employment practices which result in excluding individuals from participation in, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this regulation applies.

5. Subparagraph (b) under § 80.3(c) relating to community work and training assisted under Title IV of the Social Security Act, 42 U.S.C. 609, is deleted.

6. Subparagraph (d) (formerly (e)) of § 80.3(c) is changed to read "rehabilitation facilities" instead of "sheltered workshops."

7. Section 80.4(a)(2) is revised to delete the requirement that surplus property transfers contain a reverter for breach of the nondiscrimination provisions and instead to authorize a reverter discretionary with the responsible department official in the case of any real

property transfer. As revised, a covenant running with the land, to assure nondiscriminatory use, will be included when any Federal financial assistance is extended in the form of a transfer of real property by the Federal Government. In other cases where property is acquired or improved with Federal financial assistance, the amendment requires that the recipient agree to include such a covenant in any subsequent transfer.

8. Language of § 80.4(b) which provided that noncomplying features of existing continuing State programs could be corrected in the future has been deleted.

9. In § 80.6(b) a new sentence is added after the first sentence to require recipients to keep racial and ethnic data in relation to federally-assisted programs.

10. In § 80.6(c) new language is added after the last sentence to make clear that asserted considerations of privacy or confidentiality may not operate to bar the Department from requiring recipients to keep such data.

11. In § 80.7(b) the period for filing complaints is extended from 90 to 180 days in conformity with other Civil Rights regulations.

12. Section 80.9(a) provided that in the case of a waiver of a right to a hearing the decision may be made on the basis of "such information as is available." This is amended to provide that the decision in such a case may be made on the basis of "such information as may be filed as the record."

13. Under § 80.10, prior to the present amendment, a party to a proceedings could request the Secretary to review a hearing examiner's decision even though there was no request for the intervening review of the Reviewing Authority, which is a matter of right. The amendment to § 80.10(c) authorizes a request for review by the Secretary only if the matter has first been considered by the Reviewing Authority.

14. Subparagraph (4) of § 80.10(g) duplicates the provision of the last sentence of subparagraph (3) of such section. Subparagraph (4) is deleted to eliminate that inadvertent duplication.

15. A sentence is added to § 80.12(c) specifying that actions taken by an official of another Department or Agency under an assignment of responsibility shall have the same effect as though taken by the responsible official of this Department.

16. In some provisions the word "program" has been used to refer to the arrangement under which Federal financial assistance is made available; in other places it was used to mean the operation or activity of the applicant or recipient. Technical revisions are made in the designation of Part 80 and throughout the regulation to eliminate the use of "program" to refer to the arrangement under which Federal financial assistance is made available.

17. Clause 3 is added to § 80.12(a) to make clear that these regulations and amendments will not affect the requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 45 CFR Part 181.

18. The listing of Appendix A is revised to eliminate the use "program" to refer to the arrangement under which Federal financial assistance is made available and to bring the listings in the Appendix up to date.

1. The designation of Part 80 is amended to read as set forth in the heading above.

2. Section 80.2 is amended to read:

§ 80.2 Application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal assisted programs and activities listed in Appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, or any employer, employment agency, or labor organization, except to the extent described in § 80.3. The fact that a type of Federal assistance is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(Secs. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d-1, 2000d-3)

3. Section 80.3 is amended by adding a new paragraph (b)(1)(vii) as set forth below. Paragraph (b) is amended by renumbering the present subparagraphs (3) and (4) as subparagraphs (4) and (5), respectively, and adding new subparagraphs (3) and (6). As so changed, subparagraphs (3), (4), (5) and (6) read as set forth below. Paragraphs (c) and (d) are amended to read as set forth below.

§ 80.3 Discrimination prohibited.

* * * * *

(b) Specific discriminatory actions prohibited. (1) * * *

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

* * * * *

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the employment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(*a*) Projects under the Public Works Acceleration Act, Public Law 87-658, 42 U.S.C. 2641-2643.

(*b*) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371-1374.

(*c*) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(d) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32–34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian Health and Cuban Refugee Services.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

* * * * *

4. Section § 80.4(a)(2), (b), and (d) is amended to read as follows:

§ 80.4 Assurances required.

(a) *General.* (1) * * *

(2) Where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant to any subsequent transfer of the property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the propetry in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this regulation applies (including the Federal financial assistance listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this regulation, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

* * * * *

(d) *Assurance from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training project, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

* * * * *

5. The introductory statement of § 80.5 and paragraphs (a), (b), (e) and (h) are amended to read as set forth below; and new paragraphs (i) and (j) are added as illustrative examples of new § 80.3 (b)(6).

§ 80.5 Illustrative application.

The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).

(a) In Federally assisted programs for the provision of health or welfare services, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the grantee under the program or, if the grantee is a State, by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 80.3(e).

(b) In federally-affected area assistance (P.L. 815 and P.L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

* * * * *

(e) In grants to assist in the construction of facilities for the provision of health, educational or welfare services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In case of hospital construction grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the hospital, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith. In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

* * * * *

(h) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly. Thus, a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.

(i) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient

under § 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

6. Paragraphs (b), (c), and (d) of § 80.6 are amended to read:

§ 80.6 Compliance information.

* * * * *

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this Part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

§ 80.7 [Amended]

7. Paragraph (b) of § 80.7 is amended by deleting the phrase "90 days" and substituting "180 days".

8. Paragraph (a) of § 80.9 is amended to read:

§ 80.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 80.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 80.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

* * * * *

9. Paragraphs (e) and (f) of § 80.10 are amended to read as set forth below, and paragraph (g)(4) is deleted.

§ 80.10 Decisions and notices.

* * * * *

(e) *Review in certain cases by the Secretary.* If the Secretary has not personally made the final decision referred to in paragraphs (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this regulation.

* * * * *

10. Paragraph (a) of § 80.12 is amended, and a new concluding sentence is added to paragraph (c), so that the amended paragraph reads as set forth below.

§ 80.12 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with

such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 45 CFR Part 70; (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (3) requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 45 CFR Part 181.

* * * * *

(c) *Supervision and coordination.* The responsible Department official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for review as provided in § 80.10(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Department.

11. The following citations are added immediately after each of the listed sections of 45 CFR Part 80 as indicated below:

§ 80.1: (Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d).
§ 80.2: (Sec. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d–1, 2000d–3).
§ 80.3: (Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d–1, 2000d–3).
§ 80.4: (Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1. Sec. 182; 80 Stat. 1209; 42 U.S.C. 2000d–5).
§ 80.5: (Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1).
§ 80.6: (Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1).
§ 80.7: (Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1).
§ 80.8: (Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1. Sec. 182, 80 Stat. 1209; 42 U.S.C. 2000d–5).
§ 80.9: (Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1).
§ 80.10: (Sec. 602, Civil Rights Act of 1964; 78 Stat. 252, 42 U.S.C. 2000d–1).
§ 80.11 (Sec. 603, Civil Rights Act of 1964; 78 Stat. 253; 42 U.S.C. 2000d–2).
§ 80.12: (Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1).
§ 80.13: (Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1).

Effective date. This amendment shall become effective August 6, 1973.

Dated: August 8, 1972.

[SEAL] ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

APPENDIX A

FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Part 1. Assistance other than for State-Administered Continuing Programs

