federal register

TUESDAY, NOVEMBER 6, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 213

Pages 30525–30716

PART I

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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PART II:

PART III:

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REMINDERS

NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

federal register

Area Code 202 Phone 523-5240

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List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears following the Notices section of each issue beginning with the second issue of the month. In the last issue of the month the cumulative list will appear at the end of the issue.

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.

Rules and Regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that one position of Secretary to the Director, National Institute of Law Enforcement and Criminal Justice, is excepted under Schedule C.

Effective on November 6, 1973, § 213.3310(s)(5) is added as set out below.

§ 213.3310 Department of Justice.

* * * * *

(s) *Law Enforcement Assistance Administration.* * * *

* * * * *

(5) One Secretary to the Director, National Institute of Law Enforcement and Criminal Justice.

* * * * *

(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.

[FR Doc.73-23593 Filed 11-5-73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 102—PUBLIC ACCESS TO RECORDS

Public Disclosure of CLC Reports

The purpose of this amendment to the Cost of Living Council's regulations governing public access to its records is to (1) define a business enterprise as a parent and the consolidated and unconsolidated entities which it directly or indirectly controls, (2) require the filing of an additional copy of certain quarterly reports to be used by the Council in responding to requests for public disclosure, (3) provide for the certification that public disclosure of certain quarterly reports is not required because the submitting firm has not increased prices sufficiently to require disclosure, and (4) specify those parts of Schedules F, R, and T which the Council has determined contain information which is nonproprietary and therefore subject to disclosure in accordance with Part 102 of Title 6, Code of Federal Regulations.

Subpart F of Part 102, dealing with public disclosure of the Forms CLC–2 and CLC–22, applies to business enterprises having certain characteristics. Previously, "business enterprise" had been defined in § 102.53 with reference to the instructions to the Form CLC–2 and to the Form CLC–22. Section 102.53 is amended to define business enterprise as a firm is defined in Part 150 of the Economic Stabilization Regulations for purposes of determining tier status.

Under § 102.54(a)(3), a firm required to submit additional copies of its Form CLC–2 or CLC–22 quarterly report omitting all proprietary data must submit three copies. This requirement is being changed to four copies. The additional copy will allow the Council to respond to public disclosure requests at both CLC Headquarters in Washington and the IRS District Offices where the copies are filed.

A new paragraph (d) is being added to § 102.54 providing for a business enterprise having annual sales or revenues of $250 million or over to certify that its quarterly reports are not subject to public disclosure, when the business enterprise has not increased prices enough to require such disclosure under the terms of § 205(b)(1) of the Economic Stabilization Act of 1970, as amended.

The Council has previously set out in §§ 102.55 and 102.56 an item-by-item listing of the data on Forms CLC–2 and CLC–22 and their related Schedule C's which the Council has determined to be nonproprietary. Similar listings are being added covering related Schedules F (Report or Record of Food Manufacturing Revenues), R (Reconciliation of Forms 10–K, 10–Q or Other Financial Statements to Form CLC–22), and T (Report of Retailing and Wholesaling Markups or Gross Margins).

Because the purpose of these amendments is to make technical corrections and to provide immediate guidance and information with respect to the decisions of the Council, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making these amendments effective in less than 30 days. Interested persons may submit written comments regarding these regulations. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, Part 102 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective November 2, 1973.

Issued in Washington, D.C., on November 2, 1973.

JAMES W. MCLANE,
Deputy Director, Cost of Living Council.

1. In § 102.53 the definition of "Business enterprise" is amended to read as follows:

§ 102.53 Definitions.

For the purpose of this subpart—

"Business enterprise" means a parent and the consolidated and unconsolidated entities which it directly or indirectly controls, as those terms are defined in § 150.31 of this title.

* * * * *

2. Section 102.54(a)(3) is amended and a new paragraph (d) is added to read as follows:

§ 102.54 Disclosure procedure.

(a) * * *

(3) Attach four copies of the entire CLC–2 or CLC–22 submission which omit all proprietary information or data in accordance with the definitions and rules provided in § 102.55 or § 102.56.

* * * * *

(d) Each business enterprise having annual sales or revenues of $250 million or more and submitting to the Cost of Living Council a Form CLC–2 or Form CLC–22 which is not subject to public disclosure because the business enterprise has not charged a price for a substantial product that exceeds the 1.5 percent limitation specified in § 102.51(b)(1)(iii) shall attach a supporting certification to that effect.

4. Section 102.56 is amended by adding new paragraphs (d), (e), and (f) to read as follows:

§ 102.56 Form CLC–22 data.

* * * * *

(d) *Schedule F (Report or Record of Food Manufacturing Revenues).* (1) The information called for in items 1 and 2 serves to identify or describe the firm, the reporting period, and the base period. All of the information is nonproprietary data because it does not include either trade data or general financial data.

(2)(i) Item 3 (Price Rule) Columns (a) and (b) contain nonproprietary data because only the names of product lines and related standard industrial classification codes is required, which is neither trade data nor general financial data other than "SEC data", and is generally avilable to the public elsewhere.

(ii) Column (c) (Base Revenues) reports the revenues by product line in the base period selected by the firm pursuant to Subpart Q. Generally, the base period is any 4 consecutive fiscal quarters, at the firm's option, of the eight fiscal quarters which ended prior to May 11, 1973. With respect to slaughtering and manufacturing of meat products, however, the base period is any 4 consecutive fiscal quarters, at the option of the firm concerned, which began after May 25, 1970 and ended before May 11, 1973. These 4-quarter periods are not required to correspond to the fiscal year used on the SEC Form 10–K. In addition, the CLC definition of revenues for Column (c) provides for adjustments to revenues which are not normally reflected in "revenues" for SEC reporting purposes. For example, the CLC definition of "revenues" for Column (c) excludes revenues from foreign operations and may exclude revenues derived from food or food raw materials purchased and sold without change in form, and from hedging activities. Therefore, this information has no counterpart on SEC Form 10–K prepared as though the firm were a single-product-line firm and it is defined as proprietary data.

(iii) Column (d) compares the ratio of the current volume to the volume in the base period. This information has no counterpart on a SEC Form 10–K prepared as though the firm were a single-product-line firm and thus it is defined as proprietary data.

(iv) The data required in Column (e) is a percentage figure representing "Cost justification plus 100 percent" for each product line entered in item 3. These are calculations unique to the Schedule F and find no counterpart on the SEC Form 10–K. However, in order to fulfill the general purpose of § 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the data required in Column (e) of item 3, as nonproprietary CLC data.

(v) Column (f) (Permissible Revenues) is determined by multiplying together the information in Columns (c), (d), and (e). This figure is a special CLC calculation which has no counterpart in the SEC Form 10–K. Therefore, the information required is not SEC data, and is defined as proprietary data.

(vi) Column (g) (Current Revenues) calls for current revenues as defined by the Cost of Living Council. This definition is not the same as that used for SEC purposes, because items bought and sold without change in form must be excluded. Since such general financial data, thus more narrowly prescribed, is not required for SEC purposes, it is defined as proprietary data.

(vii) The data called for in Column (h) (Current Revenues Under (Over)) contains the result of a special CLC calculation which has no counterpart in the SEC Form 10–K. Therefore, the information in Column (h) is not SEC data, and is defined as proprietary data.

(e) *Schedule R (Reconciliation of Forms 10–K, 10–Q or Other Financial Statements to Form CLC–22.* (1) The information called for in lines 1 and 2 serves to identify the firm and the period of time being reconciled. All of this information is nonproprietary because it does not include either trade data or general financial data.

(2) Lines 3 (Net Sales/Revenues) and 4 (Net Income) contain data reported to the SEC and are therefore nonproprietary.

(3) Lines 5 (Adjustments) and 6 (Intercompany sales/income) are special CLC calculations which have no counterpart in the SEC Form 10–K. Therefore, none of the information required is SEC data and all of it is defined as proprietary data.

(4) Line 7 calls for restatements of lines 3 or 4. Since any such restatement would be a restatement of data otherwise included in a periodic report to the SEC, the restatement is nonproprietary.

(5) Lines 8 (Equity interest in other entities), 9 (Non-operating items), 10 (Income tax expense), and 11 (Extraordinary items) call for data required to be updated to the SEC which is therefore nonproprietary.

(6) Lines 12 (Net sales) and 13 (Operating income) are already defined in Parts II and III of the Form CLC–22 as proprietary data.

(f) *Schedule T (Report of Retailing and Wholesaling Markups or Gross Margins).* (1) The information called for in items 1 through 4 serves to identify the firm, the reporting period, the purpose of the filing, and whether the firm is reporting on customary initial percentage markups, or gross margins. All of the information required is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere.

(2) Item 5 (Schedule of Markups or Gross Margins). The information as to the pricing base period is nonproprietary because it is neither trade data nor general financial data. The information required in Column (a) for item 5 is nonproprietary data because it is the merchandise or customer categories, which is neither trade data nor general financial data other than SEC data, and is generally available to the public elsewhere.

(3) The information required in Columns (b), (c), (d), (e), (f), (g), and (h), concerns markups or gross margins by merchandise or customer category. This information has no counterpart on a SEC Form 10–K prepared as though the firm was a single-product-line firm and thus it is defined as proprietary data.

(4) Item 6 calls for name, title, address, and telephone number. Everything required in this item is nonproprietary data because it does not include either trade data or general financial data other than SEC data and is generally available to the public elsewhere.

[FR Doc.73-23730 Filed 11-2-73;3:56 pm]

Title 7—Agriculture

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

PART 945—IRISH POTATOES GROWN IN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Expenses and Rate of Assessment

This document authorizes the Idaho-Eastern Oregon Potato Committee to spend not more than $36,825 for its operations during the fiscal period ending May 31, 1974, and to collect $0.0026 per hundredweight on assessable potatoes handled by first handlers.

The committee was established under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945), regulating the handling of Irish potatoes grown in Idaho and Malheur County, Oregon. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Notice was published in the September 20 FEDERAL REGISTER (38 FR 26384) regarding the proposals. It afforded interested persons an opportunity to file written comments not later than September 28, 1973. None was filed.

After consideration of all relevant matters, including the proposals set forth in the notice, it is found that the following budget and rate of assessment should be issued:

§ 945.226 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending May 31, 1974, by the Idaho-Eastern Oregon Potato Committee for its maintenance and functioning and for such other purposes as the Secretary determines to be appropriate will amount to $36,825.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be $0.0026 per hundredweight, or equivalent quantity, of assessable potatoes handled by him as the first handler during the fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as a reserve to the extent authorized in § 945.44(b).

(d) Terms used in this section shall have the same meaning as when used in the marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of this part require that the rate of assessment for a particular fiscal period shall be applicable to all assessable potatoes from the beginning of such period and (2) the current fiscal period began on June 1, 1973, and the rate of assessment herein fixed will apply to all

assessable potatoes beginning with such date.

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

Dated: November 1, 1973.

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

[FR Doc.73-23587 Filed 11-5-73;8:45 am]

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

[MILK ORDER NO. 136]

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

Order Terminating Certain Provisions

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Great Basin marketing area.

After consideration of all relevant material, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. Section 1136.9(d).
2. In § 1136.31(a), beginning in the first line, the provision, "and each handler pursuant to § 1136.9(d)."
3. Section 1136.63.
4. In § 1136.81, the reference to § 1136.63.
5. Section 1136.86(d).
6. In § 1136.88, the reference to § 1136.63.

STATEMENT OF CONSIDERATION

The termination order would remove provisions of the order that designate a vendor as a handler. A vendor is a person who does not operate a pool plant but receives fluid milk products for resale and distributes to retail or wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from a pool plant.

Such person is required to make reports to the market administrator at such time and in such manner as the market administrator requests. Further, each vendor must pay into the producer-settlement fund, on or before the 25th day at the end of the month, at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price subject to conditions specified in the order. Also, such vendor must pay the administrative assessment for such milk and is subject to a charge for unpaid obligations as provided by the order.

The provisions were made effective November 1, 1970, to provide for circumstances in which a producer-handler supplies fluid milk products to a vendor who at the same time obtains fluid milk products from handlers regulated, fully or partially, by the Great Basin order or by another order.

The final decision of the proceeding in which the provisions were considered, contained a conclusion at 35 FR 15009 that the disposition of the surplus production of a producer-handler to a vendor receiving fluid milk products from other handlers should be treated in the same manner as the disposition of a producer-handler's surplus to a regulated handler.

The vending of milk occurs under a wide variety of circumstances in the Great Basin marketing area. Administrative experience has established that some persons having or acquiring interests other than milk distribution are in a position to avoid financial obligation under the order even though they purchase milk from pool plants and producer-handlers. At the same time, persons who engage primarily in operating one or more milk delivery routes, and who similarly buy milk from pool plants and producer-handlers, may incur financial obligation under the order. While there is little difference in these operations insofar as the distribution of milk from producer-handler sources is concerned, there is substantial reason to doubt that such provisions can be uniformly and equitably applied to all such persons. It reasonably may be expected that deletion of the provisions in question will not be disruptive to marketing conditions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing in the marketing area in that the provisions to be terminated do not effectuate the declared policy of the Act; and

(b) This termination eases a restriction and does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective November 6, 1973.

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated.

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

Effective date: November 6, 1973.

Signed at Washington, D.C., on November 1, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-23541 Filed 11-5-73;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—GUARANTEED LOANS

[FHA Instructions 449.1 and 449.3]

PART 1843—FARMER LOANS

Clarification Amendments

Correction

In FR Doc. 73-23275 appearing at page 30102 of the issue of Thursday, November 1, 1973, the amendatory language preceding the heading and text of § 1843.3 should be corrected to read as follows:

1. Section 1843.3 is amended by revising paragraphs (a), (b), and (c) to read as set forth below. Paragraph (d) as published at 38 FR 29051 remains unchanged.

Title 10—Atomic Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 70—SPECIAL NUCLEAR MATERIAL

PART 73—PHYSICAL PROTECTION OF SPECIAL NUCLEAR MATERIAL

Amended Requirements for Material in Transit

On February 1, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 3080) proposed amendments to its regulations in 10 CFR Part 73 which would, in the interest of the common defense and security, strengthen existing requirements for physical protection of special nuclear material while in transit. Interested persons were invited to submit comments and suggestions for consideration in connection with the proposed amendments within 30 days after publication in the FEDERAL REGISTER. The comment period was subsequently extended another 30 days. Upon consideration of the comments received and other factors involved, the Commission has adopted the proposed amendments, with certain modifications as set forth below.

Significant differences from the amendments published for comment are: (1) The text has been reorganized to present the general requirements for the protection of special nuclear material in one section, and to group into sections requirements for particular transportation modes and monitoring methods; (2) the concept and definition of "dual occupancy protection" has been replaced with a "continuous visual surveillance" concept and definition; (3) requirements for fingerprint seals have been replaced by requirements for tamper-indicating type seals; (4) call-in times for road and rail movements have been extended from two to five hours when radiotelephone coverage or conventional telephone coverage along the planned route is not

available; (5) only one driver is required in the cargo vehicle when escorts are used for motor vehicle movements which last less than one hour and during which continuous radiotelephone or radio communication with the shipper is maintained; (6) criteria for protection of special nuclear material in shipments by sea have been added; (7) monitoring requirements have been further clarified, and requirements for arming monitors have been added; (8) export requirements have been clarified; (9) the requirement that direct routes be taken in motor shipments has been eliminated; and (10) licensees and applicants for a license are required to submit a plan outlining the procedures that will be used to meet the requirements of Part 73 applicable to transportation. Editorial changes were also made.

The following discussions pertain to items (1) through (10) respectively:

(1) The text of the rule as set forth below has been reorganized to present in one section requirements that apply generally to all modes of transportation. Requirements pertaining to particular modes of transportation are specified in individual sections. Requirements for monitoring during transfers and other criteria have been put into separate sections.

(2) The concept and definition of "continuous visual surveillance" has been substituted for the concept and definition of "dual occupancy protection" since it is a more widely used term. Requirements for dual occupancy protection are still retained in conjunction with "continuous visual surveillance" for shipments by road (§ 73.31(c)) of one hour or more and for shipments by road of less than an hour where continuous communication with the shipper is not available. The requirement that a driver or other authorized individual be within 10 feet of the access door leading to the special nuclear material has been replaced by a requirement that all access to storage areas or cargo compartments be kept within unobstructed view at all times.

(3) Since, under the regulations that follow, special nuclear material in transit will be under continuous surveillance during road movements, and at all stops during air, rail and sea movements, the requirement for fingerprint-type seals has been changed to a requirement for tamper-indicating type seals. Tamper-indicating type seals are also required in 10 CFR Part 70 to provide an indication that material is intact.

(4) Where no radiotelephone coverage is available, a requirement that the driver of a motor shipment of special nuclear material call in every two hours could necessitate frequent detours from the planned route.

Such detours would increase transit time and hence vulnerability to diversion. Accordingly, calls shall be made by either radiotelephone or conventional telephone (if available along the preplanned route) at least every two hours. In cases where radiotelephone coverage or a conventional telephone has not been available along the preplanned route for 5 hours, a conventional telephone call shall be made.

(5) In order to reduce costs between local plant transfers or local plant to airport transfers which take less than an hour, the need for two drivers in the cargo vehicle has been eliminated when escorts are used provided continuous communication to the licensee or his agent is available.

(6) Requirements for shipment by sea have been included in the amendments that follow to cover all possible modes of transportation. The requirements are for: (a) Armed guards at all scheduled stops at domestic seaports; (b) no ship-to-ship transfers; (c) minimizaton of ports of calls; (d) ship-to-shore communication every 24 hours.

(7) The monitoring requirements at terminal points have been combined into one section and made applicable to shipments by all modes of transportation. Consistent with the protection required for land shipments while a vehicle is in motion, monitors are required to be armed. This will assure that a shipment is adequately protected at points where shipments are subject to possible theft or misrouting.

(8) Requirements applicable to export by air or sea have been clarified by a provision that licensees assure that an unarmed escort accompany a shipment from the last port or terminal in the United States up to the terminal at which the special nuclear material is unloaded from the vehicle that left the United States. From that point to the final destination an exchange of hand-to-hand receipts is required at all points en route where there is a transfer of custody.

(9) The requirement that direct routes be taken in motor shipments has been eliminated because of the possible need to "interline," which may result in transportation through points which do not necessarily lie along the most direct route. The need to minimize transit times, however, has been retained.

(10) The requirement that a plan be submitted by certain licensees for use of either specially designed trucks or escorts has been expanded to require that licensees submit a plan outlining the procedures that will be used to meet the transportation requirements of Part 73. Part 70 has also been revised to reflect this requirement for license applicants.

On or before January 7, 1974, licensees are required to submit a plan outlining the procedures that will be used to meet the requirements of these amendments, including a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer, as appropriate. This plan must be followed as of March 8, 1973.

Each applicant for a license to import, export, transport, deliver to a carrier in a single shipment, or take delivery of a single shipment as specified in § 73.1(b) of this chapter is also required to include in his application filed pursuant to Part 70 a plan outlining the procedures that will be used to meet the requirements of these amendments, including a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer, as appropriate.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 70 and 73 are published as a document subject to codification.[1]

1. Section 70.22 is amended by adding a new paragraph (g) to read as follows:

§ 70.22 Contents of application.

* * * * *

(g) Each application for a license which would authorize the transport or delivery to a carrier for transport of special nuclear material in an amount specified in § 73.1(b) of this chapter shall include a description of the plan for physical protection of special nuclear material in transit in accordance with §§ 73.30 through 73.36 and 73.41(c) of this chapter, including a plan for the selection, qualification and training of armed escorts, or the specification and design of a specially designed truck or trailer as appropriate.

2. The prefatory language of § 70.23(a) is amended and a new paragraph (a)(9) is added to § 70.23 to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) An application for a license, other than a license for export, will be approved if the Commission determines that:

* * * * *

(9) Where the applicant is required to submit a plan for physical protection of special nuclear material in transit pursuant to § 70.22(g), of this chapter, the applicant's plan is adequate.

* * * * *

3. A new paragraph (d) is added to § 70.32 to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(d) The licensee shall make no change which would decrease the effectiveness of the plan for physical protection of special nuclear material in transit prepared pursuant to § 70.22(g) or 73.30(e) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for a change in the technical specifications incorporated in his license, if any, or for an amendment to his license pursuant to § 50.90 or § 70.34 of this chapter, as appropriate. The licensee may

[1] Concurrently with publication of this notice, the Atomic Energy Commission is publishing further amendments of Parts 70 and 73 which appear on pages 30537–30546

make changes to the plan for physical protection of special nuclear material without prior Commission approval if these changes do not decrease the effectiveness of the plan. A report containing a description of each change shall be furnished the Commission within two months after the change.

4. Paragraph (b) of § 73.1 is amended and a new paragraph (c) is added to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) This part prescribes requirements for the physical protection of special nuclear material in transportation by any person who is licensed pursuant to the regulations in Part 70 of this chapter who imports, exports, transports, delivers to a carrier fo transports, deliver
carrier for transport in a single shipment, or takes delivery of a single shipment free on board at the point where it is delivered to a carrier, either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium, or any combination of these materials, which is 5,000 grams or more computed by the formula grams= (grams contained U-235)+2.5 (grams U-233+grams Pu).

(c) This part also applies to shipments by air of special nuclear material in quantities exceeding (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

5. In § 73.3, a new paragraph (n) is added to read as follows:

§ 73.3 Definitions.

* * * * *

(n) "Continuous visual surveillance" means unobstructed view at all times of a shipment of special nuclear material, and of all access points to a temporary storage area or cargo compartment containing the shipment.

6. The undesignated center head following § 73.13 is amended to read as follows:

PHYSICAL PROTECTION OF SPECIAL NUCLEAR MATERIAL IN TRANSIT

7. Section 73.30 is amended to read as follows:

§ 73.30 General requirements.

(a) Except as specified in paragraph § 73.36(a) or as otherwise authorized pursuant to § 73.30(f), each licensee who transports or who delivers to a carrier for transport either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium, or any combination of these materials, which is 5,000 grams or more. Computed by the formula grams= (grams contained U-235)+2.5 (grams U-233+grams Pu), shall make arrangements to assure that such special nuclear material will, if a common or contract carrier is used, be transported under the established procedures of a carrier which provides a system for the physical protection of valuable material in transit and requires an exchange of hand-to-hand receipts at origin and destination and at all points enroute where there is a transfer of custody.

(b) Transit times of shipments other than those specified in § 73.1(c) shall be minimized and routes shall be selected to avoid areas of natural disaster or civil disorders. Such shipments shall be preplanned to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept receipt of shipment.

(c) Special nuclear material shall be shipped in containers which are sealed by tamper indicating type seals. The container shall also be locked if it is not in another container or vehicle which is locked. If inspection of the container or vehicle is not required by State or local authorities before final destination, the outermost container or vehicle shall also be sealed by tamper indicating type seals. No container weighing 500 pounds or less shall be shipped in open trucks, railroad flat cars or box cars and ships. This paragraph does not apply to shipments of quantities specified in § 73.1(c).

(d) When guards are used pursuant to §§ 73.31(c)(1), 73.31(c)(2), 73.33 and 73.35, the licensee shall not permit an individual to act as a guard unless there is documentation that the individual has been qualified by demonstrating an understanding of his duties and responsibilities. The licensee or his agent shall have documentation that guards have been requalified annually.

(e) By January 7, 1974, each licensee shall submit a plan outlining the procedures that will be used to meet the requirements of §§ 73.30 through 73.36 and 73.41(c) including a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer as appropriate. This plan shall be followed by the licensee after March 6, 1974.

(f) A licensee or applicant for a license may apply to the Commission for approval of proposed procedures for transport of special nuclear material in a manner not otherwise authorized by the regulations of this part. Such application shall include a description and quantity of the special nuclear material involved, the origin and destination, the carriers to be used, the expected time in transit, the number of transfer points, the communications to be used, the vehicle visual identification, and the cargo security and surveillance measures to be used.

8. Section 73.31 is amended to read as follows:

§ 73.31 Shipment by road.

(a) All shipments by road shall be made without any scheduled intermediate stops to transfer special nuclear material or other cargo between the facility from which it is shipped and the facility of the receiver.

(b) All motor vehicles used to transport special nuclear material shall be equipped with a radiotelephone which can communicate with a licensee or his agent. The licensee or agent with whom communications shall be maintained for different segments of the shipment shall be predesignated before a shipment is made. Calls to such licensee or agent shall be made at least every 2 hours when radiotelephone or conventional telephone coverage along the route is available to relay position and projected route. Call frequency may extend up to 5 hours when radiotelephone or conventional telephone coverage is not available along the preplanned route, at which time a conventional telephone call shall be made. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify an appropriate law enforcement authority and the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A of this part.

(c) A shipment shall be accompanied by at least two people in the vehicle containing the shipment, which may be two drivers or one driver and an authorized individual. The vehicle containing the shipment shall be under continuous visual surveillance, or one of the drivers or authorized individuals shall be in the cab of the vehicle, awake, and not in a sleeper berth. The shipment shall be further protected by one of the following methods:

(1) An armed escort consisting of at least two guards shall accompany the shipment in a separate escort vehicle. Escorts shall maintain continuous vigilance for the presence of conditions or situations which might threaten the security of the shipment, take such action as circumstances might require to avoid interference with continuous safe passage of the cargo vehicle, provide assistance to, or summon aid for crew of cargo vehicles in case of emergency, check seals and locks at each stop where time permits, and observe the cargo vehicle and adjacent areas during stops or layovers. Continuous radio communication capability shall be provided between the cargo vehicle and the escort vehicle. Escort vehicles shall also be equipped with a radiotelephone. The licensee may use his own employees as armed escorts or he may use an agent. Only the driver is required in the vehicle containing special nuclear material for shipments involving an average of less than an hour in transportation, if continuous radiotelephone or radio communication is maintained during the course of the shipment with the licensee or agent monitoring the shipment.

(2) The shipment shall be made in a specially designed truck or trailer which reduces the vulnerability to diversion. Design features of the truck or trailer shall permit immobilization of the van and provide barriers or deterrents to physical penetration of the cargo compartment unless armed guards are also used in which case immobilization of the vehicle is not required.

(d) Transfers to and from other modes of transportation shall be in accordance with § 73.35.

(e) Vehicles shall be marked on top with identifying letters or numbers which will permit identification of the vehicle under daylight conditions from the air in clear weather at 1,000 feet above ground level. The same code of letters and numbers as those used on the top shall also be marked on the sides and rear of the vehicle to permit identification from the ground.

§ 73.60 [Redesignated]

9. Former § 73.60 is deleted; § 73.32 is redesignated as § 73.60, and a new § 73.32 is added to read as follows:

§ 73.32 Shipments by air.

(a) Except as specifically approved by the Atomic Energy Commission, no shipment of special nuclear material shall be made in passenger aircraft in excess of (1) 20 grams or 20 curies whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(b) In shipments on cargo aircraft of either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233 or plutonium, or any combination of these materials which is 5,000 grams or more computed by the formula grams=(grams contained U-235)+2.5 (grams U-233+grams Pu), transfers shall be in accordance with § 73.35. Transfers shall be minimized.

(c) Export shipments shall be escorted by an unarmed authorized individual, who may be a crew member, from the last terminal in the United States until the shipment is unloaded at a foreign terminal. He shall perform monitoring duties at foreign terminals as described in § 73.35.

10. Section 73.33 is redesignated paragraph (d) of the new § 73.60 and is amended to read as follows:

§ 73.60 Physical protection of special nuclear material in use or storage.

* * * * *

(d) Each licensee shall test and maintain intrusion alarms, security containers, and protected areas utilized by the licensee pursuant to the requirements of this part as follows:

(1) Intrusion alarms and security containers shall be maintained in operable and effective condition.

(2) Intrusion alarms shall be inspected and tested for operability and required functional performance at intervals not exceeding seven (7) days.

11. A new § 73.33 is added to read as follows:

§ 73.33 Shipment by rail.

(a) A shipment by rail shall be escorted by two guards, in the shipment car or an escort car of the train, who shall keep the shipment cars under observation and who shall detrain at stops when practicable and time permits to guard the shipment cars under observation, and check car or container locks and seals. Radiotelephone communication shall be maintained with a licensee or his agent to relay position every 2 hours or less, and at scheduled stops in the event that radiotelephone coverage was not available in the last 5 hours before the stop. The licensee or agent with whom communications shall be maintained for different segments of the shipment shall be predesignated before a shipment is made. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify an appropriate law enforcement authority and the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A of this part.

(b) Transfers shall be in accordance with § 73.35.

12. A new § 73.34 is added to read as follows:

§ 73.34 Shipment by sea.

(a) Shipments shall be made on vessels making the minimum ports of call. Transfers to and from other modes of transportation shall be in accordance with § 73.35. There shall be no scheduled transfers to other ships. At domestic ports of call where other cargo is transferred, the shipment shall be protected in accordance with § 73.35(a).

(b) The shipment shall be placed in a secure compartment which is locked and sealed. Locks and seals shall be periodically inspected in transit, if accessible, by an escort or crew member.

(c) Export shipments shall be escorted by an unarmed authorized individual, who may be a crew member, from the last port in the United States until the shipment is unloaded at a foreign port. He shall perform monitoring duties at foreign ports as described in § 73.35.

(d) Ship-to-shore communications shall be available, and a ship-to-shore contact shall be made every twenty-four hours to relay position information, and the status of the shipment, which shall be determined by a daily inspection where possible. This information shall be sent, as often as it is available, to the licensee or his agent who makes the arrangements for the protection of the shipment.

13. A new § 73.35 is added to read as follows:

§ 73.35 Transfer of special nuclear material.

All transfers shall be monitored by a guard. An alternate guard shall be designated at all transfer points to substitute, if necessary. Monitoring of special nuclear material transfers shall be conducted as follows:

(a) At scheduled intermediate stops where special nuclear material is not scheduled for transfer, the guard shall observe the opening of the cargo compartment and assure that the shipment is not removed. The guard shall maintain continuous visual surveillance of the cargo compartment. Continuous visual surveillance of the cargo compartment shall be maintained up to the time the vehicle is ready to depart. The guard shall observe the vehicle until it has departed, and shall notify the licensee or his agent of the latest status immediately thereafter.

(b) At points where special nuclear material is transferred from a vehicle to storage, from one vehicle to another, or from storage to a vehicle, the guard shall keep the shipment under continuous visual surveillance by observing the opening of the cargo compartment of the incoming vehicle and assuring that the shipment is complete by checking locks and/or seals. Continuous visual surveillance of a shipment shall be maintained at all times it is in the terminal or in storage. Shipments shall be preplanned in order to avoid storage times in excess of 24 hours. Continuous visual surveillance of the cargo compartment shall be maintained up to the time the vehicle is ready to depart from the terminal. The guard shall observe the vehicle until it has departed, and shall notify the licensee or his agent of the latest status immediately thereafter.

(c) The guard shall be required to immediately notify the carrier and the licensee who made the arrangements for protection of special nuclear material of any deviation from or attempted interference with schedule or routing.

14. A new § 73.36 is added to read as follows:

§ 73.36 Miscellaneous requirements.

(a) Each licensee who takes delivery of special nuclear material free on board (f.o.b.) the point at which it is delivered to a carrier for transport shall make the arrangements to assure that such special nuclear material will be protected in transit as prescribed in §§ 73.30 through 73.35, rather than the person who delivers such shipment to the carrier for transport.

(b) Each licensee who imports special nuclear material shall make arrangements to assure that such material will be protected in transit as follows:

(1) An individual designated by the licensee or his agent, or as specified by a contract of carriage, shall confirm the container count and examine locks and/or seals for evidence of tampering, at the first place in the United States at which the shipment is discharged from the arriving carrier.

(2) The shipment shall be protected at the first terminal at which it arrives in the United States and all subsequent terminals as provided in §§ 73.30 through 73.35 and paragraphs (c) and (f) of this section.

(c)(1) Each licensee who delivers special nuclear material to a carrier for transport shall immediately notify the consignee by telephone, telegraph, or teletype, of the time of departure of the shipment, and shall notify or confirm with the consignee the method of transportation, including the names of carriers, and the estimated time of arrival of the shipment at its destination. (2) In the case of a shipment free on board (f.o.b.) the point where it is delivered to a carrier for transport, each licensee

shall, before the shipment is delivered to the carrier, obtain written certification from the licensee who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by §§ 73.30 through 73.35 for licensed shipments have been made. When an AEC license-exempt contractor is the consignee of a shipment, the licensee shall, before the shipment is delivered to the carrier, obtain written certification from the contractor who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by AEC Manual Chapters 2401 or 2405 have been made. (3) Each licensee who delivers special nuclear material to a carrier for transport shall also make arrangements with the consignee to be notified immediately by telephone, telegraph, or teletype, of the arrival of the shipment at its destination.

(d) In addition to complying with the requirements specified in paragraphs (c) and (f) of this section, each licensee who exports special nuclear material shall comply with the requirements specified in §§ 73.30 through 73.35, as applicable, up to the first point where the shipment is taken off the vehicle outside the United States. The licensee shall also make arrangements with the consignee to be notified immediately by telephone and telegraph, teletype, or cable, of the arrival of the shipment at its destination, or of any such shipment that is lost or unaccounted for after the estimated time of arrival at its destination.

(e) Each licensee who receives a shipment of special nuclear material shall immediately notify the person who delivered the material to a carrier for transport of the arrival of the shipment at its destination. In the event such a shipment fails to arrive at its destination at the estimated time, the consignee, if a licensee, or in the case of an export shipment, the licensee who exported the shipment, shall immediately notify by telephone and telegraph, or teletype, the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A of this part, and the licensee or other person who delivered the material to a carrier for transport. The licensee who made the physical protection arrangements shall also immediately notify by telephone and telegraph, or teletype the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional office listed in Appendix A of the action being taken to trace the shipment.

(f) Each licensee who makes arrangements for physical protection of a shipment of special nuclear material as required by §§ 73.30 through 73.36 shall immediately conduct a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and file a report with the Commission as specified in § 73.71. If the licensee who conducts the trace investigation is not the consignee, he shall also immediately report the results of his investigation by telephone and telegraph, or teletype to the consignee.

15. An undesignated center head is added after § 73.36 to read as follows:

PHYSICAL PROTECTION REQUIREMENTS AT FIXED SITES

16. Section 73.41(c) is amended to read as follows:

§ 73.41 Records.

* * * * *

(c) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, names and addresses of the monitor and one alternate monitor at each transfer point, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification, and any other information to confirm the means utilized to comply with §§ 73.30 through 73.36. Such information shall be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan including monitor changes, trace investigations and others shall also be recorded.

§ 73.71 [Redesignated]

17. § 73.42 is redesignated § 73.71.

Effective date. The foregoing amendments are effective on March 6, 1974, except for §§ 70.22(g), 70.23(a)(9), and 73.30(e), which will become effective on December 6, 1973.

(Sec. 161, Pub. Law 83-703, 68 Stat. 948; (42 U.S.C. 2201).)

Dated at Germantown, Maryland this 31st day of October 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-23551 Filed 11-5-73;8:45 am.]

PHYSICAL PROTECTION OF PLANTS AND MATERIALS

On February 1, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 3073, 3075, and 3082), proposed amendments to its regulations in 10 CFR Parts 50, 70, and 73 which would, in the interests of the common defense and security and in the interests of public health and safety, strengthen the physical protection of licensee plants and of special nuclear materials (SNM) located at licensed facilities.

Interested parties were invited to submit comments and suggestions for consideration pertaining to the proposed amendments within 30 days after the publication in the FEDERAL REGISTER. The comment period was subsequently extended 30 days. Upon consideration of the comments received, and other factors involved, the Commission has adopted the proposed amendments, with certain modifications, as set forth below.

Significant differences from the amendments published for comment are the following: (1) Inclusion of all physical protection requirements into Part 73 and the subsequent expansion of the scope of that part; (2) removal of the requirement to search vehicles prior to entry into the protected area of a licensee's plant and clarification of the requirement that all drivers of such vehicles be escorted; (3) exemption of employees who possess an AEC clearance from a routine search at the protected area boundary; and (4) specification of the maximum amount of fissile material per volume of material (e.g., scrap) which can be stored outside a material access area. In addition, several editorial and clarifying changes were made.

The following discussions pertain to the items (1) through (4) above:

(1) The rule set forth below consolidates all the fixed-site physical protection requirements into a single part of the Commission's regulations in Title 10 of the Code of Federal Regulations, Part 73. The scope of that part is expanded accordingly. The purpose of the consolidation is to increase clarity and assure consistency.

(2) The rule set forth below does not require a search prior to entry into a protected area of a licensee's plant of either vehicles or of all packages. A thorough search of vehicles and packages on vehicles would take considerable time and effort and could necessitate dismantling the vehicles and the opening of each package to inspect the contents. Instead, drivers of trucks and delivery and service vehicles shall be escorted within the protected area. Packages being transported into the protected area shall be checked on a random basis. As in the proposed rule, hand-carried packages must be searched prior to entry into a protected area. Further, all persons, packages, and vehicles must be searched upon exit from a material access area.

(3) In the rule set forth below, employees possessing an AEC security clearance are exempted from a routine search but are required to be searched on a random basis prior to entry into the protected area. The exemption is based upon the belief that an AEC clearance in conjunction with a random search provides adequate assurance that such individuals will not carry materials which could be used for sabotage into the facility.

(4) In the rule set forth below, enriched uranium scrap which contains no more than 0.25 grams of uranium-235 per liter of scrap material may be stored in 30-gallon or larger containers outside a building, within an area separately fenced within the protected areas. Uranium scrap so stored would require theft of approximately 160 30-gallon containers to accumulate a strategic quantity (5,000 grams) of uranium-235.

The purpose of these amendments is to impose requirements for the protection of plants of licensees against acts of

industrial sabotage and for the protection of SNM in the possession of licensees against theft by establishing and maintaining a physical protection system of (i) protective barriers and intrusion detection devices at fixed sites to provide early detection of an attack, (ii) deterrence to attack by means of armed guards, and (iii) liaison and communication with law enforcement authorities capable of rendering assistance to counter such attacks.

Pursuant to the Atomic Energy Act of 1954, as amended, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments of Title 10, Chapter I, Code of Federal Regulations, Parts 50, 70, and 73 are published as a document subject to codification.[1]

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. A new paragraph (c) is added to § 50.34 of 10 CFR Part 50 to read as follows:

§ 50.34 Contents of applications: technical information.

* * * * *

(c) Physical security plan. Each application for a license to operate a production or utilization facility shall include a physical security plan. The plan shall consist of two parts. Part I shall address vital equipment, vital areas, and isolation zones, and shall demonstrate how the applicant plans to comply with the requirements of Part 73 of this chapter, if applicable, at the proposed facility.[2] Part II shall list tests, inspections, and other means to be used to demonstrate compliance with such requirements, if applicable.

2. New paragraphs (p) and (q) are added to § 50.54 of 10 CFR Part 50 to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(p) The licensee shall make no change which would decrease the effectiveness of a security plan prepared pursuant to § 50.34(c) or paragraph (q) of this section without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for a change in the technical specifications incorporated in his license or for an amendment to his license pursuant to § 50.90, as appropriate. The licensee shall maintain records of changes to the plan made without prior Commission approval, and shall furnish to the Commission a report containing a description of each change within two months after the change is made.

(q) Each licensee who is authorized to operate a production or utilization facility and who has not submitted a physical security plan, as described in § 50.34(c) by November 6, 1973 shall submit such a plan to the Commission for approval by January 7, 1974.

PART 70—SPECIAL NUCLEAR MATERIAL

3. Section 70.22(g) of 10 CFR is amended and a new paragraph (h) is added to read as follows:

§ 70.22 Contents of applications.

* * * * * *

(g) Each application for a license which would authorize the transport or delivery to a carrier for transport of special nuclear material in an amount specified in § 73.1(b)(2) of this chapter shall include a description of the plan for physical protection of special nuclear material in transit in accordance with §§ 73.30 through 73.36 and 73.41(c) of this chapter, including a plan for the selection, qualification and training of armed escorts, or the specification and design of a specially designed truck or trailer as appropriate.

(h) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams=(grams contained U-235)+2.5 (grams U-233 +grams plutonium), other than a license for possession or use of such material in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, shall include a physical security plan, consisting of two parts. Part I shall address vital equipment, vital areas, and isolation zones, and shall demonstrate how the applicant plans to meet the physical protection requirements of Part 73 of this chapter in the conduct of the activity to be licensed. Part II shall list tests, inspections, and other means to demonstrate compliance with such requirements.

4. In § 70.23 paragraph (a) is revised and a new paragraph (a)(10) is added to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) An application for a license, other than a license for export, will be approved if the Commission determines that:

* * * * *

(10) Where the applicant is required to submit a physical security plan pursuant to § 70.22(h), the applicant's proposed plan is adequate.

* * * * *

5. New paragraphs (e) and (f) are added to § 70.32 to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(e) The licensee shall make no change which would decrease the effectiveness of a security plan prepared pursuant to § 70.22(h) or paragraph (f) of this section without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to his license pursuant to § 70.34. The licensee shall maintain records of changes to the plan made without prior Commission approval, and shall furnish to the Commission a report containing a description of each change within two months after the change is made.

(f) Each license who is authorized to possess or use at any site or contiguous site subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) uranium 233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams=(grams contained U-235)+2.5 (grams U-235+grams plutonium), other than possession or use involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, and who has not submitted a physical security plan as described in § 70.22(h), shall submit a physical security plan to the AEC for approval by January 7, 1974.

6. The title of Part 73 is revised to read as follows:

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

7. Paragraphs (a) through (c) of § 73.1 are amended and redesignated as paragraphs (b)(1), (b)(2), and (b)(3), respectively, and new paragraphs (a) and (b)(4) are added to read as follows:

§ 73.1 Purpose and scope.

(a) *Purpose.* This part prescribes requirements for physical protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used for the purpose of protection against acts of industrial sabotage and protection of special nuclear material against theft by establishment and maintenance of a physical protection system of: (1) Protective barriers and intrusion detection devices at fixed sites to provide early detection of an attack, (2) deterrence to attack by means of armed guards and escorts, and (3) liaison and communication with law enforcement authorities capable of rendering assistance to counter such attacks.

(b) *Scope.* (1) This part prescribes requirements for (i) the physical protection of production and utilization facilities licensed pursuant to Part 50 of this chapter; (ii) the physical protection of plants in which activities licensed pursuant to Part 70 of this chapter are conducted, and the physical protection of special nuclear material by any person who pursuant to the regulations in Part 70 of this chapter possesses or uses at any site or contiguous sites subject to control by the licensee, uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula,

[1] These amendments include further amendments of certain sections of Parts 70 and 73 which appear on pages 30533 and 30542.

[2] Regulatory Guide 1.17 dated June 1973 describes physical security criteria generally acceptable for the protection of nuclear power reactors against acts of industrial sabotage.

grams=(grams contained U-235)+2.5 (grams U-235+grams plutonium).

(2) This part prescribes requirements for the physical protection of special nuclear material in transportation by any person who is licensed pursuant to the regulations in Part 70 of this chapter who imports, exports, transports, delivers to a carrier for transport in a single shipment, or takes delivery of a single shipment free on board at the point where it is delivered to a carrier, either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium, or any combination of these materials, which is 5,000 grams or more computed by the formula grams=(grams contained U-235)+2.5(grams U-233+grams plutonium).

(3) This part also applies to shipments by air of special nuclear material in quantities exceeding (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(4) Special nuclear material subject to this part may also be protected pursuant to security procedures prescribed by the Commission or another Government agency for the protection of classified materials. The provisions and requirements of this part are in addition to, and not in substitution for, any such security procedures. Compliance with the requirements of this part does not relieve any licensee from any requirement or obligation to protect special nuclear material pursuant to security procedures prescribed by the Commission or other Government agency for the protection of classified materials.

8. Existing § 73.2 is deleted and § 73.3 is redesignated as § 73.2; paragraphs (h), (i), and (j) are deleted; paragraph (n) is redesignated paragraph (e), new paragraphs (h), (i), (j), (k), and (p) are added, and paragraphs (a), (c), (d), (e), (f), (k), (l), and (m) are amended to read as follows:

§ 73.2 Definitions.

As used in this part:

(a) Terms defined in Parts 50 and 70 of this chapter have the same meaning when used in this part.

* * * * *

(c) "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft and/or the protection of a plant against industrial sabotage.

(d) "Watchman" means an individual, not necessarily uniformed or armed with a firearm, who provides protection for a plant and the special nuclear material therein in the course of performing other duties.

(e) "Continuous visual surveillance" means unobstructed view at all times of a shipment of special nuclear material, and of all access to a temporary storage area or cargo compartment containing the shipment.

(f) "Physical barrier" means

(1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled outward between 30° and 45° from the vertical, with an overall height of not less than eight feet, including the barbed topping.

(2) Building walls constructed of stone, brick, cinder block, concrete, steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction; not part of a building, provided with a barbed topping described in paragraph (f)(1) of this section of a height of not less than 8 feet.

(3) Ceilings and floors constructed to offer equivalent resistance to penetration equivalent to that of building walls described in paragraph (f)(2) of this section.

* * * * *

(h) "Vital area" means any area which contains vital equipment within a structure, the walls, roof, and floor of which constitute physical barriers of construction at least as substantial as walls as described in paragraph (f)(2) of this section.

(i) "Vital equipment" means any equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. Equipment or systems which would be required to function to protect public health and safety following such failure, destruction, or release are also considered to be vital.

(j) "Material access area" means any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which each constitute a physical barrier.

(k) "Isolation zone" means any area, clear of all objects which could conceal or shield an individual, adjacent to a physical barrier, which is monitored to detect the presence of individuals or vehicles within that area.

(l) "Intrusion alarm" means a tamper indicating electrical, electro-mechanical, electro-optical, electroni or similar device which will detect intrusion by an individual into a building, protected area, vital area, or material access area, and alert guards or watchmen by means of actuated visible and audible signals.

(m) "Lock" in the case of vaults or vault type rooms means a three-position, manipulation resistant, dial type, built-in combination lock or combination padlock and in the case of fences, walls and buildings, means an integral door lock or padlock which provides protection equivalent to a six-tumbler cylinder lock. "Lock" in the case of a vault or vault type room also means any manipulation resistant, electromechanical device which provides the same function as a built-in combination lock or combination padlock which can be operated remotely or by the "reading" or insertion of information which can be uniquely characterized and which allows operation of the device. "Locked" means protected by an operable lock.

(n) "Vault" means a burglar-resistant windowless enclosure with walls, floor and roof of: (1) Steel at least one-half inch thick, (2) reinforced concrete or stone at least 8 inches thick, (3) nonreinforced concrete or stone at least 12 inches thick, or (4) monolithic floor or roof construction of equivalent resistance to entry, with a built-in lock in a steel door at least 1 inch thick, exclusive of the locking mechanism.

(o) "Vault-type room" means a room with one or more doors, all capable of being locked, protected by an intrusion alarm which creates an alarm upon the entry of a person anywhere into the room and upon exist from the room or upon movement of an individual within the room.

(p) "Industrial sabotage" means any deliberate act directed against a plant in which an activity licensed pursuant to the regulations in this chapter is conducted, or to any component of such a plant, which could directly or indirectly endanger the public health and safety by exposure to radiation, other than such acts by a enemy of the United States, whether foreign government or other person.

§ 73.3 [Redesignated]

10. Section 73.4 is redesignated as § 73.3.

11. Section 73.5 is redesignated § 73.4 and amended to read as follows:

§ 73.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part should be addressed to the Director of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545, or may be delivered in person at the Commission's offices at 1717 H Street NW., Washington, D.C.; at 7920 Norfolk Avenue, Bethesda, Maryland; or at Germantown, Maryland.

§ 73.5 [Redesignated]

12. Section 73.12 is redesignated § 73.5.

§ 73.13 [Redesignated]

13. Section 73.13 is redesignated § 73.6 and amended to read as follows:

§ 73.6 Exemptions for certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of §§ 73.30 through 73.36 and of §§ 73.60 and 73.70 of this part, with respect to the following special nuclear material:

(a) Uranium-235 contained in uranium enriched to less than 20 percent in the U-235 isotope;

(b) Special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding; and

(c) Special nuclear material in a quantity not exceeding 350 grams of uranium-235, uranium-233, plutonium,

or a combination thereof, possessed in any analytical, research, quality control, metallurgical or electronic laboratory.

14. Paragraphs (b) and (c) of § 73.30 are amended to read as follows:

§ 73.30 General requirements.

* * * * *

(b) Transit times of shipments other than those specified in § 73.1(b)(3) shall be minimized and routes shall be selected to avoid areas of natural disaster or civil disorders. Such shipments shall be preplanned to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept receipt of shipment.

(c) Special nuclear material shall be shipped in containers which are sealed by tamper indicating type seals. The containers shall also be locked if it is not in another container or vehicle which is locked. If inspection of the container or vehicle is not required by State or local authorities before final destination, the outermost container or vehicle shall also be sealed by tamper indicating type seals. No container weighing 500 pounds or less shall be shipped in open trucks, railroad flat cars or box cars and ships. This paragraph does not apply to shipments of quantities specified in § 73.1(b)(3).

* * * * *

15. A new § 73.40 and center head are added to read as follows:

PHYSICAL PROTECTION REQUIREMENTS AT FIXED SITES

§ 73.40 Physical protection: General requirements at fixed sites.

Each licensee shall provide physical protection against industrial sabotage and against theft of special nuclear material at the fixed sites where licensed activities are conducted. Security plans submitted to the Commission for approval shall be followed by the licensee after March 6, 1974.

16. A new § 73.50 is added to read as follows:

§ 73.50 Requirements for physical protection of licensed activities, other than the operation of nuclear reactors, against industrial sabotage.

In addition to any other requirements of this part, each licensee who is authorized to operate a fuel reprocessing plant pursuant to Part 50 of this chapter or who possesses or uses uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium), other than in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, shall comply with the following after March 6, 1974.

(a) *Physical security organization.* (1) The licensee shall establish a security organization, including guards, to protect his facility against industrial sabotage and the special nuclear material in his possession against theft.

(2) At least one supervisor of the security organization shall be on site at all times.

(3) The licensee shall establish, maintain and follow written security procedures which document the structure of the security organization and which detail the duties of guards, watchmen, and other individuals responsible for security.

(4) The licensee shall not permit an individual to act as a guard or watchman unless such individual has been properly trained and equipped and has qualified by demonstrating: (i) an understanding of the licensee's security procedures, and (ii) the ability to execute all duties required of him by such procedures. Each guard and watchman shall be requalified at least annually. Such requalification shall be documented.

(b) *Physical barriers.* (1) The licensee shall locate vital equipment only within a vital area, which, in turn, shall be located within a protected area such that access to vital equipment requires passage through at least two physical barriers. More than one vital area may be within a single protected area.

(2) The licensee shall locate material access areas only within protected areas such that access to the material access area requires passage through at least two physical barriers. More than one material access area may be within a single protected area.

(3) The physical barrier at the perimeter of the protected area shall be separated from any other barrier designated as a physical barrier within the protected area, and the intervening space monitored or periodically checked to detect the presence of persons or vehicles so that the facility security organization can respond to suspicious activity or to the breaching of any physical barrier.

(4) An isolation zone shall be maintained around the physical barrier at the perimeter of the protected area and any part of a building used as part of that physical barrier. The isolation zone shall be monitored to detect the presence of individuals or vehicles within the zone so as to allow response by armed members of the licensee security organization to be initiated at the time of penetration of the protected area. Parking facilities, both for employees and visitors, shall be located outside the isolation zone.

(5) Isolation zones and clear areas between barriers shall be provided with illumination sufficient for the monitoring required by paragraphs (b)(3) and (4), but not less than 0.2 foot candles.

(c) *Access requirements.* The licensee shall control all points of personnel and vehicle access into a protected area including shipping or receiving areas, and into each vital area. Identification of personnel and vehicles shall be made and authorization shall be checked at such points.

(1) At the point of personnel and vehicle access into a protected area, all individuals, except employees who possess an AEC personnel security clearance, and all hand-carried packages shall be searched for devices such as firearms, explosives, and incendiary devices, or other items which could be used for industrial sabotage. The search shall be conducted either by a physical search or by the use of equipment capable of detecting such devices. Employees who possess an AEC personnel security clearance shall be searched at random intervals. Subsequent to search, drivers of delivery and service vehicles shall be escorted at all times while within the protected area.

(2) All packages being delivered into the protected area shall be checked for proper identification and authorization. Packages other than hand-carried packages shall be searched at random intervals.

(3) A picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.

(4) Access to vital areas and material access areas shall be limited to individuals who are authorized access to vital equipment or special nuclear material and who require such access to perform their duties. Authorization for such individuals shall be provided by the issuance of specially coded numbered badges indicating vital areas and material access areas to which access is authorized. Unoccupied vital areas and material access areas shall be protected by an active intrusion alarm system.

(5) Individuals not employed by the licensee shall be escorted by a watchman, or other individual designated by the licensee, while in a protected area and shall be badged to indicate that an escort is required. In addition, each individual not employed by the licensee shall be required to register his name, date, time, purpose of visit, employment affiliation, citizenship, name and badge number of the escort, and name of the individual to be visited. Except for a driver of a delivery or service vehicle an individual not employed by the licensee, who requires frequent and extended access to a protected area or a vital area need not be escorted provided such individual is provided with a picture badge, which he must receive upon entrance into the protected area and which he must return each time he leaves the protected area, which indicates (i) nonemployee—no escort required; (ii) areas to which access is authorized, and (iii) the period for which access has been authorized.

(6) No vehicles used primarily for the conveyance of individuals shall be permitted within a protected area except under emergency conditions.

(7) Keys, locks, combinations, and related equipment shall be controlled to minimize the possibility of compromise and promptly changed whenever there is evidence that they have been compromised. Upon termination of employment of any employee,[1] keys, locks, combinations, and related equipment to which that employee had access shall be changed.

(d) *Detection aids.* (1) All alarms required pursuant to this part shall annunicate in a continuously manned central alarm station located within the protected area and in at least one other continuously manned station, not neces-

sarily within the protected area, such that a single act cannot remove the capability of calling for assistance or otherwise responding to an alarm. All alarms shall be self-checking and tamper indicating. The annunciation of an alarm at the onsite central alarm station shall indicate the type of alarm (e.g., intrusion alarm, emergency exit alarm, etc.) and location. All intrusion alarms, emergency exit alarms, alarm systems, and line supervisory systems shall at minimum meet the performance and reliability levels indicated by GSA Interim Federal Specification W-A-00450 B (GSA-FSS).

(2) All emergency exits in each protected area and each vital area shall be alarmed.

(e) *Communication requirements.* (1) Each guard or watchman on duty shall be capable of maintaining continuous communication with an individual in a continuously manned central alarm station within the protected area, who shall be capable of calling for assistance from other guards and watchmen and from local law enforcement authorities.

(2) The alarm stations required by paragraph (d)(1) of this section shall have conventional telephone service for communication with the law enforcement authorities as described in paragraph (e)(1) of this section.

(3) To provide the capability of continuous communication, two-way radio voice communication shall be established in addition to conventional telephone service, between local law enforcement authorities and the facility and shall terminate at the facility in a continuously manned central alarm station within the protected area.

(4) All communications equipment, including offsite equipment, shall remain operable from independent power sources in the event of loss of primary power.

(f) *Testing and maintenance.* Each licensee shall test and maintain intrusion alarms, emergency alarms, communications equipment, physical barriers, and other security related devices or equipment utilized pursuant to this section as follows:

(1) All alarms, communications equipment, physical barriers, and other security related devices or equipment shall be maintained in operable and effective condition.

(2) Each intrusion alarm shall be functionally tested for operability and required performance at the beginning and end of each interval during which it is used for security, but not less frequently than once every seven (7) days.

(3) Communications equipment shall be tested for operability and performance not less frequently than once at the beginning of each security personnel work shift.

(g) *Response requirement.* (1) The licensee shall establish liaison with local law enforcement authorities. In developing his physical security plan, the licensee shall take account of the probable size and response time of the local law enforcement authority assistance.

(2) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, or a vital area, or upon evidence of intrusion into a protected area or a vital area, the facility security organization shall (i) determine whether or not a threat exists, (ii) assess the extent of the threat, if any, and (iii) take immediate measures to neutralize the threat, either by appropriate action by facility guards or by calling for assistance from local law enforcement authorities, or both.

17. Section 73.60 is added to read as follows:

§ 73.60 Physical protection of special nuclear material at fixed sites.

Each licensee who pursuant to the regulations in Part 70 of this chapter possesses at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium) shall, by March 6, 1974 protect the special nuclear material from theft or diversion as follows:

(a) *Access requirements.* (1) Special nuclear material shall be stored or processed only in a material access area. No activities other than those which require access to special nuclear material or equipment employed in the process, use, or storage of special nuclear material, shall be permitted within a material access area.

(2) Material access areas shall be located only within a protected area to which access is controlled.

(3) Special nuclear material not in process shall be stored in a vault equipped with an intrusion alarm or in a vault-type room and each such vault or vault-type room shall be controlled as a separate material access area.

(4) Enriched uranium scrap in the form of small pieces, cuttings, chips, solutions or in other forms which result from a manufacturing process, contained in 30-gallon or larger containers, with a uranium-235 content of less than 0.25 grams per liter, may be stored within a locked and separately fenced area which is within a larger protected area provided that the storage area is no closer than 25 feet to the perimeter of the protected area. The storage area when unoccupied shall be protected by a guard or watchman who shall patrol at intervals not exceeding 4 hours, or by intrusion alarms.

(5) Admittance to a material access area shall be under the control of authorized individuals and limited to individuals who require such access to perform their duties.

(6) Prior to entry into a material access area, packages shall be searched for devices such as firearms, explosives, incendiary devices, or counterfeit substitute items which could be used for theft or diversion of special nuclear material.

(7) Methods to observe individuals within material access areas to assure that special nuclear material is not diverted shall be provided and used on a continuing basis.

(b) *Exit requirement.* Each individual, package, and vehicle shall be searched for concealed special nuclear material before existing from a material access area unless exit is into a contiguous material access area. The search may be carried out by a physical search or by use of equipment capable of detecting the presence of concealed special nuclear material.

(c) *Detection aid requirement.* Each unoccupied material access area shall be locked and protected by an intrusion alarm on active status. All emergency exits shall be continuously alarmed.

(d) *Testing and maintenance.* Each licensee shall test and maintain intrusion alarms, physical barriers, and other devices utilized pursuant to the requirements of this section as follows:

(1) Intrusion alarms, physical barriers, and other devices used for material protection shall be maintained in operable condition.

(2) Each intrusion alarm shall be inspected and tested for operability and required functional performance at the beginning and end of each interval during which it is used for material protection, but not less frequently than once every seven (7) days.

18. Section 73.41 is redesignated as § 73.70 and amended to read as follows:

RECORDS AND REPORTS

§ 73.70 Records.

Each licensee subject to the provisions of §§ 73.30 through 73.36 and/or § 73.50 and/or § 73.60 shall keep the following records:

(a) Names and addresses of all individuals who have been designated as authorized individuals.

(b) Names, addresses, and badge numbers of all individuals authorized to have access to vital equipment or special nuclear material, and the vital areas and material access areas to which authorization is granted.

(c) A register of visitors, vendors, and other individuals not employed by the licensee recorded pursuant to § 73.50(c)(5).

(d) A log indicating name, badge number, time of entry, reason for entry, and time of exit of all individuals granted access to a normally unoccupied vital area.

(e) Documentation of all routine security tours and inspections, and of all tests, inspections, and maintenance performed on physical barriers, intrusion alarms, communications equipment, and other security related equipment used pursuant to the requirements of this part.

(f) A record at each onsite alarm annunciation location of each alarm, false alarm, alarm check, and tamper indication that identifies the type of alarm, location, alarm circuit, date, and time. In addition, details of response by facility guards and watchmen to each alarm, intrusion, or other security incident shall be recorded.

(g) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, names and addresses of the monitor and one alternate monitor at each transfer point, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification; and any other information to confirm the means utilized to comply with §§ 73.30 through 73.36. Such information shall be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan including monitor changes, trace investigations and others shall also be recorded.

(h) Procedures for controlling access to protected areas and for controlling access to keys for locks used to protect special nuclear material.

19. Section 73.71 is amended to read as follows:

§ 73.71 Reports of unaccounted for shipments, suspected theft, unlawful diversion, or industrial sabotage.

(a) Each licensee who conducts a trace investigation of a lost or unaccounted for shipment pursuant to § 73.36(f) shall immediately report to the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A, by telephone, telegram, or teletype, the details and results of his trace investigation and shall file within a period of fifteen (15) days a written report to the Director of the appropriate Regulatory Operations Regional Office with a copy to the Director of Regulatory Operations, U.S. Atomic Energy Commission, Washington, D.C. 20545, setting forth the details and results of the trace investigation.

(b) Each licensee shall report immediately to the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A, by telephone, telegram, or teletype, any incident in which an attempt has been made, or is believed to have been made, to commit a theft or unlawful diversion of special nuclear material which he is licensed to possess, or to commit an act of industrial sabotage against his plant. The initial report shall be followed within a period of fifteen (15) days by a written report submitted to the Director of the appropriate Regulatory Operations Regional Office, with a copy to the Director of Regulatory Operations, U.S. Atomic Energy Commission, Washington, D.C. 20545, setting forth the details of the incident. Subsequent to the submission of the written report required by this paragraph a licensee shall immediately inform the Director of the appropriate Regulatory Operations Regional Office by means of a written report of any substantive additional information, which becomes available to the licensee, concerning the incident.

§ 73.80 [Redesignated]

20. Section 73.51 is redesignated as § 73.80.

Effective date. The foregoing amendments become effective on December 6, 1973.

(Sec. 161, Public Law 83-703, 68 Stat. 948; 42 U.S.C. 2201.)

Dated at Germantown, Maryland this 31st day of October 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-23552 Filed 11-5-73;8:45 am]

PART 70—SPECIAL NUCLEAR MATERIAL

Revised Control and Accounting Requirements

On February 1, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 3077) proposed amendments to its regulations in 10 CFR Part 70 which would revise the materials control and accounting requirements for special nuclear material.

Interested parties were invited to submit comments and suggestions for consideration in connection with the proposed amendments within 60 days after publication in the FEDERAL REGISTER. Upon consideration of the comments received, and other factors involved, the Commission has adopted the proposed amendments, with certain modifications as set forth below.

Significant differences from the proposed amendments published for comment are: (1) A change in the detailed control and accounting requirements for plutonium containing 80 percent or more by weight of the isotope Pu-238; (2) addition of a requirement for tamper-safing procedures to include control of the tamper-safing devices and records of the date and time of tamper-safing; (3) addition of requirements for the identification and control of in-process items containing special nuclear material; (4) changes in the date of the first inventory required under the amended regulation and the date by which the licensee's description of his program to meet the amended regulations must be submitted to the Commission have been made; (5) a change in the required frequency of plutonium inventories has been made from one to two months; (6) clarification of the description of that portion of a fuel reprocessing plant requiring only 6-month inventories; (7) addition of a five-year retention period for material balance and inventory records; (8) provision for licensees to apply for a license or amendment authorizing alternate limits of error (LE) for material unaccounted for (MUF) than specified in the proposed amendments and deletion of the limit of error of MUF requirements to be effective after January 1, 1976; (9) modification of LEMUF requirements to specify that they apply to a total plant balance for inprocess material of each type; (10) modification of the absolute minimum quantity limits for LEMUF to reflect a less stringent requirement for low enriched uranium; (11) modification of the material balance requirements to require accounting for plutonium only on the element basis; (12) deletion of specific remeasurement criteria for material inventory that has not been tamper-safed to permit the licensee flexibility in this remeasurement of SNM; and (13) addition of a footnote to clarify that the regulations do not require plant shutdown and cleanout for physical inventory. In addition, editorial changes were made.

The following discussion pertains to the respective items (1) through (13) above:

(1) The rule set forth below requires that the control and accounting requirements for plutonium containing 80 percent or more by weight of the isotope Pu-238 be the same as those for low-enriched uranium. This isotope of plutonium, because of the heat generated within the material, is, like low-enriched uranium, an improbable fissile material for use in nuclear weapons and does not require the controls specified in Part 70 for strategic material such as high-enriched uranium and plutonium having higher Pu-239 isotopic content. This isotope at these concentrations, i.e., greater than 80 percent, does not exist in quantity because it is produced only by special irradiation programs and not ordinarily as a product from power reactors

(2) The rule set forth below specifies that tamper-safing devices must be controlled and that the date and time of application of the devices be recorded. Unless it can be assured that the tamper-safing devices are available only to authorized persons and that there is documented evidence that the devices were applied at a time appropriate to ensure the integrity of the measurement of the material, tamper-safing cannot be an effective control mechanism.

(3) The proposed rule required item identification and control for items containing special nuclear material that had been tamper-safed and were not in process. It is equally as important to identify and control items in process that contain special nuclear material. The rule set forth below requires identification and control of items containing special nuclear material whether in process or not in process.

(4) Section 70.51(e)(2) of the proposed amendments would have required the licensee to perform the first inventory under the amended rule within 90 days after the effective date of the rule. However, § 70.51(g) would not have required the licensee to submit a description of his procedures to be used to comply with the requirements of amended rule until 120 days after the effective date. Based on comments received, the Commission believes the licensee should develop and submit a description of his inventory procedures prior to taking an inventory following the amended rule. Accordingly, the rule set forth below provides effective dates such that the addi-

tional material control and accounting requirements will become effective 6 months after publication of these amendments, the first inventory under the revised rule must be taken within 6 months after publication of these amendments, and the licensee's program description must be submitted to the Commission within 4 months after publication of these amendments. Until the submittals have been reviewed and their acceptability determined, licensees will be expected to follow the material control and inventory program described in their submittals.

(5) After evaluating comments, it was determined not to be feasible for licensees to meet the 0.5 percent limit on the limit of error of material unaccounted for (LEMUF) on a monthly balance for plutonium as specified in the proposed amendments. To meet the 0.5 percent limit licensees indicated that plant shutdown and clean-out would be required. Even then there were some questions whether the 0.5 percent limit would be met. To have a higher throughput factor for the LEMUF limit, the rule set forth below requires conduct of plutonium inventories every two months instead of every month as required by the proposed amendment. The two-month inventory interval for plutonium (other than in a reprocessing facility) makes the limits and inventory interval for plutonium the same as for high enriched uranium.

(6) The proposed rule identified that part of a fuel reprocessing plant which would have required physical inventory at only 6-month intervals. Comments indicated that the intent of this requirement was not clear. The rule set forth below more specifically identifies that portion of the fuel reprocessing process that is inaccessible and not as susceptible to diversion of special nuclear material and therefore does not require as frequent inventories as more accessible processes and materials.

(7) The rule set forth below specifies a five-year retention time for material balance and inventory records. This requirement is consistent with International Atomic Energy Agency records retention requirements and will make the U.S. records retention requirements compatible with IAEA safeguards for purpose of the Treaty on the Nonproliferation of Nuclear Weapons.

(8) At the time that the proposed rules were formulated, it was recognized that some types of processes and operations initially could not meet the proposed regulations and provision was made for application for exception to the specified requirements. Based upon comments received and upon reconsideration, the Commission has determined that specific provision should be made in the regulations for consideration of alternative LEMUF limits. The regulation has been revised accordingly. If a licensee has demonstrated through actual experience that he cannot meet the specified LE MUF limits, he may apply to the Commission for imposition of limits that can be met. These alternate limits will be approved if the licensee demonstrates that he has made reasonable efforts and cannot meet the prescribed limits and he has or will initiate a program to enable him to meet the prescribed limits. In view of this alternate provision and in consideration of the many uncertainties in the developing technology, prediction of firm LEMUF limits two to three years in the future was not considered feasible. Licensee performance and technological developments will be evaluated on a continuing basis and more stringent LEMUF limits established as the need is indicated and as the state-of-the-art permits.

(9) The proposed amendments were not clear as to which material balance the LEMUF limits applied. The rule set forth below specifies that the LEMUF limits apply to the total plant in-process material balance for a given material type. While balances still will be needed for material balance areas and limits of error calculated for such balances to permit MUF evaluation, the LEMUF limits specified in the rule set forth below do not apply for such balances unless they consist of the total plant in-process balance for a given material type.

(10) The proposed amendments specified absolute quantities for the LEMUF limits below which the relative percentage limits would not apply. The proposed limits for low enriched uranium were more stringent at the 3–4 percent enrichment level on an effective kilogram basis than the limits for plutonium, U-233, and high enriched uranium. To provide proper gradation of requirements the limits for low enriched uranium have been modified.

(11) The proposed amendments would have required calculation of an in-process material balance, MUF, and LEMUF for both element and isotope for plutonium. Adequate control can be maintained for plutonium using only the element balance. The rule set forth below requires calculation of an in-process material balance, MUF and LEMUF for plutonium element only.

(12) The proposed amendments specified confidence levels for statistical sampling plans to be used for verification of previous measurements for inventory purposes. Comments indicated that these statistical sampling plan statements were interpreted to mean specific requirements for the use of the specified plans. There also appeared to be some confusion as to the interpretation of the confidence levels being required. The rule set forth below specifies only that measurements of SNM on inventory whose integrity is not ensured by tamper-safing shall be vertified by remeasurement. The licensee may select appropriate remeasurement procedures and sampling plans. These plans will be included in the description of his program which will be submitted to the Commission.

(13) Comments indicated that the inventory criteria in the proposed amendments were interpreted as requiring plant shutdown and cleanout for physical inventory. Such is not required so long as process inventory measurements can be made on a dynamic basis to sufficient precision and accuracy to meet the LEMUF limits specified in § 70.51(e)(5)(ii). The rule set forth below contains a footnote to this effect. Many comments indicated that the licensee should be given flexibility to develop "innovative" inventory techniques to preclude costly plant shutdown. Such flexibility had always been the intent of the proposed amendments.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments of Title 10, Chapter I, Code of Federal Regulations, Part 70 are published as a document subject to codification.

1. Section 70.4 is amended by adding a new paragraph (t) to read as follows:

§ 70.4 Definitions.

* * * * *

(t) "Effective kilograms of special nuclear material" means: (1) For plutonium and uranium-233 their weight in kilograms; (2) For uranium with an enrichment in the isotope U-235 of 0.01 (1%) and above, its element weight in kilograms multiplied by the square of its enrichment expressed as a decimal weight fraction; and (3) For uranium with an enrichment in the isotope U-235 below 0.01 (1%), by its element weight in kilograms multiplied by 0.0001.

2. Paragraph (b) of § 70.22 is revised to read as follows:

§ 70.22 Content of applications.

* * * * *

(b) Each application for a license to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter or those involved in a waste disposal operation, or as sealed sources, shall also contain:

(1) A full description of the applicant's program for control of and accounting for special nuclear material which will be in his possession under license, including:

(i) Procedures used in receiving, storing and shipping special nuclear material;

(ii) Procedures for controlling special nuclear material during its processing or use in the facility, if appropriate;

(iii) Procedures by which process losses are determined;

(iv) Special nuclear material records and reporting procedures;

(v) Physical inventory procedures showing how the requirements of paragraphs (e) and (f) of § 70.51 will be satisfied;

(vi) Measurement and statistical control procedures; and

(vii) Administrative controls (organization and management) for assuring

appropriate implementation of the procedures described in paragraph (b)(1)(i) through (vi) of this section.[1]

(2) An identification of the fundamental material controls provided in the procedures described in paragraphs (b)(1)(i) through (vii) of this section, which the applicant considers essential for assuring that special nuclear material in his possession under license will be adequately safeguarded. Such proposed controls will be considered by the Commission in determining the conditions to be incorporated in the license pursuant to § 70.32(c).

* * * * *

3. Paragraph (c) of § 70.32 is revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(c) Each license authorizing the possession at any one time and location of special nuclear material in a quantity exceeding one effective kilogram of special nuclear material and the use of such special nuclear material except those uses involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter or those involved in a waste disposal operation, or in sealed sources, shall contain and be subject to a condition requiring the licensee to maintain and follow (1) the program for control and accounting for special nuclear material and fundamental material controls described pursuant to § 70.22(b)(2) and (2) such other material control procedures as the Commission determines to be essential for the safeguarding of special nuclear material. The licensee shall make no change which would decrease the effectiveness of the material control and accounting program prepared pursuant to § 70.22(b)(1) or § 70.51(g) without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for amendment to his license pursuant to § 70.34. The licensee shall maintain records of changes to the material control and accounting program made without prior Commission approval, and shall furnish to the Commission a report containing a description of each change within:

(1) Two months of the change if it pertains to plutonium, uranium-233 or uranium-235 contained in uranium enriched 20% or more in the uranium-235 isotope, and

(2) Six months of the change if it pertains to uranium enriched less than 20 percent inthe uranium-235 isotope.

[1] For guidance in preparing the required descriptions, an applicant may consult "Guide for Preparation of Fundamental Material Controls and Nuclear Materials Safeguards Procedures," and "Regulatory Guide 5.3 Statistical Terminology and Notation For Special Nuclear Materials Controls and Accountability" which are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of these guides may be obtained by addressing a request to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545.

4. Section 70.51 is revised to read as follows:

§ 70.51 Material balance, inventory, and records requirements.

(a) As used in this section:

(1) "Additions to material in process" means receipts that are opened except for receipts opened only for sampling and subsequently maintained under tamper-safing, and opened sealed sources.

(2) "Enrichment category" for uranium 235 means high-enriched uranium—that uranium whose isotope content is 20 percent or more uranium 235 by weight, and low-enriched uranium—that uranium whose isotope content is less than 20 percent uranium 235 by weight.

(3) "Element" means uranium or plutonium.

(4) "Fissile isotope" means (i) uranium-233 or (ii) uranium-235 by enrichment category.

(5) "Limit of error" means the uncertainty component used in constructing a 95 percent confidence interval associated with a quantity after any recognized bias has been eliminated or its effect accounted for.

(6) "Material balance" means a determination of material unaccounted for (MUF) by subtracting ending inventory (EI) plus removals (R) from beginning inventory (BI) plus additions to inventory (A). Mathematically,

$$MUF = BI + A - EI - R$$

(7) "Material in process" means any special nuclear material possessed by the licensee except in unopened receipts, sealed sources, and ultimate product maintained under tamper-safing.

(8) "Physical inventory" means determination on a measured basis of the quantity of special nuclear material on hand at a given time. The methods of physical inventory and associated measurements will vary depending on the material to be inventoried and the process involved.[2]

(9) "Removals from material in process" includes measured quantities of special nuclear material disposed of as discards, encapsulated as a sealed source, or in other ultimate product paced under tamper-safing or shipped offsite.

(10) "Tamper-safing" means the use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault.

(11) "Ultimate product" means any special nuclear material in the form of a product that would not be further processed at that licensed location.

(12) "Unopened receipts" means receipts not opened by the licensee, including receipts of sealed sources, and receipts opened only for sampling and subsequently maintained under tamper-safing.

(b) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, import, export, and transfer of all special nuclear material in his possession regardless of its origin or method of acquisition.

(c) Each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material shall establish, maintain, and follow written material control and accounting procedures which are sufficient to enable the licensee to account for the special nuclear material in his possession under license.

(d) Except as required by paragraph (e) of this section, each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium 235, uranium 233, or plutonium, or any combination thereof, shall conduct a physical inventory of all special nuclear material in his possession under license at intervals not to exceed twelve months.

(e) Effective May 6, 1974, each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter or those involved in a waste disposal operation; as sealed sources; or as reactor irradiated fuels involved in research, development, and evaluation programs in facilities other than irradiated fuel reprocessing plants, shall:

(1) Maintain procedures which shall include:

(i) Procedures for tamper-safing containers or vaults containing nuclear material not in process, which include control of access to the devices and records of the date and time of application of each device to a container or vault; unique identification of each such item; inventory records showing the identity, location, and quantity of special nuclear material for all such items; and records of the source and disposition of all such items;

(ii) Records of the quantities of special nuclear material added to or removed from the process;

(iii) Inventory records for the quantity of special nuclear material in process;

(iv) Unique identification of items or containers containing special nuclear material in process; inventory records showing the identity, location, and quantity of special nuclear material for all such items; and records of the source and disposition of all such items;

(v) Documentation of all transfers of special nuclear material between material balance areas to show identity and quantity of special nuclear material transferred;

(vi) Requirements for authorized signatures on each document for transfer of special nuclear material between material balance areas; and

(vii) Means for control of and accounting for internal transfer documents.

(2) On or before May 6, 1974, and thereafter as necessary to comply with the requirements of paragraph (e)(3) of

[2] Criteria for physical inventories are set out in paragraph (f) of this section.

this section, perform a physical inventory of all special nuclear material in his possession in compliance with the criteria for physical inventories set forth in paragraph (f) of this section.

(3) Conduct physical inventories made in accordance with the criteria for physical inventories set forth in paragraph (f) of this section at intervals determined from the start of the beginning inventory to the start of the ending inventory not to exceed:

(i) 2 calendar months for plutonium except for plutonium containing 80 percent or more by weight of the isotope Pu-238, uranium 233 and for uranium enriched 20 percent or more in the isotope uranium 235 (except as provided in paragraph (e) (3) (ii) of this section); and

(ii) 6 calendar months for uranium enriched less than 20 percent in the isotope uranium 235; for plutonium, U-233 and high-enriched uranium in that portion of an irradiated-fuel reprocessing plant from the dissolver to the first vessel outside of the radiation shielded portion of the process; and for plutonium containing 80 percent or more by weight of the isotope Pu-238;

(4) Within 30 calendar days after the start of each ending physical inventory required by paragraph (e) (3) of this section:

(i) Calculate, for the material balance interval terminated by that inventory, the material unaccounted for (MUF) and its associated limit of error for each element and the fissile isotope for uranium contained in material in process;

(ii) Reconcile and adjust the book record of quantity of element and fissile isotope, as appropriate, to the results of the physical inventory;

(iii) Complete and maintain for a period of five years material balance records for each material balance showing the quantity of element and fissile isotope, as appropriate, in each component of the material balance, with the associated limit of error for the material unaccounted for both in terms of absolute quantity of element and fissile isotope and relative to additions to or removals from material in process for the interval, where results of limit of error calculations are recorded in sufficient detail to permit an evaluation of sources of error.

(iv) Complete and maintain for a period of five years a record summarizing the quantities of element and fissile isotope, as appropriate, for ending inventory of material in process, additions to material in process during the material balance interval and removals from the material in process during the material balance interval; and

(v) Complete and maintain for a period of five years a record summarizing the quantities of element and fissile isotope, as appropriate, in unopened receipts (including receipts opened only for sampling and subsequently maintained under tamper-safing), and ultimate products maintained under tamper-safing, or in the form of sealed sources;

(5) Establish and maintain a system of control and accountability such that the limits of error for any material unaccounted for (MUF) ascertained as a result of the material balances made pursuant to paragraph (e) (3) of this section do not exceed (i) 200 grams of plutonium or uranium 233, 300 grams of high enriched uranium or uranium 235 contained in high enriched uranium, or 9,000 grams of uranium 235 contained in low enriched uranium, (ii) those limits specified in the following table, or (iii) other limits authorized by the Commission pursuant to paragraph (e) (6) of this section:

Material Type	*Limit of Error of MUF on Any Total Plant Inprocess Material Balance* Percent*
Plutonium element or uranium 233 in a chemical reprocessing plant	1.0
Uranium element and fissile isotope in a reprocessing plant	0.7
Plutonium element, uranium 233, or high enriched uranium element and fissile isotope—all other	0.5
Low-enriched uranium element and fissile isotope—all other	0.5

*As a percentage of additions to or removals from material in process, whichever is greater.

Any licensee subject to this paragraph on December 6, 1973, who requests higher limits pursuant to paragraph (e) (6) of this section at the time he submits his program description under the provisions of paragraph (g) of this section is hereby authorized to operate at the higher limits until the application for license or amendment has been finally determined by the Commission;

(6) An applicant or a licensee subject to the requirements of paragraph (e) of this section may request limits higher than those specified in paragraph (e) (5) of this section. The requested higher limits shall be pased on considerations such as the type and complexity of process, the number of unit operations, process throughput quantities, process recycle quantities, and the technology available and applicable to the control and accounting of the material in the process. The Commission will approve higher limits if the applicant demonstrates:

(i) That he has made reasonable efforts and cannot meet the limits of error of MUF specified in paragraph (e) (5) of this section; and

(ii) That he has initiated or will initiate a program to achieve improvements in his material control system so as to meet the limits specified in paragraph (e) (5) of this section.

(f) Each licensee subject to the requirements of paragraph (e) of this section shall:

(1) Establish physical inventory procedures to assure that:

(i) The quantity of special nuclear material associated with each item on inventory is a measured value;

(ii) Each item on inventory is listed and identified to assure that all items are listed and that no item is listed more than once;

(iii) Cutoff procedures for transfers and processing are established so that all quantities are inventoried and none are inventoried more than once;

(iv) Cutoff procedures for records and reports are established so that all transfers for the inventory and material balance interval and no others are included in the records; and

(v) Upon completion of the inventory, all book and inventory records, both total plant and material balance area, are reconciled with and adjusted to the physical inventory.

(2) Establish inventory procedures for sealed sources and containers or vaults containing special nuclear material that provide for:

(i) Identification and location of all such items;

(ii) Verification of the integrity of the tamper-safing devices for such items;

(iii) Reverification of identity and quantity of contained special nuclear material for each item not tamper-safed, or whose tamper-safing is found to have been compromised;

(iv) Verification of the correctness of the inventory records of identity and location for all such items; and

(v) Documentation in compliance with the requirements of paragraphs (f) (2) (i), (ii), (iii), and (iv) of this section.

(3) Establish inventory procedures for special nuclear material in process that provide for:

(i) Measurement of all quantities not previously measured by the licensee for element and fissile isotope; and

(ii) For all material whose content of element and fissile isotope has been previously measured by the licensee but for which the validity of such previously made measurements has not been assured by tamper-safing, verification of the quantity of contained element and fissile isotope by remeasurement.

(4) Conduct physical inventories according to written inventory instructions for each inventory which shall;

(i) Assign inventory duties and responsibilities;

(ii) Specify the extent to which each material balance area and process is to be shut down, cleaned out, and/or remain static;[4]

(iii) Identify the basis for accepting previously made measurements and their limits of error;

(iv) Designate measurements to be made for inventory purposes and the procedures for making such measurements; and

(v) Identify the means by which material on inventory will be listed to assure that each item is inventoried and that there is no duplication.

(g) Each licensee subject to the requirements of paragraph (e) of this sec-

[4] No process shutdown and/or cleanout for inventory is required if requirements with respect to MUF and the limit of error of MUF as specified in paragraph (e) (5) (ii) of this section are met using other inventory methods.

tion shall submit to the Commission for approval by March 6, 1974, a full description of the program intended to be used to enable the licensee to comply with that paragraph and the requirements set forth in paragraph (f) of this section. This program shall be followed by the licensee after May 6, 1974.

(h) Each licensee who determines that the requirements of paragraph (e) of this section will require modifications of his plant or equipment costing $500,000 or more may, by March 6, 1974, apply to the Commission for an extension of time, not to exceed six additional months, for compliance with those requirements. Each application for extension shall include a description of the modifications to be made, a statement of estimated associated costs with substantiating evidence, and a schedule of the dates when the modifications will be commenced and completed.

5. Section 70.53 is revised to read as follows:

§ 70.53 Material status reports.

(a) Each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium 235, uranium 233, or plutonium or any combination thereof, shall complete and submit to the Commission Material Status Reports on Form AEC–742, in accordance with printed instructions for completing the form, concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of or lost by the licensee. All such reports shall be made as of June 30 and December 31 of each year and shall be filed with the Commission within thirty (30) days after the end of the period covered by the report. The Commission may permit a licensee to submit Material Status Reports at other times when good cause is shown.

(b) Each licensee subject to the requirements of § 70.51(e) shall submit to the appropriate Regional Office of the AEC Directorate of Regulatory Operations listed in Appendix A of Part 73 of this chapter within 30 calendar days after the start of each ending physical inventory required by § 70.51(e)(3):

(1) If the material unaccounted for exceeded both (i) its associated limit of error and (ii) 200 grams of plutonium or U–233, 300 grams of high enriched uranium or uranium U-235 contained in high enriched uranium, or 9,000 grams of U-235 contained in low enriched uranium, a statement of the probable reasons for the material unaccounted for and actions taken or planned with respect to the material unaccounted for; and

(2) If for any material the limit of error of the material unaccounted for balance exceeds any applicable limits specified in § 70.51(e)(5) or approved pursuant to § 70.51(e)(6), a statement of the probable reasons for the limit of error and actions taken or planned with respect to the limit of error.

Effective date. The foregoing amendments become effective on December 6, 1973.

(Secs. 53b, 161, Pub. L. 83–703, 68 Stat. 930, 948 (42 U.S.C. 2073(b), 2201)

Dated at Germantown, Maryland this 31st day of October 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-23553 Filed 11-5-73;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

[No. 73-1569]

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

Real Estate Loan Prepayments

The Federal Home Loan Bank Board considers it desirable to amend § 545.6–12(b) of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.6–12(b)) in order to authorize Federal associations to make or purchase interests in real estate loans secured by other than homes or combinations of homes and business properties which contain a provision prohibiting any prepayment of the loan.

The second sentence of § 545.6–12(b) had required that all borrowers "from a Federal association shall have the right to prepay their loans without penalty unless the loan contract makes express provision for a prepayment penalty". The amended § 545.6–12(b) limits the requirement of permitting prepayments to loans secured by homes and combinations of homes and business property. The final sentence of § 545.6–12(b) continues to prescribe the maximum prepayment penalty for loans secured by homes only.

Accordingly, the Board hereby amends said § 545.6–12 by revising paragraph (b) thereof to read as set forth below, effective November 6, 1973:

Since the above amendment relieves restrictions, the Board hereby finds that notice and public procedure with respect to said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b).

§ 545.6–12 Loan payments.

* * * * *

(b) *Loan payments and prepayments.* Payments on the principal indebtedness of all loans on real estate security shall be applied directly to the reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time in whole or in part by a Federal association to offset payments which subsequently accrue under the loan contract. Each borrower from Federal associations on a loan secured by a home or combination of home and business property shall have the right to prepay the loan without penalty unless the loan contract makes express provision for a prepayment penalty. The prepayment penalty for a loan secured by a home which is occupied or to be occupied in whole or in part by a borrower shall not be more than 6 months' advance interest on that part of the aggregate amount of all prepayments made on such loan in any 12-month period which exceeds 20 percent of the original principal amount of the loan.

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

By the Federal Home Loan Bank Board.

Dated: October 17, 1973.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.73-23569 Filed 11-5-73;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 118—HANDICAPPED ASSISTANCE LOANS

Assistance to Certain Nonprofit Organizations and Small Business Concerns Owned by Handicapped Individuals

A proposal was issued on July 31, 1973 (38 FR 20351), to establish rules and regulations governing financial assistance to certain nonprofit organizations operated in the interests of the handicapped and to small business concerns owned, or to be owned, by handicapped individuals. The proposal established a new Part 118 to set forth guidelines for eligibility, credit terms, and procedures for financial assistance pursuant to section 7(g) of the Small Business Act, as amended. Interested persons were given till August 30, 1973, to submit written statements of facts, opinions, or arguments concerning the proposal. All comments submitted were given due consideration.

As a result of the comments received, the following changes are made:

1. Section 118.1, *Program objectives:* The proposal to limit financial assistance for nonprofit organizations to enable them to perform on Federal contracts under Public Law 92–28 (amended Wagner-O'Day Act), or to fulfill contracts and orders for goods and services from the private sector was considered to be too restrictive. Many workshops market products through their own retail outlets, many workshops have Federal contracts obtained on a competitive basis, and many State and local governments purchase goods and services from workshops and the proposed language appeared to limit this type of activity. The proposed language has, therefore, been revised to broaden the scope of the program objectives for nonprofit organizations to allow for financial assistance to enable these organizations to produce and provide marketable goods and services.

2. Section 118.2, *Definitions:* Many comments were submitted concerning the definition for "handicapped individuals." From the evaluation of the comments, it became apparent that a handicap which in any way limits the selection of employment refers to what is accomplished by employment and training at a workshop but does not apply to "engaging" in a business endeavor. The definition of "handicapped

individual" has been modified to allow for this difference and now provides that only for HAL–2 loans should the degree of handicap limit the individual in engaging in normal competitive business practice. Definitions for the "Committee" and for "Central Nonprofit Organization" have been eliminated and the other definitions renumbered accordingly. Under the definition for "nonprofit organization", the word "direct" has been added to clarify production or provision of the commodities or services.

3. Section 118.11(a), Eligibility for HAL–1: The requirement for affiliation with a Central Nonprofit Organization has been eliminated as a result of a general expression that this provision was too restrictive and served no useful purpose in establishing the ability of the applicant organization to meet qualifications for loan assistance. Other new provisions which were recommended were not adopted on the same basis as being too restrictive.

4. Section 118.11(d), Eligibility for HAL–2: The word "professional" has been added to further define a "counselor" and the subparagraph concerning overcoming a handicap has been eliminated. It was pointed out the requirement, as stated in the authorizing legislation, that the handicap be of a permanent nature renders this provision redundant. It was also noted that the suggested provision could rule out for assistance the individual who has a permanent impairment but who has received training to ready him or her for employment or to overcome the handicap. This was not the intention of the proposal as every applicant must still demonstrate that the business can be operated in such a manner as reasonably to assure repayment.

5. Section 118.31, *Terms and conditions*, has been reworded to substitute clarifying language. The intent of the provision remains the same.

6. Section 118.41, *Participations*, has also been reworded to substitute clarifying language. The intent of this provision remain the same.

Many comments dealt with provisions which are of a statutory nature, such as the 75 percent man-hour employment requirement and the need for reasonable assurance of repayment and cannot be eliminated.

Accordingly, with these changes and additions, the proposed amendments are adopted as set forth below:

Sec.
118.1 Program objectives.
118.2 Definitions.

HANDICAPPED ASSISTANCE LOANS

118.11 Eligibility.
118.21 Limitations and use of proceeds.
118.31 Terms and conditions.
118.41 Participations.
118.51 Credit requirements.
118.61 Application procedures.
118.71 Applicability of other SBA regulations.

AUTHORITY: Section 7(g) of the Small Business Act, as amended (sec. 3, Pub. L. 92–595, 86 Stat. 1314; 15 U.S.C. 686(g)).

§ 118.1 Program objectives.

(a) Loans made to public or private nonprofit as defined in § 118.2(e), organizations (HAL–1) will be limited to nonprofit sheltered workshops and any similar organization to enable them to produce and provide marketable goods and services. It is not the purpose of these loans to provide for supportive services to workshops. These supportive services include, but are not limited to, subsidization of wages of low producers, health and rehabilitation services, and management. Usually such supportive services are funded by fees from State or local rehabilitation agencies, community fundraising drives, private donors, grants, bequests, and other Government programs. The Small Business Act prohibits the duplication of the work or activity of any other department or agency of the Federal Government unless expressly provided for.

(b) Loans made to eligible small business concerns owned by handicapped persons (HAL–2) are to assist in the establishment, acquisition, or operation of a small business.

§ 118.2 Definitions.

For purposes of this part:

(a) "Administrator" means the Administrator of the Small Business Administration.

(b) "SBA" means the Small Business Administration.

(c) "Small business concern" means a business concern which would qualify as a small business under § 121.3–10 of this chapter.

(d) The "Act" means the Small Business Act.

(e) "Nonprofit organization" means any public or private organization which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; and which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial asistance under this program, employs handicapped individuals for not less than 75 percent of the man-hours required for the direct production or provision of the commodities or services.

(f) "Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable and also, in the case of applications for HAL–2, which limits the individual(s) in engaging in normal competitive business practices without SBA loan assistance.

(g) "HAL–1" means a Handicapped Assistance Loan to a nonprofit organization, as defined in Paragraph (e) of this section.

(h) "HAL–2" means a Handicapped Assistance Loan to an eligible small business concern owned, or to be owned, by handicapped individual(s).

HANDICAPPED ASSISTANCE LOANS

§ 118.11 Eligibility.

(a) In order to be eligible to apply for a HAL–1, the nonprofit organization must submit certification that it is organized under the laws of the State, or of the United States, as a nonprofit organization operating in the interests of handicapped individuals. Such certification may include copies of by-laws, incorporation papers, certification of its tax exempt status as determined by the Internal Revenue Service ((501)(3)(c)), and recognition and approval by a State Vocational Rehabilitation Agency. It must provide documentation that it employs during any fiscal year in which it recieves SBA financial assistance, handicapped individuals for not less than 75 percent of the man-hours required for the direct production of commodities or in the provision of services which it renders. In addition it must comply with any applicable occupational health and safety standard which may be prescribed by the Secretary of Labor:

(1) Loans under HAL–1 are not to be used as a substitute for historical sources of funding.

(2) Financial assistance shall not be extended if funds are otherwise available on reasonable terms from private sources or other Federal, State or local programs. It must be demonstrated that:

(i) The applicant's bank account will not make the loan.

(ii) Private credit is not obtainable.

(iii) Grant funds from other Government programs are not available.

(iv) Contributions from foundations, local or state fund raising activities, including tax assessments, donations, and similar historical avenues of funding will not be diminished as a result of the SBA loan.

(b) In order to be eligible to apply for a MAL–2, a business must qualify under Parts 120 and 121 of this chapter, except where inconsistent with specific provisions in this part. In the case of a partnership, corporation, or cooperative, the business must be 100 percent owned by handicapped individuals.

(1) Applications for financial assistance may be considered only when there is evidence that the desired credit is not otherwise available on reasonable terms. The financial assistance applied for shall be deemed to be otherwise available on reasonable terms, unless it is satisfactorily demonstrated that:

(i) Proof of refusal of the required financial assistance has been obtained from—

(A) The applicant's bank of account;

(B) If the amount of financial assistance applied for is in excess of the amount that the bank normally lends to any one borrower, then a refusal from a correspondent bank or from any other lending institution whose lending capacity is adequate to cover the financial assistance applied for; and

(C) Not less than 2 financial institutions for direct loans in cities where the population exceeds 200,000.

Proof of refusal must contain the date, amount and terms requested, and the reasons for not granting the desired credit. Bank refusal to advance credit should not be considered the full test of unavailability of credit and, where there is knowledge or reasons to believe that credit is otherwise available on reasonable terms from sources other than such banks, the financial assistance applied for cannot be granted notwithstanding the receipt of written refusals from such banks.

(ii) The financial assistance required does not appear to be obtainable:

(A) On reasonable terms through the public offering or private placing of securities of the applicant;

(B) Through the disposal at a fair price of assets not required by the applicant in the conduct of the existing business or not reasonably necessary to its potential healthy growth; and

(C) Without undue hardship through utilization of the personal credit resources of the owner, partners, management, or principal shareholders of the applicant;

(D) Through other applicable Government financing, including SBA's regular Business Loan Program and its Economic Opportunity Loan Program.

(c) Under HAL–2 financial assistance may be used to acquire a business.

(d) Applicants for assistance under HAL–2 must provide information from a physician, psychiatrist, and/or professional counselor in writing as to the permanent nature of the handicap and the limitations it places on the applicant.

(e) Direct loan assistance is subject to the availability of funds.

§ 118.21 Limitations on use of proceeds.

(a) Loans for nonprofit organizations HAL–1) may not be used for:

(1) Training, education, housing; or other supportive services for handicapped employees of sheltered workshops.

(2) Construction of facilities if a construction grant is available from other Government sources.

(3) Purchase of a building when mortgage insurance through other Federal agencies is available.

(b) Restrictions on use of proceeds for HAL–2 loans are the same as for regular SBA business loans with the exception of acquisition of a business.

§ 118.31 Terms and conditions.

(a) HAL loans shall not be made, participated in, or guaranteed if the total amount of the Government's share of such assistance to a single borrower at any one time exceeds a total outstanding of $350,000. The loan limit applies collectively to all HAL–2 loans to business entities owned or controlled by affiliated ownership and for all HAL–1 loans to the specific applicant nonprofit organization.

(1) The administrative ceiling on a direct loan is $100,000, and $150,000 as the SBA share of an immediate participation loan. Acceptance of such applications is subject to availability of funds.

(b) Interest on direct loans and the SBA share of an immediate participation loan is 3 percent per annum.

(c) Subject to the approval of SBA, the participants share of immediate participation loans, and on guaranted loans prior to SBA's purchase, the interest rate shall be at a legal and reasonable rate. Maximum allowable rates for the bank share of any HAL loan shall be the same as established for business and Economic Opportunity loans which are set forth in Part 120.3(b)(2).