1. Loans for acquisition of equipment for academic subjects, and for minor remodeling (20 U.S.C. 445).
2. Construction of facilities for institutions of higher education (20 U.S.C. 701–758).
3. School Construction in federally-affected and in major disaster areas (20 U.S.C. 631–647).
4. Construction of educational broadcast facilities (47 U.S.C. 390–399).
5. Loan service of captioned films and educational media; research on, and production and distribution of, educational media for the handicapped, and training of persons in the use of such media for the handicapped (20 U.S.C. 1452).
6. Demonstration residential vocational education schools (20 U.S.C. 1321).
7. Research and related activities in education of handicapped children (20 U.S.C. 1441).
8. Educational research, dissemination and demonstration projects; research training; and construction under the Cooperation Research Act (20 U.S.C. 331–332(b)).
9. Research in teaching modern foreign languages (20 U.S.C. 512).
10. Training projects for manpower development and training (42 U.S.C. 2601, 2602, 2610a–2610c).
11. Research and training projects in Vocational Education (20 U.S.C. 1281(a), 1282–1284).
12. Allowances to institutions training NDEA graduate fellows (20 U.S.C. 461–465).
13. Grants for training in librarianship (20 U.S.C. 1031–1033).
14. Grants for training personnel for the education of handicapped children (20 U.S.C. 1431).
15. Allowances for institutions training teachers and related educational personnel in elementary and secondary education, or post-secondary vocational education (20 U.S.C. 1111–1118).
16. Recruitment, enrollment, training and assignment of Teacher Corps personnel (20 U.S.C. 1101–1107a).
17. Operation and maintenance of schools in Federally-affected and in major disaster areas (20 U.S.C. 236–241; 241–1; 242–244).
18. Grants or contracts for the operation of training institutes for elementary or secondary school personnel to deal with special educational problems occasioned by desegregation (42 U.S.C. 2000c–3).
19. Grants for in-service training of teachers and other schools personnel and employment of specialists in desegregation problems (42 U.S.C. 2000c–4).
20. Higher education students loan program (Title II, National Defense Education Act, 20 U.S.C. 421–429).
21. Educational Opportunity grants and assistance for State and private programs of low-interest insured loans and State loans to students in institutions of higher education (Title IV, Higher Education Act of 1965, 20 U.S.C. 1061–1087).
22. Grants and contracts for the conduct of Talent Search, Upward Bound, and Special Services Programs (20 U.S.C. 1068).
23. Land-grant college aid (7 U.S.C. 301–308; 321–326; 328–331).
24. Language and area centers (Title VI, National Defense Education Act, 20 U.S.C. 511).
25. American Printing House for the Blind (20 U.S.C. 101–105).
26. Future Farmers of America (36 U.S.C. 271–391) and similar programs.
27. Science clubs (P.L. 85–875, 20 U.S.C. 2, note).
28. Howard University (20 U.S.C. 121–129).
29. Gallaudet College (31 D.C. Code, Ch. 10).
30. Establishment and operation of a model secondary school for the deaf by Gallaudet College (31 D.C. Code 1051–1053; 80 Stat. 1027–1028).
31. Faculty development programs, workshops and institutes (20 U.S.C. 1131–1132).
32. National Technical Institute for the Deaf (20 U.S.C. 681–685).
33. Institutes and other programs for training educational personnel (Parts D, E & F, Title V, Higher Education Act of 1965) (20 U.S.C. 1119–1119c–4).
34. Grants and contracts for research and demonstration projects in librarianship (20 U.S.C. 1034).
35. Acquisition of college library resources (20 U.S.C. 1021–1028).
36. Grants for strengthening developing institutions of higher education (20 U.S.C. 1051–1054); National Fellowships for teaching at developing institutions (20 U.S.C. 1055), and grants to retired professors to teach at developing institutions (20 U.S.C. 1056).
37. College Work-Study Program (42 U.S.C. 2751–2757).
38. Financial assistance for acquisition of higher education equipment, and minor remodeling (20 U.S.C. 1121–1129).
39. Grants for special experimental demonstration projects and teacher training in adult education (20 U.S.C. 1208).
40. Grant programs for advanced and undergraduate international studies (20 U.S.C. 1171–1176; 22 U.S.C. 2452(b)).
41. Experimental projects for developing State leadership or establishment of special services (20 U.S.C. 865).
42. Grants to and arrangements with State educational and other agencies to meet special educational needs of migratory children of migratory agricultural workers (20 U.S.C. 241e(c)).
43. Grants by the Commissioner of Education to local educational agencies for supplementary educational centers and services; guidance, counseling, and testing (20 U.S.C. 841–844; 844b).
44. Resource centers for improvement of education of handicapped children (20 U.S.C. 1421) and centers and services for deaf-blind children (20 U.S.C. 1422).
45. Recruitment of personnel and dissemination of information on education of handicapped (20 U.S.C. 1433).
46. Grants for research and demonstrations relating to physical education or recreation for handicapped children (20 U.S.C.

1442) and training of physical educators and recreation personnel (20 U.S.C. 1434).

47. Dropout prevention projects (20 U.S.C. 887).

48. Bilingual education programs (20 U.S.C. 880b–880b–6).

49. Grants to agencies and organizations for Cuban refugees (22) U.S.C. 2601(b)(4).

50. Grants and contracts for special programs for children with specific learning disabilities including research and related activities, training and operating model centers (20 U.S.C. 1461).

51. Curriculum development in vocational and technical education (20 U.S.C. 1391).

52. Establishment, including construction, and operation of a National Center on Educational Media and Materials for the Handicapped (20 U.S.C. 1453).

53. Grants and contracts for the development and operation of experimental preschool and early education programs for handicapped (20 U.S.C. 1423).

54. Grants to public or private non-profit agencies to carry on the Follow Through Program in kindergarten and elementary schools (42 U.S.C. 2809 (a)(2)).

55. Grants for programs of cooperative education and grants and contracts for training and research in cooperative education (20 U.S.C. 1087a–1087c).

56. Grants and contracts to encourage the sharing of college facilities and resources (network for knowledge) (20 U.S.C. 1133–1133b).

57. Grants, contracts, and fellowships to improve programs preparing persons for public service and to attract students to public service (20 U.S.C. 1134–1134b).

58. Grants for the improvement of graduate programs (20 U.S.C. 1135–1135c).

59. Contracts for expanding and improving law school clinical experience programs (20 U.S.C. 1136–1136b).

60. Exemplary programs and projects in vocational education (20 U.S.C. 1301–1305).

61. Grants to reduce borrowing cost for construction of residential schools and dormitories (20 U.S.C. 1323).

62. Project grants and contracts for research and demonstration relating to new or improved health facilities and services (sec. 304, PHS Act, 42 U.S.C. 242b).

63. Grants for construction or modernization of emergency rooms of general hospitals (Title VI, Part C, PHS Act, 42 U.S.C. 291j).

64. Institutional and special projects grants to schools of nursing (sections 805–808, PHS Act, 42 U.S.C. 296d–296g).

65. Grants for construction and initial staffing of facilities for prevention and treatment of alcoholism (sec. 241–2, Community Mental Health Centers Act (42 U.S.C. 2688 f and g).

66. Grants for construction and initial staffing of specialized facilities for the treatment of alcoholics requiring care in such facilities (sec. 243, Community Mental Health Centers Act, 42 U.S.C. 2688h).

67. Special project grants for training programs, evaluation of existing treatment programs, and conduct of significant programs relating to treatment of alcoholics (sec. 246, Community Mental Health Centers Act, 42 U.S.C. 2688j–1).

68. Grants for construction and initial staff of treatment facilities for narcotic addicts (sec. 251, Community Mental Health Centers Act, 42 U.S.C. 2688m).

69. Special project grants for training programs, evaluation of existing treatment programs, and conduct of significant programs relating to treatment of narcotics addicts (sec. 252, Community Mental Health Centers Act, 42 U.S.C. 2688n–1).

70. Grants for consultation services for Community Mental Health Centers, alcoholism prevention and treatment facilities for narcotic addicts, and facilities for mental health of children (sec. 264, Community Mental Health Centers Act, 42 U.S.C. 2688r).

71. Grants for construction and initial staff of facilities for mental health of children (sec. 271, Community Mental Health Centers Act, 42 U.S.C. 2688u).

72. Special project grants for training programs and evaluation of existing treatment program relating to mental health of children (sec. 272, Community Mental Health Centers Act, 42 U.S.C. 2688x).

73. Grants and loans for construction and modernization of medical facilities in the District of Columbia (P.L. 90–457; 82 Stat. 631–3).

74. Teaching facilities for nurse training (secs. 801–804, Public Health Service Act, 42 U.S.C. 296–296c).

75. Teaching facilities for allied health professions personnel (sec. 791, Public Health Service Act, 42 U.S.C. 295h).

76. Mental retardation research facilities (Title VI, Part D, Public Health Service Act, 42 U.S.C. 295–395e).

77. George Washington University Hospital construction (76 Stat. 83, P.L. 87–460, May 31, 1962).

78. Research projects, including conferences, communication activities and primate or other center grants (secs. 301, 303, 304, and 308, Public Health Service Act, 42 U.S.C. 241, 242a, 242b, and 242f).

79. General research support (sec. 301(d), Public Health Service Act, 42 U.S.C. 241).

80. Mental health demonstrations and administrative studies (sec. 303(a)(2), Public Health Service Act, 42 U.S.C. 242a).

81. Migratory workers health services (sec. 310, Public Health Service Act, 42 U.S.C. 242h).

82. Immunization programs (sec. 317, Public Health Service Act, 42 U.S.C. 247b).

83. Health research training projects and fellowship grants (secs. 301, 433, Public Health Service Act, 42 U.S.C. 242, 289c).

84. Categorical (heart, cancer, etc.) grants for training, traineeships or fellowships (secs. 303, 433, etc., Public Health Service Act, 42 U.S.C. 242a, 289c, etc.).

85. Advanced professional nurse traineeships (sec. 821, Public Health Service Act, 42 U.S.C. 297).

86. Department projects under Appalachian Regional Development Act (40 U.S.C. App. A).

87. Grants to institutions for traineeships for professional public health personnel (sec. 306, Public Health Service Act, 42 U.S.C. 242d).

88. Grants for graduate or specialized training in public health (sec. 309, Public Health Service Act, 42 U.S.C. 242g).

89. Health professions school student loan program (Title VII, Part C, Public Health Service Act, 52 U.S.C. 294–294(k)).

90. Grants for provision in schools of public health of training, consultation and technical assistance in the field of public health and in the administration of state or local public health programs (sec. 309(c)), Public Health Service Act, 42 U.S.C. 242(g)(c)).

91. Project grants for training, studies, or demonstrations looking metropolitan area, or other local area plans for health services (sec. 314(c), Public Health Service Act, 42 U.S.C. 246(c)).

92. Project grants for training, studies, or demonstrations looking toward the development of improved comprehensive health planning (sec. 314(c), Public Health Service Act, 42 U.S.C. 246(c)).

93. Project grants for health services development (sec. 314(e), Public Health Service Act, 42 U.S.C. 246(e)).

94. Institutional and special grants to health professions schools (Title VII, Part E, Public Health Service Act, 42 U.S.C. 295f–295f–4).

95. Improvement grants to centers for allied health professions (sec. 792, Public Health Service Act, 42 U.S.C. 295h–1).

96. Scholarship grants to health professions schools (Title VII, Part F, Public Health Service Act, 42 U.S.C. 295h–1).

97. Scholarship grants to schools of nursing (Title VIII, Part D, Public Health Service Act, 42 U.S.C. 298c–298c–6).

98. Traineeships for advanced training of allied health professions personnel (sec. 793, Public Health Service Act, 42 U.S.C. 295h–2).