(d) The interest rate on SBA's share of a guaranteed loan after purchase by SBA becomes the same as the rate for direct loans. SBA's payment to the guaranteed participant of accrued interest to the date of purchase shall be at the interest rate established by participant but shall not exceed an effective rate of interest of 8 percent per annum, and without any future adjustment for any unpaid accrued interest in excess of 8 pecent per annum.

(e) Repayment will be required at the earliest feasible date giving consideration to the use to be made of the funds and indicated ability to repay with 15 years as the absolute maximum. When deemed necessary, grace periods for payment of principal may be provided. Interest payments must be made as soon after the loan is disbursed as possible and will be required during any grace period. A fluctuating repayment schedule may be established for seasonal businesses or nonprofit organizations.

§ 118.41 Participations.

(a) It is the policy to stimulate and encourage loans by banks and other lending institutions.

(1) An applicant for a direct HAL loan must show that an immediate participation or guaranteed loan is not available. An applicant for any immediate participation loan must show that a guaranteed loan is not available.

(2) SBA's share of immediate participation loans shall not exceed 75 percent of the loan. Exceptions may be made in cases when the participant's legal lending limit precludes a 25 percent participation. In such cases the participant will be required to share in the loan to the extent of its legal lending limit but in no event less than 10 percent. In guaranteed loans the exposure of SBA under the guaranty may not exceed 90 percent of the unpaid principal balance and accrued interest.

(3) The guaranty fee paid by the bank to SBA on the guaranteed portion of a loan and the service fee charged by the bank to SBA on SBA's share of an immediate participation loan shall be the same as those fees applicable on regular business loans.

(4) No agreement to extend financial assistance under this program shall establish any preferences in favor of a bank or other lending institution.

§ 118.51 Credit requirements.

(a) An applicant must meet certain practical credit requirements established by SBA. Principal requirements are as follows:

(1) An applicant must be of good character as determined by SBA.

(2) There must be evidence that the ability exists to operate the business or the nonprofit organization successfully.

(3) There must be enough capital invested in the business so that, with assistance through SBA, the business will be able to operate on a sound financial basis.

(4) As required by the Small Business Act, as amended, the proposed loan, whether direct, immediate participation, or guaranteed must be "of such sound value or so secured as reasonably to assure repayment."

(i) In those border line cases where a reasonable doubt exists as to repayment ability, the decision shall be resolved in favor of the applicant.

(5) The loan should be secured by collateral of a type, amount, and value which, considered with other factors, such as the character and ability of the management, and of the prospective earnings, will afford the required assurance of repayment.

(i) On loans to be made to finance Federal Government contracts, an assignment of amounts to come due under such contracts may be required.

(ii) Personal guaranties of the officers or directors of nonprofit organizations (HAL–1) shall not be required.

(6) The past earnings record and future prospects of the firm for HAL–2 loans must indicate ability to repay the loan out of income from the business.

(i) For loans to nonprofit organizations (HAL–1), evidence that the organization has the capability and experience to perform successfully on the work to be performed must be furnished but it is not necessary that the loan be repaid from the earnings of the organization if repayment ability can be determined on another basis.

§ 118.61 Application procedures.

(a) An applicant desiring to obtain HAL assistance shall apply to the regional, district, or branch office servicing the area where the business or nonprofit organization is located, or to the applicant's bank which in turn will apply for the SBA guaranty to the regional, district, or branch office servicing the area where the business or nonprofit organization is located.

(1) If another SBA office is closer, the applicant may obtain counseling, advice, or assistance in filing an application from that office.

(2) Addresses of SBA offices are listed in Part 101 of this chapter.

(b) After a direct loan application has been submitted to SBA and has been approved or declined, the regional or district office will send a letter of notifica-

tion to the applicant. In cases of decline, the reasons will be stated. When a bank is participating, the bank will be notified of the final decision.

(i) In the event of decline, the applicant may request a reconsideration from the declining office within six months. A reconsideration request must include new or additional information which will overcome the stated reasons for decline.

§ 118.71 Applicability of other SBA regulations.

(a) All applicable provisions of Parts 120 and 122 of this chapter shall apply to HAL's except where other provision is made in this part.

Effective date. These SBA regulations are effective November 5, 1973.

Dated: November 1, 1973.

(Catalog of Federal Domestic Assistance Programs. 59.003, Economic Opportunity Loans; 59.012, Small Business Loans; 13.763, Rehabilitation Services and Facilities.)

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-23594 Filed 11-5-73;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 73-307]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Supplies and Equipment for Aircraft; Saudi Arabia

In accordance with section 309(d), 46 Stat. 690, as amended (19 U.S.C. 1309(d)), the Secretary of Commerce has found and under date of May 8, 1973, has advised the Secretary of the Treasury that, except for spare parts, commissary stores, ground equipment, and aircraft supplies other than fuels, lubricants and consumble technical supplies, Saudi Arabia allows privileges substantially reciprocal to those provided for in sections 309 and 317, 46 Stat. 690, as amended, 696, as amended (19 U.S.C. 1309, 1317), to aircraft registered in the United States and engaged in foreign trade. Corresponding privileges are accordingly extended to aircraft registered in Saudi Arabia and engaged in foreign trade, effective as of the date of such notification.

Accordingly, paragraph (f) of § 10.59, Customs regulations, is amended by the insertion of "Saudi Arabia" in appropriate alphabetical order, the number of this Treasury Decision in the opposite column headed "Treasury Decision(s)" and the wording "applicable only as to aircraft fuels, lubricants, and consumable technical supplies" opposite "Saudi Arabia" in the column headed "Exceptions, if any, as noted" in the list of nations in that paragraph.

(Secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759 (19 U.S.C. 1309, 1317, 1624))

As there is a statutory basis for the exemption from Customs duties on withdrawal of supplies by aircraft when reciprocity has been established, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: October 29, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-23711 Filed 11-5-73;8:45 am]

[T.D. 73-308]

FINES, PENALTIES, AND FORFEITURES

Authority To Mitigate or Remit

Sections 171.21 and 172.21 of the Customs Regulations delegate to district directors of Customs the authority to mitigate or remit fines, penalties, and forfeitures up to certain specified amounts, and to cancel any claim for liquidated damages not exceeding certain specified amounts. It is deemed advisable to enlarge this delegation so as to reduce the volume of cases which require submission to the Headquarters office of the United States Customs Service and thereby expedite the disposition of such cases.

Sections 171.33 and 172.33, Customs Regulations, provide that if a petitioner is not satisfied with a decision with respect to a petition for remission or mitigation of fines, penalties, or forfeitures, or a petition for relief from liquidated damages, he may file a supplemental petition with the district director. The supplemental petition is forwarded to the Commissioner of Customs for reconsideration of the case except where the district director grants additional relief and there has been no specific request on the part of the petitioner for review by the Commissioner of Customs. In order to further promote the prompt disposition of cases involving fines, penalties, forfeitures, and liquidated damages, and in order to provide an additional level of independent review within the Customs region, it has been decided to delegate to regional commissioners of Customs the authority to decide supplemental petitions for relief in cases within the district director's authority to mitigate, remit, or cancel when the district director believes no additional relief is warranted, or when the petitioner is not satisfied with the additional relief granted by the district director, or if there has been a specific request on the part of the petitioner for review by the regional commissioner.

Accordingly, the amendments to §§ 10.39 (e) and (f), 10.92(d), 18.8(d), 125.42, 171.21, 171.33(b), 172.21, and 172.33(b) of the Customs regulations are hereby adopted as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§§ 10.39, 10.92 [Amended]

Sections 10.39 (e) and (f) and 10.92(d) are amended by substituting "$50,000" for "$20,000".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

§ 18.8 [Amended]

Section 18.8(d) is amended by substituting "$50,000" for "$20,000".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

§ 125.42 [Amended]

Section 125.42 is amended by substituting "$50,000" for "$20,000".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 171—FINES, PENALTIES, AND FORFEITURES

Section 171.21 is amended to read as follows:

§ 171.21 Petitions acted on by district director.

The district director may mitigate or remit fines, penalties, and forfeitures incurred under any law administered by the United States Customs Service on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate, when the total amount of the fines and penalties incurred with respect to any one offense, together with the total value of any merchandise or other article subject to forfeiture or to a claim for forfeiture value, does not exceed $25,000.

Paragraph (b) of § 171.33 is amended to read as follows:

§ 171.33 Supplemental petitions for relief.

* * * * *

(b) *Consideration*—(1) *Decisions of the district director.* Where the district director has the authority to grant relief in accordance with the provisions of § 171.21, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner of Customs, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies for reconsideration and disposition of the case.

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner

of Customs shall be forwarded, together with all pertinent documents, to the Commissioner of Customs for reconsideration of the case.

(R.S. 251, as amended, secs. 618, 624, 46 Stat. 757, as amended, 759 (19 U.S.C. 66, 1618, 1624).)

PART 172—LIQUIDATED DAMAGES

Section 172.21 is amended to read as follows:

§ 172.21 Petitions acted on by district director of Customs.

The district director may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the claim is $50,000 or less.

Paragraph (b) of § 172.33 is amended to read as follows:

§ 172.33 Supplemental petitions for relief.

* * * * *

(b) *Consideration.*—(1) *Decisions of the district director.* Where the district director of Customs has authority to grant relief in accordance with the provisions of § 172.21, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for reconsideration by the regional Commissioner of Customs, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies for reconsideration and disposition of the case.

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner of Customs shall be forwarded, together with all pertinent documents, to the Commissioner of Customs for reconsideration of the case.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

Because these amendments involve a matter relating to agency procedure or practice, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. These amendments shall become effective on November 6, 1973.

[SEAL] VERNON D. ACREE,
Commissioner of Customs.

Approved: October 31, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-23710 Filed 11-5-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Dithiazanine Iodide

The Commissioner of Food and Drugs has evaluated supplemental new animal drug applications (11-531V and 11-674V) filed by Elanco Products Co., Post Office Box 1750, Indianapolis, IN 46206, proposing revised labeling for the safe and effective use of dithiazanine iodide tablets and dithiazanine iodide powder as an anthelmintic for the treatment of dogs. The supplemental applications are 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), Part 135c is amended as follows:

1. Section 135c.82 is amended by revising paragraph (d)(1) to read as follows:

§ 135c.82 Dithiazanine iodide tablets, veterinary.

* * * * *

(d) *Conditions of use.* (1) The tablets are administered orally to dogs immediately after feeding using the following dosage schedule for various parasite infestations:

	Milligrams per pound of body weight	Length of treatment—days
Large roundworms (*Toxocara canis, Toxascaris leonina*)	10	3-5
Hookworms (*Ancylostoma caninum, Uncinaria stenocephala*)	10	7
Whipworms (*Trichuris vulpis*)	10	7
Strongyloides (*Strongyloides canis, Strongyloides stercoralis*)	10	10-12
Heartworm microfilariae (*Dirofilaria immitus*)	3-5	7-10
Treatment with dithiazanine iodide for heartworm microfilariae should follow 6 weeks after therapy for adult worms.		

* * * * *

2. Section 135c.83 is amended in paragraph (d)(1) as follows:

§ 135c.83 Dithiazanine iodide powder, veterinary.

* * * * *

(d) *Conditions of use.* (1) Dithiazanine iodide powder, veterinary is administered to dogs by mixing the proper dosage in the dog's food, using the following dosage schedule for various parasite infestations:

	Milligrams per pound of body weight	Length of treatment—days
Large roundworms (*Toxocara canis, Toxascaris leonina*)	10	3-5
Hookworms (*Ancylostoma caninum, Uncinaria stenocephala*)	10	7
Whipworms (*Trichuris vulpis*)	10	7
Strongyloides (*Strongyloides canis, Strongyloides stercoralis*)	10	10-12
Heartworm microfilariae (*Dirofilaria immitus*)	3-5	7-10
Treatment with dithiazanine iodide for heartworm microfilariae should follow 6 weeks after therapy for adult worms.		

* * * * *

Effective date. This order shall be effective November 6, 1973.

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

Dated: October 30, 1973.

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

[FR Doc.73-23544 Filed 11-5-73;8:45 am]

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Exempt Chemical Preparations

The Administrator of the Drug Enforcement Administration has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting that several chemical preparations containing controlled substances be granted the exemptions provided for in § 1308.23 of Title 21 of the Code of Federal Regulations.

The Administrator hereby finds that each of the following chemical preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to a human being or other animal, and either (a) contains no narcotic controlled substance and is packaged in such a form or concentration that the package quantity does not present any significant potential abuse, or (b) contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion or concentration, that the preparation or mixture does not present any potential for abuse. If the preparation or mixture is formulated in such a manner that it incorporates methods of denaturing or other means so that the preparation or mixture is not liable to be abused, and so that the narcotic substance cannot in practice be removed. The Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as

the needs of researchers, chemical analysts, and suppliers of these products.

Therefore, under the authority vested in the Attorney General by sections 301 and 501(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 821 and 871(b)) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations (see 38 FR 18380, July 2, 1973) the Administrator hereby orders that Part 1308 of Title 21 of the Code of Federal Regulations be amended as follows:

§ 1308.24 [Amended]

a. By amending § 1308.24 (f) by adding the following chemical preparations:

Manufacturer or supplier	Product name and supplier's catalog number	Form of product	Date of application
• •	• •	• •	•
American Hospital Supply Corp. (Harleco Division).	Buffer for serum protein electrophoresis No. 96099.	Vial: 10 dram	July 25, 1973
• •	• •	• •	•
Beckman Instruments, Inc. (Spinco Division).	ASO buffer, pH 7.2	Tube: 2.7 grams	Aug. 31, 1973
• •	• •	• •	•
Brinkmann Instruments, Inc.	Brinkmann Drug-Skreen Drug standard—set I, No. 3505000-1.	Vial: 2 ml	Aug. 14, 1973
Do	Brinkmann Drug-Skreen Drug standard—set II, No. 3505010-8.	do	Do.
• •	• •	• •	•
Paul B. Elder Co.	Fisher body heat indicator	Bottle: pint	July 30, 1973
• •	• •	• •	•
Cardis Laboratories	CEP V No. 709-308	Plate: 80 mm. x 100 mm. x 2.2 mm.	Aug. 9, 1973
Do	CEP V No. 709-328	Plate: 40 mm. x 80 mm. x 2.5 mm.	Do.
Do	CEP VII No. 709-338	do	Do.
Do	CEP V No. 709-338	do	Do.
Do	CEP VI No. 709-309	Plate: 80 mm. x 100 mm. x 2.2 mm.	Do.
Do	CEP VI No. 709-329	Plate: 40 mm. x 80 mm. x 2.5 mm.	Do.
Do	CEP VI No. 709-339	do	Do.
Do	CEP plate-amebiasis testing 10 test No. 730-271.	Plate: 40 mm. x 80 mm. x 2.5 mm.	Do.
Do	CEP plate-amebiasis testing 40 test No. 730-274.	do	Do.
• •	• •	• •	•
Hyland Division Travenol Laboratories, Inc.	T-1	Vial: 20 ml	Aug. 17, 1973
Do	T-2	do	Do.
Do	T-3	Vial: 50 ml	Do.
Do	T-4	do	Do.
Do	T-5	do	Do.
• •	• •	• •	•
Materials and Technology Systems, Inc.	Carboxymethyl-morphine	Vial: 8 ml	May 3, 1973
Do	Carboxymethyl-morphine bovine serum albumin or rabbit serum albumin.	do	Do.
Do	5-ethyl-5-(1-carboxy-n-propyl) barbituric acid.	Vial: 8 ml. and 10 ml	Do.
Do	5-ethyl-5-(1-carboxy-n-propyl) barbituric acid bovine serum albumin or rabbit serum albumin.	Vial: 8 ml	Do.
Do	Ecgonine bovine serum albumin or rabbit serum albumin.	do	Do.
Do	Tropinecarboxylic acid	Vial: 8 ml. and 10 ml	Do.
Do	Morphine standard	Vial: 10 ml	July 17, 1973
Do	Morphine-urine standard	Vial: 25 ml	Do.
Do	Ecgonine-urine standard	do	Do.
Do	Barbiturate-urine standard	do	Do.
• •	• •	• •	•
Millipore	Hapindex slide cassette No. EE10 300 00.	Plate: 4¼" x 3¼" x ¼"...	Sept. 5, 1973
Do	Immunoelectrophoresis buffer No. XE21 032 00.	Vial: 10.19 gm	Do.
Do	Immuno-agaro slide	Plate: 3¼" x 2¼" x 1/16".	Do.
Do	Agaro slide No. ESAL 031 00 and No. ESAL 031 05.	Plate: 3" x 1" x 1/16"	Do.
• •	• •	• •	•
Regis Chemical Co.	Urine drug control set	Vial: 5 ml	Aug. 20, 1973
Do	Drug reference standards set containing:	Vial:	Do.
	Group A	5 ml	
	Group B	do	
	Group C	do	
	Group D	do	
	Group E	5 ml	
• •	• •	• •	•
SIGMA Chemical Co.	Adenosine phosphate substrate No. 675-1.	Bottle: 4 oz	July 25, 1973
Do	Glycerophosphate substrate No. 675-2.	do	Do.
Do	Glycerophosphate substrate No. 704-1.	do	Do.
Do	Acid hematoxylin solution No. 285-2	Bottle: 25 ml. and 100 ml.	Aug. 6, 1973
Do	Mayer's hematoxylin solution No. MHS-1.	do	Do.
• •	• •	• •	•
E. R. Squibb & Sons, Inc.	Barbital buffer mixture for use with digoxin immutope kit No. 09380.	Vial: 5 cc	July 30, 1973
• •	• •	• •	•
Supelco, Inc.	Barb mix-1	Vial: 1 ml	Aug. 28, 1973
Do	Barb mix-2	do	Do.
Do	Amph mix	do	Do.
Do	Alk mix	do	Do.
• •	• •	• •	•

b. By amending §1308.24(f) by deleting the following chemical preparations:

Manufacturer or supplier	Product name and supplier's catalog number	Form of product	Date of application
• •	• •	• •	•
Brinkmann Instruments, Inc.	Brinkmann drug screen standard A	Vial: 1 ml	Jan. 26, 1973
Do	Brinkmann drug screen standard B	do	Do.
Do	Brinkmann drug screen standard C	do	Do.
Do	Brinkmann drug screen standard D	do	Do.
• •	• •	• •	•
Hyland Division Travenol Laboratories, Inc.	T-3	Vial: 10 ml	Dec. 29, 1972
Do	T-4	Vial: 20 ml	Do.
• •	• •	• •	•

c. By amending § 1308.24(f) by correcting the following entry, which now reads:

Manufacturer or supplier	Product name and supplier's catalog number	Form of product	Date of application
• •	• •	• •	•
American Hospital Supply Corp. (Harleco Division).	Buffered substrate glycerophosphate Bedansky, No. 2388L.	Vial: 0.924 gram per 15 x 45 mm. vial.	Sept. 15, 1971
• •	• •	• •	•

to read as follows:

Manufacturer or supplier	Product name and supplier's catalog number	Form of product	Date of application
* *	* *	* *	*
American Hospital Supply Corp. (Harleco Division).	Buffered substrate glycerophosphate Bodansky, No. 2368f.	Vial: 0.924 gram per 15 x 45 mm. vial.	Sept. 15, 1971
* *	* *	* *	*

Effective date. This order is effective on November 6, 1973. Any interested person may file written comments on or objections to the order on or before January 7, 1974. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke or amend his original order as he determines appropriate.

Dated October 30, 1973.

JOHN R. BARTELS, Jr.,
Acting Administrator,
Drug Enforcement Administration.

[FR Doc.73-23489 Filed 11-5-73;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-244]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

\- - - - -

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Alabama	Morgan	Decatur, City of				Nov. 5, 1973, Emergency.
Missouri	St. Louis	Kirkwood, City of.				Do.
Pennsylvania	Blair	Allegheny, Township of.				Do.
Do.	Columbia	Cleveland, Township of.				Do.
Do.	Westmoreland	Derry, Borough of.				Do.
Do.	Luzerne	Hunlock, Township of.				Do.
Do.	Erie	McKean, Borough f.				Do.
South Carolina	Lexington	Unincorporated Areas.				Do.
Virginia	Frederick	do.				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued: October 29, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-23478 Filed 11-5-73;8:45 am]

[Docket No. FI-243]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Illinois	Calhoun	Unincorporated Areas.				Nov. 2, 1973, Emergency.
Florida	Palm Beach	Palm Springs, Village of.				Do.
Massachusetts	Worcester	Blackstone, Town of.				Do.
Michigan	Oakland	Beverly Hills, Village of.				Do.
Missouri	Buchannan	St. Joseph, City of.				Do.
Nebraska	Sarpy	Springfield, Village of.				Do.
New York	Broome	Conklin, Town of.				Do.
Do.	Nassau	Hewlett Harbor, Village of.				Do.
Oklahoma	Garfield	Enid, City of				Do.
Pennsylvania	Columbia	Montour, Township of.				Do.
Do.	do.	Scott, Township of.				Do.
Do.	York	Springettsbury, Township of.				Do.
Do.	Lancaster	West Earl, Township of.				Do.
South Carolina	Anderson	Anderson, City of				Do.
Texas	Tarrant	Benbrook, City of				Do.
Do.	Guadalupe	Schertz, City of				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued: October 26, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-23471 Filed 11-5-73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7289]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Investment Credit Carryovers and Work Incentive Program Credit Carryovers in Certain Corporate Acquisitions

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for Wednesday, June 6, 1973 (38 FR 14835), an amendment to the income tax regulations (26 CFR pt. 1) under section 381 (c) (23) and (24) of the Internal Revenue Code of 1954 was proposed in order to conform such regulations to the provisions of section 2(d) of the Revenue Act of 1962 (76 Stat. 971) and section 106 of the Revenue Act of 1971 (85 Stat. 506), relating to investment credit carryovers, and section 601(c) of the Revenue Act of 1971 (85 Stat. 557) relating to work incentive program credit carryovers. No comments were received regarding the rules proposed and the amendment of the regulations as proposed is adopted by this document without change.

Section 381 provides that an acquiring corporation may succeed to certain tax items or attributes of a distributor or transferor corporation in certain corporate acquisitions described in section 381(a). Among the items to which an acquiring corporation may succeed are investment credit carryovers (section 381(c)(23)) and work incentive program credit carryovers (section 381(c)(24)).

The purpose of the amendment is to provide rules to govern the manner in which the above-mentioned carryovers of a distributor or transferor corporation are to be taken into account by an acquiring corporation in the year of acquisition and in subsequent taxable years.

The regulations provide that the investment credit carryovers and work incentive program (WIN) credit carryovers of a distributor or transferor corporation (computed as of the close of the date of distribution or transfer) may be carried to the first taxable year of the acquiring corporation ending after the date of distribution or transfer and integrated with the carryovers and carrybacks of the acquiring corporation for purposes of computing the amount of credit allowed by section 38 or by section 40 for such first taxable year and for subsequent taxable years.

The regulations deal with the computation of carryovers in two cases: (1) When the distribution or transfer occurs on the last day of an acquiring corporation's taxable year, and (2) when the distribution or transfer occurs on a day other than the last day of an acquiring corporation's taxable year. When the distribution occurs on the last day of an acquiring corporation's taxable year, the unused credits of the distributor or transferor corporation are integrated with the unused credits of the acquiring corporation and applied against the excess limitation (i.e., the excess of the limitation based on tax over the credit earned) of the acquiring corporation for its next succeeding taxable year. On the other hand, if the distribution or transfer occurs on a day other than the last day of the acquiring corporation's taxable year, then the amount of unused credit of a distributor or transferor corporation which may be taken into account by the acquiring corporation in the year of acquisition is limited to that portion of the excess limitation for such year which is attributable to the period beginning on the date following the date of distribution or transfer and ending with the close of the taxable year.

The regulations contain special rules dealing with the carryover of unused investment credits arising in taxable years ending before January 1, 1971, which may be carried to a taxable year beginning after December 31, 1970. Also, the regulations provide special rules dealing with the manner in which the limitation contained in section 46(b)(5) is to be applied in the case of a corporate acquisition.

Adoption of amendment to the regulations. On Wednesday, June 6, 1973, notice of proposed rulemaking with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 381(c) (23) and (24) of the Internal Revenue Code of 1954, in order to conform such regulations to certain provisions of section 2 of the Revenue Act of 1962 (76 Stat. 962), relating to credit for investment in certain depreciable property, and section 601(c) of the Revenue Act of 1971 (85 Stat. 557), relating to credit under section 40 for work incentive program expenses, was published in the FEDERAL REGISTER (38 FR 14835). No comments were received regarding the rules proposed and the amendment of the regulations as proposed is hereby adopted without change.

PARAGRAPH 1. Paragraph (e) of § 1.46–2 is revised to read as follows:

§ 1.46–2 Carryback and carryover of unused credit.

* * * * *

(e) *Corporate acquisitions.*—For the carryover of unused credits in the case of certain corporate acquisitions, see section 381(c)(23) and § 1.381(c)(23)–1.

* * * * *

PAR. 2. Section 1.381(c)(6) is amended by revising section 381(c)(6) and by revising the historical note to read as follows:

§ 1.381(c)(6) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; method of computing depreciation allowance.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.*—The items referred to in subsection (a) are:

* * * * *

(6) *Method of computing depreciation allowance.*—The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under subsections (b), (j), and (k) of section 167 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

(Sec. 381(c)(6) as amended by sec. 521(f), Tax Reform Act 1969 (83 Stat. 654).)

PAR. 3. There are inserted immediately after § 1.381(c)(22)–1 the following new sections:

§ 1.381(c)(23) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; credit under section 38 for investment in certain depreciable property.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.*—The items referred to in subsection (a) are:

* * * * *

(23) *Credit under section 38 for investment in certain depreciable property.*—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary or his delegate) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(Sec. 381(c)(23) as added by sec. 2(d), Rev. Act 1962 (76 Stat. 971).)

§ 1.381(c)(23)–1 Investment credit carryovers in certain corporate acquisitions.

(a) *Carryover requirement.* (1) Section 381(c)(23) requires the acquiring corporation in a transaction to which section 381 applies to succeed to and take into account under such regulations as may be prescribed by the Secretary or his delegate, the investment credit carryovers of the distributor or transferor corporation. To determine the amount of these carryovers as of the close of the date of distribution or transfer, and to integrate them with any carryovers and carrybacks of the acquiring corporation for purposes of determining the amount of credit allowed by section 38 to the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of sections 46, 47, and 48 in accordance with the conditions and limitations of this section.

(2) The investment credit carryovers and carrybacks of the acquiring corporation determined as of the close of the date of distribution or transfer, shall be computed without reference to any unused credit of a distributor or transferor corporation. The investment credit carryovers of a distributor or transferor corporation as of the close of the date of distribution or transfer shall be determined without reference to any unused credit of the acquiring corporation.

(b) *Carryback of unused credits.* An unused credit of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall not be carried back in computing the credit allowed by section 38 to a distributor or transferor corporation. However, an unused credit of the acquiring corporation for any such taxable year shall be carried back in accordance with section 46(b)(1) in computing the credit allowed to the acquiring corporation for a taxable year ending on or before the date of distribution or transfer. If a distributor or transferor corporation remains in existence after the date of distribution or transfer, an unused credit sustained by it for any taxable year beginning after such date shall be carried back in accordance with section 46(b)(1) in computing the credit allowed by section 38 to such corporation for a taxable year ending on or before that date, but may not be carried back or over in computing the credit allowed by section 38 to the acquiring corporation.

(c) *Computation of carryovers and carrybacks.* (1) Subject to the modifications set forth in this paragraph, the provisions of § 1.46–2 shall apply in computing carryovers and carrybacks of unused credits to taxable years of the acquiring corporation.

(2) (i) The investment credit carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall first be carried to the first taxable year of the acquiring corporation ending after that date. This rule applies whether the date of distribution or transfer is on the last day, or any other day, of the acquiring corporation's taxable year.

(ii) The investment credit carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall be carried to the acquiring corporation without diminution by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation.

(3) An unused credit of a distributor or transferor corporation for a taxable year which ends on or before the last day of a taxable year of the acquiring corporation shall be considered to be an unused credit for a year prior to such taxable year of the acquiring corporation. If the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, the unused credit years of the distributor or transferor corporations shall be taken into account in the order in which such years terminate. If any one of the unused credit years of a distributor or transferor corporation ends on the same day as the unused credit year of another distributor or transferor corporation, either unused credit year may be taken into account before the other.

(4) The extent to which an investment credit carryover of a distributor or transferor corporation or of an acquiring corporation from an unused credit year ending before January 1, 1971, may be taken into account by the acquiring corporation for a taxable year beginning after December 31, 1970, shall be determined without regard to the credit earned by the acquiring corporation for such year. Thus, in such a case, the amount of unused credit from such unused credit years which may be taken into account in a taxable year of the acquiring corporation beginning after December 31, 1970, shall be determined solely with reference to the limitation based on amount of tax for such taxable year (without reduction for the credit earned for such year).

(d) *Computation of carryovers when date of distribution or transfer occurs on last day of acquiring corporation's taxable year.* The computation of the investment credit carryovers from the distributor or transferor corporation and from the acquiring corporation in a case where the date of distribution or transfer occurs on the last day of a taxable year of the acquiring corporation may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1971, and each corporation files its return on the calendar year basis. On December 31, 1972, X transfers all its assets to Y in a statutory merger to which section 361 applies. X's credit earned and its limitation based on amount of tax for its taxable years 1971 and 1972 are as follows:

X Corporation's taxable year	Credit earned	Limitation based on amount of tax
1971	$10,000	$5,000
1972	5,000	3,000

Y's credit earned and its limitation based on amount of tax for its taxable years 1971 through 1973 are as follows:

Y Corporation's taxable year	Credit earned	Limitation based on amount of tax
1971	$6,000	$5,000
1972	5,000	3,000
1973	3,000	10,000

The sequence for the allowance of unused credits of X Corporation and Y Corporation,

and the computation of the carryovers to Y Corporation's calendar year 1974, may be illustrated as follows:

(i) *X Corporation's 1971 unused credit.*—The carryover to Y 1974 is $0, computed as follows:

Unused credit	$5,000
Excess of X's 1972 limitation based on tax over credit earned	0
Carryover to Y's year 1973	5,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Carryover to Y's year 1974	0

(ii) *Y Corporation's 1971 unused credit.*—The carryover to Y 1974 is $0, computed as follows:

Unused credit	$1,000
Excess of Y's 1972 limitation based on tax over credit earned	0
Carryover to Y's year 1973	1,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Less: X's $5,000 carryover from 1971	5,000
	2,000
Carryover to Y's year 1974	0

(iii) *X Corporation's 1972 unused credit.*—The carryover to Y 1974 is $1,000, computed as follows:

Unused credit	$2,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Less: X's $5,000 carryover from 1971 and Y's $1,000 carryover from 1971	6,000
	1,000
Carryover to Y's year 1974	1,000

(iv) *Y Corporation's 1972 unused credit.*—The carryover to Y 1974 is $2,000, computed as follows:

Unused credit	$2,000
Excess of Y's 1973 limitation based on tax over credit earned	7,000
Less: X's $5,000 carryover from 1971, Y's $1,000 carryover from 1971 and X's $1,000 carryover from 1972	7,000
	0
Carryover to Y's year 1974	2,000

(v) The aggregate of the investment credit carryovers to Y's year 1974 is $3,000, computed as follows:

X's 1972 unused credit	$1,000
Y's 1972 unused credit	2,000
Total	3,000

(e) *Computation of carryovers when date of distribution or transfer is not on last day of acquiring corporation's taxable year.*—(1) If the date of distribution or transfer occurs on any day other than the last day of a taxable year of the acquiring corporation, the amount which may be added to the amount allowable as a credit by section 38 for the first taxable year of the acquiring corporation ending after the date of distribution or transfer (hereinafter called the "year of acquisition") shall be determined in the following manner. The year of acquisition shall be considered as though it were 2 taxable years. The first of such 2 taxable years shall be referred to in this paragraph as the preacquisition part year and shall begin with the beginning of the year of acquisition and end with the close of the date of distribution or transfer. The second of such 2 taxable years shall be referred to in this paragraph as the postacquisition part year and shall begin with the day following the date of distribution or transfer and shall end with the close of the year of acquisition.

(2) The excess limitation for the year of acquisition (i.e., the excess of the limitation based on the amount of tax for such year over the amount of credit earned for such year) shall be divided between the preacquisition part year and the postacquisition part year in proportion to the number of days in each. Thus, if in a statutory merger to which section 361 applies Y Corporation, a calendar year taxpayer, acquires the assets of X Corporation on June 30, 1975, and Y Corporation has an excess limitation of $36,500 for its calendar year 1975, then the excess limitation for the preacquisition part year would be $18,100 ($36,500 × 181/365) and the excess limitation for the postacquisition part year would be $18,400 ($36,500 × 184/365).

(3) An unused credit of the acquiring corporation shall be carried to and applied against the excess limitation for the preacquisition part year and then carried to and applied against the excess limitation for the postacquisition part year, whereas an unused credit of the distributor or transferor corporation shall not be carried to the preacquisition part year but shall only be carried to and applied against the excess limitation for the postacquisition part year. For special rule relating to carryovers from taxable years ending before January 1, 1971, to taxable years beginning after December 31, 1970, see subparagraph (6) of this paragraph.

(4) Though considered as two separate taxable years for purposes of this paragraph, the preacquisition part year and the postacquisition part year are treated as one taxable year in determining the years to which an unused credit is carred under section 46(b)(1).

(5) The preceding subparagraphs may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1971, and each corporation files its return on the calendar year basis. On May 1, 1972, X transfers all its assets to Y in a statutory merger to which section 361 applies. X's credit earned and its limitation based on amount of tax for its taxable years 1971 and ending May 1, 1972, are as follows:

X Corporation's taxable year	Credit earned	Limitation based on amount of tax
1971	$11,000	$5,000
Ending 5-1-72	3,000	6,000

Y's credit earned and its limitation based on amount of tax for its taxable years 1971 and 1972 are as follows:

X Corporation's taxable year	Credit earned	Limitation based on amount of tax
1971	$7,000	$3,000
1972	3,000	9,000

The sequence for the allowance of unused credits of X Corporation and Y Corporation, and the computation of carryovers to Y Corporation's calendar year 1973, may be illustrated as follows:

(i) *X Corporation's 1971 unused credit.* The carryover to Y 1973 is $0, computed as follows:

Unused credit	$6,000
Excess of X's 5-1-72 limitation based on tax over credit earned	3,000
Carryover to Y's postacquisition part year 1972	3,000
Excess limitation for Y's postacquisition part year ($6,000 × 244/366)	4,000
Carryover to Y's year 1973	0

(ii) *Y Corporation's 1971 unused credit.* The carryover to Y 1973 is $1,000, computed as follows:

Unused credit	$4,000
Excess limitation for Y's preacquisition part year ($6,000 × 122/366)	2,000
Carryover to Y's postacquisition part year	2,000
Excess limitation for Y's postacquisition part year ($6,000 × 244/366)	4,000
Less: X's $3,000 carryover from 1971	3,000
	1,000
Carryover to Y's year 1973	1,000

(iii) The aggregate of the investment credit carryovers to Y's year 1973 is $1,000, computed as follows:

X's 1971 unused credit	0
Y's 1971 unused credit	1,000
Total	1,000

(6) If the year of acquisition is a taxable year beginning after December 31, 1970, and if there is an unused credit of the distributor or transferor corporation or of the acquiring corporation arising in an unused credit year ending before January 1, 1971, which may be carried to such year of acquisition (see paragraph (c)(4) of this section), then in applying subparagraphs (1), (2), and (3) of this paragraph, in lieu of dividing the excess limitation for the year of acquisition between the preacquisition and postacquisition part years, only the limitation based on the amount of tax for such year (i.e., without reduction for the credit earned) shall be divided be-

tween the preacquisition and postacquisition part years. If there is also an unused credit arising in an unused credit year ending after December 31, 1970, which may be carried to the year of acquisition, then for the purpose of determining the amount of such unused credit which may be taken into account for such year of acquisition, the credit earned for the year of acquisition shall first be applied against the limitation based on amount of tax for the preacquisition part year (reduced by any investment credit carryovers to such part year from unused credit years ending before January 1, 1971) and the excess, if any, shall then be applied against the limitation based on amount of tax for the postacquisition part year (also reduced by any investment credit carryovers to such part year from unused credit years ending before January 1, 1971).

(7) Subparagraph (6) of this paragraph may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1970, and each corporation files its return on the calendar year basis. On May 1, 1972, X transfers all its assets to Y in a statutory merger to which section 361 applies. X's credit earned and its limitation based on amount of tax for its taxable years 1970, 1971, and ending May 1, 1972, are as follows:

Y Corporation's taxable year	Credit earned	Limitation based on amount of tax
1970	$300	
1971	100	
Ending 5-1-72	200	

Y's credit earned and its limitation based on amount of tax for its taxable years 1970 through 1972 are as follows:

Y Corporation's taxable year	Credit earned	Limitation based on amount of tax
1970	$100	
1971	200	
1972	300	$900

The sequence for the allowance of unused credits of X Corporation and Y Corporation, and the computation of carryovers to Y Corporation's calendar year 1973, may be illustrated as follows:

(i) *X Corporation's 1970 unused credit.*—The carryover to Y 1973 is $0, computed as follows:

Unused credit	$300
X Corporation's 1971 limitation based on tax	0
X Corporation's 5-1-72 limitation based on tax	0
Carryover to Y's postacquisition part year 1972	300
Limitation based on tax for Y's postacquisition part year 1972 ($900×244/366)	600
Carryover to Y's year 1973	0

(ii) *Y Corporation's 1970 unused credit.*—The carryover to Y 1973 is $0, computed as follows:

Unused credit	$100
Y Corporation's 1971 limitation based on tax	0
Carryover to Y's preacquisition part year 1972	100
Limitation based on tax for Y's preacquisition part year 1972 ($900×122/366)	300
Carryover to Y's postacquisition part year 1972	0

(iii) *Y Corporation's credit earned for 1972.*—The carryover to Y 1973 is $0, computed as follows:

Credit earned	$300
Limitation based on tax for preacquisition part year 1972 ($900×122/366)	300
Less: Y's $100 carryover from 1970	100
	$200
Carryover to Y's postacquisition part year 1972	100
Limitation based on tax for postacquisition part year 1972 ($900×244/366)	600
Less: X's $300 carryover from 1970	300
	300
Carryover to Y's year 1973	0

(iv) *X Corporation's 1971 unused credit.*—The carryover to Y 1973 is $0, computed as follows:

Unused credit	$100
Excess of X's 1972 limitation based on tax over credit earned	0
Carryover to Y's postacquisition part year 1972	100
Limitation based on tax for postacquisition part year 1972 ($900×244/366)	600
Less:	
X's $300 carryover from 1970	300
Y's 1972 credit earned for postacquisition part year	100
	400
	200
Carryover to Y's year 1973	0

(v) *Y Corporation's 1971 unused credit.*—The carryover to Y 1973 is $100, computed as follows:

Unused credit	$200
Limitation based on tax for preacquisition part year 1972 ($900×122/366)	300
Less:	
Y's $100 carryover from 1970	100
Y's 1972 credit earned for preacquisition part year 1972	200
	300
	0
Carryover to Y's postacquisition part year	200
Limitation based on tax for postacquisition part year 1972 ($900×244/366)	600
Less:	
X's $300 carryover from 1970	300
Y's 1972 credit earned for postacquisition part year 1972	100
X's $100 carryover from 1971	100
	500
	100
Carryover to Y's year 1973	100

(vi) *X Corporation's 5-1-72 unused credit.*—The carryover to Y 1973 is $200, computed as follows:

Unused credit	$200
Limitation based on tax for postacquisition part year 1972 ($900×244/366)	600
Less:	
X's $300 carryover from 1970	300
Y's 1972 credit earned for postacquisition part year 1972	100
X's $100 carryover from 1971, and Y's $100 carryover from 1971	200
	600
	0
Carryover to Y's year 1973	200

(vii) The aggregate of the investment credit carryovers to Y 1973 is $300, computed as follows:

Y's 1971 unused credit	$100
X's 1972 unused credit	200
Total	300

(8) If the year of acquisition is a taxable year to which the limitation provided in § 1.46-2(b)(2) (relating to 20-percent limitation on carryovers and carrybacks to certain taxable years) applies, then for purposes of applying such limitation the preacquisition part year and the postacquisition part year shall each be considered a fractional part of a year, but, if the date of distribution or transfer is not on the last day of a month, the entire month in which the date of distribution or transfer occurs shall be considered as included in the preacquisition part year and no portion thereof shall be considered as included in the postacquisition part year.

(9) If the acquiring corporation succeeds to the investment credit carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the manner in which the unused credits of the distributor or transferor corporations shall be applied shall be determined consistently with the rules prescribed in paragraph (c) of § 1.381(c)(1)-2.

(f) *Successive acquiring corporations.*—An acquiring corporation which, in a distribution or transfer to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall succeed to and take into account, subject to the conditions and limitations of § 1.46-2 and this section, the investment credit carryovers available to the first acquiring corporation under § 1.46-2 and this section.

(g) *Recomputation of credit allowed by section 38 on certain property of acquiring corporation.*—If section 38 prop-

erty acquired by an acquiring corporation in a transaction to which section 381(a) applies is disposed of, or otherwise ceases to be section 38 property (or becomes public utility property) with respect to the acquiring corporation, before the close of the estimated useful life which was taken into account in computing the distributor or transferor corporation's qualified investment, see paragraph (e) of § 1.47-3.

(h) *Electing small business corporation.*—An unused credit of a distributor or transferor corporation arising in an unused credit year for which such corporation is not an electing small business corporation (as defined in section 1371(b)) may not be carried over in a transaction to which section 381 applies to a taxable year of the acquiring corporation for which such corporation is an electing small business corporation and may not be added to the amount allowable as a credit under section 38 to the shareholders of the acquiring corporation for such taxable year. However, in such a case, a taxable year for which the acquiring corporation is an electing small business corporation shall be counted as a taxable year for purposes of determining the taxable years to which such unused credit may be carried.

§ 1.381(c)(24) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; credit under section 40 for work incentive program expenses.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.*—The items referred to in subsection (a) are:

* * * * *

(24) *Credit under section 40 for work incentive program expenses.*—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 40, and under such regulations as may be prescribed by the Secretary or his delegate) the items required to be taken into account for purposes of section 40 in respect of the distributor or transferor corporation.

(Sec. 381(c)(24) as added by sec. 601(c), Rev. Act 1971 (85 Stat. 557).)

§ 1.381(c)(24)-1 Work incentive program credit carryovers in certain corporate acquisitions.

The computation of carryovers and carrybacks of unused WIN credits in a transaction to which section 381 applies shall be made under the principles of § 1.381(c)(23)-1 (relating to the computation of carryovers and carrybacks of unused investment credits), except that the provisions of paragraph (c)(4) and paragraph (e)(6), (7), and (8) of such section shall not apply.

(Secs. 381(c)(23), 76 Stat. 971 (26 U.S.C. 381(c)(23), 381(c)(24)) 85 Stat. 557 (26 U.S.C. 381(c)(24)), 7805, 68A Stat. 917 (26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: October 30, 1973.

JOHN H. HALL,
Deputy Assistant Secretary of the Treasury.

[FR Doc.73-23592 Filed 11-5-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 167—REGISTRATION OF PESTICIDE-PRODUCING ESTABLISHMENTS, SUBMISSION OF PESTICIDES REPORTS, AND LABELING

On July 24, 1973, this Agency published proposed regulations concerning registration of establishments as required by section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973), in the FEDERAL REGISTER (38 FR 19841). Comments were received from the industry, other Federal agencies, State agencies, and environmental groups. All comments were considered, and several recommendations made therein have been adopted.

Several comments were received concerning the types of establishments which must be registered under these regulations. With respect to comments concerning foreign producers, section 7(a) provides that "No person shall produce any pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator." Section 2(w) defines the term "produce", in part, to mean "* * * propagate * * * any pesticide or device." The "Random House Dictionary of the English Language" defines "propagate" as "* * * to spread * * *; to disseminate * * *." Thus, any person who disseminates any pesticide or device subject to this Act, which includes foreign products, in any State is subject to the requirements of section 7. This Agency has determined that to adequately enforce the Act foreign producers should meet the same requirements as domestic producers with regard to establishment registration, reporting and labeling. In addition the Agency does not believe that domestically-produced pesticides should be required to bear establishment registration numbers while foreign-produced pesticides would not. In other words, the requirements for the foreign pesticide should be no less than those for the domestic pesticide.

Comments were also received stating that custom blenders should not be considered establishments because their blending is performed according to registered label instructions only, their operation consists entirely of mixing a registered pesticide with bulk fertilized, their business is of low volume and thus has a negligible impact on the environment, or because such persons are adequately controlled by State agencies. This Agency believes that such persons clearly fall within the definition of "producer" and are subject to these provisions except insofar as they themselves perform all application of their blends.

Comments concerning § 167.1 *Definitions*, resulted in rewording or inclusion of additional sections to clarify the requirements, none of which reflect any change in intent. The revised term "sold or distributed" explicitly relates to the total amount of a product released for shipment, regardless of whether it is to be shipped to another establishment or shipped directly to the consumer market. The definition of "amount of pesticide" deletes reference to the word "formulation" to make clear that volumes and weights apply to the product rather than a breakdown of the formulation. A new definition, "immediate container", is added to dispel any ambiguity concerning labeling requirements. The term "type of pesticide" has been expanded to include the Use Classification, which will be assigned to each pesticide at a later date (section 3(d) of the Act).

Comments concerning the definition of "current production" emphasized that the definition implicitly requires a forecast of future production. It should be noted that the data submitted will be viewed by the Agency as such a forecast, subject to all relevant economic variables, and will serve the purpose of furnishing this Agency with the producer's intended production volume.

The registration procedures have been made more explicit by substituting the term "company headquarters" for "company." In context, this means that the company headquarters will submit one application identifying all its producing sites (establishments), and notification of each establishment's registration will be sent to the company headquarters by this Agency. It is the intent of the Agency to mail the Application for Registration of Pesticide-Producing Establishments form to all current registrants upon promulgation of these regulations. Nonregistrants should obtain Application forms from an EPA Regional Office or from EPA, Pesticides Enforcement Division, Establishment Registration Section, 401 M Street SW., Washington, D.C. 20460.

Section 167.2(f), Amendments to registration, has been changed to provide thirty days instead of five days within which a producer must inform the Agency of any amendment to information submitted in support of initial registration.

With respect to the labeling requirements, § 167.4 has been revised to provide that only one Establishment Registration Number is to appear on the label; that number to be the one assigned to the last establishment in which the product was produced. It should also be noted that any variations from the establishment registration numbering system will not be acceptable to the Agency.

Section 167.4(d), Deadline for labeling, has been reworded to provide that all products released for shipment by the dates set forth in the proposal must bear the assigned Establishment Registration Number regardless of the date of production. Comments were also received stating that the dates by which products must bear the assigned Establishment Registration Number are unrealistic due to the fact that labels are frequently ordered several years in advance of use or that it would be difficult to relabel establishment product inventories. The Agency believes, because it is permitting placement of the Establishment Registration Number in any location on the immediate container by a variety of methods, such as sticker labeling, tagging, stenciling, etc., that the industry should have no problem complying with this requirement.

With regard to § 167.5 *Pesticides reports*, it is the intention of the Agency to mail a Pesticides Report form directly to each establishment shortly after notification of registration. Section 167.5(a), Information required for the Pesticides Report, deletes the word "and" in the phrase "sales and distribution", pertaining to volumes which must be reported with respect to each product produced by the reporting establishment, and substitutes the word "or" to reflect the intent that sales and distribution are not to be reported separately.

The regulations read as set forth below.

Sec.
167.1 Definitions.
167.2 Registration procedures.
167.3 Duration of registration.
167.4 Labeling requirements.
167.5 Pesticides reports.

AUTHORITY: Secs. 7,25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 86 Stat. 987, 997.

§ 167.1 Definitions.

Terms used in this part shall have the meanings set forth for such terms in the Act. In addition, as used in this part, the following terms shall have the meanings stated below:

(a) *Act*. As used in this part, the term "Act" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973–999).

(b) *Establishment*. The term "establishment", for purposes of this part, means each site where a pesticide, as defined by this Act, or a device is produced, regardless of whether such site is independently owned or operated and regardless of whether such site is domestic and producing any pesticide or device for export only or whether the site is foreign and producing any pesticide or device for import into the United States.

(c) *Produce*. The term "produce" means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5, or device, or to repackage or otherwise change the container of any pesticide or device.

(d) *Producer*. The term "producer" means any person, as defined by the Act, who produces any pesticide or device.

(e) *Pesticides report*. The term "pesticides report" means information showing the types and amounts of pesticides or devices which are being produced in the current calendar year, have been produced in the past calendar year, and which have been sold or distributed in the past calendar year.

(f) *Current production*. The term "current production" means amount of planned production in the calendar year in which the pesticides report is submitted, including new products not previously sold or distributed.

(g) *Past year*. The term "past year" means the calendar year immediately prior to that in which the report is submitted.

(h) *Sold or distributed*. The term "sold or distributed" means the aggregate amount of a product released for shipment by the establishment in which the pesticide or device was produced.

(i) *Type of pesticide*. The term "type of pesticide" refers to each individual product as identified by the product name; EPA Registration Number (EPA File Symbol, if any, for planned products; Experimental Permit Number if the pesticide is produced under an Experimental Use Permit); production type (technical, formulation, repackaging, etc.); product classification (fungicide, insecticide, herbicide, etc.); market produced for (domestic, foreign, etc.); and use classification. In cases where a pesticide is not registered, registration is not applied for, or is not produced under an Experimental Use Permit, the term shall also include the chemical formulation.

(j) *Amount of pesticide*. The term "amount of pesticide" means quantity, expressed in weight or volume of the product, and is to be reported in pounds for solid or semi-solid products and gallons for liquid products.

(k) *Device*. The term "device" means any device or class of devices as defined by the Act and determined by the Administrator pursuant to Section 25(c) to be subject to the provisions of section 7 of the Act.

(l) *Immediate container*. The term "immediate container" means the individual innermost package holding the pesticide.

§ 167.2 Registration procedures.

(a) *Who must register*. All establishments, as defined in this part, which produce any pesticide or device subject to the provisions of this section, must be registered pursuant to the requirements of these regulations: *Provided, however*, That those persons who produce pesticides solely for application by themselves are not required to be registered.

(b) *Information required*. Application for registration, to be made on the EPA Application for Registration of Pesticide-Producing Establishments form, requires the name and address of the company; the type of ownership (individual, partnership, cooperative association, corporation, or any organized group of persons whether incorporated or not); and the names and addresses of all producing establishments. Applications are obtainable on request from the Environmental Protection Agency, Pesticides Enforcement Division, Washington, D.C. 20460 or from one of the EPA Regional Offices. Addresses of the Regional Offices may be obtained from the Environmental Protection Agency, Washington, D.C. 20460.

(c) *Submission of application*. The completed application shall be submitted by the company headquarters to the Regional Office having jurisdiction over the State in which the headquarters of the company is located, provided, however, that foreign companies shall submit their applications to the Environmental Protection Agency, Pesticides Enforcement Division, Washington, D.C. 20460 U.S.A.

(d) *Times for registration*. Applications for registration of all establishments producing pesticides or devices distributed in interstate commerce, or produced for export, or imported into the United States must be submitted by December 24, 1973. Applications for registration of all establishments producing solely for intrastate commerce must be submitted by October 21, 1974.

(e) *Notification of establishment registration number*. The Agency will provide to the company headquarters a validated copy of the EPA Application for Registration of Pesticide-Producing Establishments containing the registration number assigned to each establishment registered in accordance with these regulations.

(f) *Amendments to registration*. Any changes in type of ownership or address shall be submitted on the EPA Amendment to Registration of Pesticide-Producing Establishments from within thirty days of such changes to the appropriate Regional Office of the Agency.

§ 167.3 Duration of registration.

Establishment registration will remain effective provided pesticides reports are submitted annually pursuant to the requirements of this section. Failure to submit a report may result in termination of establishment registration.

§ 167.4 Labeling requirements.

(a) *Establishment number*. The only Establishment Registration Number which shall appear on the label is that of the final establishment at which the product was produced.

(b) *Placement*. For purposes of this part, the Establishment Registration Number may appear in any location on the label or immediate container and must also appear on the outside container or wrapper of the package if there

be one through which the EPA Establishment Registration Number on the immediate container cannot be clearly read.

(c) *Designation.* The Establishment Registration Number shall be preceded by "EPA Est."

(d) *Deadline for labeling.* Those products released for shipment on or after October 21, 1974, by establishments whose applications are due December 24, 1973, must bear the EPA Establishment Registration Number. Products released for shipment after six months after notification of registration by those establishments whose applications are due October 21, 1974, must bear the Establishment Registration Number. New products and products of those establishments entering into pesticides production for the first time must bear the Establishment Registration Number from the outset of production.

§ 167.5 Pesticides reports.

(a) *Information required.* The pesticides report, to be submitted on the EPA Pesticides Report form, shall include the name and address of the establishment; the types of pesticides produced; the past year's amount of production and sales or distribution of each product; and the amount of current production of each product. This report does not cover those pesticide products or devices sold or distributed but not produced by the reporting establishment. Reports submitted by foreign producers shall cover those pesticide products or devices exported to the United States.

(b) *Submission of report.* All reports shall be submitted by the establishment to the Regional Office having jurisdiction over the State in which the establishment is located. Reports from foreign establishments shall be submitted to the Environmental Protection Agency, Pesticides Enforcement Division, Washington, D.C. 20460, U.S.A.

(c) *When to report.* Within 30 days of notification of registration of an establishment the producer of the establishment shall file with the Agency a pesticide report. Thereafter reports are required to be filed annually on or before February 1.

(d) *Confidentiality of information.* Any information submitted in the pesticides report shall be considered confidential and subject to the provisions of section 10 of this Act.

Dated: October 30, 1973.

JOHN QUARLES,
Acting Administrator.

[FR Doc.73-23511 Filed 11-5-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 73-1095]

PART 0—COMMISSION ORGANIZATION

Chief Administrative Law Judge; Delegation of Authority

1. Under § 1.274(c) of the rules, if the officer presiding at a hearing becomes unavailable to the Commission, a new hearing can be ordered or, in the alternative, the hearing can continue. In either event, a new presiding officer must be designated. The procedural determination and the designation of a presiding officer are functions which can appropriately and efficiently be performed by the Chief Administrative Law Judge. This being the case, we are amending the Rules to reflect such authority.

2. Authority for this amendment is contained in sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d), and 303(r). Because this amendment relates to internal Commission organization and procedure, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

3. In view of the foregoing, § 0.351 of the rules is amended as set forth below effective November 6, 1973.

Adopted: October 25, 1973.

Released: October 29, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Secretary.

In Part 0 of Chapter I of Title 47 of the Code of Federal Regulations, § 0.351 (h) is added, to read as follows:

§ 0.351 Authority delegated.

* * * * *

(h) If the administrative law judge designated to preside at a hearing becomes unavailable, to order a rehearing or to order that the hearing continue before another administrative law judge and, in either case, to designate the judge who is to preside.

[FR Doc.73-23556 Filed 11-5-73;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1104, Amdt. 8]

PART 1033—CAR SERVICE

Penn Central Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 30th day of October 1973.

Upon further consideration of Service Order No. 1104 (37 FR 15307, 22986; 38 FR 3512, 8445, 14754, 18024, 20621, and 23952), and good cause appearing therefor:

It is ordered, That § 1033.1104 *Service Order No. 1104* (Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., trustees, authorized to operate over tracks of the Erie Lackawanna Railway 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., December 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., October 31, 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.73-23580 Filed 11-5-73;8:45 am]

[S.O. 1159]

PART 1033—CAR SERVICE

Chicago and North Western Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 30th day of October 1973.

It appearing, that the Chicago and North Western Transportation Company (CNW) is unable to operate over its line between Tunney City, Wisconsin, and Camp McCoy, Wisconsin, because of the collapse of a tunnel, thereby interfering with through train operations between its terminals at Wyeville, Wisconsin, and Winona, Minnesota, and stations east and west thereof; that the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milw) has consented to use of its tracks between Tunnel City, Wisconsin, and Winona, Minnesota, by the CNW; that operation by the CNW over the aforementioned tracks of the Milw is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein 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:

§ 1033.1159 Service Order No. 1159.

(a) *Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.* The Chicago and North Western Transportation Company (CNW) be, and it is hereby, authorized to operate over tracks of the Chicago, Milwaukee,

[1] Commissioner Robert E. Lee absent; Commissioner Reid concurring in the result.

St. Paul and Pacific Railroad Company (Milw) between Tunnel City, Wisconsin, and Winona, Minnesota, a distance of approximately 66.4 miles.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the CNW over tracks of the Milw is deemed to be due to carrier's disability, the rates applicable to traffic moved by the CNW over the tracks of the Milw shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., November 1, 1973.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 30, 1974, 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 copies of this order 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 shall 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.73-23579 Filed 11-5-73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 275—U.S. STANDARDS FOR GRADES OF WHOLE OR DRESSED FISH[1]

OCTOBER 29, 1973.

In the January 9, 1973, issue of the FEDERAL REGISTER a notice was published, of proposed rulemaking, to amend Title 50 Code of Federal Regulations to include a new Part 275—U.S. Standards for Grades of Whole or Dressed Fish, pursuant to the authority vested in the Secretary of Commerce by Reorganization Plan No. 4, effective October 3, 1970. (35 FR 5627), and under the authority of Title II of the Agricultural Marketing Act of August 14, 1946, as amended (7 U.S.C. 1621–1627), transferred from the Department of the Interior to the Department of Commerce.

The purpose of the proposed amendment was to add a new Part 275, U.S. Standards for Grades of Whole or Dressed Fish. Interested persons were provided an opportunity to submit written comments in regard to the proposed amendment and no written comments were received.

Effective date. The amendment was modified for clarity as set forth below; the effective date of this new 50 CFR Part 275 shall be December 6, 1973.

ROBERT M. WHITE, *Administrator.*

Sec.
275.1 Scope and product prescription.
275.2 Product forms.
275.3 Grades—quality factors.
275.4 Determination of grade.
275.5 Hygiene.

AUTHORITY: Pub. L. 733, 60 Stat. 1087–1091 (7 U.S.C. 1621–1627).

§ 275.1 Scope and product description.

This standard shall apply to whole or dressed fish, whether fresh or frozen, of any species suitable for use as human food and processed and maintained in accordance with good manufacturing practices.

§ 275.2 Product forms.

(a) *Types.* (1) Fresh.
(2) Frozen solid packs; glazed or unglazed.
(3) Frozen individually; glazed or unglazed.
(b) *Styles.* (1) Whole.
(2) Dressed-eviscerated.
(3) Head-on or headless.
(4) With or without fins.
(5) Skin-on scaled or unscaled; semi-skinned (epidermis removed) or skinless.
(6) Other (as specified).

§ 275.3 Grades—quality factors.

(a) *U.S. Grade A.* Whole or dressed fish shall:
(1) Possess good flavor and odor and;
(2) Comply with the limits for defects for U.S. Grade A quality in accordance with § 275.4.

(b) *U.S. Grade B.* Whole or dressed fish shall:
(1) Possess reasonably good flavor and odor and;
(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 275.4.

(c) *Substandard.* Whole or dressed fish does not possess reasonably good flavor and odor and/or exceeds the limits for defects for U.S. Grade B quality in accordance with § 275.4.

§ 275.4 Determination of grade.

(a) *Procedures for grade determination.* The grade shall be determined by sampling in accordance with the sampling plan described in paragraph (b) of this section evaluating odor and flavor in accordance with paragraph (c) of this section examining for defects in accordance with paragraphs (d), (e) and (f) of this section and using the results to assign a grade as described in paragraph (g) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections, other than for military procurement, shall be in accordance with the sampling plans contained in Part 260 of this chapter except that the sampling unit is ten (10) fish for fish weighing up to 10 pounds. Fish weighing over ten (10) up to fifty (50) pounds—the sample unit shall be five (5) fish. For fish weighing over fifty (50) pounds, the sample unit shall be a minimum of three (3).

(c) *Evaluation of flavor and odor.* (1) Evaluation of the odor on each of the raw fish in the sample unit shall be carried out as follows:

(i) For the examination of small units, break the flesh or thawed sample either with the thumbs or by cutting with a knife in several places. Hold the cut or broken flesh close to the nose for evaluation.

(ii) For the examination of large units, a core may be used. Drill a hole into the hard frozen fish with a high-speed quarter inch drill. As soon as the drill is withdrawn, the hole and drillings are smelled.

(2) If the results of the raw odor evaluation indicate the existence of any off-odors, the sample shall be cooked by any of the methods set forth below to verify the flavor and odor.

(i) *Boil in bag method.* Insert the sample into a boilable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the product reaches 160 degrees F.).

(ii) *Steam method.* Wrap the sample in a single layer of aluminum foil, and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product for 20 minutes.

(iii) *Bake method.* Package the product as previously described. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents is a properly ventilated oven preheated to 400 degrees F. for 20 minutes.

(3) The amount of material to be cooked shall be based on the results of the raw odor evaluation. A minimum of 25 percent of the sample except that not less than 3 sample units shall be used.

(d) *Examination for physical defects.* Each of the fish in the sample will be examined for defects using the list of defect definitions, and the defects noted and categorized as minor, major, and serious in accordance with Table 1.

(e) *Definitions of defects in whole or dressed fish.* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the fish is adversely affected. It includes, but is not limited to, the following examples:

[1] Compliance wtih the provisions of this standard shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

(i) Jellied—refers to the abnormal condition wherein a fish is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish is partly or wholly characterized by a milky-white, excessively mush, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish is partly or wholly characterized by a dry, chalky, granular appearance, and fiberless structure.

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) "Appearance defects" shall refer to the overall general appearance of the fish (consistency of the flesh, odor, eyes, gills, and skin) and presence of excessive blood or drip and appearance of the package.

(i) Slight—refers to an appearance defect that is slightly noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(ii) Moderate—refers to an appearance, defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(iii) Excessive—refers to an appearance defect that is conspicuously noticeable and that does seriously affect the appearance, desirability and/or eating quality of the fish.

(3) "Discoloration" refers to any color not characteristic of the species used.

(i) Slight—refers to the area affected by discoloration of significant intensity involving up to 10 percent of the total area.

(ii) Moderate—refers to the area affected by discooloration of significant intensity involving over 10 percent and up to 50 percent of the total area.

(iii) Excessive—refers to the area affected by discoloration of significant intensity involving over 50 percent of the total area.

(4) "Dehydration" refers to loss of moisture from fish surfaces during frozen storage. For skin-on fish, dehydration shall be evaluated by degree of dullness and shrinkage.

(i) Slight dehydration—is surface color masking affecting more than 3 percent of the area which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(5) "Surface defects" shall refer to the following where applicable:

(i) Scales. An occurrence of attached or loose scales in any sample unit (where applicable).

(ii) Blood spot. An accumulation of coagulated opaque, masses of blood on a fish.

(iii) Fins or pieces of fin. An occurrence or absence of attached or loose fins or pieces of fin in any sample unit (where applicable). Dorsal spine shall be removed (where applicable).

(iv) Skin. The presence of the dark or light inner layers of skin for skinless. For semiskinned, reference is to the presence of the dark outside layers.

(v) Bruises. An accumulation of damaged portions of fish muscle, red and opaque in appearance (on a fish).

(vi) Damage to protective coating refers to voids in ice glaze or tears in covering membrane, also to breaks or splits in the skin which are readily discernible and not normally part of the processing.

(6) "Cutting and trimming defects" refers to the following:

(i) Body cavity cuts—refers to misplaced cuts made during evisceration.

(ii) Improper heading (as specified)—refers to the presence of pieces of gills, gill cover, pectoral fins (spine), or collarbone after the fish have been headed. No ragged cuts should be evident after heading.

(iii) Evisceration defects—refers to inadequate cleaning of the belly cavity of the fish. All viscera, kidney (where applicable), spawn, and blood should be removed.

(A) Slight degree of improper evisceration and improper heading refers to a condition that is scarcely noticeable but does not affect the apearance, desirability, and/or eating quality of the fish.

(B) Moderate degree of improper evisceration and improper heading refers to a condition that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(C) Excessive degree of improper evisceration refers to a condition that is conspicuously noticeable and that seriously affect the appearance, desirability, and/or eating quality of the fish.

(iv) Improper washing — inadequate removal of slime, blood, and bits of viscera from the surface of the fish and from the body cavity.

(v) Belly burn—an enzymatic action on the flesh causing a burned or discolored appearance.

(7) "Texture defects" texture of the cooked fish; not characteristic of the species.

(i) Slight—fairly firm, only slightly tough or rubbery, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.*

TABLE I

Physical defects		Categories		
Types	Degree	Minor	Major	Serious
Abnormal condition	Moderate		201	
	Excessive			301
Appearance defects	Slight	102		
	Moderate		202	
	Excessive			302
Discoloration	Slight	103		
	Moderate		203	
	Excessive			303
Dehydration	Slight—more than 3 percent area affected and easily removed.	104		
	Moderate—less than 3 percent area affected but difficult to remove.		204	
	Excessive—greater than 3 percent area affected			304
Surface defects	Slight—3 to 10 percent area affected	105		
	Moderate—greater than 10 percent area affected		205	
Cutting and trimming defects	Body cavity cuts	106		
	Improper heading:			
	Slight	107		
	Moderate		206	
	Evisceration defects:			
	Slight	108		
	Moderate		207	
	Excessive			307
	Improper washing	109		
	Belly burn		208	
Texture defects	Slight	110		
	Moderate		209	
	Excessive			309

NOTE.—The code numbers shown in the above table are for identification of defects for recording purposes only and are keyed to the nature and severity of the defect. They are not scores.

(g) *Grade assignment.* (1) Each fish in a sample unit will be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

	Flavor and odor	Maximum number of physical defects permitted		
		Minor	Major	Serious
Grade A	Good	3	0	0
Grade B	Reasonably good	5	1	0

(2) Upon determination of grade of each fish in each sample unit, the sample will be designated a grade as follows:

(i) *Grade A.*

Number of subsample units (fish)	Minimum number of grade A fish	Maximum number of grade B fish	Maximum number of substandard
10 (up to 10 lb)	8	2	0
5 (10-50 lb)	4	1	0
3 (over 50 lb)	3	0	0

(ii) *Grade B.*

Number of subsample units (fish)	Minimum number of grade B fish	Maximum number of substandard
10 (up to 10 lb.)	8	2
5 (10-50 lb.)	4	1
3 (over 50 lb.)	3	0

(iii) *Substandard.* Any fish not meeting the minimum requirements for Grade B quality.

(3) Upon determination of the grade for each sample unit a lot of whole or dressed fish shall be assigned that grade in which:

(i) For physical defects, the number of sample units in the next lower grade does not exceed the acceptance number for deviants prescribed in Part 260.61 of the sampling plan, Table II, of Title 50; and

(ii) Not more than 5 percent of the fish in the sample (total fish examined per lot) are in the next lower grade for odor and/or flavor.

NOTE: Sampling for inspection for military procurement shall be in accordance with MIL-STD-105. Lot size shall be expressed in terms of pounds. The sample size shall be in accordance with Inspection Level S-3. Acceptable Quality Levels shall be expressed in terms of defects per hundred units. The AQL's shall be 6.5 for minor and 4.0 for major.

§ 275.5 Hygiene.

Whole or dressed fish shall be processed and maintained in accordance with the applicable requirements of the regulations contained in §§ 260.96 to 260.103 of this chapter and of the good manufacturing practice regulations contained in 21 CFR Part 128.

[FR Doc.73-23517 Filed 11-5-73;8:45 am]

Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 967]

CELERY GROWN IN FLORIDA

Notice of Proposed Expenses and Rate of Assessment

Consideration is being given to authorizing the Florida Celery Committee to spend not more than $82,600 for its operations during the fiscal period ending July 31, 1974, and to collect one cent per crate on assessable celery handled by first handlers under the program.

The committee is the administrative agency established under Marketing Agreement No. 149 and Order No. 967, both as amended, regulating the handling of celery grown in Florida. This program is effective under the Agrcultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

All persons who desire to submit written data, views, or arguments in connection with these proposals my file the same, in quadruplicate, with the Hearing Clerk, Room 112–A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than November 15, 1973. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposals are as follows:

§ 967.209 Expenses and rate of assessment.

(a) The expenses that are reasonable and likely to be incurred during the fiscal year ending July 31, 1974, by the Florida Celery Committee for its maintenance and functioning and for such purposes as the Secretary may determine to be appropriate will amount to $82,600.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one cent ($0.01) per crate of celery handled by him as the first handler thereof during said fiscal year.

(c) As provided in § 967.62, unexpended income in excess of expenses for the fiscal year ending July 31, 1974, may be carried over as an operating reserve.

(d) Terms used in this section have the same meaning as when used in the marketing agreement and this part.

Dated: October 31, 1973.

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

[FR Doc.73-23540 Filed 11-5-73;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 908]

WEATHER MODIFICATION ACTIVITIES

Records and Reports

Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA) proposes to amend the rules on maintaining records and submitting reports on weather modification activities (37 FR 22974) by additions and changes set forth below. These amendments are proposed under the authority of 15 U.S.C. 330–330e and 15 U.S.C. 313, and pursuant to a Directive to the Secretary of Commerce reflected in the President's February 15, 1973, State of the Union Message on Natural Resources and Environment, and the Fact Sheet accompanying the Message.

All interested persons are invited to present their written views, objections, recommendations, or suggestions in connection with the proposed revisions to the Administrator, National Oceanic and Atmospheric Administration, Rockville, Maryland 20852, on or before December 6, 1973. No oral hearing will be held. The written comments submitted may be inspected by any person upon application at the Office of Environmental Monitoring and Prediction, NOAA, Room 717, 6010 Executive Blvd., Rockville, Md. 20852.

The purpose of these amendments to Title 15, Code of Federal Regulations, Part 908, is to provide for the reporting of the additional information required by NOAA to carry out the intent of the President's Directive to the Secretary of Commerce:

* * * to expand his regulations to provide for Federal notification, including recommendations where appropriate, to operators and State officials in cases where a report discloses that a proposed project may endanger persons, property or the environment or the success of Federal research projects. Notifications will be available to the public.

Over the past 27 years, weather modification activities have been undertaken to secure benefits for man, and the results have been encouraging. Although there has been no evidence in this period that these activities have significantly endangered persons, property, or the environment, the President's Message recognizes that such activities may have the potential to cause adverse effects, if carried out without appropriate safeguards.

It is almost impossible to predetermine with certainty all of the effects of a given weather modification operation. For that reason, to minimize the possibility of harmful results, planning for weather modification operations usually includes project safeguards and consideration of environmental impact which will eliminate hazards that might be reasonably foreseen. The proposed amendments, which require the reporting of current safety practices and environmental considerations, will provide a single source of information on the safety and environmental precautions used in weather modification activities in the United States. Compilations of these practices may form the basis for later publication of techniques generally used in the industry to avoid potential danger. The reported information will also help operators to anticipate, and hopefully avoid, possible interference of one experiment or operation by another.

Appropriate Federal agencies have agreed to report their weather modification activities to the Secretary of Commerce. This Federal reporting complements the reporting of non-Federal sponsored projects and provides for a central source of information on all weather modification activities in the United States.

The actions of the Department of Commerce under these proposed amendments are not intended as, nor do they constitute, approval, disapproval, or regulation of weather modification operations. Any notification that may be made to operators and State officials on the basis of information received will be advisory only.

The proposed amendments are as follows:

1. Change § 908.4(a)(7) by deleting the word "and" after the semi-colon.

2. Change § 908.4(a)(8) to § 908.4(a)(9).

3. Add § 908.4(a)(8) as follows:

§ 908.4 Initial report.

* * * * *

(8) Answers to the following questions on project safeguards:

(i) Has an Environmental Impact Statement, Federal or State, been filed? Yes____ No____. If Yes, please furnish a copy as applicable.

(ii) Have provisions been made to acquire the latest forecasts, advisories, warnings, etc. of the National Weather Service, Forest Service, or others when issued prior to and during operations? Yes____ No____. If Yes, please specify on a separate sheet.

(iii) Have any safety procedures (operational constraints, provisions for suspension of operations, monitoring methods, etc.) and any environmental guide-

lines (related to the possible effects of the operations) been included in the operational plans? Yes____ No_____ If Yes, please furnish copies or a description of the specific procedures and guidelines.

* * * * *

4. Add § 908.12(d) to read as follows:

§ 908.12 Public disclosure of information.

* * * * *

(d) When consideration of a weather modification activity report and related information indicates that a proposed project may significantly depart from the practices or procedures generally employed in similar circumstances to avoid danger to persons, property, or the environment, or indicates that the success of Federal research projects may be adversely affected if the proposed project is carried out as described, the Administrator will notify the operator(s) and State officials of such possibility and make recommendations where appropriate. The purpose of such notification shall be to inform those notified of existing practices and procedures or Federal research projects known to NOAA. Notification or recommendation, or failure to notify or recommend, shall not be construed as approval or disapproval of a proposed project or as an indication that, if carried out as proposed or recommended it may, in any way, protect or endanger persons, property, or the environment or affect the success of any Federal research project. Any advisory notification issued by the Administrator shall be available to the public and be included in the pertinent activity report file.

ROBERT M. WHITE,
Administrator.

[FR Doc.73-23519 Filed 11-5-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

[49 CFR Parts 173, 178]

[Docket No. HM-111; Notice No. 73-7]

TRANSPORTATION OF HAZARDOUS MATERIALS

Miscellaneous Proposals Relating to Radioactive Materials

Correction

In FR Doc. 73-22431 appearing at page 29483 in the issue for Thursday, October 25, 1973, make the following changes:

1. In the table in § 173.396(b) (7), the last entries in the second and third columns reading "(1)" should read "(Fissile Class I)" and "Fissile Class I", respectively.

2. In § 173.396(c) (2) (ii), in the "Table of Authorized Contents", the heading "Uranium-235" should read "Uranium-233".

3. In the second sentence of § 178.194-2(d) (2), the reference to "at ±05 inch" should read "at ±0.5 inch".

ATOMIC ENERGY COMMISSION

[10 CFR Parts 50, 115]

NUCLEAR POWER PLANTS

Codes and Standards

The Atomic Energy Commission has under consideration amendments to its regulations, 10 CFR Part 50, "Licensing of Production and Utilization Facilities," and 10 CFR Part 115, "Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements," which would incorporate new addenda to specified published industry codes.

On July 25, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 19907) amendments to §§ 50.55a and 115.43a, which provided that the editions of referenced Codes, Code Cases and Addenda whose requirements must be met include only the editions of Codes, Code Cases and Addenda through 1971 or the Winter 1972 Addenda as appropriate.

Since that date, Addenda have been issued to the referenced Codes through June 1973. The Commission proposes to amend §§ 50.55a and 115.43a to incorporate the later addenda by reference. Also proposed are minor editorial changes to update references in §§ 50.55a and 115.43a.

A determination has been made that an environmental impact statement is not required because of the routine nature of the proposed amendments and because the proposed amendments should not significantly increase the cost of equipment subject to the rule and should further reduce the extremely low probability of accidents.

Pursuant to the Atomic Energy Act of 1954, as amended, and Section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 50 and 115 is contemplated. All interested persons who wish to submit written comments or suggestions in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff by December 6, 1973. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

1. In § 50.55a of 10 CFR Part 50, paragraph (b) is amended to read as follows:

§ 50.55a Codes and standards.

Each construction permit for a utilization facility shall be subject to the following conditions, in addition to those specified in § 50.55:

* * * * *

(b) As used in this section, references[1] to editions of Criteria, Codes, and Standards include only those editions through 1971; references[1] to Addenda include only those Addenda through the Summer 1973 Addenda.

* * * * *

§ 50.55a [Amended]

2. In § 50.55a, paragraph (d) (2) (ii) is amended by deleting the words "Class A or Class 1 piping set forth in editions" and substituting therefor "Class I or Class 1 piping set forth in editions".

3. In § 50.55a, paragraph (e) (2) (ii) is amended by deleting the words "or for Class I pumps of editions" and substituting therefor "or for Class 1 pumps of editions".

4. In § 50.55a, paragraph (h) is amended by deleting the words "Criteria for Nuclear Power Plant Protection Systems" and substituting therefor "Standard: Criteria for Protection Systems for Nuclear Power Generating Stations".

5. In § 50.55a, footnote 7 is revised to read as follows:

[7] For purposes of this regulation, the proposed IEEE 279 became "in effect" on August 30, 1968, and the revised issue IEEE 279-1971 became "in effect" on June 3, 1971. Copies may be obtained from the Institute of Electrical and Electronics Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017. A copy is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

6. In § 115.43a paragraph (b) is amended to read as follows:

§ 115.43a Codes and standards.

Each construction authorization shall be subject to the following conditions, in addition to those specified in § 115.43:

* * * * *

(b) As used in this section, references[1] to editions of Criteria, Codes, and Standards include only those editions through 1971; references[1] to Addenda include only those Addenda through the Summer 1973 Addenda.

* * * * *

7. In § 115.43a, paragraph (d) (2) (ii) is amended by deleting the words "Class I piping of editions" and substituting therefor "Class 1 piping of editions" and by deleting the words "Class A or Class 1 piping set forth in editions" and substituting therefor "Class I or Class 1 piping set forth in editions".

8. In § 115.43a, paragraph (e) (2) (ii) is amended by deleting the words "to Class I pumps of editions" and substituting therefor "to Class 1 pumps of editions" and by deleting the words "or for Class I pumps of editions" and substituting therefor "or for Class 1 pumps of editions".

9. In § 115.43a, paragraph (f) (2) (ii) is amended by deleting the words "to

[1] These incorporation by reference provisions were approved by the Director of the Federal Register on March 17, 1972 and May 4, 1973.

[1] These incorporation by reference provisions were approved by the Director of the Federal Register on March 17, 1972 and May 4, 1973.

Class I valves of section III of the ASME Boiler and Pressure Vessel" and substituting therefor "to Class 1 valves of section III of the ASME Boiler and Pressure Vessel Code" and by deleting the words "or for Class I valves of section III of the ASME Boiler and Pressure Vessel Code" and substituting therefor "or for Class 1 valves of section III of the ASME Boiler and Pressure Vessel Code".

10. In § 115.43a, paragraph (h) is amended by deleting "Criteria for Nuclear Power Plant Protection Systems" and substituting therefor "Standard: Criteria for Protection Systems for Nuclear Power Generating Stations".

11. In § 115.43a, footnote 7 is revised to read as follows:

[1] For purposes of this regulation, the proposed IEEE 279 became "in effect" on August 30, 1968, and the revised issue IEEE 279-1971 became "in effect" on June 3, 1971. Copies may be obtained from the Institute of Electrical and Electronics Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017. A copy is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

(Secs. 103, 104, 1611, Pub. Law 83-703; 68 Stat. 936, 937, 948, 954 (42 U.S.C. 2133, 2134, 2201(i), 2233).)

Dated at Germantown, Md. this 31st day of October 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-23555 Filed 11-5-73;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 241]

[Docket No. 25903]

UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Charges by Foreign Governments for Airport and En Route Facilities and Services; Extension of Time

By notice of proposed rulemaking EDR-254, dated September 17, 1973 and published at 38 FR 26461, the Board gave notice that it had under consideration an amendment to Part 241 of its Economic Regulations (14 CFR Part 241), which would require certificated route and supplemental air carriers to report charges by foreign governments for airport and en route facilities and services. Interested persons were invited to participate in the proceeding by submission of twelve (12) copies of written data, views, or arguments pertaining thereto to the Docket Section of the Board on or before November 5, 1973.

Counsel for Trans World Airlines, Inc. (TWA), has requested a 30-day extension of the time for filing comments, to December 5, 1973, stating that TWA needs additional time to coordinate the comments it receives from its numerous international regions before it can respond to the proposed rulemaking.

Although some extension of time appears to be warranted, it is believed that an additional 30 days would be excessive. Therefore, the undersigned finds that good cause has been shown for an extension of time for filing comments to November 20, 1973.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations, the undersigned hereby extends the time for submitting comments to November 20, 1973.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324.)

Dated: November 1, 1973.

[SEAL] SIMON EILENBERG,
Acting Associate General Counsel, Rules and Rates.

[FR Doc.73-23571 Filed 11-5-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

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

O,S-Dimethyl Phosphoramidothioate

Chemagro Division of Baychem Corp., Post Office Box 4913, Kansas City, MO 64120, submitted a petition (PP 4E1424) proposing establishment of tolerances for residues of the insecticide *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodities cucumbers, eggplant, peppers, and tomatoes at 1 part per million; and melons at 0.5 part per million.

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. There is no reasonable expectation of residues in eggs, meat, milk, or poultry, and § 180.6(a)(3) applies.

2. The proposed tolerances will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(e))), 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), it is proposed that § 180.315 be amended by revising the paragraph, "1 part per million * * *" and by adding a new paragraph, "0.5 part per million * * *", as follows:

§ 180.315 *O,S*-Dimethyl phosphoramidothioate; tolerances for residues.

* * * * *

1 part per million in or on broccoli, brussels sprouts, cabbage, cauliflower, cucumbers, eggplant, lettuce, peppers, and tomatoes.

0.5 part per million in or on melons.

Any person who has registered or submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed herein may request on or before December 6, 1973, that this proposal be referred to an advisory committee in accordance with section 408(e) of the act.

Interested persons may on or before December 6, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th and M Streets, SW., Waterside Mall, Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. All written submissions made pursuant to this proposal will be made available for public inspection at the office of the Hearing Clerk.

Dated October 25, 1973.

HENRY J. KORP,
Deputy Assistant Administrator, for Pesticide Programs.

[FR Doc.73-23521 Filed 11-5-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

[Docket No. 19554, FCC 73-1125]

CABLE CASTING OF CERTAIN PROGRAMS

Order for Oral Argument

1. By order released October 17, 1973 (38 FR 29342), the Commission indicated its intention to hold oral argument in the captioned proceeding on November 5, 6, and 7, 1973, and invited those wishing to appear to so notify the Commission. Those notices have now been received. The time allocation and schedule of appearances are shown on the attachment hereto. The argument will be held in the Commission meeting room (Room 856) at the Commission's headquarters, 1919 M Street, NW., Washington, D.C., commencing at 9 a.m., on November 5, 1973.

2. Although the Commission has initially indicated its desire to hear argument separately on the sports and nonsports aspects of the proceeding, that now appears impractical in view of the large number of persons wishing to participate and the stated intention of most to address both issues. We will accordingly permit all participants to address both aspects of the proceeding at one time and will not require that the issues be addressed separately.

3. Finally, we have reserved the afternoon of November 7, 1973, for panel discussions. A separate order will be issued shortly, establishing the format and composition of the panels.

Accordingly, *It is ordered*, That the schedule of appearance for oral argument in Docket 19554 is adopted as set forth below.

Adopted: October 30, 1973.

Released: October 30, 1973.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

[1] Commissioner Johnson absent.

MONDAY, NOVEMBER 5, 1973

COMMENCING AT 9 A.M.

National Association of Theatre Owners, Inc.
Martin E. Firestone, 20 minutes.
National Cable Television Association
David H. Foster, 20 minutes.
National Association of Broadcasters
John B. Summers, 20 minutes.
Optical Systems Corporation
Geoffry M. Nathanson, 20 minutes.
The Association of Maximum Service Telecasters, Inc.
Ernest W. Jennes, 20 minutes.

10 MINUTE RECESS

Paul Kagan Associates, Inc.
Paul Kagan, 10 minutes.
Douglass Cater,
Director of the Aspen Institute for Humanistic Studies, Program on Communications and Society, 10 minutes.
American Civil Liberties Union
Alan Reitman, 10 minutes.
Joint Council on Educational Telecommunications
William G. Harley, 10 minutes.
Teleglobe Pay-TV System, Inc.
Mark E. Fields, 10 minutes.
National Urban Coalition
M. Carl Holman, 10 minutes.
National Urban League, Inc.
Ronald H. Brown, 10 minutes.
Henry Geller
Speaking for himself, Leland L. Johnson and Walter S. Baer, 10 minutes
American Farm Bureau Federation
Donald T. Donnelly, 10 minutes

LUNCHEON BREAK

12:30–2:00 p.m.

Alan Rothenberg, 10 minutes
Professional Bowlers Association
Edward G. Elias, 10 minutes
Milwaukee Professional Sports and Services, Inc.
William Alverson, 10 minutes
St. Louis Blues Hockey Club, Inc.
Clay Hyland, 10 minutes
Philadelphia Hockey Club, Inc.
Harlan Singer, 10 minutes
Duckpin Professional Bowlers Association, Inc.
Franklin T. Applestein, 10 minutes
PGA Tournament Players Division Women's Tennis Association
Martin Carmichael, 10 minutes

10 MINUTES RECESS

National Hockey League
Donald V. Ruck, 10 minutes
National Basketball Association Player's Association
Lawrence Fleisher, 10 minutes
New York Nets–New York Islanders
Roy Boe, 10 minutes
Jack Dolph Associates
Jack Dolph, 10 minutes
Office of the Commissioner of Baseball
Paul Porter, 10 minutes.
Viacom International, Inc.
Ralph Baruch, 10 minutes.
American Cable Television, Inc.
Bruce Merrill, 10 minutes.
Twenty Television Stations Licensees (KCAU-TV, *et al.*)
James A. McKenna, Jr.
Robert W. Coll, 10 minutes.
Taft Broadcasting Company
Bernard Koteen, 10 minutes.

TUESDAY, NOVEMBER 6, 1973

Commencing at 9:00 a.m.

Program Suppliers (Motion Picture Producers Association of America, et al.)

Jack Valenti, Gordon Stulberg, Charlton Heston, Greg Morris, Robert Stack, Robert Wise, Edward Anhalt, Leo Jaffee, Louis Nizer, Ben Loveliss, 60 minutes.

Congressman Lionel Van Deerlin, 10 minutes.
Congressman Thomas Ludlow Ashley, 10 minutes.
Congressman Gus Yatron, 10 minutes.
Michael Close, Mayor, Pottsville, Pennsylvania, 5 minutes.
Warner Cable of Pottsville
William G. Dimmerling, 5 minutes.
Warner Cable of Warren
Fred Schwab, 5 minutes.

10 MINUTE RECESS

Eugene L. Shirk, Mayor, Reading, Pennsylvania, 10 minutes.
Earl J. Huntley, President of the City Council, Jacksonville, Florida, 10 minutes.
American Broadcasting Company
Everett H. Erlick, Robert J. Kaufman, James A. McKenna, Jr., Robert W. Coll, 15 minutes.
National Broadcasting Company, Inc.
Howard Monderer, 10 minutes
Columbia Broadcasting System, Inc.
Harry R. Olsson, Jr., 10 minutes
Computer Television Inc.
Paul L. Klein, 10 minutes
Warner Cable Corporation
Alfred Stern, 10 minutes
Trans-World Communications
Robert L. Heald, 10 minutes

LUNCHEON BREAK

12:30–2:00

Chester County Broadcasting Co.
William Halpern, 5 minutes
Juan Morales, 5 minutes
James L. Felton, 5 minutes
Betty Wooten, 5 minutes
Jefferson TV Cable Co., Inc.
John Rigas, 5 minutes
Jackson Community Antenna, Inc.
Ken Everett, 5 minutes
Open Channel
Theodora Sklover, 10 minutes
Cable Television Information Center
W. Bowman Cutter, 10 minutes
Cable Communications Resource Center
Charles E. Tate, 10 minutes.
DR. JESSE HARTELINE, Director, Open University Program, Rutgers University, 10 minutes.

10 MINUTE RECESS

ABC Television Network Affiliates Association
Kenneth A. Cox, 10 minutes.
CBS Television Network Affiliates Association
Charles A. Miller, 10 minutes.
NBC Television Affiliates
Robert W. Ferguson, 10 minutes.
American Television and Communications Corporation
Monroe M. Rifkin, 10 minutes.
Cox Cable Communications, Inc.
Henry W. Harris, 10 minutes.
Law Firm of Smith and Pepper
E. Stratford Smith, Robert F. Corazzini, 10 minutes.
Cablecom-General, Inc.
Thomas G. Shack, Jr., 10 minutes.
San Francisco Catv Corp.
Dr. Thomas Martinez, 10 minutes.
Multimedia, Inc.
Wilson C. Wearn, 10 minutes.
Westinghouse Broadcasting Company, Inc.
Ramsey L. Woodworth, 10 minutes.
Corinthian Broadcasting Corp.
Charles H. Tower, 10 minutes.

WEDNESDAY, NOVEMBER 7, 1973

COMMENCING AT 9:00 A.M.

Time Incorporated
W. Theodore Pierson, Jr., 10 minutes.
Commission on Cable Television of the State of New York
Joel Yohalem, 10 minutes.

New York Cable Television Association
Lewis I. Cohen, Morton L. Berfield, 10 minutes.
Varian Micro-Link, Dayton Communications, et al.
Leo I. George, 10 minutes.
National Council of La Raza
Henry Santiestevan, 10 minutes.
International Brotherhood of Electrical Workers
Arthur Korff, 10 minutes.
Writers Guild of America East Inc.
Leonard Wasser, 10 minutes.
The Authors League of America, Inc.
Irwin Karp, 10 minutes.
Community Medical Cablecasting
Laird Kelly, 10 minutes.

10 MINUTE RECESS

Department of Health, Education, and Welfare, Office of Education, National Center for Educational Technology
Robert T. Filep, 10 minutes.
Telease, Inc.
Robert S. Block, 10 minutes.
Lincoln Center for the Performing Arts, Inc.
John Goberman, 10 minutes.
United States Conference of Mayors
A. J. Cooper, 10 minutes.
Illinois Agricultural Association
William W. Allen, 10 minutes.
The John & Mary Markle Foundation
Lloyd N. Morrisett, 10 minutes.
Digital Communications, Inc.
Frank N. Merklein, 10 minutes.
Theatrevision, Inc.
Dore Schary, Ralph Bellamy, 15 minutes.
Gary Communications Group
Dr. A. William Douglas, 10 minutes.
Channel Two Television Company
Jack Harris, 10 minutes.
Springfield Television Broadcasting Corporation
William L. Putnam, 10 minutes.

LUNCHEON BREAK

12:30–2:00

Afternoon reserved for panel discussions

[FR Doc.73-23558 Filed 11-5-73;8:45 am]

[47 CFR Part 97]

[Docket No. 19852, FCC 73-1097]

AMATEUR-SATELLITE SERVICE PROVISIONS

Notice of Inquiry

1. On February 14, 1973, the Commission adopted amendments to Part 2 of the Rules, in Docket 19547, conforming to the extent practicable with the Geneva Radio Regulations, as revised by the Space World Administrative Radio Conference, Geneva, 1971. With these amendments, a new Amateur-satellite Service was established and certain frequencies within the Amateur Radio Service were also allocated to the new service. The Commission desires to proceed with rulemaking for the Amateur-satellite Service.

2. The Amateur-satellite Service is defined as "A radiocommunication service using space stations on earth satellites for the same purpose as those of the amateur service." Space radiocommunication is defined as "Any radiocommunication involving the use of one or more space stations or the use of one or more passive satellites or other objects in

space". A space station is defined as "A station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the earth's atmosphere".

3. The frequencies allocated to the Amateur-satellite Service are:

7.0–7.1 MHz
14.0–14.25
21.0–21.45
28.0–29.7
144–146 MHz
435–438 secondary status, telecommand required.
24–24.05 GHz

In the frequency band 435–438 MHz, the Amateur-satellite Service may be authorized, provided harmful interference is not caused to other authorized services also operating in that frequency band.

4. Over the past twelve years, prior to the adoption of these rules, the Commission authorized a total of six amateur radio stations for operation on board earth satellites, under the rules in Part 97 applicable to all amateur radio stations. Specific temporary waivers to the rules were granted where necessary. For instance, in the case of the most recent amateur satellite, OSCAR 6, launched on October 15, 1972, several waivers to specific regulations in Part 97 were granted for station operation under the license WA3NDS. These waivers were granted on the basis of representations to the Commission by the applicant concerning certain provisions incorporated into the design of the station, including reasonably well protected remote control command functions and very low transmitter power.

5. Unlike it predecessors whose operating lifetimes were but a few weeks, OSCAR 6 was designed for an operating lifetime of at least one year. This demonstrated that amateurs now have the capability of producing satellites to operate for periods exceeding the six month limitation for waivers authorized by the Bureau Chief under delegated authority. For this reason, on March 21, 1973, the Commission adopted an order delegating to the Chief, Safety and Special Radio Services Bureau authority to act on waiver requests of the provisions of Part 97 for amateur radio stations on board satellites. Waivers granted under this delegated authority are limited to rules regarding station location, authorized emissions, station control, identification, logging and operator privileges. This action was taken as a temporary measure pending the development of rules for the Amateur-satellite Service to govern the operation of amateur satellites.

6. It is our objective that the Amateur-satellite Service develop in an orderly fashion and in a spirit of cooperation with other amateur radio activities and services sharing the same frequencies. While we recognize that every eventuality and need cannot be accounted for now, and that further rule making will be necessary, we believe there is sufficient basis for establishing rules. The experience of amateurs with six satellites over a twelve year period should provide adequate insight for developing rules. Accordingly, the Commission will establish rules for the Amateur-satellite Service, in Part 97. We propose to adopt a new Subpart, Amateur-satellite Service, based upon information provided in response to paragraphs 7 and 8 of this Notice, and such other relevant information as deemed appropriate.

7. In order to assist the Commission in formulating rules for the Amateur-satellite Service, knowledgeable parties are invited to submit comments and suggestions on the following:

a. What specific types of stations and/or functions should be provided for in the Amateur-satellite Service, in addition to space stations? Earth stations? Telecommand stations? Others?

b. What should be the station license requirements and privileges for the above stations? What representations should be made for these stations in applications for licensing?

c. What classes of amateur radio operator licenses should be a prerequisite for the above station licenses? What should be the operating privileges at these stations? What material should be added to the examinations for these operator classes?

d. What technical standards should be adopted? What should the telecommand and telemetry requirements be? What emissions should be authorized?

e. What should the rules provide for in the way of operating requirements and procedures? Station identification requirements? Station log requirements? Should distinctive call signs be assigned?

f. What other provisions should be included in the rules?

8. Comments and suggestions on the means by which the Commission can fully and properly comply with the requirements of international agreements are solicited. Geneva footnote 320A to the Table in section 2.106 requires the Commission to ensure that any harmful interference caused by emissions from an amateur satellite authorized by the Commission to operate in the band 435–438 MHz be eliminated by means of appropriate devices for controlling the emissions. Additionally, the Commission must insure that sufficient earth command stations are established before launch to guarantee that harmful interference can be terminated by the Commission, as stipulated by Article 41, section 1576A, subsection 6 of the ITU Radio Regulations.

9. This action is taken pursuant to sections 4(i), 303, and 403 of the Communications Act of 1934, as amended. Comments must be filed on or before January 7, 1974. All relevant and timely comments will be considered.

10. In accordance with provisions of § 1.419 of the rules, an original and fourteen (14) copies of all comments, suggestions, pleadings, briefs, or other documents shall be furnished the Commission.

Adopted: October 25, 1973.

Released: October 30, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.73-23557 Filed 11-5-73; 8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Parts 154, 201, 260]

[Docket No. RM 74-4]

UNIFORM SYSTEMS OF ACCOUNTS FOR NATURAL GAS COMPANIES

Advances for Gas Exploration, Development and Production

OCTOBER 31, 1973.

Pursuant to 5 U.S.C. 553, sections 8, 10, and 16 of the Natural Gas Act (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i, 717o), the Commission gives notice it will undertake a careful evaluation of the experience under Commission Order No. 465 Docket No. R-411, to determine whether its objectives are being satisfactorily met at an acceptable level of ultimate cost to the nation's gas consumers.

The action proposed to be taken is the second in-depth analysis of developments under the advance payment agreements which have been filed with the Commission in compliance with Commission Orders Nos. 410, 410A (Docket No. R-380) and Nos. 441 and 465 (Docket No. R-411).[1] The primary objective will be to determine whether the program is stimulating activity toward increasing the supply of natural gas sufficiently to justify the extension of rate base treatment of advances made after December 31, 1973.[2]

As part of the process of this determination, our staff prepared a questionnaire which was distributed by letter dated July 30, 1973, to those regulated natural gas companies which have filed advance payment agreements. The questionnaires were completed and returned to the Commission and a compilation of

[1] Commissioner Robert E. Lee absent.

[1] The U.S. Court of Appeals for the District of Columbia circuit affirmed Commission Orders No. 410, 410A, and 441, but in doing so stated that: "We would accordingly expect that the FPC will not continue, or extend the effective date of, the practices authorized by Order 441 without further proceedings in which New York and all other interested parties will be given the opportunity to demonstrate the effectiveness or the futility of this experiment." Following the Court's mandate, we initiated such a review prior to issuance of Order No. 465 and are following the same procedure of in-depth analysis to determine the prudence of a further extension of the program.