99. Contracts to encourage full utilization of nursing educational talent (sec. 868, Public Health Service Act, 42 U.S.C. 298c–7).

100. Grants to community mental health centers for the compensation of professional and technical personnel for the initial operation of new centers or of new services in centers (Community Mental Health Centers Act, Part B, 42 U.S.C. 2688–2688d).

101. Grants for the planning, construction, equipment and operation of multicounty demonstration health projects in the Appalachian region (sec. 202 of Appalachian Regional Development Act, P.L. 89–4, as amended, P.L. 90–103 40 U.S.C. App. 202).

102. Education, research, training, and demonstrations in the fields of heart disease, cancer, stroke and related diseases (secs. 900–110, Public Health Service Act, 42 U.S.C. 299a–j).

103. Assistance to medical libraries (secs. 390–399, Public Health Service Act, 42 U.S.C. 280b–280b–9).

104. Nursing student loans (secs. 822–828, Public Health Service Act, 42 U.S.C. 297a–g).

105. Hawaii leprosy payments (sec. 331, Public Health Service Act, 42 U.S.C. 255).

106. Heart disease laboratories and related facilities for patient care (sec. 412(d), Public Health Service Act, 42 U.S.C. 287a(d)).

107. Grants for construction of hospitals serving Indians (P.L. 85–151, 42 U.S.C. 2005).

108. Indian Sanitation Facilities (P.L. 86–121, 42 U.S.C. 2004a).

109. Research projects relating to maternal and child health services and crippled children's services (42 U.S.C. 712).

110. Maternal and child health special project grants to State agencies and institutions of higher learning (42 U.S.C. 703(2)).

111. Maternity and infant care and family planning services; special project grants to local health agencies and other organizations (42 U.S.C. 708).

112. Special project grants to State agencies and institutions of higher learning for crippled children's services (42 U.S.C. 704(2)).

113. Special project grants for health of school and preschool children (42 U.S.C. 709) and for dental health of children (42 U.S.C. 710).

114. Grants to institutions of higher learning for training personnel for health care and related services for mothers and children (42 U.S.C. 711).

115. Grants and contracts for the conduct of research, experiments, or demonstrations relating to the development, utilization, quality, organization, and financing of services, facilities, and resources of hospitals, long-term care facilities, or other medical facilities (sec. 304, Public Health Service Act, as amended by P.L. 90–174, 42 U.S.C. 242b).

116. Health research facilities (Title VII Part A, Public Health Service Act, 42 U.S.C. 292–292j).

117. Teaching facilities for health professions personnel (Title VII, Part B, Public Health Service Act, 42 U.S.C. 293–293h).

118. Project grants and contracts for research, development, training, and studies in the field of electronic product radiation (Sec. 356, Public Health Service Act, 42 U.S.C. 263d).

119. Project grants and contracts for research, studies, demonstrations, training,

and education relating to coal mine health (sec. 501, Federal Coal Mine Health and Safety Act of 1969, Public Law 91-173.).

120. Surplus real and related personal property disposal (40 U.S.C. 484(k)).

121. Supplementary medical insurance benefits for the aged (Title XXIII, Part B, Social Security Act, 42 U.S.C. 1395j-1395w).

122. Issuance of rent-free permits for vending stands, credit unions, employee associations, etc. (20 U.S.C. 107-107f; 45 C.F.R. Part 20; sec. 25, 12 U.S.C. 1770).

123. Grants for special vocational rehabilitation projects (29 U.S.C. 34(a)(1)).

124. Experimental, pilot or demonstration projects to promote the objectives of Title I, X, XIV, XVI, or XIX or Part A of Title IV of the Social Security Act (42 U.S.C. 1315).

125. Social Security and welfare cooperative research or demonstration projects (42 U.S.C. 1310).

126. Child welfare research, training, or demonstration projects (42 U.S.C. 626).

127. Training projects (Title VI, Older Americans Act, 42 U.S.C. 3041-3042).

128. Grants for expansion of vocational rehabilitation services (29 U.S.C. 34(a)(2)(A)).

129. Grants for construction of rehabilitation facilities (29 U.S.C. 41a(a)-(e)) and for initial staffing of rehabilitation facilities (29 U.S.C. 41a(f)).

130. Project development grants for rehabilitation facilities (29 U.S.C. 41a(g)(2)).

131. Rehabilitation Facility improvement grants (29 U.S.C. 41b(b)).

132. Agreement for the establishment and operation of a national center for deaf-blind youths and adults (29 U.S.C. 42a).

133. Project grants for services for migratory agricultural workers (29 U.S.C. 42b).

134. Grants for initial staffing of community mental retardation facilities (42 U.S.C. 2678-2678d).

135. Grants for training welfare personnel and for expansion and development of undergraduate and graduate social work programs (42 U.S.C. 906, 908).

136. Research and development projects concerning older Americans (42 U.S.C. 3031-3032).

137. Grants to States for training of nursing home administrators (42 U.S.C. 1396g(e)).

138. Contracts or jointly financed cooperative arrangements with industry (29 U.S.C. 34(a)(2)(B)).

139. Project grants for new careers in rehabilitation (29 U.S.C. 34(a)(2)(C)).

140. Children of low-income families (20 U.S.C. 241a-241m).

141. Grants for training (29 U.S.C. 37(a)(2)).

142. Grants for projects for training services (29 U.S.C. 41b(a)).

143. Grants for comprehensive juvenile delinquency planning (42 U.S.C. 3811).

144. Grants for project planning in juvenile delinquency (42 U.S.C. 3812).

145. Grants for juvenile delinquency rehabilitative services projects (42 U.S.C. 3822, 3842).

146. Grants for juvenile delinquency preventive service projects (42 U.S.C. 3861).

147. Grants for training projects in juvenile delinquency fields (42 U.S.C. 3861).

148. Grants for development of improved techniques and practices in juvenile delinquency services (42 U.S.C. 3871).

149. Grants for technical assistance in juvenile delinquency services (42 U.S.C. 3872).

150. Grants for State technical assistance to local units in juvenile delinquency services (42 U.S.C. 3873).

151. Grants for public service centers projects (42 U.S.C. 2744).

152. Grants to public or private non-profit agencies to carry on the Project Headstart Program (42 U.S.C. 2809(a)(1)).

153. Project grants for new careers for the handicapped (29 U.S.C. 34(a)(2)(D)).

154. Construction, demonstration, and training grants for university-affiliated facilities for persons with developmental disabilities (42 U.S.C. 2661-2666).

Part 2. Continuing Assistance to State Administered Programs

1. Grants to States for public library services and construction, interlibrary cooperation and specialized State library services for certain State institutions and the physically handicapped (20 U.S.C. 351-355).

2. Grants to States for strengthening instruction in academic subjects (20 U.S.C. 441-444).

3. Grants to States for vocational education (20 U.S.C. 1241-1264).

4. Arrangements with State education agencies for training under the Manpower Development and Training Act (42 U.S.C. 2601-2602, 2610a).

5. Grants to States to assist in the elementary and secondary education of children of low-income families (20 U.S.C. 241a-241m).

6. Grants to States to provide for school library resources, textbooks and other instructional materials for pupils and teachers in elementary and secondary schools (20 U.S.C. 821-827).

7. Grants to States to strengthen State departments of education (20 U.S.C. 861-870).

8. Grants to States for community service programs (20 U.S.C. 1001-1011).

9. Grants to States for adult basic education and related research, teacher training and special projects (20 U.S.C. 1201-1211).

10. Grants to State educational agencies for supplementary educational centers and services, and guidance, counseling and testing (20 U.S.C. 841-847).

11. Grants to States for research and training in vocational education (20 U.S.C. 1281(b)).

12. Grants to States for exemplary programs and projects in vocational education (20 U.S.C. 1301-1305).

13. Grants to States for residential vocational education schools (20 U.S.C. 1321).

14. Grants to States for consumer and homemaking education (20 U.S.C. 1341).

15. Grants to States for cooperative vocational education program (20 U.S.C. 1351-1355).

16. Grants to States for vocational work-study programs (20 U.S.C. 1371-1374).

17. Grants to States to attract and qualify teachers to meet critical teaching shortages (20 U.S.C. 1108-1110c).

18. Grants to States for education of handicapped children (20 U.S.C. 1411-1414).

19. Grants for administration of State plans and for comprehensive planning to determine construction needs of institutions of higher education (20 U.S.C. 715(b)).

20. Grants to States for comprehensive health planning (sec. 314(a), Public Health Service Act, 42 U.S.C. 246(a)).

21. Grants to States for establishing and maintaining adequate public health services (sec. 314(d), Public Health Service Act, 42 U.S.C. 246(d)).

22. Grants, loans, and loan guarantees with interest subsidies for hospital and medical facilities (Title VI, Public Health Service Act, 42 U.S.C. 291 et seq.).

23. Grants to States for community mental health centers construction (Community Mental Health Centers Act, Part A, 42 U.S.C. 2681-2687).

24. Cost of rehabilitation services (Title II, Social Security Act sec. 222(d); 42 U.S.C. 422(d)).

25. Surplus personal property disposal donations for health and educational purposes through State agencies (40 U.S.C. 484(j)).

26. Grants for State and community programs on aging (Title III, Older Americans Act, 42 U.S.C. 3021-3025).

27. Grants to States for planning, provision of services, and construction and operation of facilities for persons with developmental disabilities (42 U.S.C. 2670-2677c).

28. Grants to States for vocational rehabilitation services (29 U.S.C. 32); for innovation of vocational rehabilitation services (29 U.S.C. 33); and for rehabilitation facilities planning (29 U.S.C. 41a(g)(1)).

29. Designation of State licensing agency for blind operators of vending stands (20 U.S.C. 107-107f).

30. Grants to States for old-age assistance (42 U.S.C. 301 et seq.); aid to families with dependent children (42 U.S.C. 601 et seq.); child-welfare services (42 U.S.C. 620 et seq.); aid to the blind (42 U.S.C. 1201 et seq.); aid to the permanently and totally disabled (42 U.S.C. 1351 et seq.); aid to the aged, blind, or disabled (42 U.S.C. 1381 et seq.); medical assistance (42 U.S.C. 1396 et seq.).

31. Grants to States for maternal and child health and crippled children's services (42 U.S.C. 701-707); for special projects for maternal and infant care (42 U.S.C. 708).

32. Grants to States for juvenile delinquency preventive and rehabilitative services (42 U.S.C. 3841).

[FR Doc.73-13285 Filed 3-7-73;8:45 am]

CHAPTER VI—NATIONAL SCIENCE FOUNDATION

PART 611—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE NATIONAL SCIENCE FOUNDATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

1. Section 611.3 is amended as follows:

a. A new subparagraph (3) is added to paragraph (b), and existing subparagraphs (3) and (4) are to be renumbered (4) and (5).

b. A new subparagraph (6) is added to paragraph (b).

c. Paragraph (c)(3) is revised to read as follows.

d. New paragraph (c)(4) is added.

As amended, § 611.3 reads as follows:

§ 611.3 Discrimination prohibited.

* * * * *

(b) * * *

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

* * * * *

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments

which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) * * *

(3) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(4) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of the foregoing subparagraph of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

* * * * *

2. Section 611.4 is amended as follows:

a. Paragraph (a)(1) is amended to delete the existing second and third sentences and insert in lieu thereof the following:

b. Paragraph (a)(2) is revised to read as follows:

c. Paragraph (b) is amended to delete the term "Commissioner of Education" and insert in lieu thereof "the responsible Official of the Department of Health, Education, and Welfare".

As amended, § 611.4 reads, as follows:

§ 611.4 Assurances required.

(a) *General.* (1) * * * In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. * * *

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Foundation to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Foundation official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Foundation official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

* * * * *

3. Section 611.5 is amended to add subparagraphs 6 and 7 as follows:

§ 611.5 Illustrative applications.

* * * * *

6. In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 611.6(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals which will insure that groups previously subjected to discrimination are adequately served but not the establishment of discriminatory qualifications for participation in any program.

7. Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

4. Section 611.8(d) is amended by deleting the phrase following number 2 and renumbering 3 to 2.

5. Section 611.9 is amended as follows:

a. Paragraph (b) is amended to delete citation of the Administrative Procedure Act and insert in lieu thereof "5 U.S.C. 3105 and 3344".

b. Paragraph (d) is amended to delete the citation of the Administrative Procedure Act and insert in lieu thereof "5 U.S.C. 554–557".

6. Section 611.10 is amended by adding a new paragraph (g) as follows:

§ 611.10 Decisions and notices.

(g) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Foundation official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Foundation official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Foundation official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Foundation official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

6. Section 611.12 is amended as follows:

a. Paragraph (a) is amended to delete the existing last sentence and insert in lieu thereof the following:

b. Paragraph (c) is amended to add thereto the following:

§ 611.12 Effect on other regulations; forms and instructions.

(a) * * * Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 and regula-

tions issued thereunder, or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

* * * * *

(c) * * * Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

7. Appendix A is deleted and the following substituted therefor:

APPENDIX A

Statutory Provisions under which the National Science Foundation provides Federal financial assistance:

The National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875).
Title IX of the National Defense Education Act of 1958 (42 U.S.C. 1876–1879).
The National Sea Grant College and Program Act of 1966 (80 Stat. 998) [1]

H. GUYFORD STEVER,
Director.

[FR Doc.73-13303 Filed 7-3-73;8:45 am]

CHAPTER X—OFFICE OF ECONOMIC OPPORTUNITY

PART 1010—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE OFFICE OF ECONOMIC OPPORTUNITY EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The proposed amendments to Part 1010 of Chapter X of Title 45 of the Code of Federal Regulations, as published in the FEDERAL REGISTER, 36 FR 23502, December 9, 1971, are adopted with the following changes:

1. Section 1010.3(a) is revised to read as set forth below.

2. In § 1010.4(b) subparagraph (1) is amended by adding a new subdivision (vii), and subparagraph (6) is revised. As amended, § 1010.4 reads as set forth below.

3. Section 1010.7(b) is amended by adding a new sentence. As revised, § 1010.7 reads as set forth below.

4. In §1010.8 the reference in paragraph (b) to "90 days" is corrected to read "180 days".

5. Appendix A is revised to read as set forth below.

PHILLIP V. SANCHEZ,
Director.

Chapter X now reads as follows:

Sec.
1010.1 Purpose.
1010.2 Definitions.
1010.3 Application of this part.
1010.4 Discrimination prohibited.
1010.5 Assurances required.
1010.6 Illustrative applications.
1010.7 Compliance information.
1010.8 Conduct of investigation.
1010.9 Procedure for effecting compliance.
1010.10 Hearings.
1010.11 Decisions and notices.
1010.12 Judicial review.
1010.13 Effect on other regulations; forms and instructions.

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; and sec. 602, 78 Stat. 528; 42 U.S.C. 2942.

§ 1010.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Office of Economic Opportunity.

§ 1010.2 Definitions.

As used in this part—

(a) The term "Office" means the Office of Economic Opportunity, and includes all of its organizational units.

(b) The term "Director" means the Director of the Office of Economic Opportunity.

(c) The term "responsible Office official" with respect to any program receiving Federal financial assistance means the Director or other official of the Office who by law or by delegation has the principal responsibility within the Office for the administration of the law extending such assistance.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Office official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means any such application, request, or plan.

§ 1010.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a provision of law administered by the Office, including the federally assisted programs and activities listed in Appendix A of this part. This part applies to money paid, property transferred, or other federal financial assistance extended under any such program after January 7, 1965 pursuant to an application approved prior to such date. This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program, before January 7, 1965, (3) any assistance to any individual who is the ultimate beneficiary under any such program, (4) any employment practice, under any such program, of any employ-

[1] Functions to be transferred to the National Oceanic and Atmospheric Administration, Department of Commerce, under Reorganization Plan No. 4 of 1970.

er, employment agency or labor organization, except to the extent described in § 1010.4. Any action or inaction on the part of a recipient which is a direct violation of the Economic Opportunity Act of 1964, will be dealt with under regulations enacted pursuant to such Act. The fact that a program or activity is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be covered by this part after notice is published in the FEDERAL REGISTER.

(b) The regulations issued by the Department of Agriculture pursuant to Title VI of the Act (7 CFR Part 15) shall be applicable to the program of grants and loans authorized under Title III, Part A of the Economic Opportunity Act of 1964, as amended.

(c) The regulations issued by the Department of Labor pursuant to Title VI of the Act (29 CFR Part 31) shall be applicable to the work-training programs authorized under Title I, Part B of the Economic Opportunity Act of 1964, as amended, and to the Special Work and Career Development Programs authorized under Title I, Part E of the Economic Opportunity Act of 1964, as amended, and to the extent determined by that Department, to the Jobs Corps Program under Title I, Part A.

(d) The regulations issued by the Department of Health, Education, and Welfare pursuant to Title VI of the Act (45 CFR Part 80) shall be applicable to the work experience programs authorized under Title V, Part A of the Economic Opportunity Act of 1964, as amended, and shall be applicable to the "Project Head Start" authorized under Title II, and to the "Follow Through" Program authorized under Title II, of the Economic Opportunity Act of 1964, as amended.

(e) The regulations issued by the Small Business Administration pursuant to Title VI of the Act (13 CFR Part 112) shall be applicable to the program of employment and investment incentives authorized under Title IV of the Economic Opportunity Act of 1964, as amended.

§ 1010.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin;

(i) Deny an individual any services, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program, including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section.

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient in determining the type of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination. Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program or part thereof to which this part applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (1) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (2) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (3) to provide work experience which contributes to the education or training of such individuals. The following programs administered by the Office have one of the above objectives as a primary objective:

(i) Community Action Programs or parts thereof which have as a primary objective the provision of employment.

(ii) Programs of assistance for migrant, and other seasonally employed, agricultural employees and their families which have as a primary objective the provision of employment.

The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it. Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of the foregoing paragraph of this paragraph (c) shall apply to the employment practices of the re-

cipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian programs.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 1010.5 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part, and that the applicant will in all phases and levels of programs and activities, install an affirmative action program to achieve equal opportunities for participation, with provisions for effective periodic self-evaluation. In the case where Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extented or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. The responsible office official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, which was acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Office to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Office official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Director may agree, upon request of the transfeee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(b) *Elementary and Secondary schools.* In the case of any program for the benefit of elementary or secondary school students which, as a necessary part of such program, utilizes to a substantial extent the facilities of an elementary or secondary school or school system, the requirements of paragraph (a) of this section shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time, and provides reasonable assurance that it will carry out such plan. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order including any future modification of such order. The provisions of this paragraph do not apply to programs for pre-school children.

(c) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the institution establishes, to the satisfaction of the responsible Office official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1010.6 Illustrative applications.