[2] Termination date set in Order No. 465, issued December 29, 1972, in Docket No. R-411.

the results was made by our Staff. This compilation is attached hereto and is also in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, 825 North Capitol Street NE., Washington, D.C. 20426, during regular business hours.

The accounting and rate treatment of advance payments was formerly before the Commission and treated in Order Nos. 410, issued October 2, 1970 (44 FPC 1142, 410A, issued January 8, 1971 (45 FPC 135), and 441, issued November 10, 1971 (36 FR 21961) and 465, issued December 29, 1972 (38 FR 1385, Jan. 12, 1973)). The Commission deems it appropriate to offer all parties further opportunity to comment on Account 166 and demonstrate the effectiveness or futility of the present advance payment program.

Comments are requested from interested parties on the advisability of: (i) Continuing the accounting rate base treatment of advance payments, on a permanent or temporary basis, for gas exploration, development, and production beyond the December 31, 1973, termination date, as prescribed in Order No. 465 or with the following possible modifications; (ii) allowing rate base treatment for advances that result in the acquisition of a working interest by a pipeline and/or a pipeline affiliate, and whether to require any benefits derived from such working interest(s) to be charged as a credit to the pipeline's cost-of-service; (iii) treating Alaskan advances the same as advances made within the lower 48 States; and (iv) allowing tracking of advance payments under a formula similar to that permitted for R&D expenditures [3] and/or for purchased gas costs.[4] In addition, the Commission requests comments concerning the impact the advance payment program had had on the financial condition of the pipelines as well as comments concerning any proposed modification to our existing advance payment program.

No extension of time is intended to be granted for responses to this rulemaking proceeding because of the time element necessary to analyze the responses before the termination date.

Any interested person may submit to the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, not later than November 20, 1973, data, views, comments, or suggestions in writing concerning all or part of the proposed revised regulations. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C. 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference with the staff of the Federal Power Commission to discuss the proposed revision. The staff, in its discretion, may grant or deny requests for a conference.

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

NOTE.—Schedules I through V(c), 1973 Summary of Advance Payment Status Survey, are filed as part of the original document.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-23620 Filed 11-5-73;8:45 am]

[3] Order No. 483 -- FPC --, issued April 30, 1973, in Docket No. R-462; rehearing denied -- FPC -- issued June 28, 1973, in Docket No. R-462.

[4] Order Nos. 452 (47 FPC 1049), 452-A (47 FPC 1510), 452-B -- FPC --, issued January 8, 1973, in Docket No. R-406 and Order No. 466 -- FPC -- issued January 9, 1973, in Docket No. R-448.

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1207]

[No. 32155 (Sub-No. 3)]

HOUSEHOLD GOODS MOVING AND STORAGE INDUSTRY

Revenue and Expense Accounts

Corrections

In FR Doc. 73-10585, appearing at page 14388 in the issue for Friday, June 1, 1973, make the following changes:

1. The "Chart of Accounts" in Instruction 27 is changed as follows:

a. In the column headed "Revenue Classification" the reference to "510, 1, 3, 2, respectively," should read "510, 1, 2, 3".

b. In column 8, the reference to "8183" should read "8138".

2. In Account 3100, "Note B", the reference to "Account 3300" should read "Account 3200".

3. In Account 3200, in "Note B", the reference to "Account 3300" should read "Account 3100".

4. In Account 3580, "Note B", the reference to "Account 2082" should read "Account 2032".

5. In Account 3720, the reference to "Account 3760—Warehause Handling" should read "Account 3760—Warehouse Handling".

6. In Account 8620, in the entry for 8622, the word "Interstate" should read "Intrastate".

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 THE INTERIOR

Bureau of Land Management

[BLM Director, Boise Interagency Fire Center Supplement, BLM Manual 1510]

CHIEF, DIVISION OF MANAGEMENT SERVICES ET AL.

Delegation of Authority

A. Pursuant to delegation of authority contained in FR Doc. 73-16605, August 3, 1973, the following officers—

Chief, Division of Management Services
Boise Interagency Fire Center;
Supply Officer, Division of Management Services
Boise Interagency Fire Center; and
Purchasing Agent, Division of Management Services
Boise Interagency Fire Center

are delegated authority in the following instances:

1. Negotiated contracts may enter into contracts pursuant to section 302(c)(2) of the Federal Property and Administrative Services Act, regardless of amount. This authority is to be used for rental of equipment and aircraft and for procurement of supplies and services required for emergency fire suppression and presuppression, where the order exceeds $2,500.

2. Open market purchases may enter into contracts pursuant to section 302 (c)(3) of the Federal Property and Administrative Services Act, for supplies, services, and rental of equipment and aircraft not to exceed $2,500 per transaction; and for construction not to exceed $2,000 per transaction; provided that the requirement is not available from established sources of supply.

3. Established sources of supply may procure supplies and services available from established sources of supply regardless of amount.

4. Capitalized property may enter into contracts, under authority of subparagraphs 1, 2, or 3 above, as appropriate, for purchase of capitalized property.

If the purchase is to be charged to fire suppression funds, or if the item is not included in an approved equipment budget, prior approval of purchase by the Assistant Director, Administration is required. This authority may be exercised only in a true emergency situation such as for immediate use in suppression of active fires and delivery for use on that fire is attainable.

B. The authority granted above may not be redelegated.

JACK F. WILSON,
BLM Director—BIFC.

[FR Doc.73-23532 Filed 11-5-73;8:45 am]

[OR 10138]

OREGON

Proposed Withdrawal and Reservation of Lands

OCTOBER 24, 1973.

The Department of Agriculture, on behalf of the Forest Service, has filed application, OR 10138, for withdrawal of national forest land described below, from all forms of appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, subject to valid existing rights.

The applicant desires the land for use as a Winter Sports Recreation Area Expansion.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing no later than November 30, 1973, to the undersigned officer of the Bureau of Land Management, Department of the Interior, Post Office Box 2965 (729 N.E. Oregon Street), Portland Oregon 97208.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, to eliminate land needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the land and its resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn as requested by the applicant agency.

The determination by the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If the circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The land involved in the application is:

ROUGE RIVER AND KLAMATH NATIONAL FORESTS

WILLAMETTE MERIDIAN

T. 40 S., R. 1 E.,
Sec. 9, S½S½S½;
Sec. 15, SW¼NW¼, NW¼SW¼;
Sec. 16, N½;
Sec. 17, E½;
Sec. 20, NE¼;
Sec. 21, S½N½.

The area described contains approximately 1,120 acres in Jackson County, Oregon.

IRVING W. ANDERSON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.73-23533 Filed 11-5-73;8:45 am]

COLORADO GRAZING DISTRICT BOARD 3

Notice of Meeting

Notice is hereby given that the Colorado Grazing District Board #3 will hold its meeting on Thursday, December 6, 1973, at the District Office, Highway 550 South, Montrose, Colorado, starting at 9 a.m. in the conference room.

The agenda for the meeting will be the consideration to reprecinct the Grazing District Advisory Board and recommendations thereon. Other items to be brought before the Board: grazing applications for the 1974 grazing year, applications to transfer grazing privileges, Range Improvement Program and any other business that should be considered by the Board.

The meeting will be open to the public as space is available.

Time will be available for a limited number of brief statements by members of the public. Those wishing to make an oral statement should inform the Advisory Board Chairman, Lawrence E. Phelps, prior to the meeting of the Board. Oral statements will be heard at 11 a.m.

Any interested person may file a written statement with the Board for its consideration. Written statements should be submitted to: Lawrence E. Phelps, % District Manager, Bureau of Land Management, P.O. Box 1269, Montrose, Colorado 81401.

JAMES S. LAVENDER,
Acting State Director.

[FR Doc.73-23575 Filed 11-5-73;8:45 am]

COLORADO GRAZING DISTRICT BOARD 3A

Notice of Meeting

Notice is hereby given that the Colorado Grazing District Board #3A will hold its meeting on Tuesday, December 4, 1973, at the San Juan Resource Headquarters of the Montrose District, 1211 Main Street, Durango, Colorado, starting at 10 a.m. in the Resource Area Manager's room.

The agenda for the meeting will be the consideration to reprecinct the Grazing District Advisory Board and recommendations thereon. Other items to be

brought before the Board: grazing applications for the 1974 grazing year, applications to transfer grazing privileges, Range Improvement Program and any other business that should be considered by the Board.

The meeting will be open to the public as space is available.

Time will be available for a limited number of brief statements by members of the public. Those wishing to make an oral statement should inform the Advisory Board Chairman, James Suckla, prior to the meeting of the Board. Oral statements will be heard at 1 p.m.

Any interested person may file a written statement with the Board for its consideration. Written statements should be submitted to James Suckla, % District Manager, Bureau of Land Management, P.O. Box 1269, Montrose, Colorado, 81401.

JAMES S. LAVENDER,
Acting State Director.

[FR Doc.73-23574 Filed 11-5-73;8:45 am]

SALMON DISTRICT ADVISORY BOARD

Notice of Meeting

Pursuant to the requirements of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Bureau of Land Management Salmon District Advisory Board will hold a meeting beginning at 10 a.m., December 13, 1973, at the BLM Salmon District Office, Salmon, Idaho. The agenda for the meeting, which is open to interested members of the public, will include consideration of and recommended action on grazing applications and transfers.

The Advisory Board Chairman is Floyd J. Whittaker of Leadore, Idaho 83464.

WILLIAM L. MATHEWS,
State Director.

[FR Doc.73-23573 Filed 11-5-73;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

List of Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 28, 1973, Part II, there was published a list of the properties included in the National Register of Historic Places. This list has been amended by a notice in the FEDERAL REGISTER of March 6 (pp. 6084-6086), April 10 (pp. 9095-9097), May 1 (pp. 10745-10748), June 5 (pp. 14770-14777), July 3 (pp. 17744-17749), August 7 (pp. 21278-21284), September 4 (pp. 23808-23811), and October 2 (pp. 27307-27310). Further notice is given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470.

The following properties have been added to the National Register since October 2:

Alabama

Franklin County

Hodges vicinity, *Overton Farm*, about 4 miles northwest of Hodges (10-3-73).

Limestone County

Athens, *Donnell, Robert, House*, 601 South Clinton Street (9-19-73).

Perry County

Marion, *Marion Female Seminary*, 202 Monroe Street (10-4-73).

Sumter County

Epes vicinity, *Fort Tombecbee*, 0.75 mile northeast of Epes on the Tombigbee River, off U.S. 11 (10-2-73).

Alaska

Southeastern District

Juneau, *St. Nicholas Russian Orthodox Church*, 326 5th Street (9-19-73).

California

Sacramento County

Folsom, *Folsom Powerhouse*, off Folsom Boulevard in Folsom Lake State Recreation Area (10-2-73).

Siskiyou County

Tulelake vicinity, *Captain Jack's Stronghold*, south of Tulelake in Lava Beds National Monument (9-20-73).

Tulelake vicinity, *Hospital Rock*, south of Tulelake in Lava Beds National Monument (10-2-73).

Colorado

Denver County

Denver, *Croke-Patterson-Campbell Mansion*, 428-430 East 11th Avenue (9-19-73).

Delaware

New Castle County

Wilmington, *Woodstock*, 102 Middleboro Road (9-7-73).

District of Columbia

Washington

Pierce-Klingle Mansion, 3545 Williamsburg Lane Northwest (10-10-73).

Florida

Broward County

Fort Lauderdale, *Stranahan House*, 335 Southeast 6th Avenue (10-2-73).

Monroe County

Key West, *Old Post Office and Customs House*, Front Street (9-20-73).

Orange County

Winter Park, *The Parsonage*, Fairbanks Avenue at Chase Avenue (10-2-73).

Georgia

Chatham County

Savannah vicinity, *Bethesda Home for Boys*, About 10 miles south of Savannah at Ferguson Avenue and Bethesda Road (9-12-73).

Hawaii

Hawaii County

Waiohinu vicinty, *Manuka Bay Petroglyphs* west of Waiohinu at Manuka Bay (9-19-73).

Kauai County

Hanalei, *Waioli Mission*, off Hawaii 56 (10-3-73).

Illinois

Bureau County

Sheffield, *Old Danish Church*, southeast corner of Cook and Washington Streets (10-2-73).

Indiana

Brown County

Nashville vicinity, *Steele, Theodore Clement, House and Studio*, southwest of Nashville, off Ind. 46 in Yellowwood State Forest (10-2-73).

Spencer County

Rockport, *Brown-Kercheval House*, 315 South Second Street (9-20-73).

Kentucky

Anderson County

Lawrenceburg, *Kavanaugh Academy*, 241 East Woodford Street (9-19-73).

Lawrenceburg vicinity, *McBrayer-Clark House*, north of Lawrenceburg on Ky. 326 (9-19-73).

Bourbon County

Paris, *Eades Tavern (Robert Trimble House)*, 421 High Street (10-2-73).

Estill County

Irvine vicinity, *Cottage Iron Furnace*, 7 miles northeast of Irvine in Daniel Boone National Forest (9-20-73).

Jefferson County

Louisville, *Landward House*, 1385-1387 South Fourth Street (9-20-73).

Nicholas County

Carlisle vicinity, *Forest Retreat Farm and Tavern*, northwest of Carlisle at junction of U.S. 68 and Ky. 32 (10-2-73).

Scott County

Georgetown, *Johnston-Jacobs House*, 205 North Hamilton Street (10-2-73).

Georgetown vicinity; *Smith, Nelson and Clifton Rodes, House*; northeast of Georgetown off the Leesburg Pike (10-3-73).

Louisiana

Orleans Parish

New Orleans, *Perseverance Hall*, 901 St. Claude Avenue (10-2-73).

Maine

Aroostook County

Houlton, *First National Bank of Houlton*, Market Square (9-20-73).

Madawaska vicinity, *Acadian Landing Site*, East of Madawaska on the St. John River, off U.S. 1 (9-20-73).

Madawaska vicinity, *St. David Catholic Church*, east of Madawaska on U.S. 1 (10-2-73).

Cumberland County

Portland, *Mechanics' Hall*, 519 Congress Street (10-3-73).

Kennebec County

Waterville-Winslow, *Two Cent Bridge*, spans the Kennebec River at Temple Street (9-20-73).

Penobscot County

Orono, *Treat, Nathaniel, House*, 114 Main Street (9-20-73).

Waldo County

Belfast, *Primrose Hill Historic District*, High and Anderson Streets (10-3-73).

York County

Kennebunkport, *Lord, Captain Nathaniel, Mansion*, corner of Pleasant and Green Streets (9–20–73).
Kennebunkport, *Perkins Tide Mill*, Mill Lane (9–7–73).

Maryland

Anne Arundel County

Annapolis, *Callahan, John, House*, 164 Conduit Street (10–2–73).

Baltimore County

Glyndon, *Glyndon Historic District* (9–20–73).

Calvert County

Mutual vicinity, *La Veille*, west of Mutual on La Veille Road off Md. 264 (9–20–73).

Frederick County

Urbana vicinity, *Amelung House and Glassworks*, 4 miles southwest of Urbana off U.S. 240 on secondary road (10–3–73).

Garrett County

Grantsville vicinity, *Tomlinson Inn and the Little Meadows*, 3 miles east of Grantsville on U.S. 40 (9–20–73).

Harford County

Aberdeen vicinity, *Sophia's Dairy*, southwest of Aberdeen off U.S. 40 (9–20–73).
Darlington vicinity, *Wildfell (Scott House)*, northwest of Darlington on U.S. 1 (9–20–73).

St. Marys County

St. Marys City vicinity, *St. George's Protestant Episcopal Church*, west of St. Marys City off Md. 249 (10–3–73).

Michigan

Charlevoix County

Pi-wan-go-ning Prehistoric District, northwestern Charlevoix County (10–3–73).

Washtenaw County

Ann Arbor, *Detroit Observatory*, Observatory and Ann Streets (9–20–73).

Minnesota

Benton County

Royalton vicinity, *Posch Site*, south of Royalton (10–2–73).

Brown County

New Ulm, *Hermann Monument*, Hermann Heights Park (10–2–73).

Morrison County

Little Falls vicinity, *Pelkey Lake Site*, east of Little Falls (10–2–73).
Little Falls vicinity, *Rice Lake Peninsula Prehistoric District*, southeast of Little Falls (10–2–73).
Little Falls vicinity, *Swan River Indian Village Site*, south of Little Falls (10–2–73).

Wadena County

Menahga vicinity, *Blueberry Lake Village Site*, northeast of Menahga (10–2–73).
Staples vicinity, *Old Wadena Site*, north of Staples (10–9–73).

Mississippi

Benton County

Michigan City, *Davis' Mills Battle Site*, off Miss. 7 (10–2–73).

Clay County

West Point vicinity, *Waverley*, 10 miles east of West Point (9–20–73).

Forrest County

Hattiesburg, *U.S. District Courthouse*, corner of Pine and Forrest Streets (9–18–73).

Harrison County

Biloxi, *Biloxi Lighthouse*, on U.S. 90 at Porter Avenue (10–3–73).

Hinds County

Raymond vicinity, *Peyton House*, north of Raymond on Clinton Road (10–3–73).

Nebraska

Douglas County

Omaha, *Aquila Court Building*, 1615 Howard Street (10–2–73).

Keith County

Ogallala, *Brandhoefer, Leonidas A., Mansion*, 10th and Spruce Street (10–3–73).

New Jersey

Essex County

Newark, *Ballantine, John, House*, 43 Washington Street (10–2–73).

Morris County

Morristown vicinity, *Revere, Joseph W., House*, northwest of Morristown on Mendham Avenue (9–20–73).

New York

Cortland County

Homer, *Old Homer Village Historic District* (10–2–73).

Dutchess County

Poughkeepsie, *Main Building, Vassar College*, Vassar College campus (9–19–73).

Madison County

Hamilton, *Old Biology Hall, Colgate University*, Colgate University campus (9–20–73).

Oneida County

Utica, *Rutger-Steuben Park Historic District* (9–19–73).

Onondaga County

Syracuse, *Hall of Languages, Syracuse University*, Syracuse University campus (9–20–73).

Ontario County

Canadaigua, *Sonnenberg Gardens*, 151 Charlotte Street (9–28–73).

Queens County

New York, *Hunters Point Historic District* (9–19–73).

Saratoga County

Waterford, *Peebles (Peobles) Island*, at the junction of the Mohawk and Hudson Rivers (10–2–73).

Steuben County

Corning, *Jenning's Tavern (Patterson Inn)*, 59 West Pulteney Street (9–20–73).

Suffolk County

Great River vicinity, *Cutting, Bayard, Estate (Westbrook)*, north of Great River on N.Y. 27 (10–2–73).

Westchester County

Bedford, *Bedford Village Historic District*, includes most of the original village (10–2–73).

North Carolina

Burke County

Morganton vicinity, *Quaker Meadows*, west of Morganton off N.C. 181 (10–3–73).

Craven County

New Bern, *First Church of Christ, Scientist*, 406–408 Middle Street (10–2–73).

Perquimans County

Hertford vicinity, *Land's End*, about 12 miles southeast of Hertford near junction S.R. 1300 and 1324 (9–20–73).

Ohio

Columbiana County

Salem, *Street, John, House*, 631 North Ellsworth Avenue (10–10–73).

Lake County

Kirtland, *Old South Church*, 9802 Chillicothe Road (9–20–73).

Montgomery County

Brookville, *Spitler, Samuel, House*, 15 Hay Avenue (9–28–73).

Portage County

Kent, *Brown-Kent Tannery*, Stow Street (10–2–73).

Washington County

Marietta, *First Unitarian Church of Marietta*, 232 Third Street (10–3–73).

Oklahoma

Beckham County

Carter vicinity, *Edwards Archeological Site*, west of Carter (9–19–73).

Muskogee County

Muskogee, *Foreman, Grant, House*, 1419 West Okmulgee Street (9–19–73).

Oregon

Klamath County

Klamath Falls, *Baldwin Hotel*, 31 Main Street (10–2–73).

Marion County

Salem, *Port, Dr. Luke A., House (Deepwood)*, 1116 Mission SE. (10–2–73).

Pennsylvania

Chester County

Downingtown vicinity, *Rooke, Robert, House*, north of Downingtown at Horseshoe Trail and Fellowship Road (9–19–73).
Lionville, *Uwchlan Meeting House*, North Village Avenue (Pa. 113) (9–20–73).

Dauphin County

Harrisburg, *Harris, John, Mansion*, 219 South Front Street (9–20–73).

Franklin County

St. Thomas vicinity, *Woodland*, southwest of St. Thomas on Pa. 416 (9–20–73).

Montgomery County

Pennsburg vicinity, *Rieth, Andreas, Homestead*, southeast of Pennsburg on Geryville Pike (9–19–73).
Tylersport vicinity, *Landis Homestead*, southwest of Tylersport off Pa. 563 on Morwood Road (10–10–73).

Northampton County

Bethlehem, *Moravian Sun Inn*, 564 Main Street (10–2–73).

South Carolina

Aiken County

North Augusta, *Hammond, Charles, House*, 908 Martintown Road West (10–2–73).

Charleston County

Charleston, *Charleston's French Quarter District (Lodge Alley)*, bounded by Lodge Alley, Cumberland, East Bay, and State Streets (9–19–73).

Marion County

Marion, *Marion Historic District* (10–4–73).

Orangeburg County

Orangeburg, *Orangeburg County Jail*, 44 St. John Street (10–2–73).

Tennessee

Benton County

Big Sandy vicinity, *Mount Zion Church*, 5.5 miles southeast of Big Sandy (10-2-73).

Maury County

Columbia vicinity, *Polk Manor*, west of Columbia off U.S. 43 (9-7-73).

Robertson County

Cedar Hill vicinity, *Glen Raven*, southwest of Cedar Hill on Washington Road (10-2-73).

Rutherford County

Murfreesboro, *Palmer, General Joseph B., House*, 434 East Main Street (9-20-73).

Sullivan County

Kingsport, *Old Kingsport Presbyterian Church*, Stone Drive and Afton (10-2-73).

Texas

Webb County

Laredo, *San Agustin de Laredo Historic District*, (9-19-73).

Vermont

Windham County

Bellows Falls vicinity, *Hall Covered Bridge*, west of Bellows Falls across the Saxtons River off Vt. 121 (9-20-73).

Virginia

Culpeper County

Culpeper, *Hill, A. P., Boyhood Home*, 102 North Main Street (10-2-73).

Gloucester County

Gloucester, *Gloucester County Courthouse Square Historic District* (10-3-73).

Gloucester vicinity, *Reed, Walter, Birthplace*, southwest of Gloucester at intersection of Va. 614 and 616.

James City County

Williamsburg vicinity, *Governor's Land Archeological District*, west of Williamsburg (9-21-73)

Rockingham County

Harrisonburg vicinity, *Baxter House*, About 8 miles northeast of Harrisonburg on Va. 42 (10-3-73).

Harrisonburg vicinity, *Beery, John K., Farm*, About 5 miles north of Harrisonburg off Va. 42 (9-19-73).

Southampton County

Capron vicinity, *Belmont*, northeast of Capron off Va. 652 (10-3-73).

Stafford County

Falmouth, *Carlton*, 501 Melchers Drive (10-3-73).

Wyoming

Teton County

Moose vicinity, *Cunningham Cabin*, northeast of Moose off U.S. 26/89/187 in Grand Teton National Park (10-2-73).

The following are corrections to previous listings in the FEDERAL REGISTER:

Georgia

Fulton County

Roswell, *Bulloch Hall*, Bulloch Avenue.

Indiana

Marion County

Indianapolis, *Propylaeum, The*, 1410 North Delaware Street.

Massachusetts

Middlesex County

Concord, *Alcott, Louisa May, House (Orchard House)*, Lexington Road.

Missouri

St. Charles County

Defiance, *Boone, Daniel, House (Nathan Boone House)*, Highway F.

Rhode Island

Providence County

Providence, **College Hill Historic District*, the entire length of Benefit Street and east and west of that street in irregular form.

Texas

Blanco County

Blanco, *Conn, Adrian Edwards, House*, at intersection of U.S. 281 and the southwest boundary of the courthouse square.

Utah

Washington County

Rockville, *Deseret Telegraph and Post Office, Utah 15.*

The following properties have been demolished and removed from the National Register:

Massachusetts

Middlesex County

Cambridge, *Mason, Josiah, House*, 79 Moore Street.

Oregon

Multnomah County

Portland, *Brown, Captain John A., House*, 525 19th Avenue.

South Carolina

Greenville County

Greenville, *Greenville City Hall*, northwest corner of Main and Broad Streets.

Texas

Galveston County

Galveston, *Ursuline Convent*, 2600 Avenue N.

Travis County

Austin, *Houghton House*, 12th and Guadalupe Streets.

ERNEST A. CONNALLY,
Associate Director,
Professional Services.

[FR Doc.73-23430 Filed 11-5-73;8:45 am]

Office of the Secretary

[Interior Priority Reg. 2]

PETROLEUM PRODUCTS UNDER MILITARY SUPPLY CONTRACTS

SECTION 1. *What this regulation does.* There is a possibility of a disruption of the normal supply of petroleum products required by the Department of Defense. When such disruption occurs, the interests of national defense require that orders placed by the Department of Defense be accepted and filled regardless of a supplier's other existing contracts and orders. This regulation provides for the issuance of directives requiring that priority be given orders placed by the Department of Defense under such circumstances.

SEC. 2. *Directives.* (a) Upon receipt of written notification from the Commander of the Defense Fuels Supply Center Department of Defense, that a disruption in military supply of petroleum products will occur, the Director, Office of Oil and Gas, Department of the Interior, may issue a written directive to specified suppliers requiring them, regardless of other existing contracts and orders, to supply the required products. The directive shall set forth the maximum quantities of each product which the supplier is obligated to deliver over a specified period of time. Each supplier to whom a directive is issued shall comply with it fully and completely.

(b) The Director, Office of Oil and Gas, may, in writing, authorize the Associate Director and Assistant Directors of that office to issue directives pursuant to paragraph (a) of this section.

SEC. 3. *Defense against claims for damages.* No supplier shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with the provisions of any directive issued under this regulation.

SEC. 4. *Requests for adjustment or exceptions.* Any supplier to whom a directive is issued under this regulation may file with the Director, Office of Oil and Gas, a request for adjustment or exception upon the ground that its enforcement against him would be unduly prejudicial.

SEC. 5. *Records and Reports.* (a) Each supplier to whom a directive is issued under this regulation shall make and preserve, for at least two years thereafter, accurate and complete records of deliveries made under the contract to which the directive relates. Records may be retained in the form of microfilm or photographic copies instead of the original by those persons who, at the time such microfilm or other photographic records are made, maintain such copies of records in the regular and usual course of business.

(b) All records required by this regulation shall be made available for inspection and audit by duly authorized representatives of the Department of the Interior at the usual place of business where the records are maintained.

(c) Suppliers to whom directives are issued under this regulation shall make such records and submit such reports to the Director, Office of Oil and Gas, as he may require.

SEC. 6. *Communications.* All communications concerning this regulation shall be addressed to Director, Office of Oil and Gas, Department of the Interior, Washington, D.C. 20240.

SEC. 7. *Definitions.* As used in this regulation, the term "supplier" means a person capable of fulfilling a delivery contract with the Defense Fuels Supply Center, Department of Defense, and the term "person" means an individual, corporation, partnership, association, or any other organized group of persons.

SEC. 8. *Violations.* Any supplier who willfully fails to comply with the provisions of this regulation or a directive issued thereunder, or who willfully conceals a material fact or furnishes false information in the course of operation

under this regulation or a directive issued thereunder, is guilty of a crime and upon conviction may be punished by fine or imprisonment or both.

SEC. 9. *Authority.* This regulation is issued pursuant to sections 101, 704, 705, and 707 of the Defense Production Act of 1950, as amended (50 U.S.C., App., secs. 2071, 2154, 2155, 2157), Executive Order 10480, as amended (50 U.S.C., App., sec. 2153, note), and DMO 8400.1 (32A CFR, p. 17).

Special circumstances have rendered consultation with industry representatives in the formulation of this regulation impracticable.

Effective date: November 6, 1973.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

OCTOBER 26, 1973.

[FR Doc.73-23596 Filed 11-2-73;9:37 am]

DEPARTMENT OF AGRICULTURE

Forest Service

CARIBOU NATIONAL FOREST GRAZING ADVISORY BOARD

Notice of Meeting

The Caribou National Forest Grazing Advisory Board will meet at 1:30 p.m. November 27, 1973 at the Pocatello Public Library in Pocatello, Idaho.

The purpose of the meeting is two-fold, first to combine the Woolgrowers' Advisory Board and the Cattlemen's Advisory Board into one Forest Advisory Board; and second, to discuss local and national policies concerning National Forest grazing permittees.

The meeting will be open to the public. Persons who wish to attend should notify the Caribou National Forest, Post Office Box 4189, Pocatello, Idaho 83201, or phone 232-1142. Written statements may be filed with the Board before or after the meeting. Public participation will be scheduled following the close of the regular schedule of business.

D. A. SCHULTZ,
Forest Supervisor.

OCTOBER 15, 1973.

[FR Doc.73-23538 Filed 11-5-73;8:45 am]

UNION COUNTY GRAZING ADVISORY BOARD

Notice of Meeting

The Union County Grazing Advisory Board, Cibola National Forest, will meet Monday, November 9, 1973, at 1 p.m. in the District Ranger's Office, Kiowa National Grasslands, 16 North Second Street, Clayton, New Mexico 88415.

The purpose of this meeting will be:

1. Review election results to fill expired terms of office held by three board members of the Union County Grazing Advisory Board.

2. Review new procedures to be followed in calling future Advisory Board meetings.

3. Discuss progress of the various grazing systems implemented during the past two years involving both deeded and Government lands.

4. Discuss other business that might come before the Board by other interested persons.

The meeting will be open to the public. Persons who wish to attend should notify Chairman Weston Baker via telephone number 374-9073, or by writing to Mr. Weston Baker, Chairman, Union County Grazing Advisory Board, Rural Route, Clayton, New Mexico 88415. Written statements may be filed with the Board.

W. L. LLOYD,
Forest Supervisor.

OCTOBER 30, 1973.

[FR Doc.73-23572 Filed 11-5-73;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Withdrawal of Application for Duty Free Entry of Scientific Article

The Virginia Polytechnic Institute and State University has withdrawn its application for duty-free entry of a model RMU-6E Mass Spectrometer (Docket No. 69-00708-01-77040). Accordingly, further administrative proceedings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

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

[FR Doc.73-23520 Filed 11-5-73;8:45 am]

Social and Economic Statistics Administration

CENSUS ADVISORY COMMITTEE ON SMALL AREAS

Notice of Public Meeting

The Census Advisory Committee on Small Areas will convene on November 15, 1973, at 9 a.m. in Room 2113, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on Small Areas was established in 1965 to advise the Bureau of the Census concerning development of statistical programs in metropolitan and other local communities regarding transportation, urban renewal, poverty, and other activities.

The agenda for the meeting is: (1) Topics of curren' interest including staff changes, organization plans, program priorities, and budget allocation, (2) annual housing survey, (3) census use study activities, (4) thoughts on the 1980 census, (5) small area estimates, and (6) Geographic Base Files (GBF), Dual Independent Map Encoding (DIME) files, metro maps, and census small areas boundaries.

A limited number of seats—approximately 15—will be available to the public. A brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Guidance and Control Officer at least three days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting should contact the Committee Guidance and Control Officer, Mr. Robert B. Voight, Chief, Data User Services Office, Bureau of the Census, Room 3555, Federal Building 3, Suitland, Maryland. (Mail Address: Washington, D.C. 20233). Telephone (301) 763-7720.

Dated: November 1, 1973.

EDWARD D. FAILOR,
Administrator, Social and Economic Statistics Administration.

[FR Doc.73-23576 Filed 11-5-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 9048]

METHOXSALEN LOTION

Drugs for Human Use—Drug Efficacy Study Implementation; Followup Notice on Efficacy

The Food and Drug Administration published an announcement in the FEDERAL REGISTER of November 3, 1970 (35 FR 16950), regarding the efficacy of the drug listed below, stating that it was regarded as possibly effective for use to facilitate repigmentation of vitiligo. Other indications referred to in that notice pertain to oral dosage forms of methoxsalen which are not affected by this followup notice.

That part of NDA 9-048 pertaining to Oxsoralen Lotion (methoxsalen); Paul B. Elder Co., 705 East Mulberry Street, Post Office Box 31, Bryan, OH 43506.

Based on additional data submitted by Paul B. Elder Company, the Commissioner of Food and Drugs amends the announcement of November 3, 1970, insofar as it pertains to methoxsalen lotion, as set forth below.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs A new drug application is required from any person marketing such drug without approval.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's reports as well as other available evidence and concludes that methoxsalen lotion is effective as a repigmenting agent in vitiligo.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Methoxsalen preparations are in lotion form suitable for topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The "Indication" is as follows:

INDICATION

Repigmenting agent for use in vitiligo.

3. *Marketing status.* Marketing of such drugs may be continued under the conditions described in the notice entitled Conditions for Marketing New Drugs Evaluated in Drug Efficacy Study, published in the FEDERAL REGISTER July 14, 1970 (35 FR 11273), as follows:

a. For holders of "deemed approved" new drug applications (i.e., an application which became effective on the basis of safety prior to October 10, 1962), the submission of a supplement for revised labeling and a supplement for updating information as described in paragraphs (a)(1) (i) and (iii) of the notice of July 14, 1970.

b. For any person who does not hold an approved or effective new drug application, the submission of a full new drug application as described in paragraph (a)(3)(iii) of that notice.

c. For any distributor of the drug, the use of labeling in accord with this announcement for any such drug shipped within the jurisdiction of the Act as described in paragraph (b) of that notice.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application 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, Maryland 20852.

Communications forwarded in response to this announcement should be identified with the reference number DESI 9048, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Original new drug applications: Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Requests for the Academy's report: Drug Efficacy Study Information Control (BD-66), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Manager (BD-101), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–52, as amended; (21 U.S.C. 352, 355)), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: October 30, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-23546 Filed 11-5-73;8:45 am]

[DESI 9048]

UPJOHN CO.

Notice of Withdrawal of Approval of New Drug Application

In the FEDERAL REGISTER of November 3, 1970 (35 FR 16950), the Commissioner of Food and Drugs announced (DESI 9048) his conclusions pursuant to evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, concerning the following drug:

NDA 11-401; Meloxine Tablets containing methoxsalen; The Upjohn Co., 7171 Portage Road, Kalamazoo, Michigan 49001.

The announcement stated that the drug was regarded as possibly effective for its labeled indications. No data have been received concerning that product and Upjohn requested withdrawal of approval of its new drug application and has waived opportunity for a hearing.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application 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.

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 deleon the basis of new information before him with regard to the drug, evaluated gated to him (21 CFR 2.120), finds that together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is 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 application No. 11-401 and all amendments and supplements thereto is withdrawn effective on Nov. 16, 1973.

Shipment in interstate commerce of the above-listed drug product or of any identical, related, or similar product, not the subject of an approved new drug application, will thereafter be unlawful.

Dated: October 30, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-23545 Filed 11-5-73;8:45 am]

Health Resources Administration

FEDERAL HOSPITAL COUNCIL AND NATIONAL ADVISORY HEALTH SERVICES COUNCIL

Announcement of Meetings; Correction

In FR Doc. 73-22910 appearing at pages 29630 and 29631 in the issue for Friday, October 26, 1973, the announcement for the Joint Meeting of the Federal Hospital Council and the National Advisory Health Services Council should also include: "Any person desiring to present material to Council members must submit material in writing to Mr. Russell Z. Seidel, Room 15-35, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, no later than twenty-four (24) hours before the meeting date so that material can be reproduced and made available to each Council member at the time of presentation.

Dated: October 31, 1973.

KENNETH M. ENDICOTT,
Administrator, Health Resources Administration.

[FR Doc.73-23687 Filed 11-5-73;8:45 am]

FEDERAL HOSPITAL COUNCIL

Announcement of Meetings; Correction

In FR Doc. 73-22910 appearing at page 29631 in the issue for Friday, October 26, 1973, the committee dates and times for the Federal Hospital Council should be changed from "Open—11/14 (2:00-4:00 p.m.) and 11/15 (10:00 a.m.-12:00 p.m.); Closed—11/14 (9:00-10:00 a.m.)" to "Open—11/14 (3:00-4:30 p.m.) and 11/15 (10:00 a.m.-3:00 p.m.); Closed 11/15 (9:00-10:00 a.m.)."

In addition, any person desiring to present material to Council members must submit material in writing to Mr. Russell Z. Seidel, Room 15-35, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, no later than twenty-four (24) hours before the meeting date so that material can be reproduced and made available to each Council member at the time of presentation.

Dated: October 31, 1973.

KENNETH M. ENDICOTT,
Administrator, Health Resources Administration.

[FR Doc.73-23688 Filed 11-5-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-458; 50-459]

GULF STATES UTILITIES CO.

Receipt of Application; Availability of Environmental Report; Time for Submission of Views on Antitrust Matter

Gulf States Utilities Company (the applicant), pursuant to sec. 103 of the

Atomic Energy Act of 1954, as amended, has filed an application, which was docketed September 24, 1973, for authorization to construct and operate two generating units utilizing boiling water reactors. The application was tendered on June 8, 1973. Following a preliminary review for completeness, it was rejected on July 16, 1973, for lack of sufficient information. The applicant submitted additional information on August 22, 1973, and the application was accepted for docketing.

The proposed nuclear facilities designated by the applicant as the River Bend Station, Units 1 and 2, are to be located in West Feliciana Parish, Louisiana, approximately 24 miles north-northwest of Baton Rouge, Louisiana. Each unit is designed for initial operation at approximately 2894 megawatts (thermal), with a net electrical output of approximately 934 megawatts.

A Notice of Hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the U.S. Atomic Energy Commission, Regulation, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before December 26, 1973. The request should be filed in connection with Docket Nos. 50-458-A and 50-459-A.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and at the Audubon Library, West Feliciana Branch, Ferdinand Street, St. Francisville, Louisiana 70775.

The applicant has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, an environmental report dated September 18, 1973. The report has been made available for public inspection at the aforementioned locations. The report, which discusses environmental considerations related to the proposed construction of the River Bend Station, Units 1 and 2, is also being made available at the Commission on Intergovernmental Relations, P.O. Box 44316, Baton Rouge, Louisiana 70804, and the Florida District Clearinghouse, Capitol Regional Planning Commission, 101 St. Ferdinand Street, Suite 205, Baton Rouge, Louisiana 70801.

After the report has been analyzed by the Commission's director of Regulation or his designee, a draft environmental statement will be prepared by the Commission. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Maryland, this 12th day of October 1973.

For the Atomic Energy Commission.

JOHN F. STOLZ,
Chief, Boiling Water Reactors Branch 2, Directorate of Licensing.

[FR Doc.73-22345 Filed 10-19-73;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON BEAVER VALLEY POWER STATION

Notice of Meeting

NOVEMBER 2, 1973.

In accordance with the purposes of Section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Subcommittee on the Beaver Valley Unit 2 project will hold a meeting on November 23, 1973, in Courtroom No. 7, Beaver County Courthouse, Beaver, Pennsylvania 15009. The purpose of this meeting will be to begin the Committee's formal Construction Permit review of Beaver Valley Power Station Unit 2. This facility is located in Shippingport Borough, Beaver County, Pennsylvania.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Friday, November 23, 1973, 9:30 a.m.-3:30 p.m. The Subcommittee will hear presentations by Regulatory Staff and representatives of Duquesne Light Company and their representatives and hold discussions with these groups pertinent to issuance of a Construction Permit for Beaver Valley Power Station Unit 2.

In connection with the above agenda item, the Subcommittee will hold an executive session beginning at 8:30 a.m. which will involve a discussion of its preliminary views, and an executive session at the end of the day, consisting of an exchange of opinions of the Subcommittee members present and internal deliberations for the purpose of formulation of recommendations to the ACRS. In addition, prior to the executive session at the end of the day, the Subcommittee may hold a closed session with the Regulatory Staff and Applicant to discuss privileged information relating to plant security and fuel design, if necessary.

I have determined, in accordance with subsection 10(d) of Public Law 92-463, that the executive session at the beginning and end of the meeting will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that a closed session may be held, if necessary, to discuss certain information relating to site security and fuel design which is privileged and falls within exemption (4) of 5 U.S.C. 552(b). It is essential to close such portions of the meeting to protect such privileged information and protect the free interchange of internal views and to avoid undue interference with agency or Committee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than November 16, 1973, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such comments shall be based upon the Preliminary Safety Analysis Report for this facility and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545 and the Beaver Area Memorial Library, 100 College Avenue, Beaver, Pennsylvania 15009.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statements and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee, during the afternoon portion of the meeting.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on November 21, 1973, to the Office of the Executive Secretary of the Committee (telephone: 301-973-5651) between 8:30 a.m. and 5:15 p.m., Eastern Standard Time.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(h) A copy of the transcript of the open portion of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and within approximately nine days at the Beaver Area Memorial Library, 100 College Avenue, Beaver, Pennsylvania 15009. On request, copies of the minutes of the meeting will be made available for inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, on or after January 23, 1974. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.73-23728 Filed 11-5-73;8:45 am]

COMMISSION ON CIVIL RIGHTS

LOUISIANA STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Louisiana State Advisory Committee to this Commission will convene at 8:00 a.m. on November 9, 1973, at Howard Johnson's, at Interstate 10 and Highway 171, Lake Charles, Louisiana 70601.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Southwestern Regional Office, Room 231, New Moore Building, 106 Broadway, San Antonio, Texas 78205.

The purpose of this meeting shall be to discuss the status of the Louisiana SAC's Prison Project and make plans for selected SAC members to visit DeQuincy Prison.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., October 30, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-23514 Filed 11-5-73;8:45 am]

NEW MEXICO STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Mexico State Advisory Committee (SAC) to this Commission will convene at 10 a.m. on November 10, 1973, at the Four Seasons, 2500 Carlisle Boulevard, Albuquerque, New Mexico 87110.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Southwestern Regional Office of the Commission in Room 231, New Moore Building, 106 Broadway, San Antonio, Texas 78205.

The purpose of this meeting shall be to finalize plans for a Mexican American Conference, consider a proposal to begin a regional SAC study on migrant labor problems, receive followup report on the Southwestern Indian Hearing, and to discuss the Santa Fe Administration of Justice Report.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-23515 Filed 11-5-73;8:45 am]

TEXAS STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Texas State Advisory Committee to this Commission will convene at 10 a.m. on November 20, 1973, in the Fiesta Room, Saint Anthony Hotel, 300 East Travis, San Antonio, Texas 78205.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Southwestern Regional Office, Room 231, New Moore Building, 106 Broadway, San Antonio, Texas 78205.

The purpose of this meeting shall be to discuss the following: Rechartering of the Texas State Advisory Committee, the Mexican American education conference, a migrant proposal for study by the Texas State Advisory Committee, a report on the revenue sharing meeting and a report of current and proposed major Commission activities.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., October 30, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-23516 Filed 11-5-73;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN GHANA

Entry or Withdrawal From Warehouse for Consumption

NOVEMBER 2, 1973.

On September 13, 1973, there was published in the FEDERAL REGISTER (38 FR 25466) a letter dated September 11, 1973, from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs renewing the restraint on imports into the United States of cotton textile products in Category 22, produced or manufactured in Ghana, for the twelve-month period beginning September 13, 1973, and extending through September 12, 1974. The purpose of this notice is to advise that following consultations with the Government of Ghana and a review of conditions in the U.S. market for these products, this restraint is being cancelled, effective as soon as possible.

Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs cancelling restraint of Category 22 from Ghana.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

NOVEMBER 2, 1973.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury, Washington, D.C.

DEAR MR. COMMISSIONER: This directive cancels the directive issued to you on September 11, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, regarding imports of cotton textile products in Category 22, produced or manufactured in Ghana.

The actions taken with respect to the Government of Ghana and with respect to imports of cotton textile products from Ghana have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.73-23655 Filed 11-2-73;11:43 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ADVISORY COMMITTEE ON ALTERNATIVE AUTOMOTIVE POWER SYSTEMS

Notice of Meeting

Notice is hereby given that the Council on Environmental Quality's Advisory Committee on Alternative Automotive Power Systems will hold its next meeting in Cambridge, Massachusetts on November 12, 1973. The session, which is open to the public, will commence at 9 a.m. in the Transportation Systems Center, 55 Broadway, Cambridge.

The agenda for this meeting of the Advisory Committee will include a progress report on the Environmental Protection Agency's Alternative Automotive Power Systems program and the Department of Transportation's fuel economy technology studies.

A list of advisory committee members is available from, and requests for additional information should be made to:

Dr. Philip E. Schambra, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20006 (202/382-6754).

STEVEN D. JELLINEK,
Acting Staff Director.

[FR Doc.73-23752 Filed 11-5-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

EFFLUENT STANDARDS AND WATER QUALITY INFORMATION ADVISORY COMMITTEE

Notice of Meeting and Agenda

Notice is hereby given of a meeting of the Effluent Standards and Water Quality Information Advisory Committee established under Section 515 of the Federal Water Pollution Control Act ("the Act") (33 U.S.C. 1374; Public Law 92-500) to be held in Room 1112 (Conference Room), Building #2, Crystal Mall, Arlington, Virginia, November 29, 1973, at 9 a.m. This is a regularly scheduled meeting of the Committee.

The agenda for this meeting includes: Developments on Matrix Method; Proposed Limitations for Industries as Published in the FEDERAL REGISTER; Establishment of Effluent Limitations for Items on Toxic Substances List.

The meeting will be open to the public and under the direction of the Committee Chairman. Any member of the public wishing to attend or participate should contact Dr. Martha Sager, Chairman, Effluent Standards and Water Quality Information Advisory Committee, Environmental Protection Agency, Room 821, Crystal Mall, Bldg. #2, Washington, D.C. 20460 (Tel: 703 557-7390).

Dated: October 30, 1973.

MARTHA SAGER,
Chairman, Effluent Standards & Water Quality Information Advisory Committee.

[FR Doc.73-23513 Filed 11-5-73;8:45 am]

NATIONAL AIR QUALITY CRITERIA ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the National Air Quality Criteria Advisory Committee will be held at 9:00 a.m. on November 16, 1973 in Conference Room A (Room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The agenda will include briefings and consultations on (1) the determination and documentation of adverse effects on the public health and welfare of manganese as an atmospheric pollutant; (2) candidate pollutants for review and reports by the National Academy of Sciences; and (3) the EPA Science Advisory Board and the future role of the committee.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact the Executive Secretary, Mr. Ernst Linde, Scientist Administrator, National Environmental Research Center, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

The telephone number is 919-549-8411, extension 2266.

STANLEY M. GREENFIELD,
Assistant Administrator for Research and Development.

[FR Doc.73-23512 Filed 11-5-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19849 etc.]

BRINDLEE BROADCASTING CO. ET AL.

Application for Construction Permits

In re applications of BRINDLEE BROADCASTING CORPORATION, Arab, Alabama. Requests: 92.7 MHz, #224; 2 kW (H & V); 360 feet, Docket No. 19849, File No. BPH-7961. HELTON & NORRIS ENTERPRISES, INC., Arab Alabama. Requests: 92.7 MHz, #224; 3 kW (H & V); 300 feet, Docket No. 19850, File No. BPH-8054. MARSHALL COUNTY BROADCASTING COMPANY, INC., Arab, Alabama. Requests: 92.7 MHz, #224; 3 kW (H & V); 300 feet, Docket No. 19851, File No. BPH-8224; for construction permits.

1. The Commission, by the Chief of the Broadcast Bureau, acting under delegated authority, has before it the captioned applications which are mutually exclusive in that each of the applicants has requested authority to operate on the same FM broadcast channel allocated to the same community. Accordingly, a comparative hearing must be held.

2. Section 73.210 of our rules provides that the main studio of a commercial FM broadcast station must either be located in the proposed city of license or that good cause must be shown for locating the main studio outside the community. However, the Commission's Report and Order in Docket No. 19028, 27 F.C.C. 2d 851 (1971), states that it is not necessary for the Commission to consider and approve an FM main studio location at an AM main studio site in the case of commonly owned AM and FM stations licensed to serve the same principal community, since prior Commission approval is already required for an AM main studio location outside the community of license other than at the AM transmitter site, and since an AM main studio location at the AM transmitter site is presumed to be consistent with the main studio rules and the public interest. Both Marshall County Broadcasting Company, Inc. (Marshall), and Helton & Norris Enterprises, Inc. (Helton), propose to locate their studio sites outside of the city of Arab. Since Marshall proposes to locate its FM studio at its AM studio site, its proposal is consistent with the rules and the public interest. Helton, which is not an AM licensee, proposes to locate its main studio at its FM transmitter site, four miles northeast of the Arab city limits. However, Helton has submitted a showing that its studio site is only five miles from downtown Arab, in an area which appears to be readily accessible by highway and which has ample parking. We find that Helton's showing in regard to its proposed studio site is adequate and therefore no issue concerning this matter will be specified.

3. The applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, *It is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications for a construction permit should be granted.

5. *It is further ordered*, That the applicants shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of the rules.

6. *It is further ordered*, That the applicants shall give notice of the hearing within the time and in the manner specified in § 1.594 of the rules, and shall seasonably file the statement required by § 1.594(g).

Adopted: October 29, 1973.

Released October 30, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.73-23560 Filed 11-5-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-8400]

ALABAMA POWER CO.

Notice of Filing of Proposed Service Agreement

OCTOBER 30, 1973.

Take notice that Alabama Power Company by letter dated September 11, 1973, pursuant to Section 35.12 of the Federal Power Commission's Regulations, on September 14, 1973, filed a service agreement dated July 23, 1973, with Clarke-Washington Electric Membership Corporation to cover a new delivery point located in Thomasville in Clarke County, Alabama. Said service is proposed to be rendered pursuant to Alabama Power Company's FPC Rate Schedule REA-1.

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 proce-

dure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the tender are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-23562 Filed 11-5-73;8:45 am]

[Docket No. RP72-142]

CITIES SERVICE GAS CO.

Notice of Proposed Changes in FPC Gas Tariff

OCTOBER 30, 1973.

Take notice that Cities Service Gas Company (Cities Service) on October 9, 1973, tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1. Pursuant to the Purchased Gas Cost Rate Adjustment provision contained in Article 21 of its FPC Gas Tariff, the Company proposes to increase its rates effective November 23, 1973, to reflect increased purchase gas costs.

Cities Service states the Sixth Revised Sheet PGA-1 included in Appendix A of the Company's filing reflects a rate increase of 1.08¢ per Mcf which is solely based on increased gas purchase costs occasioned by filings by Transwestern Pipeline Company (Transwestern) dated August 13, 1973, and September 26, 1973. This 1.08¢ per Mcf increase in rates will produce an increase in the Company's jurisdictional revenues of $3,860,403 based on annual sales volumes for the twelve months ended August 22, 1973.

Should the Commission not permit the filing by Transwestern, dated September 26, 1973, to be effective on October 1, 1973, the Company has tendered, as an alternative, the Sixth Revised Sheet PGA-1 included in Appendix B of the Company filing reflecting an increase of 0.85¢ per Mcf which does not include the proposed rate change reflected in Transwestern's September 26, 1973, submittal. The 0.85¢ per Mcf rate increase will produce an increase in the Company's jurisdictional revenues of $3,038,280 based on annual sales volumes for the twelve months ended August 22, 1973.

On October 16, 1973, Cities Service amended this filing to designate the new tariff sheets as Fifth Revised Tariff Sheets PGA-1 as they were designated in the October 9, 1973, application. No other changes were made.

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 and 1.10). All such petitions or protests should be filed on or before November 7, 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 are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-23565 Filed 11-5-73;8:45 am]

[Docket No. E-8442]

MISSISSIPPI POWER AND LIGHT CO.

Notice of Proposed Purchase Agreement

OCTOBER 30, 1973.

Take notice that on October 10, 1973, the Mississippi Power and Light Company (MP&L) tendered for filings a proposed Agreement for Purchase of Power dated May 1, 1973, providing for service to the Southwest Mississippi Electric Power Association (Southwest), together with a Supplemental Operating Agreement dated June 16, 1961.

MP&L states that its Rate Schedule REA-11 incorporated in the instant Agreement was heretofore filed with the Commission on November 16, 1970, as MP&L's service rate schedule applicable to all existing and new points of delivery. MP&L further states that by order of the Commission on January 21, 1971 (Docket E-7577), Schedule REA-11 became effective January 21, 1971 (Docket E-7577), Schedule REA-11 became effective January 23, 1971, as affirmed by order of the Commission dated October 11, 1972, and is the currently effective tariff for service to electric power associations.

MP&L states that the proposed date of initial service is January 1, 1974, and requests that the Commission accept this filing to be effective on the date on which service may be rendered initially. According to MP&L, a copy of the filing has been sent to Southwest.

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 November 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-23567 Filed 11-5-73;8:45 am]

[Docket No. E-8435]

PENNSYLVANIA ELECTRIC CO.

Notice of Filing of Proposed Rate Schedule

OCTOBER 30, 1973.

Take notice that on October 5, 1973, Pennsylvania Electric Company (Penelec) tendered for filing as a rate schedule in the above docket a proposed contract with Allegheny Electric Cooperative (Allegheny) for wheeling and partial requirements services to Allegheny associated with an allotment of power to Allegheny by the Power Authority of the State of New York. Penelec requests that the proposed contract be permitted to become effective on November 10, 1973.

Penelec states that the proposed effective date of November 10, 1973, effectuates understandings of Penelec and Allegheny contained in a pending settlement agreement in Docket No. E-7718, and that the proposed contract was submitted as part of the settlement agreement. Penelec further states that the present filing would effectuate the parties' intention that the changes in the proposed contract become effective no earlier or later than upon expiration of the presently effective contract on November 9, 1973.

Any person wishing to be heard or to protest Penelec'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 November 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. Any person wishing to become a party must file a petition to intervene. Penelec's filing is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-23563 Filed 11-5-73;8:45 am]

[Docket No. CI74-256]

TEXAS EASTERN EXPLORATION CO.

Notice of Application

OCTOBER 31, 1973.

Take notice that on October 17, 1973, Texas Eastern Exploration Co. (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CI74-256 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 Texas Eastern Transmission Corporation from the Hospital Bayou Field, Lafourche Parish, Louisiana, 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 natural gas within the contemplation of section 157.29 of the Regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for one year from the end of the sixty-day emergency period within the contemplation of section 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Appli-

cant proposes to sell approximately 150,000 Mcf of gas per month at 50.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment. Initial upward Btu adjustment is estimated to be 1.25 cents per Mcf.

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 November 7, 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.73-23561 Filed 11-5-73;8:45 am]

FEDERAL RESERVE SYSTEM

CENTRAL BANCORPORATION, INC.

Acquisition of Bank

The Central Bancorporation, Inc., Cincinnati, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the successor by merger to The Commercial Banking & Trust Company, Wooster, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 16, 1973.

Board of Governors of the Federal Reserve System, October 30, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23523 Filed 11-5-73;8:45 am]

CENTRAL BANCSHARES, INC.

Formation of Bank Holding Company

Central Bancshares, Inc., Kansas City, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of The Fidelity State Bank, Kansas City, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than November 12, 1973.

Board of Governors of the Federal Reserve System, October 30, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23522 Filed 11-5-73;8:45 am]

FIRST BANCORP., INC.

Acquisition of Bank

First Bancorp. Inc., Corsicana, Texas, 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 51 per cent of the voting shares of Addison State Bank, Addison, Texas, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 26, 1973.

Board of Governors of the Federal Reserve System, October 30, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23530 Filed 11-5-73;8:45 am]

FIRST BANCSHARES OF FLORIDA, INC.

Acquisition of Bank

First Bancshares of Florida, Inc., Boca Raton, Florida, 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 90 percent or more of the voting shares of First Forest Hill Bank of Palm Beach County, West Palm Beach, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than November 22, 1973.

Board of Governors of the Federal Reserve System, October 29, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23524 Filed 11-5-73;8:45 am]

FIRST BANCSHARES OF FLORIDA, INC.

Acquisition of Bank

First Bancshares of Florida, Inc., Boca Raton, Florida, 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 90 percent or more of the voting shares of The First Marion Bank, Ocala, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 25, 1973.

Board of Governors of the Federal Reserve System, October 29, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23525 Filed 11-5-73;8:45 am]

FIRST BANCORP OF N.H., INC.

Acquisition of Bank

First Bancorp of N.H., Inc., Exeter, New Hampshire, 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 80 per cent or more of the voting shares of the successor by merger to The Merchants National Bank of Manchester, Manchester, New Hampshire. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System,

Washington, D.C. 20551, to be received not later than November 12, 1973.

Board of Governors of the Federal Reserve System, October 29, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23526 Filed 11-5-73;8:45 am]

OAK PARK BANCORP, INC.

Formation of Bank Holding Company

Oak Park Bancorp, Inc., Oak Park, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Oak Park Trust and Savings Bank, Oak Park, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than November 12, 1973.

Board of Governors of the Federal Reserve System, October 30, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23527 Filed 11-5-73;8:45 am]

PEOPLES SAVINGS BANK CO.

Order Approving Application for Merger of Banks

The Peoples Savings Bank Company, Delta, Ohio ("Delta Bank"), has applied for the Board's approval pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) of the merger of that bank with The Farmers State Bank of Lyons, Ohio, Lyons, Ohio ("Lyons Bank") under the name and charter of Delta Bank. Both Delta and Lyons banks are State member banks of the Federal Reserve System. It is proposed that upon consummation of this proposal the present office of Lyons Bank will be operated as a branch of Delta Bank.

As required by the Act, notice of the proposed merger, in the form approved by the Board, has been published, and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

The Board has considered the application and all comments and reports in the light of the factors set forth in the Act.

Delta Bank ($11 million of deposits)[1] is a subsidiary of BancOhio Corporation, Columbus, Ohio, the second largest banking organization in Ohio, controlling approximately 9 percent of total deposits of commercial banks in the State. Delta Bank operates one banking Office located in Delta, Ohio, and holds approximately 11 percent of total deposits of commercial banks in the Fulton County, Ohio, banking market (which includes most of Fulton County, Ohio, and portions of Lenawee County, Michigan) and is the fourth largest of eight banks operating in that market. As a result of consummation of the proposed merger of Delta Bank with Lyons Bank ($4 million of deposits) the parent holding company's share of total deposits in the State would increase by only .01 percentage points and Delta Bank's share of deposits in the relevant market would increase to 15 percent. Delta bank will become the third largest bank in this market.

Lyons Bank operates one banking office in the predominately rural north central portion of the Fulton County banking market and is the seventh largest of eight banks operating in that market. The single office of Lyons Bank is located approximately 13 miles from Delta Bank. The three largest banks in this market control approximately 64 percent of the total deposits.

Although located in the same banking market, little competition exists between Delta and Lyons banks as their service areas do not overlap to a significant extent. Delta Bank obtains approximately 2.5 percent of its deposits and 3.5 percent of its loans from the area served by Lyons Bank. Lyons Bank derives approximately 1.0 percent of deposits and 2 percent of its loans from the area served by Delta Bank.

Delta and Lyons banks are permitted by Ohio law to branch into each others service area, however, the record indicates little likelihood of such expansion occurring in the foreseeable future. The population to banking office ratio of the area served by Lyons Bank is significantly below the average for Fulton County and far below the average for the State. In addition, in view of its small size, it is doubtful that Lyons Bank has sufficient financial and managerial resources to contemplate branching in the foreseeable future. Although two bank subsidiaries of BancOhio Corporation are located in counties adjacent to Fulton County, no substantial competition exists between these banks and Delta or Lyons banks. It appears that consummation of the proposal will not eliminate any meaningful existing or future competition between any of Applicant's subsidiary banks and between Delta and Lyons banks. Accordingly, the board concludes that consummation of the proposed acquisition would have only a slightly adverse effect on existing competition in the Fulton banking market. The proposed merger, however, by increasing the competitive capability of Delta Bank, may result in increasing future competition among the largest banks in the Fulton banking market.

The financial and managerial resources of both Delta and Lyons banks are satisfactory and the prospects for Delta Bank upon consummation of the proposal herein appear favorable. Consequently, banking factors are consistent with approval of the application. There is no evidence in the record that the banking needs of the Fulton County banking market are going unserved at the present time. It is proposed, however, that consummation of the proposal herein will result in an increase in the range of banking services available to customers now served by Lyons Bank. Delta Bank presently provides a wide range of consumer savings accounts, installment and commercial loan services and credit card services, some of which are not offered by Lyons Bank. These services would become available upon consummation of this proposal. In addition, through its parent holding company, Delta Bank presently offers farm equipment leasing services which could become more readily available to residents of the Lyons area upon consummation of the proposed merger. Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the application and lend some weight thereto. It is the Board's judgment that the slightly adverse effect of the proposed merger on existing competition would be outweighed by the benefits to the banking convenience and needs of customers to be served by Delta Bank and that consummation of the proposal 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 October 29, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-23528 Filed 11-5-73;8:45 am]

REPUBLIC OF TEXAS CORP.

Order Approving Formation of Bank Holding Company

Republic of Texas Corporation, Dallas, Texas, has applied for the Board's approval, under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 3(a)(1)), of formation of a bank holding company through the acquisition of 100 percent, less directors' qualifying shares, of the voting shares of the successor by merger to Republic National Bank of Dallas, Dallas, Texas ("Republic Bank"). The bank into which Republic Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Republic Bank. Ac-

[1] All banking data are as of December 31, 1972.

[2] Voting for this action: Chairman Burns and Governors Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Governors Mitchell and Daane.

cordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Republic Bank. As an incident to the proposal, Applicant will acquire indirect control of 29.99 percent of the voting shares of Oak Cliff Bank and Trust Company, Dallas, Texas.

As a further incident of the acquisition of Republic Bank, Applicant will acquire indirect control of less than 25 percent but more than 5 percent of the outstanding voting shares of each of 21 Texas banks ("minority" banks) as follows: (1) First Security Bank and Trust Company, Carrollton (20.00 percent); (2) Bank of Dallas, Dallas (10.00 percent); (3) Fair Park National Bank of Dallas, Dallas (23.73 percent); (4) Greenville Avenue State Bank, Dallas (24.89 percent); (5) The Hillcrest State Bank, Universtiy Park (24.90 percent); (6) Lakewood Bank and Trust Company, Dallas (23.91 percent); (7) North Central Bank, Dallas (24.50 percent); (8) Northwest National Bank of Dallas, Dallas (24.89 percent); (9) Preston State Bank, Dallas (24.98 percent); (10) Royal National Bank of Dallas, Dallas (23.47 percent); (11) The Village Bank, N.A., Dallas (20.50 percent); (12) First National Bank of Duncanville, Duncanville (20.00 percent); (13) First National Bank in Garland, Garland (21.19 percent); (14) Midway National Bank of Grand Prairie, Grand Prairie (24.89 percent); (15) Citizens National Bank of Greenville, Greenville (9.99 percent); (16) First National Bank of Irving, Irving (24.90 percent); (17) Bank of Lancaster, Lancaster (16.00 percent); (18) First National Bank of Plano, Plano (24.86 percent); (19) The Citizens State Bank, Richardson (20.00 percent); (20) First National Bank of Mineral Wells, Mineral Wells (23.14 percent); and (21) First National Bank, Wills Point (6.00 percent). The described shares of the indirectly acquired banks are held by several trusts for the benefit of stockholders of Republic Bank and, pursuant to section 2(g)(2) of the Act, Republic Bank is deemed to control such shares; by virtue of section 2(g)(1) of the Act, Applicant will be deemed to control such shares upon its acquisition of control of Republic 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 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)).

Board approval of Applicant's proposal to become a bank holding company does not signify Board approval of the retention of the above referred to interests in the 21 minority banks nor of the acquisition of additional shares in such banks. Applicant has represented to the Board that Applicant will file separate applications for prior approval by the Board for retention of its holdings in each of certain banks and for acquisition of additional shares and will divest completely its interests in all of the others of the 21 minority banks. Of course, any such applications so filed by Applicant will be subject to the ordinary regulatory and legal process, including review under the statutory standards as set forth in section 3 of the Bank Holding Company Act.

Applicant is a recently organized corporation formed for the purpose of becoming a bank holding company through the acquisition of the voting shares of the successor by merger to Republic Bank (deposits of $2,071 million).[1] Republic Bank is the largest commercial bank in the Dallas banking market and also is the largest bank in Texas, on the basis of deposits. Republic Bank holds, respectively, 27.7 percent, and 6.0 percent, of total deposits in commercial banks in the Dallas banking market and the State.[2] In terms of IPC demand deposits on accounts of $20,000 or less (a measure often used for a bank's retail significance), Republic Bank's market share would be about 9.5 percent.[3]

Since the application involves basically a corporate rearrangement whereby shareholders of Republic Bank will become shareholders of Applicant, no adverse effect on existing or potential competition is probable. Indeed, a holding company with Republic Bank as lead bank may be considered to be a probable entrant into various local banking markets throughout the State and this should provide increased competition in such local markets, many of which are concentrated.

Applicant, through its ownership of Republic Bank, will also obtain indirect control of various nonbanking companies whose shares are owned in trust for the benefit of the shareholders of Republic Bank. The activities of these companies are described in a Board determination dated September 10, 1973, relating to a group of corporations referred to collectively under the name of Howard Corporation. This Board determination reviewed and confirmed grandfather benefits of Republic Bank with regard to certain activities which are more specifically described in that determination. However, the Board has ruled that Applicant would not be a successor to the grandfather benefits of Republic Bank, and Applicant has committed itself and is required to dispose of nonpermissible activities within the 2-year statutory period prescribed in section 4(a)(2) of the Act. Consummation of the application herein will result in or accelerate the separation of the banking and impermissible nonbanking interests of Republic Bank. Such separation is a positive factor in favor of approval of the application since such separation is in accord with the basic purposes of the Bank Holding Company Act.

The financial and managerial resources and the prospects of Applicant depend, at least for the immediate future, on those of Republic Bank which are regarded as generally satisfactory, particularly in view of the commitment of Applicant to have additional capital added to Republic Bank. The commitment weighs in favor of approval of the application. Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the application and may provide some weight for approval since it may be expected that Applicant will enter and bring its expertise and experience into various local markets throughout Texas. On the basis of all relevant facts contained in the record, it is the Board's judgment that the proposed transaction would be in the public interest and 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 Dallas pursuant to delegated authority.

By order of the Board of Governors,[4] effective October 25, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-23529 Filed 11-5-73;8:45 am]

[1] All banking data are as of December 31, 1972, except where otherwise noted.

[2] The Dallas banking market is approximated by the Dallas RMA which includes Dallas County and portions of six other counties.

[3] Banking data for IPC demand deposits of $20,000 or less are as of June 30, 1972.

[4] Voting for this action: Chairman Burns and Governors Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Governors Mitchell and Daane.

STATE STREET BOSTON FINANCIAL CORP.

Proposed Acquisition of Kentucky Mortgage Company, Inc.

State Street Boston Financial Corporation, Boston, Massachusetts, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Kentucky Mortgage Company, Incorporated, Lexington, Kentucky. Notice of the application was published in the following newspapers:

Date	Newspaper	City and State
Sept. 6, 1973	The Cincinnati Enquirer.	Cincinnati, Ohio.
Sept. 20, 1973	Herald Leader	Lexington, Ky.
Sept. 6, 1973	The Louisville Times & The Courier-Journal.	Louisville, Ky.
Sept. 5, 1973	The Paducah Sun-Democrat.	Paducah, Ky.

Applicant states that the proposed subsidiary would engage in the follow-

ing activities: (1) real estate lending; (2) mortgage banking; (3) servicing mortgage loans; (4) sale of credit life, accident and health insurance to mortgagors on loans serviced by Kentucky Mortgage Company, Incorporated; and (5) acting as adviser to a real estate investment trust. Persons wishing to comment on this proposal should submit their views in writing within 30 days of the date of publication of this notice to Federal Reserve Bank of St. Louis, 411 Locust Street, P.O. Box 442, St. Louis, Missouri 63166. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 25, 1973.

Board of Governors of the Federal Reserve System, October 29, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-23531 Filed 11-5-73;8:45 am]

NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NATIONAL CAPITAL MEMORIAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisor Committee will be held at 1:30 p.m. on Monday, November 12, 1973, in room 234 at the National Capital Parks Headquarters, 1100 Ohio Drive SW., Washington, D.C.

The committee was established for the purposes of preparing and recommending to the Secretary broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials, and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital region.

The members of the committee are as follows:

Mr. Ronald H. Walker (Chairman), Director, National Park Service, Washington, D.C.
Mr. George M. White, Architect of the Capitol, Washington, D.C.
General Mark W. Clark, Chairman, American Battle Monuments Commission, Washington, D.C.
Mr. J. Carter Brown, Chairman, Fine Arts Commission, Washington, D.C.
Mr. William H. Press, Chairman, National Capital Planning Commission, Washington, D.C.
Honorable Walter E. Washington, Mayor-Commissioner of the District of Columbia, Washington, D.C.
Mr. Larry F. Roush, Commissioner, Public Buildings Service, Washington, D.C.

The purpose of this meeting is to discuss several proposals for memorials to be erected in the Nation's Capital. Among the proposals to be considered are:

1. S.J. Res. 45—To provide for the erection of a memorial to those who served in the Armed Forces of the United States in the Vietnam War.
2. S.J. Res. 66—To authorize the erection of a monument to the dead of the First Infantry Division, United States Forces in Vietnam.
3. H.J. Res. 338—To authorize a national memorial grove of trees dedicated to those Americans who died in the Indochina War.

The meeting will be opened to the public. Any persons may file with the committee a written statement concerning the matters to be discussed.

Persons who wish to file a written statement or who want further information concerning the meeting may contact Richard L. Stanton, Assistant Director, Cooperative Activities, National Capital Parks, at area code 202-426-6715.

Dated October 26, 1973.

ROBERT M. LANDAU,
Liaison Officer,
Advisory Commissions.

[FR Doc.73-23548 Filed 11-5-73;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR SCIENCE EDUCATION

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given of a meeting of the Advisory Committee for Science Education to be held at 9 a.m. on November 19 and 20, 1973, in Room 651 at 5225 Wisconsin Avenue, NW., Washington, D.C. 20550.

The purpose of this Committee is to provide advice and recommendations concerning the impact of all Foundation activities (including research; scientific information; and international programs; as well as specifically "education" programs) relating to education in the sciences in U.S. schools, colleges, and universities.

The agenda for this meeting shall include:

	NOVEMBER 19
	MORNING
9:00	Comments by the NSF Director.
9:30	Comments by the Assistant Director for Education.
10:30	Discussion of the Committee's Annual Report to the National Science Board.
	AFTERNOON
12:15	Recess for lunch.
1:30	Continuation of the above discussion.
	NOVEMBER 20
	MORNING
9:00	Discussion of Postdoctoral Fellowships.
10:30	Discussion of Industry/University Relations.
11:30	Discussion of Research Participation for College Teachers.
	AFTERNOON
12:30	Recess for lunch.
2:00	Discussion of the Role of Professional Societies in Identifying Science Education Problems and Possible Solutions.
3:00	Discussion of the Preparation of the Committee's Annual Report for 1973.
3:30	Adjournment.

This meeting shall be open to the public. Individuals who wish to attend should inform Mrs. Frances O. Watts, Administrative Officer, Assistant Directorate for Education, by telephone (202-282-7930) or by mail (5225 Wisconsin Avenue, NW., Washington, D.C. 20550) prior to the meeting. Persons requiring further information concerning this Committee should contact Mrs. Frances O. Watts at the above address. Summary minutes relative to this meeting may be obtained from the Management Analysis Office, Room K-720, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director
for Administration.

OCTOBER 24, 1973.

[FR Doc.73-23554 Filed 11-5-73;8:45 am]

ADVISORY PANEL FOR EARTH SCIENCES, ET AL.

Notice of Meetings

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given of meetings of the following advisory panels including the individuals to contact for further information respecting each panel. The purpose of each of these advisory bodies is to provide advice and recommendations as part of the

review and evaluation process for specific proposals and projects.

ADVISORY PANEL FOR EARTH SCIENCES

Date and time of meeting: November 10 and 11, 1973; 9 a.m.
Location of meeting: Department of Geological Sciences, Southern Methodist University, Dallas, Texas 75222.
Agenda: The agenda will be devoted to the review and evaluation of research proposals.
For further information, contact: Dr. William E. Benson, Section Head, Earth Sciences Section, Room 310, 1800 G Street, NW., Washington, D.C. 20550.

ADVISORY PANEL FOR DEVELOPMENTAL BIOLOGY

Date and time of meeting: November 12 and 13, 1973; 9 a.m.
Location of meeting: Room 338, 1800 G Street, NW., Washington, D.C. 20550.
Agenda: The agenda will be devoted to the review and evaluation of research proposals.
For further information, contact: Dr. Herman W. Lewis, Section Head, Cellular Biology Section, Room 325, 1800 G Street, NW., Washington, D.C. 20550.

ADVISORY PANEL ON THE MATERIALS RESEARCH LABORATORIES

Date and time of meeting: November 12 and 13, 1973; 9 a.m.
Location of meeting: Room 321 on November 12; Room 642 on November 13; 1800 G Street, NW., Washington, D.C. 20550.
Agenda: The agenda will be devoted to the review and evaluation of research proposals.
For further information, contact: Dr. R. J. Wasilewski, Section Head, Materials Research Laboratory Section, Room 336, 1800 G Street, NW., Washington, D.C. 20550.

ADVISORY PANEL FOR ECONOMICS

Date and time of meeting: November 30, 1973; 9 a.m.
Location of meeting: Room 338, 1800 G Street, NW., Washington, D.C. 20550.
Agenda: The agenda will be devoted to the review and evaluation of research proposals.
For further information, contact: Dr. James H. Blackman, Program Director, Economics Program, Room 205, 1800 G Street, NW., Washington, D.C. 20550.

These meetings are concerned with matters which are within the exemptions of 5 U.S.C. 552(b) and will not be open to the public in accordance with the determination of the Director of the National Science Foundation dated January 15, 1973, pursuant to the provisions of section 10(d) of P.L. 92-463.

T. E. JENKINS,
Assistant Director for Administration.

OCTOBER 24, 1973.

[FR Doc.73-23543 Filed 11-5-73;8:45 am]

POSTAL RATE COMMISSION

[Docket No. R74-1]

OFFICER TO REPRESENT INTERESTS OF GENERAL PUBLIC

Designation

OCTOBER 31, 1973.

Notice is hereby given that, pursuant to section 3624(a) of the Postal Reorganization Act (39 U.S.C. 3624(a)), the Commission designates Lloyd E. Dietrich, Assistant General Counsel, Appeals Division, as the officer of the Commission who shall represent the interests of the general public in the above-entitled proceeding. The title of this officer during the course of the proceeding will be "Officer of the Commission" (OOC).

During the pendency of this proceeding the officer designated herein will direct the activities of Commission personnel assigned to assist him. Further, in accordance with section 8 of the Commission's rules of practice (39 CFR 3001.8), both the Officer of the Commission and the personnel serving with him will be prohibited from participating or advising as to any intermediate or Commission decision in this proceeding. The names of Commission personnel assigned to work with the Officer of the Commission will be provided for the hearing record at an appropriate time.

By the Commission.

JOSEPH A. FISHER,
Secretary.

[FR Doc.73-23542 Filed 11-5-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Notice of Disaster Loan Area 1020]

NEBRASKA

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Nebraska as a major disaster area following severe storms and flooding beginning on or about September 25, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from storm and flood victims in the following Counties: Clay, Gage, Jefferson, Johnson, Nemaha, Nuckolls, Otoe, Pawnee, Richardson, Saline, Thayer and Webster.

Applications may be filed at the:

Small Business Administration
District Office
215 North 17th St.
Omaha, Nebraska 68102

and at such temporary offices as are established. Such addresses will be announced locally. Applications will be processed under the provisions of Public Law 93-24.

Applications for disaster loans under this announcement must be filed not later than December 24, 1973.

Dated: October 26, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-23535 Filed 11-5-73;8:45 am]

[Declaration of Disaster Loan Area 1021]

TEXAS

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of September 1973, because of the effects of a certain disaster, damage resulted to business and residential property located in the State of Texas;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Wilson, Guadalupe and Bexar Counties, Texas, and adjacent affected areas, suffered damage or destruction resulting from excessive rainfall and flooding on September 26 and 27, 1973. Applications will be processed under the provisions of Public Law 93-24.

Office: Small Business Administration
District Office
301 Broadway
San Antonio, Texas 78205

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to December 26, 1973.

Dated: October 26, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-23534 Filed 11-5-73;8:45 am]

TARIFF COMMISSION

[AA1921-129]

POLYCHLOROPRENE RUBBER FROM JAPAN

Determination of Injury or Likelihood Thereof

OCTOBER 31, 1973.

The Treasury Department advised the Tariff Commission on July 31, 1973, that polymerized chlorobutadine, commonly known as polychloroprene rubber, from Japan is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigation AA1921-129 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of a hearing to be held in connection therewith was published in the FEDERAL REGISTER of August 17, 1973 (38 FR 22258). The hearing date was September 20, 1973. Notice of the rescheduling of the hearing date from September 20, 1973, to September 28, 1973, was published in the FEDERAL REGISTER of August 24, 1973 (38 FR 22834).

In arriving at its determination, the Commission gave due consideration to all written submissions from interested par-

ties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission determined by a vote of 4 to 1 [1] that an industry in the United States is being, or is likely to be, injured [2] by reason of the importation of polychloroprene rubber from Japan that is being or is likely to be sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Statement of reasons for affirmative determination of Chairman Bedell and Commissioner Moore.[3] In our opinion an industry in the United States is being injured by reason of the importation of polychloroprene rubber from Japan which the Department of the Treasury found is being or is likely to be sold at less than fair value (LTFV) within the meaning of the Antidumping Act of 1921, as amended. The industry so injured consists of the facilities in the United States devoted to the production of polychloroprene rubber.

U.S. imports of polychloroprene rubber from Japan, the predominant foreign supplier of that product, have increased steadily in most recent years. The volume of sales of the Japanese product in the United States in 1972 was nearly three times that in 1968. During the period of the Treasury's investigation which covered part of 1972, all of the imports from Japan were found to have been sold at less than fair value, and the margin by which sales were made below fair value was substantial. U.S. imports of polychloroprene rubber from Japan have been smaller in 1973 than in 1972 (and are now suspended), reflecting the prospects of the imposition of an antidumping duty as well as shortages of supply abroad.

Based on evidence obtained in the Commission's investigation, we have concluded that the LTFV sales of polychloroprene rubber from Japan have contributed to a depression in sales and profits experienced by the U.S. industry. U.S. sales of polychloroprene rubber by the domestic producers were about a tenth smaller in 1970 and 1971 then in 1968 and 1969. In 1972, despite an increase in domestic demand, sales by the producers barely recovered to the earlier level. Meanwhile, the sales of Japanese polychloroprene rubber were growing. In 1972, when Treasury found such sales to have been made at less than fair value, they took a significant share of the domestic market.

The increase in sales of Japanese polychloroprene rubber was accompanied by a growing impact on prices in the domestic market. The imported Japanese product consistently sold below the list prices of the domestic producers. The differences grew steadily in recent years, and were substantial in 1972. The domestic producers increasingly found it necessary to negotiate lower prices to retain sales. While LTFV sales adversely affected the prices obtained for polychloroprene rubber by both domestic producers, the effect on the smaller producer was more pronounced as it confronted active price competition from the Japanese supplier at the time it was trying to gain a foothold in the U.S. market.

The profits earned by the domestic industry on sales of polychloroprene rubber declined from 1968 to 1971; they were somewhat larger in 1972 than in 1971, but they remained far below those of the earlier years. The financial experience of the smaller domestic producer, which has been attempting to establish itself in the domestic market, has been affected by start-up costs and production problems. Nevertheless, the price competition afforded by the LTFV sales of the Japanese product contributed significantly to its poor profit-and-loss results.

In recent months, the U.S. demand for polychloroprene rubber has strengthened greatly. As a consequence, both domestic producers have operated at capacity; the supply of polychloroprene rubber in the United States has become limited relative to demand; and U.S. prices for the product have firmed. As noted above, imports of polychloroprene rubber from Japan have declined, as a result of the antidumping investigation and shortages of the product abroad. Despite the recent market changes, however, it is clear, in the light of developments discussed above, that an industry in the United States is being injured within the terms of the Antidumping Act, 1921.

Based upon the evidence available to the Commission, we are of the opinion that an industry in the United States is being injured by reason of LTFV sales of polychloroprene rubber from Japan. We have, therefore, mad an affirmative determination.

Concurring Statement of Commissioner Leonard. While I concur in the determination of the majority and agree generally with the statement of reasons of my colleagues, additional matters deserve comment.

The domestic manufacturers are today, in October 1973, enjoying excellent business, hampered only by raw material supply shortages or fabricating capacity limitations. However, a permissible interpretation of the statutory language "is being injured" requires the Commission to also look at the industry's condition during the time of Treasury's investigation of LTFV sales, a four-month period in 1972. The domestic manufacturers' sales in the domestic market were then below the level of 1968–69, notwithstanding the stimulus provided by the entry of the second (the only other) producer.

Between 1968 and 1972, Japanese imports of polychloroprene rubber trebled. Of the imports examined by the Treasury during the period covered by its investigation, all sales of this product had been made at LTFV prices and at a substantial margin below the Japanese home market price. The volume of LTFV imports found by Treasury was substantial, and the contributed materially to the increase in imports of polychloroprene rubber from Japan in that year.

The LTFV margins applicable to this product were for the most part significantly greater than the margin of underselling in the United States. This indicated that the Japanese home market price was significantly higher than the U.S. market price. The Japanese manufacturers would probably have made few, if any, sales had these sales been made at fair value prices. It is clear that in the absence of the LTFV sales (1) the Japanese would not have enjoyed the same price advantage vis-a-vis the domestic product, (2) the market penetration achieved by Japanese polychloroprene rubber would have been appreciably less, (3) sales by the domestic producers would have been reduced only slightly, if at all, (4) prices would not have dropped to the extent that they did, (5) the profits of the dominant domestic producer would not have decreased to the extent that they did, and (6) the losses incurred by the second domestic producer would not have been as severe as they were.

Thus it is clear that the sales of the polychloroprene rubber from Japan at LTFV were at the expense of the U.S. producers and thus were an identifiable cause of injury to the U.S. industry.

Statement of Comissioner Ablondi. In my opinion no industry in the United States is being injured or is likely to be injured by reason of the importation of polychloroprene rubber from Japan which is being sold at less than fair value (LTFV) within the meaning of the Antidumping Act of 1921, as amended.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-23586 Filed 11-5-73;8:45 am]

[1] Chairman Bedell, Vice Chairman Parker, and Commissioners Leonard and Moore determined in the affirmative; Commissioner Ablondi determined in the negative. Commissioner Young did not participate in the decision.

[2] Chairman Bedell and Commissioners Leonard and Moore determined that an industry in the United States is being injured; Vice Chairman Parker determined that an industry in the United States is likely to be injured.

[3] Vice Chairman Parker concurs in the result but would rest his determination principally upon the likelihood of injury. To the extent that there was present injury under the statute, it occurred in 1972. Any injury in 1973 was removed by a shortage of polychloroprene rubber in the United States and abroad. In the absence of the present abnormal short supply condition, the sale at less than fair value of polychloroprene rubber from Japan, however, is likely to cause injury to the domestic industry.

INTERSTATE COMMERCE COMMISSION

[Notice 376]

ASSIGNMENT OF HEARINGS

NOVEMBER 1, 1973.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective as-

signments 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.

FF-397, Japan Line, Ltd., now assigned November 5, 1973, at Chicago, Ill., is postponed to November 26, 1973 (1 week), on the 7th Floor, Union League Club, 651 West Jackson St., Chicago, Ill.

MC-F-11869, Crouse Cartage Company—Purchase—(B) Heartland Express, Inc. and (BB) Lawson Truck Line, Inc., now assigned November 26, 1973, at Omaha, Nebr., will be held at the Holiday Inn, 72nd and Grove St., instead of Room 616, Union Pacific Plaza, 110 North 14th Street.

MC 133119 Sub 19, Heyl Truck Lines, Inc., now assigned December 3, 1973, at Omaha, Nebr., will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street.

MC-F-11735, Graves Truck Line, Inc.—Purchase—Diamond Freightways, Inc., now assigned continued hearing December 10, 1973, at Omaha, Nebr., will be held in Room 616, Union Pacific Plaza, 110 N. 14th St.

MC-F-11820, United Truck Service—Control—Western Nebraska Express, Inc., And Wilson Brothers Truck Line, Inc., now assigned December 5, 1973, at Omaha, Nebr., will be held in Room 616, Union Pacific Plaza, 110 N. 14th St.

MC 151 Sub 49, Lovelace Truck Service, Inc., now assigned January 14, 1974, at St. Louis, Mo., is postponed indefinitely.

MC 127834 Sub 86, Cherokee Hauling & Rigging, Inc., now assigned November 5, 1973, at Memphis, Tenn., is postponed indefinitely.

MC 2202 Sub 447, Roadway Express, Inc., now assigned December 3, 1973, at Cleveland, Ohio, is postponed indefinitely.

No. 35895, Inexco Oil Company V. Belle Fourche Pipeling Co., et al., now being assigned hearing January 12, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 35888, Albemarle Paper Company V. Norfolk and Western Railway Company, et al., now being assigned hearing January 15, 1974 at the Offices of the Interstate Commerce Commission, Washington, D.C.

I&S No. 8890 Freight, all Kinds, in Multiple Trailers, Official Territory, now being assigned hearing January 14, 1974 at the Offices of the Interstate Commerce Commission, Washington, D.C.

I&S No. 8891, Transited Animal Feed in Packages, Western Territory, now being assigned hearing January 14, 1974, at Dallas, Tex., in a hearing room to be later designated.

No. 35871, Fort Worth and Denver Railway Company v. The Atchison, Topeka and Santa Fe Railway Co., now being assigned hearing January 23, 1974, at Dallas, Tex., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-23585 Filed 11-5-73;8:45 am]

[No. MC-114004 (Sub-No. 125)]

CHANDLER TRAILER CONVOY, INC., EXTENSION—JACKSON COUNTY, W. VA.

Certificate of Public Convenience and Necessity

Decided October 17, 1973. Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, over irregular routes, of trailers designed to be drawn by passenger automobile, in initial movements and buildings, in sections, from an origin which is a point of manufacture, from a named facility in Jackson County, W. Va., to points in five States. Issuance of a certificate approved upon compliance by applicant with certain conditions, subject to prior publication in the FEDERAL REGISTER, and application in all other respects denied.

The modified procedure has been followed and the matter has been assigned to the Board for disposition.

By application filed March 12, 1973, Chandler Trailer Convoy, Inc., of Little Rock, Ark., seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of trailers designed to be drawn by passenger automobiles, in initial movements, and buildings, in sections, mounted on wheeled undercarriages, in initial movements, from points in Jackson County, W. Va., to points in the United States (including Alaska but excluding Hawaii). To Question VII(b) in the application form as to whether the sought authority "can" or will be joined with any operating authority now held or sought, applicant answered "No" but stated that, although tacking is possible, it has no intention of tacking the authority sought with its existing authority. Transit Homes, Inc., a motor common carrier, opposes the application.[1]

Applicant is an irregular-route, motor common carrier specializing in the transportation of trailers designed to be drawn by passenger automobiles. In addition, it holds authority to transport sectionalized buildings which move on removable wheeled undercarriages. Its home office is located in Little Rock, where it operates its major terminal. It presently maintains terminals in 22 States. It states that its policy is to establish terminals at the location of all plantsites where justified by the traffic and, if the instant applicatino is granted, intends to establish one in Jackson County. It also operates a central dispatch system through which it is able to divert equipment is needed to meet specific service requests. It operates equipment suitable for the proposed transportation. The majority of its equipment is leased on a long term basis and operated by owner-operators, each of whom is familiar with the unique requirements which pertain to the movement of mobile homes and "double wides." Its balance sheet as of December 31, 1972, reflects its financial status.

Applicant had a certificate of support from shipper in August 1972, and filed an application in the fall of 1972 which was not acceptable to the Commission. Thereafter the shipper experienced labor problems and consequently the present application was not filed until March 1973. Applicant avers that protestant has no real, substantial interest in conflict with the proposed service since protestant's present authority commenced only on May 8, 1973. Furthermore, applicant argues that, since shipper's production is only now reaching the level previously anticipated, protestant would not be injured by a grant of the instant application. Additionally, it is presently capable of providing lowboy equipment for movement of shipper's modular buildings. Applicant requests that authority also be granted to move modular buildings in truckaway service on lowboys.

Douglas Associates, Inc., doing business as American Homes, Inc., supports the instant application. Shipper also supported recent similar applications of Transit Homes and Morgan Drive-Away, Inc. It manufactures mobile homes of various sizes, models and dimensions at its facility in Jackson County. Its production is relatively new and for some time its plant was actually closed because of labor problems. Now that its production has resumed, shipper is expanding its business. It builds custom mobile homes to the customer's specifications. As soon as production of them is completed, such must be delivered to individual customer locations and building sites throughout the United States. Transit time is therefore important, and shipper must have a ready supply of specialized equipment on short notice. Because of the difficulties and restrictions on transporting wide loads through local jurisdictions (generally they cannot be moved after dark, on weekends or holidays, and during inclement weather), the necessity for available carriers is emphasized. Part of its expansion program involves the establishment of dealerships at unspecified locations throughout its primary marketing area surrounding West Virginia, which will permit it to have a stock inventory at these locations. This will result in increased production which will require more carriers to handle it.

Shipper is also instituting production of modular buildings which will be utilized for various enterprises such as modular motel construction. Initially, it will produce 100 or more modules. These units will move in truckaway transportation service on lowboys. Since the orders will be individual and not through dealerships, shipper does not specify the

[1] Morgan Drive-Away, Inc., filed a protest but no verified statement. It submitted a letter which is entitled to no consideration.

destinations of shipments. Its primary marketing territory for the present and future includes West Virginia, Ohio, Pennsylvania, Kentucky, Virginia, and Maryland. Further, shipper forecasts a tripling in production by 1974, when it anticipates producing between 30 and 40 mobile homes weekly. It will tender a minimum of three truckloads a week to applicant. At present it operates three vehicles in private carriage and in the past has employed the services of Transit Homes and Morgan Drive-Away. Shipper states that, as a result of its expansion, it will need all of the carriers specializing in mobile home transportation to meet its requirements. Additionally, it has no lowboys for truckaway service of its modular buildings.

Transit Homes was authorized, as of May 8, 1973, to transport trailers designed to be drawn by passenger automobiles, in initial movements, from Ripley (Jackson County), W. Va., to points in Ohio, Kentucky, Pennsylvania, Virginia, North Carolina, South Carolina, and Tennessee. It operates approximately 400 trucks modified for the purpose of transporting trailers designed to be drawn by passenger automobiles and for portable buildings. It has approximately 160 terminals throughout the United States. It states that it is ready, willing and able to provide any service needed to the supporting shipper. It has provided both intrastate and interstate services for shipper in the past. It maintains two terminals and four trucks in western West Virginia and is anxious to serve this shipper. Protestant avers that shipper has failed to comply with the criteria set forth in Novak Contract Carrier Application, 103 M.C.C. 555 (1967), by not specifically alleging any deficiencies in existing service and that the shipper's statement fails to show the volume of traffic that would be tendered to applicant or any representative destinations. Finally, it argues that the authorization of applicant's proposed service will result in unnecessary duplicative common carrier service and would only dilute traffic from shipper.

Applicant filed a rebuttal statement.

DISCUSSION AND CONCLUSIONS

The quantity and quality of the evidence here are, at best, tenuous, and applicant and its supporting shipper could and should have made a better presentation. It would have been well, for example, to have stated (a) the amounts of particular commodities which shipper has shipped during the recent past, (b) the specific destination points to which the commodities moved, and (c) the particular points where it is contemplated that dealerships will be opened. In the future the evidentiary guidelines indicated in such cases as Novak, supra, 103 M.C.C. at 557, and Jerry Lipps, Inc., Extension—Pipe, 110 M.C.C. 113, 118–119 (1969), should be more closely followed. Cf. Richard Dahn, Inc. v. I.C.C., 335 F. Supp. 337 (D. N.J. 1971).

Nevertheless, shipper did state that applicant "could anticipate handling a minimum of three units per week if this authority is granted." Further, since the customer orders are necessarily individual and custom-made, future destination points cannot be forecast with complete accuracy. And shipper indicates a definite plan tc establish dealerships and to ship its products to customers in its primary marketing area of West Virginia and five other named States. Cf. Morgan Drive-Away, Inc., Ext.-Hartnett, 112 M.C.C. 392 (1970), and Miller Transporters Extension-Urea, 84 M.C.C. 684, 686–687 (1961). Thus, we believe that in this instance the evidence presented is sufficient to support a grant of authority solely to the extent of allowing service to points in the five destination States of the primary marketing area. Cf. Chemical Leaman Tank Lines, Inc. v. United States, 343 F. Supp. 104, 110–112 (D. Del. 1972), and Twin City Freight, Inc. v. United States, 360 F. Supp. 709, 712–713 (D. Minn. 1972).

It is true that no inadequacies in the services of existing carriers have been shown. Pertinent here, however, is what was said by the court in Nashua Motor Express, Inc. v. United States, 230 F. Supp. 646 (D. N.H. 1964), at page 653:

> * * * it appears to be the more reasonable view that the narrower conceptual element of inadequacy of present service was not intended to be imposed as a strait jacket upon the process of determining the broader interests of public convenience and necessity in the effectuation of the National Transportation Policy.

A carrier first in business has no absolute immunity against future competition. And, even though the resulting competition from the institution of a newly authorized service may divert traffic that would otherwise be handled by existing carriers, the public convenience and necessity may best be served by the issuance of new operating authority. Mercury Motor Express, Inc. v. United States, 261 F. Supp. 621, 622 (M. D. Fla. 1966), and Atlanta-New Orleans Motor Freight Co. v. United States, 197 F. Supp. 364, 370 (N. D. Ga. 1961).

The evidence in the instant proceeding makes it clear that shipper supported the applications of both applicant and protestant. Independent processing of applications for similar authority is not intended to confer a benefit on the carrier which is in the fortuitous circumstance of having its application first approved. It does not appear that the operations of the existing carriers and the applicant herein will result in more service than that needed by the supporting shipper as shown on the record in this proceeding. Cf. Pilot Freight Carriers, Inc. v. United States, 354 F. Supp. 222, 227 (M.D.N.C. 1972).

The evidence also shows that the commodity authority to be granted should be broad enough to embrace modular buildings moving in truckaway service on lowboys. Further, we note that, as shown by the application and the notice published in the FEDERAL REGISTER, tacking of the sought authority with that presently held can be accomplished but applicant did not indicate the points or territories which can be served thereby because there is no intention to tack. It is unlikely that the type of authority sought here would be tacked. Nevertheless, it should be observed that by a Notice of June 27, 1973, entitled "Disclosure of Tacking in Motor Carrier Applications" this Commission stated in part.

> As amended in July 1972, the application requires the applicant to indicate the points or areas where operations could be tacked and the territory that could be served thereby whether or not tacking is intended. In addition, the new form requires the applicant to attach pertinent portions of the authority now held or pending which would be involved in the tacking. * * *
>
> * * * All persons filing such applications are cautioned that failure to fully disclose the information as now required by section VII of the application as amended may result in a rejection of the application, a delay in processing thereof until the defect is cured, or other appropriate action.

Thus, we do not anticipate that applicant will object to the imposition of a plant site restriction at the point of origin. This will help to obviate any description of the type of equipment to be used to move the buildings, to identify more clearly the origin of the traffic (cf. Fox-Smythe Transp. Co. Extension—Oklahoma, 106 M.C.C. 1, 17–18 (1967)), and to preclude any possible evolution of operations, not strictly contemplated within the scope of this application, through tacking or interlining, except upon the premises and with the consent of the supporting shipper (cf. M. L. O'Boyle & Son v. Interstate Commerce Commission, 206 F. 2d 473 (D. C. Cir. 1953), and Frozen Food Express, Inc. v. United States, 346 F. Supp. 254, 262 (W.D. Tex. 1972)). Also, instead of granting authority to move buildings "in initial movements," the description will be "from an origin which is a point of manufacture" in order to conform to current Commission practice.

Since it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the authority actually granted herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding or for other appropriate relief setting forth in detail the precise manner in which it has been prejudiced.