The following examples illustrate some applications of the foregoing provisions to programs receiving Federal financial assistance administered by the Office of Economic Opportunity. In all cases, the "discrimination" prohibited is discrimination on the grounds of race, color, or national origin prohibited by Title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.

(a) *Community action programs.* Community action programs generally consist of a number of related antipoverty programs coordinated by a central community agency, either public or private non-profit. There can be no discrimination in the formulation of groups to conduct any program funded under Title II of the Economic Opportunity Act of 1964, as amended. Nor can any such program be operated in a discriminatory manner. Such a program must be open to all regardless of race, color, or national origin, and must distribute its benefits in a non-discriminatory manner. It may not restrict service to members of a group or groups if membership in the group depends on race, color, or national origin.

(b) *Programs in elementary or secondary schools.* In the case of a program covered by this part which benefits elementary or secondary school students and which is necessarily conducted in a school regularly attended by

the participaitng students, the program must be run on a non-discriminatory basis, or else the school system must give assurance that it is complying with a federal court order or a plan approved by the responsible official of the Department of Health, Education, and Welfare leading to the desegregation of the school system. If, however students do not participate in such a program in the schools they regularly attend, or if the use of school facilities is incidental to the program or not necessary to its conduct, the program must be run on a non-discriminatory basis and the assurance specified in § 1010.5(a) must be given, whether or not there is a court order or approved plan with respect to the school system. This is the case in any program for pre-school children.

(c) *Institutions of higher education.* In any research, training, demonstration, or other grant from the Office to a university for a program to be conducted in a college or university, discrimination in the admission and treatment of students in the program is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Office official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the program.

§ 1010.7 Compliance information.

(a) *Cooperation and assistance.* Each responsible Office official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part, and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Office official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Office official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, primary recipients and other recipients should have available for the responsible Office official or his designee racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Office official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible Office official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 1010.8 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Office official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Office official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Office official or his designee.

(c) *Investigations.* The responsible Office official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Office official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1010.9.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of his section, the responsible Office official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1010.9 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1010.5.* If an applicant fails or refuses to furnish an assurance under § 1010.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Office shall not be required to provide assistance in such a case during pendency of the administrative proceedings under such paragraph.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Office official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Director pursuant to § 1010.11(e), and (4) the expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with

Title VI of the Act by any other means authorized by law shall be taken until (1) the responsible office official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 1010.10 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1010.9(c), reasonable notice of such hearing shall be given by registered or certified mail, return receipt requested to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Office official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1010.9(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held in Washington, D.C., at a time and place fixed by the responsible Office official unless he determines that the convenience of the applicant or recipient or of the Office requires that another place be selected. Hearings shall be held before the responsible Office official, or at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Office shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any review thereof shall be conducted in conformity with 5 U.S.C. 554–557, (sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Office and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence unless dispensed with by stipulation. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Director may, by agreement with such other departments or agencies, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1010.11.

§ 1010.11 Decisions and notices.

(a) *Decision by person other than the responsible Office official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make any initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Office official for a final decision and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Office official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Office official may, on his own motion, within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the responsible Office official shall review the initial decision and issue his own decision thereon, including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Office official.

(b) *Decisions on record or review by the responsible Office official.* Whenever a record is certified to the responsible Office official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Office official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Office official shall be given in writing to the applicant or recipient, and the complainant, if any.

(c) *Decisions on record where hearing is waived.* Whenever a hearing is waived pursuant to § 1010.10(a), a decision shall be made by the responsible Office official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Office official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible Office official (other than the Director) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Director, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Office official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Office official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Office official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Office official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Office official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1010.12 Judicial review.

Any action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1010.13 Effect on other regulations; forms and instructions.

(a) Nothing in this part shall be deemed to supersede (1) Executive Orders 10925, 11114 and 11246 and regulations issued thereunder, or (2) any other regulations or instructions insofar as they prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Office official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Director may, from time to time, assign to officials of other departments or agencies of the Government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 1010.11), including the achievement of effective coordination and maximum uniformity within the Office and within the Executive Branch of the Government in the application of Title VI and this part to similar programs in similar situations. Any action taken, determination made, or requirements imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

Federal Financial assistance provided under the following provisions of the Economic Opportunity Act of 1964 are now administered by the Office and covered by this part:

Section 113(b) and 113(c) (Experimental and Developmental Projects Relating to Job Corps).

Title I, Part D (Special Impact Programs).

Title II, except Head Start and Follow Through Programs.

Title III, Part B (Assistance for Migrant and Other Seasonally Employed, Farmworkers and Their Families).

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CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Part 1110 reads as follows:

Sec.

AUTHORITY: The provisions of this Part 1110 issued under sec. 602, 78 Stat. 252 and sec. 10(a)(1), 79 Stat. 852.

§ 1110.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Endowment for the Arts or the National Endowment for the Humanities.

§ 1110.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the National Endowment for the Arts or the National Endowment for the Humanities including the federally assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the part, including assistance pursuant to an application approved prior to such date. It also applies to federal financial assistance extended to any such program prior to the effective date of this part under a contract or grant where the term of the contract or grant continues beyond such date or where the assistance was to provide real or personal property and the recipient or his transferee continues to use or retain ownership or possession of the property (see § 1110.4 (a)(1)). This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contract, (b) any assistance to any individual who is the ultimate beneficiary under any such program, or (c) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 1110.3. The fact that a program or activity is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 1110.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected, to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other

benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training or (ii) to provide work experience which contributes to the education or training of such individuals or (iii) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of the foregoing subparagraph of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of, beneficiaries.

(d) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 1110.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer; and any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program. The responsible Endowment official shall specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Endowment to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Endowment official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Chairman of the Endowment concerned may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of the General Services Administration. (41 CFR 101-6.2)

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new pro-

gram, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Endowment official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance, the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Endowment official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in, such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1110.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the activities for which Federal financial assistance is provided by the Endowments. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university, unless it satisfies the responsible Endowment official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(b) In cases of Federal financial assistance to elementary or secondary schools, discrimination by the recipient school district in any of its elementary or secondary schools, or by the recipient private institution, in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustration the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a training grant to a nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution, discrimination is prohibited with respect to any educational activity, any provision of medical or other services and any financial aid to individuals incident to the program.

(d) Where Federal financial assistance is provided to assist in the presentation of artistic and cultural productions to the public, assurances will be required that such productions will not be presented before any audience which has been selected on a discriminatory basis.

(e) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus, a State, in selecting projects to be supported through a State agency, may not base its selections on criteria which have the effect of defeating or substantially impairing accomplishment of the objectives of the Federal financial assistance as respects individuals of a particular race, color, or national origin.

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 1110.6(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

§ 1110.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Endowment official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Endowment official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Endowment official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Endowment official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where

any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Endowment official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 1110.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Endowment official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Endowment official a written complaint. A complaint must be filed not later than ninety days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Endowment official.

(c) *Investigations.* The responsible Endowment official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Endowment official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1110.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Endowment official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1110.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1110.4.* If an applicant fails or refuses to furnish an assurance required under § 1110.4 or otherwise fails to comply with that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Endowment concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that such Endowment shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Endowment official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearings, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Chairman of the Endowment concerned, and (4) the expiration of 30 days after the Chairman has filed with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Endowment official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 1110.9 Hearing.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1110.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Endowment official that the matter be scheduled for hearing or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right of a hearing under section 602 of the Act and § 1110.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing:* Hearings shall be held at the offices of the Endowment concerned in Washington, D.C., at a time fixed by the responsible Endowment official unless he determines that the convenience of the applicant or recipient or of the Endowment requires that another place be selected. Hearings shall be held before the responsible Endowment official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Endowment shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Endowment and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence entered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this Regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Chairman of the Endowment concerned may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 1110.10.

§ 1110.10 Decisions and notices.

(a) *Decision by person other than the responsible Endowment official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Endowment official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Endowment official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Endowment official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Endowment official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Endowment official.

(b) *Decisions on record or review by the responsible Endowment official.* Whenever a record is certified to the responsible Endowment official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Endowment official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Endowment official shall be given in writing to the applicant or recipient and to the complainant if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1110.9(a) a decision shall be made by the responsible Endowment official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Endowment official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Chairman.* Any final decision of a responsible Endowment official (other than the Chairman) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Chairman, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Endowment official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation. (An elementary or secondary school or school system which is unable to file an assurance of compliance with § 1110.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 1110.4(c), and provides reasonable assurance that it will comply with this court order or plan.)

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Endowment official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Endowment official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Endowment official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Endowment official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1110.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1110.12 Effect on other regulations; forms and instructions.

(a) *Effects on other regulations.* Nothing in this part shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925, 11114, and 11246, and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder or any other regulations or instructions insofar as such order, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is

inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Endowment official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Chairman of an Endowment may from time to time assign to other officials of the Endowment or to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part, including the achievement of effective coordination and maximum uniformity within the Endowment and within the executive branch of the Government in the application of title VI and this part of similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

§ 1110.13 Definitions.

As used in this part:

(a) The term "Foundation" means the National Foundation for the Arts and the Humanities, and includes the National Endowment for the Arts, the National Endowment for the Humanities, and each of their organizational units.

(b) The term "Endowment" means the National Endowment for the Arts or the National Endowment for the Humanities.

(c) The term "Chairman" means the Chairman of the National Endowment for the Arts or the Chairman of the National Endowment for the Humanities.