FINDINGS

We find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of trailers designed to be drawn by passenger automobiles, in initial movements, and buildings, in sections, from an origin which is a point of manufacture, from the facilities of Douglas Associates, doing business as American Homes, Inc., in Jackson County, W. Va., to points in

Ohio, Pennsylvania, Kentucky, Virginia, and Maryland; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that 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; that, unless otherwise ordered, an appropriate certificate should be granted after a lapse of 30 days from the date of publication in the FEDERAL REGISTER of a proper notice fully advising the public of the proposed operation as described herein, in order to allow time during which any interested party, who may have relied upon notice of the application as previously published and thereby may have been unaware of the complete nature of the proposed operations, may file an appropriate petition for leave to intervene or for other appropriate relief; and that the application in all other respects should be denied.

Subject to the condition of publication set forth above, and upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the Act and with the Commission's rules and regulations thereunder, within the time specified in the order entered concurrently herein, an appropriate certificate will be issued. An appropriate order will be entered.

Investigation of the matters and things involved in this proceeding having been made, and said review board, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said application, except to the extent granted in said report, be, and it is hereby, denied.

And it is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act within 90 days after the date of service hereof, or within such additional time as may be authorized by the Commission, the grant of authority made in said report shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, Review Board Number 3.

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

[FR Doc.73-23581 Filed 11-5-73;8:45 am]

[Notice 383]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before November 26, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matter relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74627. By order entered 26th day of October, 1973, the Motor Carrier Board approved the transfer to O'Neal's Tours, Inc., Wilmington, Del., of the operating rights of Thomas N. McIntire, Jr., doing business as McIntire Bus Lines, Elton, Md., as set forth in Certificate No. MC-113264, issued June 24, 1964, authorizing the transportation of passengers and their baggage between specified points and places in Delaware and Maryland, and as set forth in Permit No. MC-128121 (Sub-No. 1), issued March 10, 1967, authorizing the transportation of passengers, between Wilmington, Del., and the plantsite of Ordnance Products, Inc., at or near North East, Md., restricted to a transportation service to be performed under a continuing contract, or contracts, with Ordnance Products, Inc., of North East, Md. Dual Operations Authorized. Harry J. Jordon, 1000 Sixteenth St., NW., Washington, D.C. 20036, attorney for applicants.

No. MC-FC-74641. By order entered October 31, 1973, the Motor Carrier Board approved the transfer to Plum City Trucking Company, Inc., Plum City, Wis., of the operating rights set forth in Certificate No. MC-51021, issued August 16, 1967, to George Kannel, Jr., doing business as George Kannel, Jr. Trucking, Plum City, Wis., authorizing the transportation of livestock and agricultural commodities, from specified points in Pierce County, Wis., to South St. Paul and Red Wing, Minn.; general commodities with the usual exceptions, from South St. Paul, St. Paul, Minneapolis, Hastings, Red Wing, Four Corners, New Brighton, and Hopkins, Minn., to specified points in Pierce County, Wis.; feed, between Ellsworth, Wis., on the one hand, and, on the other, South St. Paul, St. Paul, Minneapolis, Hastings, Red Wing, Four Corners, New Brighton, and Hopkins, Minn.; household goods and emigrant movables, between South St. Paul, St. Paul, Minneapolis, Hastings, Red Wing, Four Corners, New Brighton, and Hopkins, Minn., on the one hand, and, on the other, points in Pierce County, Wis.; household goods, emigrant movables, and general commodities, except those of unusual value, classes A and B explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between specified points in Pierce and Pepin Counties, Wisconsin, on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, Newport, Red Wing, and Lake City, Minn.; and threshing machinery and farm machinery, from Des Moines, Iowa, to points in Goodhue County, Minn., and those in Pierce, St. Croix, Pepin, Buffalo, and Dunn Counties, Wis. Richard J. Ricci, 210-B West Maine St., Durand, Wis. 54736, attorney for applicants.

No. MC-FC-74716. By order of October 29, 1973, the Motor Carrier Board approved the transfer to Cleon Carder Truck Line, Inc., Dodge City, Kan., of the operating rights in Certificates No. MC-114890 (Sub-No. 33) and MC-114890 (Sub-No. 38), issued October 4, 1968, and April 25, 1969, respectively to C. E. Reynolds Transport, Inc., Joplin, Mo., authorizing the transportation of anhydrous ammonia, in bulk, in tank vehicles, from the plant site of Farmland Industries, Inc., at or near Dodge City, Kan. to points in Colorado, Wyoming, Texas, Oklahoma, Missouri, Nebraska, and Iowa; and from the pipeline terminal facilities of the Mid-America Pipeline Company near Conway, Kan., to points in Colorada, Kansas, Missouri, and Nebraska. Clyde N. Christy, 641 Harrison St., Topeka, Kansas, 66603, attorney for applicants.

No. MC-FC-74721. By order entered Ocotber 31, 1973, the Motor Carrier Board approved the transfer to Truman D. Moulton, doing business as Pulver's Motor Service, of the operating rights set forth in Certificates Nos. MC-123172 and MC-123172 (Sub-No. 1), issued by the Commission June 22, 1961, and October 16, 1961, respectively, to Floyd H. Pulver, doing business as Pulver's Motor Services, Rochester, Minn., authorizing the transportation of disabled motor vehicles, by use of wrecker equipment only, between points in that part of Minnesota on and south of a line beginning at the Minnesota-South Dakota State line and extending along U.S. Highway 14 to Mankato, Minn., and thence along Minnesota Highway 60 to the Mississippi River, at or near Wabasha, Minn., and points in Iowa, Illinois and Wisconsin; and tractors for replacement of wrecked or disabled tractors, by wrecker equipment only, between points in Minnesota on and south of a line beginning at the South Dakota-Minnesota State line at U.S. Highway 14, and extending along U.S. Highway 14 to Mankato, Minn., thence along Minnesota Highway 60 to the Mississippi River at or near Wabasha, Minn., and points in Iowa, Illinois, and Wisconsin. Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402, attorney for applicants.

No. MC-FC-74748. By order of October 31, 1973, the Motor Carrier Board approved the transfer to Bellingham-Sumas Stages, Inc., Bellingham, Wash., of the operating rights in Certificate No. MC-85401 (Sub-No. 1) issued January 19, 1967, to James Durward Adams, doing business as Bellingham-Sumas Stages, Bellingham, Wash., authorizing the transportation of passengers and their

baggage, and newspapers, express, and mail in the same vehicle with passengers, between Bellingham, Wash., and Sumas, Wash., serving all intermediate points, and passengers and their baggage, in round-trip charter operations, in foreign commerce only, beginning and ending at ports of entry in Whatcom County, Wash., on the United States-Canada Boundary line and extending to points in Washington, John T. Slater, 418 Bellingham National Bank Building, Bellingham, Wash. 98225, attorney for applicants.

No. MC-FC-74758. By order of October 30, 1973, the Motor Carrier Board approved the transfer to Frank's Transfer, Inc., Phoenix, Ariz., of that portion of Certificate of Registration No. MC-120935 (Sub-No. 1) issued on October 8, 1965, to Big Four Transfer, Inc., Phoenix, Ariz., which relates to that portion of Certificate No. 3154 issued by the Arizona Corporation Commission authorizing the transportation of freight and baggage, except household goods as defined by the Interstate Commerce Commission in Ex Parte No. MC-19, in Phoenix and vicinity; said Certificate of Registration No. 120935 (Sub-No. 1) evidencing the authority to perform a transportation service in interstate or foreign commerce corresponding in scope to the intrastate authority granted in Certificate No. 3154. Mr. George S. Livermore, attorney at law, Cox and Cox, 45 West Jefferson, Suite 300, Phoenix, Ariz. 85003.

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

[FR Doc.73-23584 Filed 11-5-73;8:45 am]

[Notice 148]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 29, 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 26396 (Sub-No. 98 TA), filed October 17, 1973. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, 201 W. Park, P.O. Box 990, Livingston, Mont. 59047. Applicant's representative: Charlotte Vicars (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from points in Montana, California, Oregon, and Idaho, to points in Pennsylvania, New York, and West Virginia, for 180 days. SUPPORTING SHIPPER: Babcock Lumber Co., P.O. Box 8348, Pittsburgh, Pa. 15218. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 44639 (Sub-No. 77 TA), filed October 19, 1973. Applicant: L. & M. EXPRESS CO., INC., 220 Ridge Road, Lyndhurst, N.J. 07071. Applicant's representative: Herman B. J. Weckstein, 60 Park Place, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and materials and supplies* used in the manufacture of wearing apparel, between Franklin, Va., on the one hand, and, on the other, New York, N.Y., and points in Hudson County, N.J., for 180 days. SUPPORTING SHIPPERS: Franklin Garment Co., Franklin, Va., and Sugarfoot Fashions, Ltd., 112 West 34th Street, New York, N.Y. 10001. SEND PROTESTS TO: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 61396 (Sub-No. 256 TA), filed October 18, 1973. Applicant: HERMAN BROS., INC., P.O. Box 189 (Box zip 68101), Downtown Station, 2501 N. 11th Street, Omaha, Nebr. 68110. Applicant's representative: J. R. Chesney (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, in tank vehicles, from Central Illinois Light Company, E. D. Edward Station, at or near Bartonville, Ill., and R. F. Wallace Station at or near East Peoria, Ill., to Dundee Cement Company at or near Clarksville, Mo., for 180 days. SUPPORTING SHIPPER: Mr. Walton H. Rice, Jr., Traffic Manager, Dundee Cement Company, Clarksville, Mo. 63336. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite 620, Union Pacific Plaza Building, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 107496 (Sub-No. 914 TA) (CORRECTION), filed October 3, 1973, published in the FEDERAL REGISTER issue of October 23, 1973, and republished as corrected this issue. 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).

NOTE.—The purpose of this partial republication to show the correct sub number as No. MC 107496 (Sub-No. 914 TA) in lieu of No. MC 107496 (Sub-No. 11 TA), which was published in error. The rest of the application remains the same.

No. MC 108449 (Sub-No. 362 TA), filed October 18, 1973. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, Minn. 55113. Applicant's representative: W. A. Mylenbeck (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from Minot, N. Dak. (except the Cenex Pipeline), to points in Minnesota, for 180 days. SUPPORTING SHIPPER: Twin City Barge & Towing Co., 1303 Red Rock Road, P.O. Box 3032, St. Paul, Minn. 55165. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg., 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 109689 (Sub-No. 254 TA), filed October 15, 1973. Applicant: W. S. HATCH CO., Off.: 642 South 800 West St., Woods Cross, Utah 84087, and Mail: P.O. Box 1825 (Box zip 84110), Salt Lake City, Utah. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude barite ore*, from Alkali flats 3 miles south of Nye County Line, Nev., to Battle Mountain, Nev., for 180 days. SUPPORTING SHIPPER: Old Soldier Mining Company, 700 First City National Bank Bldg., Houston, Tex. 77002. SEND PROTESTS TO: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 117036 (Sub-No. 20 TA), filed October 17, 1973. Applicant: H. M. KELLY, INC., R.D. 1, P.O. Box 87, New Oxford, Pa. 17350. Applicants' representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from Baltimore Md., to Alpine, Carlstadt, Clifton, Jersey City, Passaic, and Paterson, N.J.; Cortland, Poughkeepsie, and Rochester, N.Y.; Eighty-Four, Harrisburg, Media, Philadelphia, and Wilkes-Barre, Pa., for 180 days. SUPPORTING SHIPPER: Baltimore Concrete Block Corporation, Pulaski Highway & Race Road, Baltimore, Md. 21237. SEND PROTESTS TO: Robert P. Amerine, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 278 Federal Building, P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 118060 (Sub-No. 1 TA), filed October 15, 1973. Applicant: CAPITOL

PACKING CO., 1050 Yuma Street, Suite 109, Denver, Colo. 80204. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods and pickles*, in containers, from Ulysses, Kans., to points in California, Georgia, Idaho, Illinois, Massachusetts, Michigan, Maryland, Oregon, New York, and Washington, for 180 days. SUPPORTING SHIPPER: Western Natural Growers, Inc., 1221 Green Street, Ft. Collins, Colo. 80521. SEND PROTESTS TO: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 124221 (Sub-No. 42 TA), filed October 17, 1973. Applicant: HOWARD BAER, Rt. 98W, P.O. Box 27, Morton, Ill. 61550. Applicant's representative: Robert W. Loser, 1007 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs*, in vehicles equipped with merchanical refrigeration, from the plantsite of KB Specialty Foods (a wholly owned Kroger Co. subsidiary), at or near Greensburg, Ind., to the Kroger Co. distribution centers and storage facilities located in East Point, Ga.; Charleston, W. Va.; Woodlawn, Springdale, Solon, and Columbus, Ohio; Livonia and Grand Rapids, Mich.; Hazelwood and Kansas City, Mo.; Little Rock, Ark.; Louisville, Ky.; Memphis and Nashville, Tenn.; Peoria, Ill.; Salem, Va.; Houston and Irving, Tex.; and Irwin, Pa.; (2) *unsold, outdated, or damaged items* of the above-named commodities on return; and (3) foodstuffs, in vehicles equipped with mechanical refrigeration, from the plantsite of Orval Kent Food Co., Inc., Chicago, Ill., and Kroger Co. warehouses or storage facilities at Cincinnati, Ohio, and its commercial zone, to the plantsite and storage facilities of KB Specialty Foods at or near Greensburg, Ind., for 180 days. RESTRICTION: The operations authorized herein are limited to a transportation service to be performed under a continuing contract or contracts with The Kroger Co.

SUPPORTING SHIPPER: Albert E. Rauch, Traffic Manager, The Kroger Company, Kroger Brands Division, 1240 State Avenue, Cincinnati, Ohio 45204. SEND PROTESTS TO: District Supervisor Richard K. Shullaw, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60604.

EXPLANATORY NOTE.—The foodstuffs included herein, some 124 separate items, are such as are dealt in and sold in delicatessen departments of food stores.

No. MC 129149 (Sub-No. 10 TA), filed October 17, 1973. Applicant: ELLIS HAINES, doing business as HAINES TRUCK LINES, 995 Washington Street, Bushnell, Ill. 61422. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Soybean products*, dry, in bags and bulk, for the account of Lauhoff Grain Company, from Bushnell, Ill., to points in Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, Minnesota, New York, Ohio, Nebraska, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Gerald E. Stitt, Vice President, Traffic, Lauhoff Grain Company, 323 East North Street, Danville, Ill. 61832. SEND PROTESTS TO: Richard K. Shullaw, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 135691 (Sub-No. 9 TA), filed October 18, 1973. Applicant: DALLAS CARRIERS CORP., 7621 Inwood Road, Dallas, Tex. 75209. Applicant's representative: Stephen Hiesley, 666 11th Street NW., Washington, D.C. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat byproducts, products produced by a packinghouse* (not in bulk-type vehicles), from points in Iowa, to points in Texas, for 180 days. SUPPORTING SHIPPERS: Trinity Valley Foods, Inc., 7621 Inwood Road, Dallas, Tex. 75209, and U.S. Pet Food Supply Company, 7621 Inwood Road, Dallas, Tex. 75209. SEND PROTESTS TO: Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 135877 (Sub-No. 13 TA), filed October 17, 1973. Applicant: RONALD R. BRADER, doing business as SPECIALIZED TRUCKING SERVICE, 1508 South 4th Avenue, Yakima, Wash. 98902. Applicant's representative: Ronald R. Brader (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures, corrugated cartons and parts thereof, and wooden pallets*, between points in California, on the one hand, and points in Oregon and Washington, on the other hand, for 180 days. SUPPORTING SHIPPER: Anchor Hocking Corporation, 109 N. Broad St., Lancaster, Ohio 43130. SEND PROTESTS TO: District Supervisor Huetig, Interstate Commission, Bureau of Operations, 450 Multnomah Bldg., 319 Southwest Pine, Portland, Oreg. 97204.

No. MC 136897 (Sub-No. 8 TA), filed October 15, 1973. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, Ariz. 85041. Applicant's representative: Donald E. Fernaays, Suite 312, 4040 East McDowell Road, Phoenix, Ariz. 85008. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite of CF&I Steel Corporation at Pueblo, Colo., to points in Arizona and California, for 180 days. SUPPORTING SHIPPER: CF&I Steel Corporation, P.O. Box 316, Pueblo, Colo. 81002. SEND PROTESTS TO: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3427 Federal Bldg., 230 N. First Avenue, Phoenix, Ariz. 85025.

No. MC 138274 (Sub-No. 4 TA), filed October 12, 1973. Applicant: SHIPPERS BEST EXPRESS, INC., 1656 W. 14600 South, Riverton, Utah 84065. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible meat for animal feed, frozen and animal and poultry feeds* (except in liquid form) from points in Utah and Idaho, to points in California, Oregon, Washington, Colorado, Kansas, Missouri, Nebraska, Iowa, Arizona, Minnesota, Wisconsin, North Dakota, South Dakota, Michigan, Illinois, Ohio, and Indiana, for 180 days. SUPPORTING SHIPPER: C. U. I. International, a Division of Beatrice Foods Co., P.O. Box 546, Ogden, Utah 84402. SEND PROTESTS TO: Lyle D. Helfer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5239 Federal Bldg., 125 South State Street, Salt Lake City, Utah 84138.

No. MC 138896 (Sub-No. 2 TA), filed October 17, 1973. Applicant: AJAX TRANSFER COMPANY, 550 East Fifth Street South, Box 2, South St. Paul, Minn. 55075. Applicant's representative: Paul Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses*, between plantsites and facilities of Yankton Sioux Industries, Wagner, S. Dak., on the one hand, and, on the other, points in Colorado, Illinois, Iowa, Kansas, Minnesota, Michigan, Missouri, Nebraska, and North Dakota, for 180 days. SUPPORTING SHIPPER: Yankton Sioux Industries, 301 North Fifth Street, Minneapolis, Minn. 55403. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 139158 TA (CORRECTION), filed October 11, 1973, published in the FEDERAL REGISTER, issue of October 24, 1973, and republished as corrected this issue. Applicant: CHARLES B. JARRELL, 112 Ridgeview Road, Mt. Airy, N.C. 27030. Applicant's representative: Bart William Shuster, 112 N. Myers Street, Charlotte, N.C. 28202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cartoned upright wooden furniture*, from Pulaski, Va., and its commercial zone, to points in California, for 180 days. SUPPORTING SHIPPER: Coleman Furniture Corporation, Pulaski, Va. 24301. SEND PROTESTS TO: District Supervisor Terrell Price, Bureau of Operations, Interstate Commerce Com-

mission, 800 Briar Creek Road, Room CC516, Charlotte, N.C. 28205.

NOTE.—The purpose of this republication is to publish the application in full, which was separate in the FEDERAL REGISTER.

No. MC 139175 TA, filed October 16, 1973. Applicant: IVY LEE JOHNSON, Route 1, Wallace, N.C. 28466. Applicant's representative: Graham A. Phillips, Jr., P.O. Box 247, Wallace, N.C. 28466. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper*, in rolls, from Richmond, Va., to Wallace, N.C., for 180 days. SUPPORTING SHIPPER: The Wallace Enterprise, 115 N. College St., Wallace, N.C. 28466. SEND PROTESTS TO: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 139176 TA, filed October 17, 1973. Applicant: A. SPADARO TRUCKING, INC., 1343 73rd Street, Brooklyn, N.Y. 11228. Applicant's representative: Ronald I. Shapss, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Sculpture reproductions*, from Holbrook, N.Y., to points in Queens, Kings, and New York Counties, N.Y.; and Hudson, Essex, Bergen, Union, Passaic, Middlesex, and Hunterdon Counties, N.J., and (B) *materials, supplies, and equipment* used in the manufacture of sculpture reproductions, from points in Hudson, Essex, Middlesex, Bergen, Passaic, Union, and Hunterdon Counties, N.J., and Queens, Kings, and New York Counties, N.Y., to Holbrook, N.Y., for 180 days. SUPPORTING SHIPPER: Austin Productions, Inc., 815 Grundy Avenue, Holbrook, N.Y. 11741. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 139177 TA, filed October 17, 1973. Applicant: MAIERS TRANSFER & STORAGE CO., INC., 515 25th Avenue North, St. Cloud, Minn. 56301. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the plantsite of Hoerner Waldorf Corporation at St. Cloud, Minn., to points in North Dakota, for 180 days. SUPPORTING SHIPPER: Hoerner Waldorf Corporation, P.O. Box 3260, St. Paul, Minn. 55165. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 139178 TA, filed October 17, 1973. Applicant: REAL LAVOIE, 28 Frontenac St., Coaticook, Quebec, Canada. Applicant's representative: Adrien R. Paquette, 200 St. James St., Montreal, Quebec, Canada. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and wood products*, from all ports of entry on the International Boundary line between the United States and Canada, to points in Maine, Vermont, Massachusetts, New Hampshire, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Rhode Island, and Washington, D.C., for 180 days. SUPPORTING SHIPPER: Furman Lumber Inc., Waterville, Quebec, Canada. SEND PROTESTS TO: District Supervisor Ross J. Seymour, Interstate Commerce Commission, Bureau of Operations, 424 Federal Building, Concord, N.H. 03301.

By the Commission.

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

[FR Doc.73-23583 Filed 11-5-73;8:45 am]

[Notice No. 149]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

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 732 (Sub-No. 8 TA), filed October 19, 1973. Applicant: ALBINA TRANSFER COMPANY, INC., 714 N. Fremont St., Portland, Oreg. 97227. Applicant's representative: Kenneth G. Thomas, 620 SW. Fifth Avenue, Suite 1010, Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Vancouver, Wash., to plant site of Diamond Hardwood Lumber Company at or near Tillamook, Oreg., for 180 days. SUPPORTING SHIPPER: Diamond Hardwood Lumber Co., P.O. Box 192, Tillamook, Oreg. 97141. SEND PROTESTS TO: District Supervisor Huetig, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Bldg., 319 SW. Pine, Portland, Oreg. 97204.

No. MC 2135 (Sub-No. 10 TA), filed October 23, 1973. Applicant: D. J. McNICHOL CO., 2519 Morris St., Philadelphia, Pa. 19145. Applicant's representative: Harold P. Boss, 1100 Seventeenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such foods, commodities, and equipment* as are used in connection with the operation of cafeterias, from Philadilphia, Pa., to points in Connecticut, Massachusetts, and Rhode Island, and to those in New York north of U.S. Highway 6, those in New Jersey south of a line beginning at Trenton, N.J., and extending along New Jersey Highway 33 to junction New Jersey Secondary Highway 537, thence along the latter highway through Freehold, Colts Neck, and Tinton, N.J., to Eatontown, N.J., thence along New Jersey Highway 71 to junction unnumbered highway near Oceanport, N.J., and thence along unnumbered highway through Long Branch, N.J., to the Atlantic Ocean, those in Kent and Sussex Counties, Del., and to those in Virginia not including points in the Washington, D.C., Commercial Zone, for 180 days. SUPPORTING SHIPPER: ARA Services, Inc., Independence Square West, Philadelphia, Pa. 19106. SEND PROTESTS TO: Peter R. Guman, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Federal Bldg., Room 3238, 600 Arch St., Philadelphia, Pa. 19106.

No. MC 2860 (Sub-No. 132 TA), filed October 16, 1973. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, N.J. 08360. Applicant's representative: Alvin Altman, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, container ends, metal, and accessories and materials, equipment and supplies* used in the manufacture, sales and distribution of containers (except commodities in bulk), from Albany, N.Y., and Paterson, Passaic, N.J., to Merrimack, N.H., for 180 days. SUPPORTING SHIPPER: Continental Can Company, Inc., 633 Third Avenue, New York, N.Y. 10017. SEND PROTESTS TO: Richard M. Regan, District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, N.J. 08608.

No. MC 26396 (Sub-No. 100 TA), filed October 23, 1973. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, Mlg.: P.O. Box 990, 201 N. Park, Livingston, Mont. 59047. Applicant's representative: Charlotte Vicars (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bee hive lumber and bee-*

keeping equipment, from Polson, Mont., to Grand Rapids, Mich., for 180 days. SUPPORTING SHIPPER: Western Bee Supplies, Inc., P.O. Box 8, Polson, Mont. 59860. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 222 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 30887 (Sub-No. 197 TA), filed October 16, 1973. Applicant: SHIPLEY TRANSFER, INC., 49 Main Street, Box 55 Reisterstown, Md. 21136. Applicant's representative: Theodore Polydoroff, 1250 Connecticut Ave. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molten liquid polypropylene*, in bulk, in tank vehicles, from Crowley, La., to Cincinnati, Ohio, for 180 days. SUPPORTING SHIPPER: Mr. W. J. Jennings, Vice President, Crowley Hydrocarbon Chemicals, Inc., 271 Madison Ave., New York, N.Y. 10016. SEND PROTESTS TO: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814–B Federal Building, Baltimore, Md. 21201.

No. MC 33899 (Sub-No. 1 TA), filed October 18, 1973. Applicant: DAN A. GROSSMUELLER AND C. GENE WOLFINBARGER, doing business as JOHN GALT LINE, 9950 Cherry Ave., Fontana, Calif. 92335. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic mailing trays* (density—4 to 6 lbs. per cubic ft.) from La Verne, Calif., to Washington, D.C.; Denver, Colo.; Atlanta, Ga.; Jacksonville, Fla.; Greensboro, N.C.; Minneapolis, Minn.; St. Louis and Kansas City, Mo.; Des Moines, Iowa; Cincinnati, Ohio; Pittsburgh and Philadelphia, Pa.; Springfield, Mass.; Seattle, Wash.; Dallas, Tex.; Detroit, Mich.; Topeka, Kans.; and Memphis, Tenn., under a continuing contract with Carson Industries, Inc., of La Verne, Calif., for 180 days. SUPPORTING SHIPPER: Carson Industries, Inc., 1925 "A" Street, La Verne, Calif. 91750. SEND PROTESTS TO: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

MC 52657 (Sub-No. 710 TA), filed October 24, 1973. Applicant: ARCO AUTO CARRIERS, INC., 2140 West 79th St., Chicago, Ill. 60620. Applicant's representative: J. B. Burnham (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers and trailer chassis* (other than those designed to be drawn by passenger automobiles), in initial movement in truckaway service, and *materials, supplies* (except commodities in bulk), and *parts* used in the manufacture, assembly, and servicing of trailers and trailer chassis, when moving in mixed shipments and on the same load with trailers and trailer chassis, from Lebanon, Pa., to New Orleans, La., Savannah, Ga., Houston, Tex., Chicago, Ill., Detroit, Mich., Romulus, Mich., Bay City, Mich., Jacksonville, Fla., and Miami, Fla., for 180 days. SUPPORTING SHIPPER: Gency Mfg. Corp., Downingtown, Pa. 19335. SEND PROTESTS TO: Robert G. Anderson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 78400 (Sub-No. 36 TA), filed October 19, 1973. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, Mo. 63037. Applicant's representative: Thomas F. Kilroy, P.O. Box 624, Springfield, Va. 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ground clay*, in tote bins from Mayfield, Ky., to Owensville, Mo.; (2) *silica sand*, in tote bins, from Ottawa, Ill., to Owensville, Mo.; and (3) *tote bins*, from Owensville, Mo., to Mayfield, Ky., and Ottawa, Ill., for 180 days. SUPPORTING SHIPPER: H. K. Porter Company, Inc., 601 Grant Street, Pittsburgh, Pa. 15219. 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 94201 (Sub-No. 116 TA), filed October 23, 1973. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, 1500 Cedar Grove Rd., Atlanta, Ga. 30316. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree St. NW., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Charcoal*, except in bulk, and *lighter fluid (naphtha distillate), hickory chips, fireplace logs, and vermiculite*, other than crude, when moving in mixed shipments with charcoal, from Dothan, Ala., to points in Kentucky, North Carolina, South Carolina, Tennessee, and Virginia; and (2) *materials and supplies* from the above-named States to Dothan, Ala., for 180 days. SUPPORTING SHIPPER: Kingsford Company, 940 Commonwealth Building, Louisville, Ky. 40201. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 309, Atlanta, Ga. 30309.

No. MC 99776 (Sub-No. 14 TA), filed October 23, 1973. Applicant: BUCKNER TRUCKING, INC. (Texas Corporation), P.O. Box 23234, Houston, Tex. 77028. Applicant's representative: Russell F. Gleason (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials* from the plantsite of Bird & Son, Inc., at Shreveport, La., to points in Alabama, Arkansas, Florida, Kansas, Kentucky, Mississippi, New Mexico, Oklahoma, Tennessee, and Texas, for 180 days. SUPPORTING SHIPPER: Bird & Sons, Inc., P.O. Box 72, Shreveport, La. 71161. SEND PROTESTS TO: John F. Mensing, Interstate Commerce Commission, District Supervisor, Room 8610, Federal Bldg., 515 Rusk Avenue, Houston, Tex. 77002.

No. MC 107227 (Sub-No. 127 TA), filed October 19, 1973. Applicant: INSURED TRANSPORTERS, INC. (California Corporation), 45055 Fremont Boulevard, P.O. Box 1807, Fremont, Calif. 94538. Applicant's representative: John G. Lyons, 1418 Mills Tower, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New automobiles*, in secondary movements, in truckaway service, from Los Angeles Harbor and Long Beach, Calif., to points in Utah, restricted to shipments from facilities of Nissan Motor Corporation and Toyota Motors, for 180 days. SUPPORTING SHIPPERS: Nissan Motor Corporation in U.S.A., 18501 S. Figueroa Street, Carson, Calif. 90248. Toyota Motors U.S.A., 2055 W. 190th, Torrance, Calif. 90504. SEND PROTESTS TO: A. J. Rodriguez, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 113106 (Sub-No. 39 TA), filed October 23, 1973. Applicant: THE BLUE DIAMOND COMPANY (Maryland Corporation), 4401 E. Fairmount Avenue, Baltimore, Md. 21224. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from Washington, Pa., to points in New York, for 180 days. SUPPORTING SHIPPER: Mr. J. W. Pennington, Transportation Manager, Brockway Glass Company, Inc., McCullough Avenue, Brockway, Pa. 15824. SEND PROTESTS TO: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814–B Federal Building, Baltimore, Md. 21201.

No. MC 114457 (Sub-No. 169 TA), filed October 23, 1973. Applicant: DART TRANSIT COMPANY (Minnesota Corporation), 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 products*, from Winchester, Va. to points in Minnesota, for 180 days. SUPPORTING SHIPPER: Rubbermaid Commercial Products, 3124 Valley Ave., Winchester, Va. 22601. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg. & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 114533 (Sub-No. 282 TA), filed October 25, 1973. Applicant: BANKERS DISPATCH CORPORATION (Illinois Corporation), 4970 South Archer Avenue, Chicago, Ill. 60632. Applicant's representative: Stanley Komosa (same address as above). Authority sought to operate as a

common carrier, by motor vehicle, over irregular routes, transporting: *Parts, electric components, and supplies*, restricted against the transportation of articles or packages weighing in the aggregate more than 100 pounds, from one consignee to one consignee, between St. Louis, Mo., on the one hand, and, on the other, Champaign, Decatur, Quincy, and Springfield, Ill., for 180 days. SUPPORTING SHIPPER: Mr. Maurice M. Beal, International Business Machines Corporation, P.O. Box 10, Princeton, N.J. 08540. SEND PROTESTS TO: District Supervisor R. G. Anderson, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 114533 (Sub-No. 283 TA), filed October 25, 1973. Applicant: BANKERS DISPATCH (Illinois Corporation), 4970 South Archer Avenue, Chicago, Ill. 60632. Applicant's representative: Stanley Komosa (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Audit media and other business records* between Topeka, Kans., on the one hand, and, on the other, points west of Highway 63 and north of Interstate Highway 44 in the State of Missouri and points south of Highway 30 in the State of Nebraska, for 180 days. SUPPORTING SHIPPER: Mr. Dale E. Addington, Rural Data Processing Association, 2414 West 6th, Topeka, Kans. SEND PROTESTS TO: District Supervisor R. G. Anderson, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 117940 (Sub-No. 99 TA), filed October 23, 1973. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Donald L. Stern, Suite 530 Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, other than in bulk, from Little Falls and Clearwater, Minn., and Hudson, Wisc., to points in the United States (except Alaska and Hawaii), for 180 days. SUPPORTING SHIPPER: T. O. Plastics, Inc., 2901 E. 78th St., Minneapolis, Minn. 55420. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 124078 (Sub-No. 569 TA), filed October 18, 1973. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wisc. 53215. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium carbonate*, in bulk, from Greencastle, Ind., to Lewisburg, Ohio, for 180 days. SUPPORTING SHIPPER: Henwood Feed Additives, Inc., 211 Western Road, Lewisburg, Ohio 45338 (Dale R. Weir, Assistant Manager). SEND PROTESTS TO: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wisc. 53203.

No. MC 128375 (Sub-No. 102 TA), filed October 19, 1973. Applicant: CRETE CARRIER CORPORATION, P.O. Box 249, 1444 Main, Crete, Nebr. 68333. Applicant's representative: Duane W. Acklie (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid cleaning compounds, floor wax, floor polishers, carpet washers, vacuum cleaner bags, related articles, and display and promotional materials* moving in mixed shipments (except in bulk), from French Lick, Ind., to points in the United States on and west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Kooching Counties, Minn., to the international boundary line between the United States and Canada, under continuing contract with Liggett & Myers, Incorporated, for 180 days. SUPPORTING SHIPPER: Robert W. Owens, Traffic Manager, Earl Grissner Division of Liggett & Myers, Incorporated, 712 East 64th Street, Indianapolis, Ind. 46220. SEND PROTESTS TO: Max H. Johnston, District Supervisor, 320 Federal Building & Court House, Lincoln, Nebr. 68508.

No. MC 133106 (Sub-No. 36 TA), filed October 18, 1973. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, 1501 E. 8th St., Liberal, Kans. 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Switch boxes, outlet boxes, covers, rings, pipe fittings, pipe straps, pipe hangers, and related items* utilized in the installation of the above named items, from the plant, warehouse, and storage facilities of Bowers, A Division of Norris Industries at South Gate, Calif., to points in Arkansas, Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, New Mexico, Oklahoma, Texas, and West Virginia under continuing contract with Norris Industries, for 180 days. SUPPORTING SHIPPER: Bowers, A Division of Norris Industries, 8685 Bowers Avenue, South Gate, Calif. 90280. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 133119 (Sub-No. 29 TA), filed October 23, 1973. Applicant: HEYL TRUCK LINES, INC., 235 Mill Street, P.O. Box 235, Akron, Iowa 51001. Applicant's represenattive: Roger Heyl (same address as above) and A. J. Swanson, 521 So. 14th St., P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Charleston, S.C., to ports of entry located on the International Boundary line between the United States and Canada in Minnesota and North Dakota, for 180 days. SUPPORTING SHIPPER: Des Monte Banana Co., Ben Klein, Vice Pres.—Marketing, 1210 Brickell, P.O. Box 1940, Miami, Fla. 33101. SEND PROTESTS TO: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 110 North 14th St., Suite 620 Union Pacific Plaza, Omaha, Nebr. 68102.

No. MC 134323 (Sub-No. 56 TA), filed October 19, 1973. Applicant: JAY LINES, INC., P.O. Box 4146, 79107, 720 N. Grand Street, Amarillo, Tex. 79105. Applicant's representative: Gailyn L. Larsen, 521 South 14th St., Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household appliances, furnaces, air cleaners, and conditioners, humidifiers and dehumidifiers* (except those items which, because of size or weight, require the use of special equipment), from the warehouse facilities utilized by Fedders Corporation at or near South Kearny, N.J., to points in Alabama, Georgia, Kansas, Florida, Texas, Louisiana, Missouri, Arkansas, Colorado, Oklahoma, New Mexico, Iowa, Nebraska, Illinois, Wisconsin, California, Oregon, Washington, Arizona, Nevada, and Utah, for 180 days. SUPPORTING SHIPPER: Robert C. McArthur, General Traffic Manager, Fedders Corporation, Woodbridge Ave., Edison, N.J. 08817. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H–4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 134548 (Sub-No. 4 TA), filed October 18, 1973. Applicant: ZENITH TRANSPORT, LTD., 2040 Alpha Avenue, Burnaby, British Columbia, Canada. Applicant's representative: George R. LaBissoniere, 130 Andover Park East, Seattle, Wash. 98188. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood pulp*, in bales, from points on the International Border between United States and Canada at or near Blaine, Lynden, or Sumas, Wash., to Pomona, Calif., for 180 days. SUPPORTING SHIPPER: The Northwest Paper Company, Avenue C, Cloquet, Minn. 55720. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Building, Seattle, Wash. 98104.

No. MC 135384 (Sub-No. 10 TA), filed October 19, 1973. Applicant: SPECIALIZED TRUCK SERVICE, INC., Highway 81 and Interstate Highway 75, Route 3, McDonough, Ga. 30253. Applicant's representative: Frank D. Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plaster wall guards, drapery products, heating and air-conditioning enclosures, damp-*

ers, screening grills, and penthouses, from the plantsite of Brandt-Airflex Corporation at Champaign, Ill., to points in the United States (except Alaska and Hawaii); and, *materials, equipment, and supplies* used in the manufacture of the above-described products from points in the United States (except Alaska and Hawaii) to the plant and warehouse site facilities of Brandt-Airflex Corporation, for 180 days. SUPPORTING SHIPPER: Brandt-Airflex Corporation, a subsidiary of Brandt Corporation, 5020 25th Street, Long Island City, N.Y. 11101. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 309, 1252 West Peachtree Street NW., Atlanta, Ga. 30309.

No. MC 135632 (Sub-No. 2 TA), filed October 23, 1973. Applicant: FRANCIS D. BROWN & SON, INC., 600 Spring Street, Klamath Falls, Oreg. 97601. Applicant's representative: Robert R. Hollis, Commonwealth Bldg., Portland, Oreg. 97204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood waste products*, from points in Modoc County, Calif., to points in Klamath County, Oreg., and from points in Lassen County, Calif., to points in Klamath County, Oreg., for 180 days. SUPPORTING SHIPPER: Weyerhaeuser Company, P.O. Box 9, Klamath Falls, Oreg. 97601. SEND PROTESTS TO: District Supervisor Odoms, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Bldg., 319 Southwest Pine, Portland, Oreg. 97204.

No. MC 135797 (Sub-No. 14 TA), filed October 23, 1973. Applicant: J. B. HUNT TRANSPORT, INC., 833 Warner Street SW., Atlanta, Ga. 30310. Applicant's representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by wholesale and retail discount or variety stores, from the plantsite and warehouses of J. B. Hunt Co. at Lowell, Ark. to points in Kansas, Louisiana, Missouri, Oklahoma, and Tennessee (Brownsville only). RESTRICTION: The service herein authorized shall be limited to a transportation service to be performed for Wal-Mart, Inc., its subsidiaries and affiliates, for 180 days. SUPPORTING SHIPPER: Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, Ark. 72712. SEND PROTESTS TO: William L. Scroggs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 309, 1252 West Peachtree Street NW., Atlanta, Ga. 30309.

No. MC 136476 (Sub-No. 3 TA), filed October 24, 1973. Applicant: TRANSPORT WEST, INC., 2115 Birchwood, Eugene, Oreg. 97401. Applicant's representative: Hector E. Smith, 33 East 10th Avenue, P.O. Box 334, Eugene, Oreg. 97401. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Irrigation systems and equipment, materials, and supplies* used in the manufacture and installation of irrigation systems from Eugene, Oreg., to points in the United States, return on occasion of *component parts, materials, and supplies* for manufacturing said equipment, for 180 days. SUPPORTING SHIPPER: Pierce Corporation, P.O. Box 528, 10 N. Garfield, Eugene, Oreg. 97401. SEND PROTESTS TO: District Supervisor A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Bldg., 319 Southwest Pine, Portland, Oreg. 97204.

No. MC 138530 (Sub-No. 2 TA), filed October 23, 1973. Applicant: C.O.P. TRANSPORT, INC., 28 South Second St., Greenville, Pa. 16125. Applicant's representative: Warren R. Keck III (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, strip mining, walking drag lines, mining and construction excavator shovels, stripping shovels, blast hole drills, steel forgings, castings, parts for the above accessories thereof, iron and steel* used in the manufacture of above parts, *vendor products* used in the manufacture and processing of products produced and shipped by customer, applicant request authority to operate under an exclusive contract for Marion Power Shovel Co., Inc., Marion, Ohio, between points in the following States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, for 180 days. SUPPORTING SHIPPER: Marion Power Shovel Company, Inc., 617 W. Center St., Marion, Ohio 43302. SEND PROTESTS TO: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 138896 (Sub-No. 3 TA), filed October 24, 1973. Applicant: AJAX TRANSFER COMPANY, 550 East Fifth Street South, Box 2, South St. Paul, Minn. 55075. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minn. 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products, dairy products and articles* distributed by meat packinghouses, as described in Sections A, B, and C of Appendix 1 to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766 (except hides and commodities in bulk in tank vehicles), also *foodstuffs* in mechanically refrigerated vehicles, between points in Minnesota, on the one hand, and, on the other, points in Minnesota, Wisconsin, and the Upper Peninsula of Michigan, for 180 days. SUPPORTED BY: There are approximately 53 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof, which may be examined at the field office named below. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 139154 (Sub-No. 1 TA), filed October 19, 1973. Applicant: RICHARD'S TRANSPORT LTD., 2 Prospect Place, Regina, Saskatchewan, Canada. Applicant's representative: Gene P. Johnson, 425 Gate City Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from ports of entry on the International Boundary Line between the United States and Canada located in North Dakota to points in North Dakota, South Dakota, and Minnesota, for 180 days. SUPPORTING SHIPPER: Estevan Brick, Box 1123, Regina, Saskatchewan, Canada. SEND PROTESTS TO: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 13981 TA, filed October 18, 1973. Applicant: CHAFFEE LEASING CO., INC., doing business as P & J TRUCKING, 911 Yale Street, Scott City, Mo. 63780. Applicant's representative: Billy R. Reid, 6108 Sharon Road, Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay, crushed, ground, or pulverized*, in bags or boxes, from Oran, Mo., to all points in the United States, for 180 days. SUPPORTING SHIPPER: Bratton Enterprises, Inc., Oran, Mo. 63771. 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 139182 TA, filed October 19, 1973. Applicant: ATLAS DELIVERY, INC., 340 Cole Avenue, Dallas, Tex. 75207. Applicant's representative: E. Larry Wells, 4645 N. Central Expressway, Dallas, Tex. 75205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Appliances*, including: *Stoves or ranges (gas), stoves or ranges (electric), stove or range parts, ovens or surface units, electronic ovens, refrigerators, compactors, dishwashing machines, garbage disposers and ventilating hoods*, from Houston and Arlington, Tex., to points in New Mexico, Oklahoma, Arkansas, Louisiana, Mississippi, and Texas.

NOTE.—Carrier does not intend to tack authority, for 180 days.

SUPPORTING SHIPPER: The Tappan Co., Tappan Park, Mansfield, Ohio 44901. SEND PROTESTS TO: Transportation Specialist Gerald T. Holland, Bureau of Operations, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 139183 TA, filed October 19, 1973. Applicant: AIR-LINE AIR FREIGHT, LTD., CORPORATION, 11499 Conner, Detroit City Airport, Detroit, Mich. 48213. Applicant's representative: C. E. Webber, 30453 Fairfax, Southfield, Mich. 48076. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* with prior or subsequent movement by air, from, to, and between Wayne, Oakland, Macomb, and Washtenaw Counties, Mich., including Willow Run Airport, Detroit Metropolitan Airport, Detroit City Airport, and Selfridge Air Force Base, for 180 days. SUPPORTING SHIPPERS: Van Wormer Industries, 23000 Industrial Drive West, St. Clair Shores, Mich.; Beam Industries, Inc., 611 Hilger, Detroit, Mich. SEND PROTESTS TO: Melvin F. Kirsch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell, Detroit, Mich. 48226.

By the Commission.

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

[FR Doc.73-23582 Filed 11-5-73;8:45 am]

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WASHINGTON, D.C.

Volume 38 ■ Number 213

PART II

ENVIRONMENTAL PROTECTION AGENCY

■

AIR PROGRAMS; IMPLEMENTATION PLANS

Transportation and Land Use Controls; Texas Plan

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Transportation and Land Use Controls

On April 30, 1971, pursuant to section 109 of the Clean Air Act (42 U.S.C. 1857c-4), the Administrator promulgated national primary and secondary ambient air quality standards for six pollutants (40 CFR Part 50). The Act requires that the primary standards protect the public health with an adequate margin of safety and that the secondary standards protect the public welfare from any known or anticipated adverse effects. Under section 110 of the Act (42 U.S.C. 1857c-5), States were required to prepare and submit to the Administrator plans for implementing the national ambient air standards in each air quality control region in the State. The Administrator published on May 31, 1972, (37 FR 10842, 40 CFR Part 52) his initial approvals and disapprovals of State implementation plans developed and submitted under this provision of Federal law.[1]

The presence in the ambient air of three of the pollutants for which control strategies were required to be submitted by States—carbon monoxide, hydrocarbons, and photochemical oxidants—is largely attributable to motor vehicles; consequently many States were unable to formulate and submit adequate control strategies that utilized only limitations on emissions from stationary sources. However, as the Administrator noted in his May 31 approval/disapproval of implementation plans, neither the States nor the Environmental Protection Agency had any practical experience that would permit the development of meaningful transportation control plans or the prediction of their impact on air quality. In this context, "transportation control plan" is defined as the summation of individual actions (transportation controls measures) that will, when taken collectively, reduce concentrations of carbon monoxide and photochemical oxidants in the atmosphere from those achieved by the stationary source control program and the Federal motor vehicle control program (FMVCP) to the level prescribed by the National Ambient Air Quality Standards. States were advised in August 1971 (36 FR 15486) that adoption of transportation control plans could be deferred beyond the statutory deadline for submittal of implementation plans but that the submitted plans would have to define the degree of emission reduction to be achieved through transportation control measures and identify the measures being considered. Transportation control plans were to be designed to augment the existing state implementation plan and the FMVCP. States were required to submit adopted transportation control plans no later than February 15, 1973.

Many States requested 2-year extensions pursuant to section 110(e) of the Act (42 U.S.C. 1857-5(e)) for the attainment of the primary standards for the three pollutants based on the unavailability of transportation control measures. The Administrator determined that, in fact, transportation control measures would not be available soon enough to permit attainment of the primary standards within the 3-year time period prescribed by the Act; therefore, 2-year extensions were granted at the request of those States that had determined that transportation control measures would be necessary. In some cases, this meant that States were required to submit on February 15, 1973 transportation and/or land-use control measures that would achieve the standards by 1977. In other cases, the 2-year extension meant that certain States would not have to submit transportation control measures because the FMVCP and/or stationary source control would be adequate to achieve the standards by 1977 without the application of any other transportation and/or land use measures. In order to assist the States in the development of transportation control plans, the Environmental Protection Agency conducted numerous studies and made the results available to the States. In addition, contract assistance was provided in developing the plans for 14 of the affected regions, and the reports of these studies were made available to all the States.

On January 31, 1973, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of "National Resources Defense Council Inc., et al. v. Environmental Protection Agency" 475 F. 2d 968 (1973) and seven related cases, hereafter referred to as NRDC v. EPA. The court order held that the Clean Air Act did not permit the delay in submission of transportation control portions of State implementation plans until February 15, 1973, or permit the granting of extensions to mid-1977 for attainment of the national primary air standards where plans had not been submitted. The order required the Administrator to formally rescind through notice to the States and publication in the FEDERAL REGISTER the extension of time granted for submission of transportation and/or land-use control portions of implementation plans. It also required the Administrator to formally rescind in the same manner the extension granted to several States to delay implementation of their plans or portions thereof until May 31, 1977. The court further ordered the Administrator to inform the States concerned that all States that have not yet submitted an implementation plan fully complying with the requirements of the Clean Air Act of 1970 must submit such a plan by April 15, 1973. That plan must satisfy each and every requirement of section 110(a)(2)(A)-(H) if it is to be approved by the Administrator.