(d) The term "responsible Endowment official" with respect to any program receiving Federal financial assistance means the Chairman of any Endowment or other Endowment official designated by the Chairman.

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or the donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity involving the provision of services, financial aid, or other benefits to individuals (including education or training, health, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for provision of facilities for furnishing services, financial aid or other benefits to individuals. The service, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision or any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipients" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purposes of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Endowment official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

APPENDIX A

FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Assistance to groups for projects and productions in the arts.
2. Surveys, research and planning in the arts.
3. Assistance to State arts agencies for projects and productions in the arts.
4. Support of research in the humanities.
5. Support of educational programs in the humanities, including the training of students and teachers.
6. Assistance to promote the interchange of information in the humanities.
7. Assistance to foster public understanding and appreciation of the humanities.
8. Support of the publication of scholarly works in the humanities.

Dated June 12, 1972.

NANCY HANKS,
Chairman,
National Endowment for the Arts.

RONALD S. BERMAN,
Chairman, National
Endowment for the Humanities.

[FR Doc.73-13302 Filed 7-3-73;8:45 am]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[Docket No. 18; Notice 72-2]

PART 21—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

On July 19, 1972, a notice of proposed rulemaking was published in the FEDERAL REGISTER (37 FR 14320) to amend Part 21 of the Regulations of the Office of the Secretary (49 CFR Part 21)—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.

All interested parties were invited to give their views on the proposed amendment. None of the comments received provided a basis for change in the proposed amendment. The purpose of the amendment is as follows:

Planning or Advisory Board Membership. Although existing § 21.5(b)(vi) contains a prohibition against discriminatory denial of the "opportunity to participate in the program through the provision of services or otherwise * * *", the existing regulations did not specifically deal with the matter of planning or advisory board membership. Considering the broad purpose of Title VI of the Civil Rights Act of 1964, the Department of Transportation believes that membership on such boards is an aspect of "participation in the program" within the meaning of section 601 of the Act (42 U.S.C. 2000d). To make it clear that such discrimination is prohibited, the Department is adding a specific reference to planning, advisory, and similar bodies to the other activities listed in § 21.5(b).

The provision applies only to the extent that the "recipient" has control over board membership. It is applicable, for example, where the members are appointed by the recipient. Where the board is elected and the election procedures are determined by the recipient, such procedure is to be nondiscriminatory. The term "integral part" is used in order to make it clear that regulations are inapplicable to boards related only

tangentially or indirectly to a Federally assisted program.

Affirmative action to correct and prevent prohibited discrimination. Existing § 21.5(b)(7) provides that consideration of race, color, or national origin are not prohibited if the purpose and effect is to remove or overcome the detrimental results of discrimination. That provision also places on the recipient of Federal assistance an "obligation to take reasonable action to remove or overcome the consequences of prior discriminatory practice or usage and to accomplish the purposes of the Act". The Department's amendment to the second sentence in § 21.5(b)(7) is to make it clear that the recipient (1) must take affirmative action to overcome the effects of prior discriminatory practice or usage, and (2) is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the recipient's Federally assisted programs on the ground of race, color, or national origin.

Collection of racial data. Existing § 21.9(b) states that recipients shall keep such records and submit such reports as the Secretary determines are necessary. While this provision furnishes a basis for requiring data on the race and national origin of persons affected by Federally assisted programs, it contains no explicit reference to such data. Experience has shown that, with respect to most Federally assisted programs, racial data is an essential element in implementing Title VI of the Civil Rights Act of 1964. In view of the importance of such data, the Department is adding an express reference to it in § 21.9(b).

Time for filing complaints. Existing provisions of § 21.11(b) regarding the filing of complaints of alleged discrimination state that a complaint must be filed "not later than 90 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary".

To make this time period consistent with that allowed under other civil rights laws,[1] the Department is changing this time limit from 90 to 180 days.

In consideration of the foregoing, effective July 5, 1973, 49 CFR Part 21 is amended as follows:

1. Section 21.5(b) is amended by:

(1) Striking out the word "or" at the end of subparagraph (1)(v);

(2) Striking out the period at the end of subparagraph (1)(vi) and substituting a semicolon and the word "or"; and

(3) Adding a new subparagraph (1)(vii) at the end thereof, to read as set forth below.

(4) Adding a new subparagraph (7) to read as set forth below.

§ 21.5 Discrimination prohibited.

* * * * *

(b) Specific discriminatory actions prohibited:

(1) * * *

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

* * * * *

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

* * * * *

3. Section 21.9(b) is amended by adding the following new sentence at the end thereof:

§ 21.9 Compliance information.

* * * * *

(b) *Compliance reports.* * * * In general, recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

* * * * *

§ 25.11 [Amended]

4. Section 21.11(b) is amended by substituting "180 days" for "90 days".

(Sec. 602; Civil Rights Act of 1964, 42 U.S.C. 2000d-1)

Issued in Washington, D.C., on September 21, 1972.

JOHN A. VOLPE,
Secretary of Transportation.

[FR Doc. 73-13291 Filed 7-3-73; 8:45 am]

[1] See section 706(e) of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C.A. 2000e-5(e); section 810(b) of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3610(b); and the regulations of the Office of Federal Contract Compliance, 41 CFR 60-1.21.

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PART III

ENVIRONMENTAL PROTECTION AGENCY

■

POLLUTANT DISCHARGE ELIMINATION

Form and Guidelines Regarding Agricultural and Silvicultural Activities

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 124—STATE PROGRAM ELEMENTS NECESSARY FOR PARTICIPATION IN THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Form and Guidelines Regarding Agricultural and Silvicultural Activities

Notice was published in the FEDERAL REGISTER issue of December 5, 1972, (37 FR 25898) that the Environmental Protection Agency was giving consideration to proposed forms and guidelines for the acquisition of information from owners and operators of point sources. The proposed forms and accompanying instructions described, pursuant to the authority contained in section 304(h)(1) of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, (86 Stat. 816; 33 U.S.C.A. 1251 et. seq. (1972)) (hereinafter referred to as the "Act"), requirements for the acquisition of information from owners and operators of point sources subject to the National Pollutant Discharge Elimination System.

The period for comment for one of the short forms, Short Form B—Agriculture, Forestry and Fishing, was extended an additional 30 days until January 20, 1973. See the notice of extension of period for comment published in the FEDERAL REGISTER on Friday, December 29, 1972, 37 FR 28765. During the extended comment period, the Agency sought and received information, statistics, and advice as to (1) the numbers and kinds of agriculture, forestry, and fish production activities covered by Short Form B; (2) the nature, size, and frequency of polluting discharges, if any, from such activities; and, (3) any categories of dischargers (including any classes, types, and sizes within any category) that should be excluded from NPDES application and filing requirements.

Statistical information and advice was provided by the United States Department of Agriculture, and U.S. Department of the Interior, and from owners and operators of farming and agricultural operations. Meetings were held with agricultural experts and with State officials from the States of California, Illinois, Iowa, Missouri, Nebraska, Texas, and Wisconsin. Agricultural and environmental groups were consulted.

On the basis of the information, statistics, and advice received, the Environmental Protection Agency revised the proposals and published them in the FEDERAL REGISTER of May 3, 1973, for a 30-day comment period. The Agency proposed to exclude for the present time certain categories and classes of agricultural and silvicultural point sources from the requirements of the National Pollutant Discharge Elimination System. Authority for such exclusions rests with Administrator's discretion under section 402(a)(1) of the Act to issue permits. In addition, the Act and the legislative history indicate clearly that Congress regarded discharges from agricultural and silvicultural activities as problems to be dealt with primarily through the exercise of authorities concerning non-point sources and that the Administrator would have discretion to distinguish among categories and sizes of agricultural sources. The basis for the exclusions is that the pollution problems caused by the excluded categories of point sources are minor in relation to the administrative problem of processing vast numbers of agricultural discharge application forms.

Comments received during the 30-day period following the May 3 publication have been considered and appropriate revisions made to the permit application form and related regulations. The regulations reflect the policies and rationales described in 1. and 2. below.

1. *General exclusion of discharges from agricultural and silvicultural activities.* In the United States, there are three million more farmers engaged in a variety of agricultural and silvicultural activities. In connection with crop production, some water from most farms is returned to navigable waters, as the term "navigable waters" is defined in the Act. The expenditure in time, dollars, and resources necessary to process applications from every small farmer subject to NPDES requirements would be disproportionate to the water quality benefits obtained. In order to prevent the diversion of the Agency's limited resources from the larger, significant point sources of pollution, the amendments proposed herein exclude the smaller, insignificant agricultural and silvicultural discharges (including minor irrigation return flow discharges and runoff from fields, orchards, and crop and forest lands) from the requirements of the NPDES.

2. *Exceptions from general exclusion.* The following categories and classes of agricultural or silvicultural point sources are or could be significant sources of pollution and therefore will be subject to NPDES requirements.

a. *Animal confinement facilities.* The regulations provide that large animal feedlots and holding facilities will remain subject to NPDES requirements. By the inclusion of the term "concentrated animal feeding operations" in section 502 (14) of the Act, Congress indicated its intent that these sources of agricultural pollution be controlled through the NPDES permit program. Recent statistics indicate, however, that there are 1,914,945 concentrated animal feeding operations in the United States. Of these, about 180,000 are cattle feedlots. Again, there are simply too many facilities to make inclusion in the NPDES administratively manageable.

Exclusion of all feedlots, however, is improper as the build-up of solid and liquid wastes resulting from the concentration of animals in confined production facilities represents a significant source of pollution. Accordingly, on the basis of information and statistics received, pollution potential, and administrative manageability, the Agency has attempted to set cutoff points above which animal production facilities would be subject to NPDES requirements. These numbers refer to the number of animals that are contained or have been contained at any time in the previous 12 months.

Further, several comments pointed out that certain types of operations, such as a fair grounds, might contain these numbers of animals, but only for a brief period during the year. Therefore, an additional criterion has been added, that the cutoff number of animals be held for a total of 30 days or more in order for the facility to be included in the NPDES.

(1) *Slaughter and feeder cattle; 1,000 head or more.* The owner or operator of any facility with 1,000 or more slaughter and/or feeder cattle must apply for an NPDES permit. In cattle operations particularly, a few large operations tend to dominate the market. In 1970, for example, one percent of the cattle feedlots produced 55 percent of the cattle marketed. Nationwide, there are about 2,500 lots with 1,000 or more head of cattle. These 2,500 lots market almost 70 percent of the feed cattle. A reduction of the cutoff below 1,000 head would dramatically increase the number of applications.

(2) *Dairy cattle. 700 head or more.* Any dairy or facility with 700 or more dairy cattle is subject to the NPDES. The figure of 700 head includes milkers, pregnant heifers, and dry mature cows, but not calves. There are about 125 dairy operations with 700 head or more. As in the case of feed cattle, the number of applications increases significantly below the cutoff of 700 head.

(3) *Swine over 55 pounds. 2,500 or more.* The figure of 2,500 swine is limited to swine weighing over 55 pounds. The cutoff figure should result in applications from about 800 facilities. Although there are many thousands of smaller feed lots for swine, the proposed cutoff of 2,500 will cover the facilities which present the greatest potential for pollution control while limiting the number of applications to a manageable quantity.

(4) *Sheep. 10,000 head or more.* Facilities for holding or feeding sheep are required to file for an NPDES permit if the facility contains 10,000 or more sheep. Statistics indicate that there are about 100 feedlots in the United States with 10,000 or more sheep. Smaller feedlots present less potential for pollution problems as sheep manure is particularly marketable to gardeners and is therefore less likely to be discharged or disposed of as waste.

(5) *Turkeys. 55,000 or more.* Turkey lots which contain more than 55,000 birds will be required to apply for an NPDES permit. Generally, only "open lot" turkey operations will be covered as in-house turkey facilities are normally dry operations and have no liquid wastes. An estimated 300 turkey lots will be covered by the 55,000 cutoff.

(6) *Laying hens and broilers. Continuous overflow watering. 100,000 or more*—(7) *Laying hens and broilers.*

Liquid manure handling system. 30,000 or more. Owners or operators of facilities which utilize continuous overflow watering systems will be required to apply for an NPDES permit if they contain 100,000 or more laying hens or broilers. Owners or operators of facilities which utilize liquid manure handling systems will be required to apply for an NPDES permit if they contain 30,000 or more laying hens or broilers. The cited levels will include most of the commercial operations and major facilities utilizing "wet" systems, about 100 of each type. These cutoffs will include almost all egg and chicken production facilities with potential for water pollution problems.

Most broilers, laying hens, and breeding chickens are kept on litter, or in cages with dry litter floors and normally have no waste water. These dry operations account for the vast majority of commercial poultry operations in the country. Where the dry manure and litter is not disposed of in navigable waters, dry operations, for lack of a discharge subject to the Act, will not be subject to NPDES requirements.

(8) *Ducks. 5,000 or more.* All duck farm operations with more than 5,000 ducks will be required to apply for an NPDES permit. The estimated 80 duck farms with 5,000 or more ducks represent most of the commercial duck operations in the United States. Unlike wastes from most other animal production operations, wastes from duck farms normally require biological treatment. Because of the relatively small number of potential applicants and because the discharges represent a treatment problem of the kind the NPDES is designed to regulate, complete coverage of commercial duck production operations is warranted.

(9) *Combinations of animals.* Often a facility contains more than one type of animal. Although such a facility may not contain any one type in the cutoff quantity given above, the combined quantities may present a significant pollution problem. Therefore, application for a permit for a combined facility must be made if the following calculation equals or exceeds 1,000: (1) Multiply the number of animals of each type by the multiplier given below for that type; (2) Add the products of these multiplications. The multipliers are:

(a) slaughter and feeder cattle	1.0
(b) mature dairy cattle	1.4
(c) swine over 55 pounds	0.4
(d) sheep	0.1

(Multipliers are only given for the types of animals which are commonly combined.)

For example, if a facility presently holds 600 slaughter and feeder cattle, 200 mature dairy cattle, and 500 swine over 55 pounds, the calculation is as follows:

Number of Animals	Times	Multiplier
600 Slaughter and Feeder Cattle	×	1.0=600
200 Mature Dairy Cattle	×	1.4=280
500 Swine over 55 pounds	×	0.4=200
Total		1,080

Since the calculated total exceeds 1,000, an application for an NPDES permit must be filed in this case.

Two or more animal pens, feedlots, or other animal confinement facilities are considered to be a single facility where they are adjacent to each other or where they utilize a common area or system for the disposal of wastes. For example, neighboring pens separated by a road but using a common disposal system, which are owned by the same person or company, and which hold 600 slaughter cattle and 500 dairy cattle would be subject to NPDES requirements.

b. *Fish and animal production facilities.* Although, like non-aquatic animals, fish are concentrated for purposes of feeding and marketing, fish operations are not easily categorized according to the number of fish contained within a particular operation. Fish and aquatic animal production operations are proposed to be excluded herein on the basis of the method of confinement or the continuity of the discharge.

Present data indicate that closed ponds, which usually discharge less than 30 days per year, or only during periods of excess runoff, tend to have a minimal impact upon water quality. On the other hand, where fish or other aquatic animals are concentrated in raceways or similar structures which provide a continuous flow of water, the addition of food and wastes to the water flow is analogous to an industry which takes in water for processing and subsequently discharges the water laden with wastes. If, however, discharges occur infrequently, the adverse impact from this type of facility is greatly reduced. Therefore, where either a pond or raceway discharges on less than 30 days per year, no permit is required for that discharge.

Further, some small facilities, such as "fish out" facilities, farm ponds and small raceways, may discharge more frequently than on 30 days per year but still not be considered intensive fish farming. For this reason, where the discharge occurs on more than 30 days per year, but annual production is less than 20,000 pounds, no discharge permit is required at this time.

Facilities which contain any species of aquatic animal not native to the United States and discharge into navigable waters are subject to NPDES requirements regardless of the continuity of flow or the size of the facility. There is a threat that foreign pathogens or parasites harmful to our native ecosystems or to man might be introduced through discharges from these facilities. For this reason, operations which contain non-native aquatic animal species, and discharge into navigable waters must apply for an NPDES permit. Non-native species of fish are defined in "Special Publication No. 6" of the American Fisheries Society entitled, "A List of Common and Scientific Names of Fishes from the U.S. and Canada." Carp, goldfish, and brown trout, although included in the American Fisheries Society List, are excluded from the category of non-native species of fish due to their widespread distribution and relatively long residence time in the United States.

c. *Irrigation activities.* NPDES requirements apply to discharges of irrigation return flow (such as tailwater, tile drainage, surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if: (1) there is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system.

It is the individual or organization who actually has control of or responsibility for the discharge of irrigation return flow who must apply for the permit. For example, if water is supplied by an organization but the discharge of return flow to navigable waters is controlled by an individual who has more than 3,000 acres under irrigation, it is the individual who must apply for a permit. On the other hand, if an irrigation organization supplies and controls the irrigation return flow from a total of 3,000 acres to navigable waters, the organization must apply for a permit, even though one individual may be supplied with water for 3,000 acres or more.

The land serviced by the 1100 irrigation organizations which provide water to 3,000 or more acres represents 80 percent of all acreage irrigated by such organizations. If waters from an irrigation system enter navigable waters from diffuse sources, then no discharge permit is required as there is no point source of discharge.

d. *Identified point sources.* Although the general exclusion may remove large numbers of infrequent and insignificant discharges from the NPDES permit program at this time, certain other agricultural dischargers, not included within the categories listed above, may or could be significant sources of pollution.

If an excluded agricultural or silvicultural point source is a significant contributor of pollution, however, the Environmenal Protection Agency or the water pollution control agency for the State or interstate area may identify the source as not included within the exclusion. If a point source is so identified, the owner or operator must comply with all NPDES filing and application requirements.

3. *Requirements of section 301(a) of the Act.* Although the excluded categories are thus relieved at this time from complying with the requirements of section 402 of the Act and regulations issued thereunder, point sources within such categories remain subject to all other applicable provisions of Federal law and the Act, including, in particular, section 301(a) of the Act which provides that discharges from any point source are unlawful "except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404." Therefore, although owners and operators of the excluded point sources are not required to apply for or obtain an NPDES permit, they must comply with the other requirements of the

Act including any applicable effluent guidelines, standards of performance, toxic effluent standards or prohibitions, or pretreatment standards.

4. *Short Form B—Agriculture.* Also promulgated herein is a revised Short Form B for those agricultural discharges which are not excluded herein from NPDES filing requirements. The revised form is designed to provide basic information sufficient to permit the application of standards and guidelines under the Act.

Certain information on Short Form B is to be provided by all agricultural applicants. Other sections are to be completed on the basis of type of facility or activity. Special sections for this purpose are provided for animal confinement and feeding facilities, for fish and aquatic animal production facilities, and for irrigation return flow discharges from point sources.

The interim standards analytical methods and instructions provided in Table I of Short Form B shall be used by applicants pursuant to the instructions provided until the promulgation of guidelines under section 304(g) of the Act. Section 304(g) requires, within one hundred and eighty days of enactment, guidelines establishing test procedures that shall be used to analyze pollutants described in any permit application pursuant to section 402 of the Act. Following promulgation of the 304(g) guidelines, applicants for section 402 permits shall utilize any applicable test procedures contained in those guidelines for the analysis of pollutants reported in any NPDES application or reporting form, including Short Form B.

5. *Filing Instructions for Short Form B.* All owners and operators of agricultural point sources subject to the Act (other than those owners and operators who have submitted complete Refuse Act applications) must file Short Form B as soon as possible. Persons filing a Short Form B with the Environmental Protection Agency will be required to pay a filing fee of $10. The fee is assessed per application and not per discharge. For example, even though a facility filing a Short Form B may have four discharges, the applicant pays only $10.

The form can be completed in most cases by an applicant in a short period of time. In cases involving irrigation return flow, a full determination of the impact of the discharge on water quality may require further information and a more detailed analysis of the discharge. The Regional Administrator or his representatives or, in the case of States participating in the NPDES, the State Director or his representatives, will determine on a case-by-case basis whether further information is necessary before the permit can be issued. In all such cases, the applicant will be notified and advised as to further information requirements. The Regional Administrator or the State Director may also arrange for a visit to the site in order to better determine the nature of the discharges.

6. *Revisions to the proposal—Revisions to the regulations.* There are few significant changes from the May 3 version of Short Form B and the related regulations; most of the revisions consist of clarifications. One additional criterion was added for inclusion of animal feedlots, that the number of animals confined be held for 30 days or more. This addition was made in response to a comment that facilities such as fair grounds may contain a large number of animals, but for only a brief period of time each year, and therefore they should not necessarily require a permit. Any such facility which does pose a significant pollution problem can be required to apply at the discretion of the Regional Administrator or the State Director.

Probably the clarification most requested by commenters concerns responsibility for the permit where irrigation organizations supply water but individual farmers control the discharge of return flow; in such cases, the farmer must apply. Conversely, where an individual farmer receives water for 3,000 or more acres of land, but the supplying organization controls the discharge of return flow, the organization must apply for a permit. Also, it was clarified that the 3,000 acre cutoff for irrigation operations applies also to non-contiguous acres using the same drainage system.

It has been clarified that the exclusion provisions do not prohibit any owner or operator of an excluded category of point source discharge from voluntarily applying for a permit, if he is in doubt as to his obligation.

Revisions to the form. The instructions on "Who must apply" were revised to limit applicants to those holding the given number of animals for 30 days or more, as explained above.

Short Form B is to be used by the Administrator of the Environmental Protection Agency and by approved State programs as a principal means of acquiring information from owners and operators of agricultural point sources. Short Form B is included within the meaning of the term "NPDES application form" as the term is used in the guidelines published under section 304(h)(2) of the Act.

Because of the importance of making the NPDES form and related regulations available as soon as possible to owners and operators of agricultural point sources of discharge subject to the NPDES, the Administrator finds good cause to declare that these regulations and the form whose Notice of Availability follows immediately hereafter are effective immediately.

Dated: June 29, 1973.

ROBERT W. FRI,
Acting Administrator.

ACQUISITION OF INFORMATION FROM OWNERS AND OPERATORS OF POINT SOURCES

AVAILABILITY OF FORMS

Notice was published in the FEDERAL REGISTER issue of May 3, 1973, (38 FR 10960) that the Environmental Protection Agency was giving consideration to a proposed form for the acquisition of information from owners and operators of agricultural point sources of discharge. The form and accompanying instructions describe, pursuant to the authority contained in sections 304(h)(1) and 402 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816; 33 U.S.C. 1251 (1972)), requirements for the acquisition of information from owners and operators of point sources subject to the National Pollutant Discharge Elimination System.

Copies of the forms are available at State water pollution control agencies having approved programs and at all Environmental Protection Agency Regional Offices.

Part 124 of Title 40 of the Code of Federal Regulations, setting forth State program elements necessary for participation in the National Pollutant Discharge Elimination System, is amended as follows:

1. Section 124.1 is amended to add new paragraphs (u) and (v) as follows:

§ 124.1 Definitions.

* * * * *

(u) The term "animal confinement facility" means a lot or facility used or capable of being used for the feeding or holding of animals (other than fish or other aquatic animals), but does not include land used for the growing of crops or vegetation for animal feed. Two or more animal confinement facilities under common ownership are deemed to be a single animal confinement facility if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(v) The term "aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows or holds

(1) Fish or other aquatic animals in ponds, raceways or other similar structures for purposes of production and from which there is a discharge on any 30 days or more per year, but does not include

(i) Closed ponds which discharge only during periods of excess runoff, or

(ii) Facilities which produce less than 20,000 pounds of aquatic animals per year;

(2) any species of fish or other aquatic animal [other than carp (*Cyprinum carpio*), goldfish (*Carassius auratus*), or brown trout (*Salmo trutta*)] non-native to the United States (non-native fish are as defined in "Special Publication No. 6" of the American Fisheries Society entitled, "A List of Common and Scientific Names of Fishes from the U.S. and Canada") and from which there is a discharge at any time. "Special Publication No. 6" may be ordered through the American Fisheries Society, 1319 18th Street, NW., Washington, D.C. 20036.

2. Subpart B is amended to read as follows:

Subpart B—Prohibition of Dicharges Into State Waters

Sec.
124.10 Prohibition of discharges into State waters.
124.11 Exclusions.

AUTHORITY: Sec. 304(h)(1) of the Federal Water Pollution Control Act, as amended by the Federal Water Polution Control Act Amendments of 1972, (86 Stat. 816; 33 U.S.C.A. 1251 et seq. (1972)

Subpart B—Prohibition of Discharges of Pollutants

§ 124.10 Prohibition of discharges into State waters.

Except as provided in § 124.11, any State or interstate program participating in the NPDES must have a statute or regulation, enforceable in State courts, which prohibits discharges of pollutants by any person except as authorized pursuant to an NPDES permit.

(*Comment.* It is recognized that some State or interstate programs presently exempt or exclude certain categories, types, or sizes of point sources from the general prohibition of the unauthorized discharge of pollutants or from the requirement of obtaining a permit. Other States have in effect "grandfather" clauses which either exempt discharges already in existence or provide for automatic issuance of a permit to existing discharges. Except as provided in § 124.11, exceptions to the general prohibition cannot be approved. Depending on their scope and nature, any such exceptions will either (1) constitute grounds for withholding approval of the entire submitted program until such time as the State or interstate agency revises or modifies its program to conform to this subpart, or (2) constitute categories, types, or sizes of point sources for which the Administrator will not suspend the issuance of NPDES permits. In the latter case, the Administrator will issue NPDES permits for those point sources not subject to the State or interstate agency's authority.)

§ 124.11 Exclusions.

State and interstate programs may exclude the following from the requirement of obtaining an NPDES permit:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel: *Provided*, That this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is operating in a capacity other than a vessel such as when a vessel is being used as a storage facility or a cannery;

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources;

(c) Approved aquaculture projects;

(d) Dredged or fill material discharged into navigable waters;

(e) Additions of sewage, industrial wastes or other materials into publicly owned treatment works. (This exclusion applies only to the actual addition of materials into the publicly owned treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that in all appropriate cases, pretreatment standards promulgated by the Administrator pursuant to section 307(b) of the Act must be complied with.);

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303(e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(g) Any discharge of any pollutant when such discharge conforms with the national contingency plan for removal of oil and hazardous substances, published pursuant to subsection 311(c)(2) of the Act.

(h) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if: (i) There is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial and; (ii) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

Part 125 of Title 40 of the Code of Federal Regulations, setting forth policies and procedures for the Environmental Protection Agency's administration of its role in the National Pollutant Discharge Elimination System, is amended as follows:

1. Two new paragraphs, (ii) and (jj), are added to § 125.1 as follows:

§ 125.1 Definitions.

* * * * *

(ii) The term "animal confinement facility" means a lot or facility used or capable of being used for the feeding or holding of animals (other than fish or other aquatic animals), but does not include land used for the growing of crops or vegetation for animal feed. Two or more animal confinement facilities under common ownership are deemed to be a single animal confinement facility if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(jj) The term "acquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows, or holds:

(1) Fish or other acquatic animals in ponds, raceways or other similar structures for purposes of production and from which there is a discharge on any 30 days or more per year, but does not include:

(i) Closed ponds which discharge only during periods of excess runoff, or

(ii) Facilities which produce less than 20,000 pounds of acquatic animals per year;

(2) Any species of fish or other animal life [other than carp (*Cyprinus carpio*), goldfish (*Carassius auratus*), or brown trout (*Salmo trutta*)] non-native to the United States (non-native fish are as defined in "Special Publication No. 6" of the American Fisheries Society entitled, "A list of Common and Scientific Names of Fishes from the U.S. and Canada"), and from which there is a discharge at any time. "Special Publication No. 6" may be ordered through the American Fisheries Society, 1319 18th Street, NW., Washington, D.C. 20036.

2. A new § 125.4(j) is added as follows:

§ 125.4 Exclusions.

* * * * *

(j) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds;

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if: (1) There is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

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