In accordance with this order, 22 States including the District of Columbia were notified by telegram on February 5, 1973, that any extensions granted because of the unavailability of transportation and/or land-use controls were canceled and that plans for the attainment and maintenance of the standards for the three pollutants would be required by April 15, 1973. A FEDERAL REGISTER notice was issued on March 20, 1973, (38 FR 7323), to complete the requirements of that court order by specifically amending the provisions of this part with regard to each of the States concerned. These amendments provided that every State granted an extension to achieve those primary standards and/or permitted to defer submittal of the transportation and/or land-use control strategies until February 15, 1973, would be required to submit no later than April 15, 1973, transportation and/or land-use controls showing achievement of the standards by 1975. In addition to those States that were required to submit transportation and/or land-use control strategies on February 15, 1973, a number of other States, which had regions that would not achieve the standard by 1975 but which had not been required to submit transportation control strategies because the FMVCP was capable of achieving the standards by 1977, were required to submit transportation control strategies on April 15, 1973. States that were not granted an extension but which had deficient plans were also required to submit transportation control strategies on April 15, 1973. Strategies adopted by the States must provide for attainment and maintenance of these standards by May 31, 1975. At the time of submission of these plans on April 15, 1973, the Governors of the States could request an extension up to 2 years for compliance with the provisions of these plans if the specific requirements of section 110(e) are satisfied by the State plan.

By June 15, 1973, 16 States including the District of Columbia had submitted transportation control plans. These plans were reviewed by the Environmental Protection Agency and were made available for public review and comment, including public hearings held by the States. Comments were received from the general public, other Federal agencies, public interest groups, industrial and business groups, and others. Based upon the comments received and the Agency's evaluation of the plans in light of pertinent legal requirements, the Administrator announced his approval/disapproval decision on June 15, 1973.

[1] Other approval and disapproval actions have been published as follows: July 27, 1972 (37 FR 15080), August 11, 1972 (37 FR 16177), September 22, 1972 (37 FR 19806), September 26, 1972 (37 FR 20117), October 28, 1972 (37 FR 23085), November 9, 1972 (37 FR 23836), February 8, 1973 (38 FR 3599), March 8, 1973 (38 FR 6279), March 20, 1973 (38 FRA 7323), March 23, 1973 (38 FR 7554), April 10, 1973 (38 FR 9088), May 14, 1973 (38 FR 7323) March 23, 1973 (38 FR 12920), May 23, 1973 (38 FR 13561), June 5, 1973 (38 FR 14752), June 15, 1973 (38 FR 15722), June 22, 1973 (38 FR 16550), primarily transportation controls), June 22, 1973 (38 FR 16351), July 3, 1973 (38 FR 17726), July 13, 1973 (38 FR 18652), July 16, 1973 (38 FR 18878), August 3, 1973 (38 FR 20835), August 14, 1973 (38 FR 20835), August 14, 1973 (38 FR 21918), and August 21, 1973 (38 FR 22473).

The approval/disapproval decisions were based on a detailed evaluation of the plans submitted by the States. Criteria for this evaluation include adequacy of control plans, provisions for adoption and submission procedures, accuracy of air quality data and emission inventories, extension request considerations, provisions for air quality and source surveillance, review of legal authority, adequacy of resources, and provisions for intergovernmental cooperation.

If the Administrator disapproved a State plan or portion thereof, or if a State failed to submit an implementation plan or portion thereof, he was required under section 110(c) of the Act to propose and subsequently promulgate regulations setting forth a substitute implementation plan. If regulatory portions of a State plan, including control plans and related rules and regulations, were disapproved or were not submitted, regulations setting forth substitute portions were proposed. When disapproved portions were of a non-regulatory nature (air quality surveillance, adequacy of resources, and intergovernmental cooperation), and therefore not susceptible to correction through promulgation of regulations by the Administrator, detailed comments were included in the evaluation report; in such cases, the Environmental Protection Agency will work with the States to correct the deficiencies.

Proposals for various States were published as follows: January 22, 1973 (38 FR 2194—California); February 7, 1973 (38 FR 3526—California); July 2, 1973 (38 FR 17682—California, Massachusetts, Minnesota, Ohio); July 3, 1973 (38 FR 17782—New Jersey, Pennsylvania, Texas); July 16, 1973 (38 FR 18938—Alaska, Arizona, California, Illinois, Utah, Washington); July 18, 1973 (38 FR 19132—California); August 1, 1973 (38 FR 20469—California); August 2, 1973 (38 FR 20752—Colorado, District of Columbia, Oregon, Maryland, Virginia); and August 3, 1973 (38 FR 20851—California, Minnesota, New Jersey, Texas).

To the extent possible, the Administrator's evaluation of State plans reflects the latest information submitted by the States. In the interest of giving the States every opportunity to bring their implementation plans into full compliance with the Act and 40 CFR Part 51, the Environmental Protection Agency has notified States that modifications submitted after the deadline for submittal of State plans would be accepted and considered provided that such modifications were made and submitted in accordance with the requirements of 40 CFR Part 51. Accordingly, many States have been, and still are, making and submitting modifications of their implementation plans.

The Act directs the Administrator to require a State to revise its implementation plan whenever he finds that it is substantially inadequate for attainment and maintenance of a national standard. In accordance with the statutory mandate, the Environmental Protection Agency will continue to evaluate the State plans and will, as necessary, call upon the States to make revisions.

Clean Air Act Requirements

Section 110(a) of the Clean Air Act requires that a valid implementation plan set forth a control strategy that attains the ambient standards as expeditiously as practicable, but no later than May 31, 1975. Some of the plans promulgated will meet this date. For those that cannot, however, an extension under section 110(e) of the Act of up to 2 years may be granted, if necessary, for attaining an ambient air quality standard. To qualify for any extension, a plan must demonstrate that certain elements of the necessary control strategy will not be available by 1975; that there are no earlier, unused alternatives to these delayed strategies; and that emission control measures that are, in fact, reasonably available will be applied as soon as possible.

The effect of the requirement that an extension be granted only for a chosen control measure if "the necessary technology or other alternatives are not available," if "reasonably available alternative means" of emission reduction are considered and applied, and if "interim measures of control" that the Administrator determines are "reasonable under the circumstances" are applied, is to assure that the standards are obtained (in the words of section 110(a)), "as expeditiously as practicable." In essence, if a control measure is "technologically feasible," "practicable," "available," and "reasonable * * * under the circumstances," it should be part of a plan before any extension is given for other measures whose implementation in 1975 would not be technologically feasible, practicable, available, or reasonable under the circumstances. This provision of the Act applies to plans promulgated by EPA as well as to those submitted by the States. If EPA believed that such an extension would be needed for a region, the proposal to grant such extension was included in the proposed rulemaking.

Under the Clean Air Act the standards must be met by 1977 at the latest. Although both States and EPA should attempt to do this in the least costly and most practical way, the requirement of the statute is unconditional. The standards must be met by the deadline regardless of cost or technical feasibility. (A limited delay to 1978 may be allowed under § 110(f), under certain conditions.) In some regions of the country this would be possible only if substantial gasoline rationing is imposed, and the plans proposed for those regions accordingly provide for this measure in order to meet the technical requirements of the law. This does not mean, however, that the Administrator seriously desires to use such a measure.

Accordingly, it is intended to seek an amendment to the Clean Air Act for the specific purpose of allowing the Administrator to extend the attainment date and to take appropriate alternative measures for the relatively few cities that require extensive gasoline supply limitations to meet a 1977 attainment date. It should be emphasized, however, that any action by the Administrator to seek an extension beyond 1977 does not permit the delay in implementing all available control measures, even though the air quality standard will not be attained in 1977. The Administrator's intention to request additional time for attaining the standards in certain areas should in no way inhibit the rapid implementation of the feasible control measures discussed below. An additional amendment to the Act may be needed to strengthen legal authority and permit the more effective use of other measures that might better achieve long-term reductions in vehicle traffic, such as land-use planning.

Pollutant Characteristics

Carbon monoxide is called a "primary" pollutant because it is emitted directly into the air. On the other hand, photochemical oxidant (primarily ozone) is a "secondary" pollutant; it results from the reaction of two primary pollutants (hydrocarbons and nitrogen oxides) in the presence of sunlight. As such, it differs from carbon monoxide in that the correlation between emissions of the primary pollutants and concentrations of the secondary pollutant is complex and subject to many variables. The reduction of oxidant concentrations depends upon reduction in precursor (primary pollutant) emissions, but not necessarily on a one-to-one, or linear, basis. The extent of the reduction in hydrocarbon emissions required to meet the air quality standards for oxidants, as determined by statistical evaluation of observed data, is specified in 40 CFR Part 51, Appendix J. However, the maximum measured values for the 1-hour photochemical oxidant values that can be used with the curve in Appendix J is only about 550 micrograms per cubic meter ($\mu g/m^3$) or 0.28 parts per million (ppm). Several urban areas have experienced concentrations greater than this. Another limitation of the Appendix J procedure for determining needed hydrocarbon reductions is that the data base embodied in Appendix J was derived from oxidant and total hydrocarbon areometric data taken from several large cities—namely, Los Angeles, Washington, D.C., Denver, Cincinnati, and Philadelphia. Some areas, however, are now using an approach for calculating the effect of hydrocarbons according to their differing "reactivities", rather than using total hydrocarbons as the indicator. This differing approach is currently subject to scientific debate and constantly changing knowledge. Appendix J would not necessarily be appropriate for determining the degree of selective control of reactive hydrocarbons, as an alternative to control of total hydrocarbons. As a consequence of the use of reactive hydrocarbons in certain instances, and the limitations of the Appendix J curve in others, linear rollback was used in some transportation control plans to calculate required hydrocarbon reductions. EPA is continuing to study these problems and, if strategy

changes become necessary as a result of future conclusions, appropriate plan revisions will be requested or proposed.

Transportation Control Measures

Transportation control plans provide for reductions in carbon monoxide and hydrocarbon levels required beyond the reductions provided by the Federal motor vehicle emissions control program and stationary source regulations set forth in the previously approved State implementation plans. These reductions are to be accomplished through the implementation of the transportation control plans incorporating the measures discussed below. These measures include additional stationary source controls, measures providing for a reduction in vehicle miles traveled (VMT), inspection and maintenance programs, retrofit emission controls for in-use vehicles, and gasoline supply limitation. Technical information on the inspection and maintenance and retrofit measures discussed below are set forth in Appendix N to 40 CFR Part 51. The appropriateness of a particular measure for a specified area is determined by a variety of factors, which are also discussed below. Although the costs of certain measures are discussed in this preamble, the social and economic effects of the transportation plans have been evaluated on a state-by-state basis and are set forth in the individual State preambles.[2]

Considerations in selection of measures. The determination of which measures should be in a plan for a particular area is based upon several considerations. These include the severity of the pollution problem, the availability of control measures, the existing local control activities and conditions, the State transportation plans, the public hearing comments, the disruptive impact of certain measures, and the pollutant controlled.

In many areas with mobile source pollution problems, the air quality standards can be achieved by only a shift from our present reliance on the automobile to a more balanced reliance on all forms of public and private transit. In a number of these areas, emission controls on motor vehicles alone will never be adequate. Nonetheless, substantial improvement in air quality can be achieved by reductions in vehicle miles traveled to some extent by 1975 and up to 10 to 20 percent by 1977.

Since the air quality standards are to be achieved as expeditiously as practicable, the Administrator has considered the speed with which various emission control strategies could be implemented. Measures such as those providing for some VMT reductions can be implemented before other measures such as retrofits. Extensions in time, thus, could not be granted to retrofit measures until appropriate VMT reduction measures were provided at earlier dates.

The Administrator considered the existing activities, controls, and conditions in local areas. In view of the significant variations in local situations, the Administrator recognizes that transportation plans must be formulated with flexibility to complement local conditions. If an urban area is developing expanded mass transit facilities, the Agency's transportation plan might provide complementary control measures such as bus/carpool lanes. Conversely, if stationary source controls are presently inadequate, additional stationary source controls might be added in lieu of other measures.

The State plans and public hearings aided this process. If the States have submitted plans that are in part approvable, the Administrator has attempted to promulgate measures that supplement the approved portions the measures included in the plan the State is expected to submit. The Administrator has also made many changes based upon constructive public hearing testimony on the proposed plans.

The disruptive impact of various control measures was reviewed. Certain measures, such as the catalytic retrofit device, may place a large financial burden on the individual vehicle owner as compared with other retrofit devices or VMT reduction measures. On the other hand, the amount of VMT reduction that could be accomplished without a significant disruption varied according to the transit alternatives and traffic patterns existing in a specific region. The Administrator considered these factors and their relationship to the legal mandates of the Clean Air Act.

Characteristics of the pollutant being controlled had an impact on the plan. Carbon monoxide is generally a localized pollutant problem often limited to a central business district. The oxidant or smog problem, however, usually covers an entire urban-suburban area. Consequently, the VMT reduction control measures may vary according to an area's pollution problem. Furthermore, certain retrofit control devices are more effective on controlling the emissions of carbon monoxide than hydrocarbons or the reverse.

Based on the factors noted above, the Administrator generally determined the control strategy according to the following priorities, which reflect guidance provided by the statute: (1) Additional stationary source control; (2) some VMT reduction measures and/or limited inspection and maintenance; (3) additional VMT reduction measures, and/or vehicle retrofits; (4) catalytic converter retrofits; and (5) gasoline supply limitations in 1977.

Additional Stationary Source Controls

Controls to prevent hydrocarbon emissions will be imposed on a variety of stationary sources. These regulations have been patterned using the general examples of emission limitations attainable with reasonably available technology (40 CFR Part 51, Appendix B). The major changes have been to tailor the requirements to local restrictions such as the Los Angeles County Air Pollution Control District (APCD) Rule 66 and the Texas Regulation V—Control of Air Pollution from Volatile Carbon Compounds. In addition to stricter controls on many organic solvents used for paint thinners, dry cleaning, degreasing, printing, and other industrial processes, vapor recovery systems that prevent evaporation of gasoline vapors into the air will be required for the various phases of gasoline marketing. Most stationary source controls can be implemented by 1975. The implementation of vapor recovery systems depends upon whether the controls are placed on the filling of service station tanks (Stage I), or on the filling of individual vehicle tanks (Stage II) and whether the degree of control in Stage II is 80 percent or 90 percent. In most regions of the country, the Administrator has concluded that implementation of Stage I controls can be completed by March 1, 1976, assuming that all regulatory authority is adequate by March 1, 1974, and that 24 months are needed for full implementation with partial implementation achieved by March 1975. If the Stage II measure requires 80 percent control, its implementation can be completed by June 31, 1976. Much of the work needed to develop such systems is already underway. If a Stage II measure requires 90 percent control, its implementation can not be completed until May 31, 1977, since the technical problems are greater. In a few regions, these timetables can be accelerated, particularly where the number of stations involved is not excessive. The EPA is currently carrying on an investigation of the desirability of exempting certain organic compounds from control and of the adequacy and feasibility of various hydrocarbon emissions control methods.

Moderate Reductions in Vehicles Miles Traveled

In the majority of regions requiring additional controls, the combined impact of stricter controls on stationary sources and the establishment of an inspection and maintenance system will not provide emission reductions adequate to achieve the standards by 1975. Consequently, EPA is promulgating a variety of measures to reduce vehicle miles traveled in these regions.

The Administrator has noted that in several urban areas a shift from our present reliance on automobiles occupied by one or two persons to a greater reliance on other forms of transit is essential to the achievement of the air quality standards. Significant reductions in vehicle miles traveled can also be accomplished within a limited time span. In making this determination, the Administrator recognizes that the States have had practically no experience with transportation control measures as a means of dealing with air quality problems and that the success of particular VMT reduction measures is difficult to predict. However, recent developments involving bus lanes, mass transit improvements,

[2] "The Clean Air Act and Transportation Controls, An EPA White Paper", published in August, 1973, by the Office of Air and Water Programs, Environmental Protection Agency, provides additional analysis of social and economic impacts related to transportation control requirements.

carpool programs, bikeways, and other innovations indicate that many VMT reduction measures are available and feasible. Furthermore, the public in many of our urban areas recognizes the need to place less emphasis on the automobile for urban mobility and is already encouraging the implementation of steps to develop alternative forms of transit. Accordingly, the Administrator believes that reasonable VMT reduction measures can be successfully implemented.

Some of the regulations being promulgated will have significant effects on the future development of urban transportation in the major cities of this country. A clear implication of these air plans is that future augmentation of mass transit must focus not only on the center city streets but also on urban/suburban routes. It is expected that the regulations will lead not only to substantial reductions in air pollution, noise, congestion, and energy consumption, but to the development of more mass/rapid transit to serve the growing urban and suburban regions of the nation. The need, desirability, and feasibility of reducing urban auto use are no longer issues. The problem is determining the degree to which VMT reductions can be reasonably implemented within the limited time frames.

The amount of VMT reduction that can be considered "reasonably available" varies greatly according to a city's individual characteristics and the ability of other modes of transportation to absorb the demand that would be created by a significant VMT reduction. A measure cannot be considered "reasonably available" if putting it into effect would cause severe economic and social disruption. Although some reduction in personal travel could certainly be absorbed without disruption, to achieve a significant VMT reduction, the bulk of the travel displaced from single-passenger automobiles must be absorbed by such other modes of transportation as carpools, walking, bicycling, or public transit.

The significant expansion of public transit facilities that can be accomplished by 1975 depends on the upgrading and expansion of bus services. Much can be done in this regard. Scheduling and service can be improved. Individual lanes of freeways and other major roads can be set aside for the exclusive use of buses. Significant numbers of new buses can be purchased and put into service by 1975; according to Department of Transportation figures, 2,500 transit buses were sold in this country in 1972, but there is considerable potential for expansion of the transit industry's production by two- or three-fold. Foreign sources of supply could provide additional resources.

The Environmental Protection Agency is working with the Department of Transportation to assure increased Federal support for short-term augmentation of mass transit capacity and appropriate modifications of highway facilities to permit increased utilization of mass transit.

In addition to public transit, part of the transportation demand created by VMT reductions can be absorbed by carpools. Private automobiles, which are designed to carry four to six persons, carry an average of 1.1 to 1.4 persons per trip for work trips in major urban areas, and thus represent the largest unused pool of transportation capacity presently available.

The measures mentioned above are primarily concerned with providing an alternative to low-occupancy use of private automobiles. Although measures such as buying more buses and improving bus service, providing for carpool programs, building bicycle paths, and (in the long run) building new rapid rail transit systems increase the availability and attractiveness of alternative transit forms, VMT reductions will not necessarily be achieved unless disincentive restrictions are placed on the use of automobiles.

The applicability of both measures—incentives such as bus lanes that increase the attractiveness of alternative transit forms and disincentives such as parking limitations that discourage the low-occupancy use of private automobiles—varies according to the conditions in the individual urban area. For example, bus lanes are a more appropriate strategy in Washington, D.C. than certain other areas. Similarly, parking restrictions are more applicable to a major center like Boston than to a small city with few transit alternatives like Fairbanks, Alaska.

After consideration of the already available transit alternatives, the city's local conditions, and the applicability of various incentive and disincentive measures, the Administrator has determined that varying degrees of VMT reduction are feasible in particular areas. The plans developed suggest that a 3 to 10 percent VMT reduction can be achieved in the vast majority of affected regions by 1975. Since the Act specified that all reasonably available measures be instituted before any time extension is granted, the Administrator is taking into consideration all VMT-related measures presently being implemented by a municipality and augmenting those measures with methods that are available, applicable, and adoptable in the individual area by 1975.

Through our studies and the public hearing process, the Agency has also determined that it may be unrealistic to expect reductions in auto use in a region as a whole greater than 10 to 20 percent by 1977. Greater reductions may be achieved in limited areas under appropriate circumstances as is illustrated by New York City, which has a well developed transit system and hopes to accomplish a 40 percent VMT reduction in the downtown area by 1977. Generally, however, reductions beyond 10 to 20 percent would require a special and, in most cases, unreasonable effort unless driving is to be cut without a corresponding increase in mass transit. Achievement of even the levels provided for in these plans will require a strong commitment by local areas to implement strict disincentive programs, improve mass transit, and make carpooling or other programs work.

EPA is promulgating a number of measures designed both to increase the attractiveness of alternative forms of transit and to discourage the low-occupancy use of automobiles. The measures include: on-street and off-street parking reductions, regulatory fees for mass transit augmentation, vehicle free zones, bus/carpool lanes, carpool matching systems, carpool programs stressing preferential treatment, and heavy-duty vehicle bans. In some instances, proposed VMT measures are not being promulgated. These various alternatives are presented in the following discussion.

Parking restrictions. Parking restrictions are used in the majority of plans to discourage automobile use in urban centers. Restrictions in the central business district can significantly reduce carbon monoxide levels. As a measure to discourage the commuter from using his vehicle, parking limitations can effectively reduce emissions during the rush hour and result in reduced oxidant concentrations later in the day. On-street parking regulations can also result in decreased congestion and reduced emissions due to improved traffic flow.

In most EPA proposals, all parking facilities on which the actual construction work had not begun by August 15, 1973, would have been subject to review. In response to comments received, this definition has been revised to exempt such facilities if the actual construction contract has been let by that date.

However, where a developer has undertaken to build a facility, whether individually or as part of a larger structure, but the actual construction contract has not yet been signed, review will still be required. It is EPA's judgment that the project in such circumstances will still be at an early enough stage so that review to determine the possibility of decreased use of single-passenger automobiles will still be justified. However, the Administrator also recognizes that such review may be unduly burdensome in particular cases, and comment on this point is particularly invited. If the comments indicate that a less restrictive definition is justified, the promulgated regulations will be amended accordingly.

Regulatory fees for mass transit augmentation. Several of the plans call for the imposition of regulatory fees on parking. In earlier Notices of Proposed Rulemaking, the Agency expressed some doubt about its authority to impose such fees. That legal question has been extensively reexamined, and EPA has now concluded that such a step is authorized by the statute. The transportation control measures promulgated today will require a significant change in the driving habits of the American people. The use of fees can help to bring that change about with a minimum of social disruption because of the wide latitude they leave to individual choice. Those whose needs or preferences are strongly in favor of using the single-passenger automobile may continue to do so, although at a somewhat higher cost; those who can easily adapt to the use of other modes of transport will have a financial

incentive to do so. Many public comments supported the adoption of such fees. In addition, the enforcement of such fees will be less difficult than some other measures. Finally, such fees will be used to support mass transit. Expansion of mass transit is essential if the disincentives to automobile use imposed by transportation control plans are to have the desired effect. Such a use of the proceeds will also greatly mitigate the potentially regressive nature of such fees.

In requiring the States and EPA to impose transportation controls where they are needed to meet air quality standards, the Congress imposed a regulatory task whose difficulty and complexity are virtually unparalleled. The legislative history shows that Congress fully recognized the magnitude of the problem. At the same time, the statute's description of the exact types of measures that may be imposed is extremely broad and general. In the face of this broad language, the Administrator concluded that the Congress intended him to impose the method of control that he determined was best able to achieve the purposes of the statute.

Carpool systems. Experience to date with carpool programs suggests that policies to encourage carpooling might double auto occupancy rates for downtown peak period work trips. If a 10 to 50 percent increase in auto occupancy is adopted as a realistic range of possible effects, the net effect of carpool policies on total urban area auto use might be a 5 to 10 percent reduction.

EPA is promulgating measures that provide computerized carpool matching programs and preferential carpool treatment programs. The matching program provides for the formation of carpools and the preferential treatment programs provide incentives such as free parking to encourage carpools. Under the measures included in some plants, disincentives such as parking space reduction or paid, rather than free parking, are included to discourage single occupancy on commuter trips.

Bus lanes. Bus priority treatment consists of allocating highway facilities preferentially to buses for the purpose of improving the quality of bus service. Methods of effecting bus priority treatment in the transportation plans include reserved lanes for buses (and/or carpools), preferential access for buses at freeway ramps, and certain traffic engineering improvements. The forms of bus lanes set forth in either the plans proposed or approved by the States or promulgated by EPA include normal bus flow lanes, and contra-flow lanes. In the case of California, the U.S. Department of Transportation suggested that dedicated freeways or major roads be used as an alternative to the bus lane approach. Based on comments received, EPA has determined that the bus lane concept is preferable in these promulgations.

The use of bus (and/or carpool) lanes has been observed to increase mass transit freeway speeds by a factor of two or more. Through the elimination of congestion problems, bus service dependability is increased as late arrivals are significantly reduced. Furthermore, bus ridership should increase, and the fares may eventually be reduced. Because of these factors, the regulations set forth for bus lanes are expected to be a positive inducement to increased bus patronage. The timetables for implementation of bus lanes will vary according to regional situations.

Heavy-duty vehicle restrictions. The economic fabric of this country's urban and suburban areas is dependent on an extensive and flexible system of truck deliveries to industrial and commercial establishments. At the same time, emissions from heavy-duty vehicles, which are almost exclusively trucks, are regulated far less stringently than those from passenger cars.

The degree of restriction on truck VMT consistent with the maintenance of a healthy economic structure in a region will vary greatly from city to city. In most instances, the potential for economic disruption combined with the low contribution of these trucks to total emissions caused EPA to reject such measures. In certain areas, however, it was determined that a restriction of truck operations to hours when their emissions are not likely to contribute to oxidant formation was practicable, and measures to accomplish this will be implemented.

Bikeways. America is enjoying an unprecedented boom in bicycle sales and useage. In 1972 bicycles outsold automobiles, 13 million to 11 million. Bicycle use has doubled in the past ten years.

A preliminary analysis by EPA suggests that increased use of bicycles in urban commuting could reduce VMT by 1 to 2 percent. Public comment in the course of this rulemaking also favored the increased use of bicycles.

At present the major obstacles to cycling are high accident rates, high bicycle theft rates, increased exposure to auto pollutants, and insufficient support facilities. The last problem tends to cause the previous three, and all of them could therefore be greatly alleviated by providing segregated bikeways and adequate support facilities.

Many regions affected by these promulgations intend both to expand their networks of such bikeways and to integrate them with mass transit facilities. EPA fully supports and encourages such programs.

Vehicle free zones. Traffic free zones are primarily promulgated to control local carbon monoxide problems. The zones are necessarily restricted in size (approximately ten blocks or less) in order to provide foot access. Consequently, the zones can be put into effect by 1975 since no additional transit facilities are required. Although increasing the size of the vehicle free zone tends to increase the potential air quality improvements, such action also increases the problem of access, circulation, and peripheral congestion and pollution.

Selective vehicle use prohibitions. In several regions, EPA proposed a regulation under which the vehicle population would have been divided into five categories. Each category of vehicles would have been required to display prominently a tag of a distinctive color; on one day of each working week vehicles marked with one such color would have been forbidden to operate.

Testimony at all the public hearings indicated that measures of this type so far proposed would be unenforceable because of their severeness and arbitrary nature. In addition, the number of additional enforcement personnel necessary to implement such a program would then have been so great as to preclude the reasonable availability of this measure. Were they to be implemented, many very workable methods of evading the requirements would doubtless be devised.

Inspection and maintenance. Considerable reductions in motor vehicle emissions can be achieved by requiring all vehicles in an area to be tested annually for emissions, and then requiring those vehicles that exceed a certain level to be serviced until they can pass the test. This process is called "inspection and maintenance" (I/M). If additional stationary source controls are not adequate to attain the standards, the Agency considered the implementation of inspection and maintenance measures as well as measures to reduce vehicle miles traveled.

Two different types of inspection programs have been promulgated: (1) an "idle test" program that measures emissions while the vehicle is running in neutral and (2) a "loaded test" program that measures emissions while the vehicle is running in gear on a treadmill-like device called a dynamometer. The effectiveness of these programs depends primarily upon the fraction of the vehicle population forced to obtain corrective maintenance. For example, a program of inspecting idle mode emissions is estimated to result in reduction of 11 percent for hydrocarbons (HC) and 10 percent for carbon monoxide (CO). These results assume that the standards set for the inspection are sufficiently stringent to assure that 50 percent of the vehicles tested would fail the test if no unusual maintenance were obtained prior to the inspection. This concept is generally referred to as an "initial failure rate" of 50 percent. (Of course, if such vehicles are maintained in anticipation of the inspection, they need not fail, and emissions will be reduced.) An initial failure rate of only 10 percent for an idle test provides reductions of 6 percent for HC and 3 percent for CO. A loaded mode inspection should provide a 15 percent HC and a 12 percent CO reduction at a 50 percent initial failure rate and an 8 percent HC and a 4 percent CO reduction at a 10 percent initial failure rate. These reductions are representative of an annual inspection program. If semiannual inspection programs are employed, additional reductions are expected.

Annual emissions inspection on State-operated lanes is estimated to cost less than $2 per vehicle. Maintenance costs observed in fleet studies of various I/M approaches have been found to lie in the range of $20 to $30 for those failing the inspection test. However, the annual

average maintenance cost to all vehicles subject to inspection is estimated to be about $3 per vehicle when the cost of maintenance that would normally have been performed voluntarily is netted out of the estimated maintenance cost.

If the State has adequate regulations to implement an I/M program by March of 1974, the State should be able to acquire necessary equipment, prepare facilities, train personnel, complete a pilot program, and be ready to begin an inspection cycle by May 1, 1975, for an idle test program and by August 1, 1975, for a loaded test program. Accordingly, a year's cycle could be completed and full credit taken for an I/M program by May 1, 1976, or August 1, 1976. These compliance dates represent approximately an 8- to 9-month delay of the inspection schedules previously proposed. The original schedule assumed the State could begin taking actions to set up inspection systems by summer 1974. Time extensions are thus generally required for the implementation of inspection and maintenance programs.

A few States, however, have either already begun implementing inspection and maintenance programs or have existing safety inspection lanes. The State of New Jersey already has an emission inspection program operating as does the City of Chicago. In other areas, such as Portland, Oregon, the State government has taken the initial steps to make an I/M program operational. EPA has thus used or accepted earlier completion dates in certain situations. The Agency has also used completion dates slightly later than those mentioned above for States that have already developed realistic implemention time schedules that require a limited amount of additional time.

Although no programs have been conducted to investigate the effect of inspection and maintenance on medium-duty vehicles (vehicles weighing from 6,000 to 10,000 pounds), these vehicles are similar to light-duty vehicles; engine design, operational characteristics, and maintenance habits are closely related to the average automobile. Thus, the Administrator has determined it is reasonable to predict similar effects for inspection and maintenance of medium-duty vehicles as have been discussed above for light-duty vehicles.

Retrofits. If additional stationary source controls, moderate VMT reductions, and implementation of inspection and maintenance cannot provide an adequate reduction to achieve the air quality standards, the Administrator considered the implementation of retrofit emission control measures. A retrofit measure can be defined as the addition of any device, system, modification, or adjustment made on a motor vehicle after its initial manufacture to achieve a reduction in emissions. The retrofit packages considered included: vacuum spark advance disconnect (VSAD) with lean idle; air bleed to the intake system; exhaust gas recirculation; oxidation catalyst for both medium- and heavy-duty vehicles.

Implementation of strategies employing these retrofit systems cannot be completed by May 31, 1975, and thus an extension is required for these strategies. Accordingly, as required by the Act, the Administrator considered and applied all measures available by May 31, 1975, before promulgating retrofit measures. It should also be noted that the implementation of an inspection and maintenance program accompanies the implementation of all retrofit measures owing to the need to keep the retrofit devices in good operating condition.

Vacuum spark advance disconnect (VSAD) with lean idle. Two basic engine modifications employed by the motor vehicle manufacturers in meeting Federal exhaust emissions standards have been the leaning of air/fuel ratios and the modification of ignition (spark) timing. The modification of these parameters in pre-controlled (pre-1968) vehicles similarly reduces exhaust emissions. Because 1968-and-newer vehicles have utilized these modifications to some extent to meet Federal emission standards, this retrofit technique is considered to be applicable only to pre-controlled vehicles. This judgment has recently been supported by difficulties the State of California has experienced with this retrofit on controlled vehicles. It is further recognized that this retrofit cannot be used on approximately 10 percent of pre-controlled vehicles that do not employ vacuum spark advance. This system will accomplish average emissions reductions per retrofitted vehicle of 25 percent for HC and 9 percent for CO.

The initial cost of purchase and installation of this system, which is commercially available, is estimated to be $20. Device maintenance can probably be limited to an annual readjustment of the idle air/fuel ratio and would cost about $5. The VSAD retrofit is considered the most cost-effective retrofit device.

The VSAD retrofit device is currently being used on over 800,000 vehicles in the United States and thus no further evaluation of its emission reduction potential or development is required. If necessary regulations are adopted by March of 1974, States can order and receive the devices, complete an installation training program and be prepared to begin installing the system by December of 1974. Installation of the device on all pre-controlled vehicles could be completed within a year and thus full implementation can take place by December of 1975.

Air bleed to the intake system. Many devices have been designed to introduce, by one means or another, excess air into the intake system of a vehicle. This is one way of reducing HC and CO levels. The reduction achieved varies with the amount of air allowed into the intake system. This technique is applicable to some extent to all light-duty vehicles, but because of the relatively lean air/fuel ratios on controlled vehicles the technique is only being promulgated for pre-controlled vehicles. Emission reductions of 21 percent for HC and 58 percent for CO are expected to result from the implementation of this measure. The installed cost of the air bleed system is estimated to be approximately $40 to $60. A fuel economy improvement of 4 percent associated with the use of this device would reduce operating costs by $1.20 per 1,000 miles of operation.

No air bleed device has been evaluated to the extent necessary to allow immediate implementation actions. It currently appears that substantial data on such systems will be available from EPA by November 1974. Allowing the States 2 months to review data on this device and to approve specific manufacturers, selection of an approved device should be completed by January 1975. Seven months for manufacturing, installation, and training and an additional 12 months for installation on the vehicle population would result in full implementation by August 1976.

Oxidation catalyst. Because of the automotive industry commitment to the use of catalysts in meeting future Federal emission standards, it follows that catalyst systems are being identified as retrofit candidates as well. Catalyst retrofits are applicable to cars capable of running properly and without excessive engine wear on a commercially-available, lead-free gasoline. Such lead-free gasoline will be commercially available by July 1, 1974, as a result of regulations promulgated by EPA on January 10, 1973. EPA's best estimate of the proportion of cars to which catalytic systems are applicable is 20 percent of pre-1971 and 75 percent of 1971–1974 model year vehicles.

The implementation of a strategy employing catalytic retrofits is expected to account for emissions reductions of 50 percent for HC and 50 percent for CO.

Estimates of the cost to be borne by the consumer for a catalyst retrofit package will vary according to the type and age of the consumer's vehicle, and the organizational structure selected for retrofit installation. With an installation program run in State-owned (or franchised) inspection and installation centers, the average initial cost would be approximately $125. However, with an installation program designed to make use of traditional distribution channels and local service establishments, the initial price could rise to well over $300. All retrofits, however, could be financed through a state or local tax program.

The catalytic retrofit device has not been evaluated to the extent necessary to allow immediate implementation action. Substantial data, on this device, however, should be available by the fall of 1974. This will allow time for the States to review these data, and approve a particular manufacturer's product. Orders for this device could probably be placed by January of 1975. From the time the order is placed until first installation will require 10 months because of the more extensive design and manufacturing requirements of the catalysts. Installation of a catalyst system is significantly more time consuming than for other retrofit strategies. (Three man-hours compared to less than 1 man-hour for air bleed.) To minimize the impact of

these installations on the service industry, 18 months have been estimated for installation on all qualified vehicles with full implementation by May 1977. If only fleet vehicles are retrofitted with catalysts, or if only one model year of vehicles is retrofitted with catalysts and 1968 or later models are retrofitted with other devices, catalyst retrofit installation could be completed within 12 months or by December of 1976.

In view of the high cost to the individual vehicle owner associated with catalytic retrofit devices and the long implementation time, the Administrator has promulgated this measure only after other available and applicable measures short of gasoline supply limitations were applied. Since the measure requires an 18- to 24-month extension—and, consequently, all other measures can be considered—catalytic retrofits are only promulgated for areas with severe air pollution problems.

In addition, consideration is being given to retrofit of gasoline-powered vehicles in the 6,000 to 14,000 pound class, commonly referred to a medium-duty (6,000 to 10,000 pounds) and heavy-duty (above 10,000 pounds). There is very limited application of these measures since they are presently being evaluated. Those regions that will implement these measures are active participants in this evaluation.

Gasoline supply limitations. Several of the proposed transportation controls included measures to limit the gasoline supply in certain areas in order to reduce vehicle miles traveled. The measure included two types of regulations: (1) a gasoline supply lid that would become effective in 1974 to limit the quantity of gasoline sold to fiscal 1973 levels; and (2) a regulation to be implemented on May 31, 1977, to reduce an area's gasoline supply, and thus VMT, to the extent necessary to achieve the standards.

The gasoline supply lid requirement has been dropped as a primary measure. The Act requires that all "reasonably available" measures must be implemented by May 31, 1975, before granting an extension. Based upon the comments received at the public hearings on this measure and the Agency's evaluation of the feasibility of implementing and administering successful gasoline supply limitations, the Administrator has determined that a gasoline supply lid cannot be considered "reasonably available." The possibilities of evasion, the likelihood of noncompliance, and the difficulty of enforcement are too great to make this measure practicable.

The gasoline supply reduction regulation to be implemented on May 31, 1977, however, has been retained in several plans. As was noted above, the Clean Air Act required air quality standards to be achieved by 1977 without regard to cost or social disorganization that may result as a by-product of achievement. If gasoline supply limitations are needed to achieve the standard, the "reasonableness" criterion is not a determining factor. Accordingly, the Administrator was obligated to use gasoline supply limitations as a final resort measure in certain areas with severe air pollution problems. Most of these areas required reductions in vehicle miles traveled far in excess of 10 to 20 percent. In some regions, however, the required VMT reductions may well be accomplished through the specified VMT reduction measures. Gasoline supply limitations were required in these areas only to assure the attainment of the standards by 1977. If a review of air quality data and VMT reduction monitoring information prior to 1977 indicates that the gasoline reduction measure is not required, supply limitations will not be implemented.

Legal Authority and Enforcement

In the complex field of transportation controls, States and other governmental entities have a special obligation to carry out and enforce implementation plans simply because Congress has placed that responsibility upon them. In a comparable situation, a Federal court has held that a county government and local sewage districts can be required, under implementation plans to control water pollution, to install sewage treatment facilities to handle the pollution created by individual citizens emitting pollution directly into a public body of water.

Many of the measures promulgated herein include requirements that Federal, State, or local units of government take specified actions to control air pollution from transportation systems. The Clean Air Act and its legislative history demonstrate that this was the intent of Congress. The approach of leaving primary responsibility for implementation at the State and local level is also made necessary by the nature of air pollution generated by millions of individual vehicles operating on an extensive network of public roads owned and administered by State and local governments.

The specific requirements imposed herein upon States and localities are based largely on two conclusions in addition to the factors discussed above: (1) that the governmental units must abide by valid implementation plan requirements just as much as any other source owners, and (2) that they are the owners and operators of pollution sources through their ownership and operation of highway transportation facilities.

The question has been raised in public comment whether governmental entities may be subject to Federal regulation and Federal enforcement under the Clean Air Act. There is no doubt that regulations may be applicable to such entities under the Act. Section 113 of the Act permits Federal enforcement of applicable implementation plans against "any person" who is in violation of "any requirement." Section 302(e) states, "When used in this Act * * * the term 'person' includes [a] * * * State, municipality and political subdivision of a State." Section 118 extends the requirement of obedience to such plans to Federal entities.

The question remains, what kinds of requirements must a State or other governmental entity comply with? The most obvious situation is one in which a State is operating a direct stationary pollution source such as a municipal incinerator. It is no less clear, however, that the Act allows the control of many kinds of direct and indirect sources relating to mobile pollution. Parking and road facilities constitute such sources and the control of them is a valid exercise of the authority in section 110(a)(2)(B) and 110(c) to promulgate such regulations as may be necessary to attain the national ambient air quality standards.

Transportation is a necessary service. In our society, the form in which it is provided depends overwhelmingly on the regulatory, taxing, and investment decisions made at all levels of government. By building and maintaining roads and highways, by licensing vehicles and operators, by providing a system of traffic laws, and in many other ways, government has encouraged the growth of automobile use to its present levels. There is nothing inevitable about such a choice. Governments could equally well have chosen to discharge their basic function of maintaining a transportation system in ways that would have discouraged the use of single-passenger automobiles, and encouraged the use of mass transit. But often they have not.

The production of food, electricity, and other consumer and industrial goods is as necessary in our society as transportation. In each case, the Clean Air Act authorizes regulations requiring such an activity, whether State or private, to be undertaken in the least polluting way in order to attain and maintain the air quality standards. There is no valid distinction between such production facilities and the State-owned automotive transportation facilities. In a comparable situation, the Supreme Court has held that State-owned rail transportation facilities must comply with Federal safety regulations.

A direct source of air pollution is one from which pollution is emitted directly into ambient air. Direct sources include not only automobiles and other vehicles, but also the facilities on which they are located during their operation—parking facilities and roads. Pollution is emitted directly into the ambient air from such facilities, and often the most feasible method of reducing it is by imposing restrictions on their owners and operators.

Many such facilities may also be viewed as indirect sources of air pollution. An indirect source is one that encourages mobile source pollution at locations not necessarily coincident with the source itself by serving as a trip attraction for automobile drivers, or which provides a parking or driving convenience. Thus, the availability of ample, low-cost parking facilities and high-speed freeways influences individuals to use vehicles with as few as one person in them, rather than less-polluting modes of transit. Such facilities may legitimately be charged not only with the pollution arising directly from their premises, but also with the total pollu-

tion in the region emitted by the traffic increase which they encourage.

For these reasons, the Administrator has concluded that regulations placing restrictions on parking and on the use of road space are essential to reduce the amount of air pollution generated by automobiles, and that they are valid exercises of EPA's regulatory authority.

The Administrator is also promulgating regulations requiring that vehicles allowed to operate on public roads be inspected or "retrofitted" with emission control equipment. Use of public roads by large numbers of publicly registered and regulated vehicles without either proper maintenance or adequate control equipment also causes damage to health. The requirement that the road owners and the licensing and regulating authorities prohibit such use is a reasonable means of preventing such damage.

Direct Federal enforcement and massive, duplicative Federal programs aimed at vehicles on an individual basis were not the means contemplated by the Act to solve these problems. It is clearly necessary that implementation of transportation control plans be carried out at the State and local level. The Chairman of the House Committee that reported out the amendments to the Act described their purpose as follows:

> If we left it all to the Federal Government, we would have about everybody on the payroll of the United States. We know this is not practical. Therefore, the Federal Government sets the standards, we tell the States what they must do and what standards they must meet. These standards must be put into effect by the communities and the States, and we expect them to have the means to do the actual enforcing.

Equally clear, however, is that the amendments of 1970 were designed to cure deficiencies that had resulted from total reliance upon state and local action to solve what was increasingly recognized as a national health problem. The regulations now being promulgated will provide the necessary assurance that such state and local action will be forthcoming.

Under section 113(a) (1) and (2) of the Act, the Administrator is authorized to issue orders and to bring civil actions or seek penalties. Although the legal authority to enforce these plans is clear, the primary effort—as is true for all implementation plans—will be directed toward working with the States both to develop and to implement effective strategies. This effort should continue even after these measures have been promulgated, so that all affected states eventually assume voluntarily the direct responsibility for enforcement of the plans.

In some instances, new regulations will be necessary on a State level. In others, existing regulations will be adequate. Where State-enacted Statutory authority is not adequate, the Clean Air Act and these regulations can provide the legal basis for programs at the State or local level.

As a matter of administrative convenience, a provision regarding violations and enforceability is being deleted from the regulations being promulgated for each State, and replaced by a general regulation covering these subjects which is applicable to all regulations promulgated under this part. No change in meaning or effect is intended by this change. Each of the regulations promulgated or approved is considered to be enforceable by the Agency, including all regulations requiring employers to provide mass transit priority incentives.

Summary of Approval/Promulgation Actions

Approval/promulgation actions presented in the initial group cover 16 separate air quality control regions (AQCR) found in 8 states. The actions taken in these 16 separate cases concerning transportation control plans are shown in Table 1. Air quality control regions or subregions are identified using the name of a key metropolitan area associated with the region. For example, the Texas portion of the Southern Louisiana-Southwest Texas interstate region is designated Beaumont. Preambles and regulations are provided separately for each State.

Table 1.—*Approved/promulgation summary*

	Region [1]
Plan fully approved in initial group:	
Minnesota: Minneapolis-St. Paul	1
Oregon: Portland	1
Ohio: Toledo, Dayton	2
Total	4
Plans requiring partial EPA promulgation:	
Colorado: Denver	1
Ohio: Cincinnati	1
Total	2
Plans requiring total EPA promulgation:	
Massachusetts: Boston, Springfield	2
Texas: San Antonio, Dallas-Fort Worth, Austin-Waco, Houston/Galveston, Corpus Christi, El Paso, Beaumont [2]	7
Total	9
Plan being reproposed for later promulgation:	
Indiana: Indianapolis	1
Grand total	16

[1] Air quality control region or portion thereof.

[2] Only stationary source controls are promulgated in this action.

Public Comment and Review

These promulgations of transportation controls and those to be promulgated within the next few weeks have involved ample opportunity for both written comment and oral testimony. However, the Administrator wishes to call attention to the fact that it is always appropriate for members of the public and affected interests to submit written comments on rulemaking actions even after the regulations have been promulgated. Accordingly, although these regulations become effective upon promulgation, interested persons are encouraged to submit written comments to the Administrator or the appropriate Regional Administrators for 30 additional days from the date of promulgation of the transportation control plan for each region. This does not affect the timetable for bringing any legal actions regarding these plans. Petitions for review may be filed in the United States Court of Appeals for the appropriate circuits within thirty days from the date of each promulgation or approval, pursuant to section 307 of the Act (42 U.S.C. 1857h–5(b)(1)).

This rulemaking is made pursuant to section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857c–5(c) (a) and 1857g).

Dated October 25, 1973.

Russell E. Train,
Administrator.

Part 52 of Chapter I, Title 40, is amended by adding § 52.23 as follows:

§ 52.23 Violation and enforcement.

Failure to comply with any provisions of this part shall render the person or Governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if the person or Governmental entity fails to comply with such schedule.

[FR Doc.73-23186 Filed 11-5-73;8:45 am]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Promulgation of Texas Transportation Control Plan

Background

The State of Texas submitted a revision to the Texas Air Pollution Implementation Plan on April 15, 1973. Along with that submittal, the Governor of Texas requested an extension until 1977 for the attainment of the standard for photochemical oxidants in seven Texas Air Quality Control Regions. The State plan asserted that the 1975 ambient air quality standards would be met by May 31, 1975 by utilizing a stationary source strategy that would regulate reactive carbon compounds.

This plan was evaluated by EPA and on June 15, 1973, the plan was disapproved by the Administrator 38 FR 16562, 16568 (June 22, 1973). The plan was disapproved because principal portions or revisions of the control strategy and appropriate documentation were not made available for public inspection and public comment prior to the hearings on the plan. It was further determined that the material submitted by Texas, even if validly adopted, would not adequately ensure that the plan would meet the requirements of 40 CFR 51.14. On July 3, 1973, the Administrator proposed an

alternate control strategy for attaining and maintaining national standards for photochemical oxidants in Texas (38 FR 17799). That proposal further described specific deficiencies in the Texas plan. The document pointed out that the State control plan was inadequate because it was based on the control of stationary sources alone. The reduction model used by EPA showed that this control could not result in attainment of national ambient air quality standards without additional transportation control measures.

Public hearings were conducted by the Environmental Protection Agency in Dallas, Houston, San Antonio, El Paso, Austin, Corpus Christi, and Beaumont, Texas on July 17, 18, and 19, 1973. As a result of comments received during those public hearings and additional written comments submitted to EPA, certain changes have been made to the regulations as proposed.

AIR QUALITY AND EMISSION REDUCTIONS

EPA proposed a control strategy based on the reduction of reactive organic compound (hydrocarbon) emissions. The magnitude of the required reductions in emissions was determined on the basis of straight percentage rollback from the baseline oxidant air quality measurements in each region. See "Photochemical Oxidant Control Strategy Development For Critical Texas Air Quality Control Regions," prepared for EPA in 1973 by TRW, Inc. "Control Strategy," hereinafter). The Texas Air Control Board, in public testimony, has maintained that the model is incorrect because it assumes that a decrease in ozone is to be effected from each corresponding decrease in non-methane hydrocarbons. In the plan submitted on April 15, 1973, the State, using data from AP-84 (Air Quality Criteria for Nitrogen Oxides), had developed a reduction model relationship based on non-methane hydrocarbons. Using this relationship, the percent reduction required for reactive hydrocarbon emissions was significantly lower than the reduction required by straight percentage reduction. To estimate reductions in reactive hydrocarbons resulting from their strategy, the State separated reactive and non-reactive components in the hydrocarbon emission inventory. EPA has reviewed this model relationship and has determined that this reduction relationship should not be accepted as the appropriate reduction model and that in this case the appropriate reduction model should be the straight percentage rollback model.

The reduction relationship developed by the State presumes the non-existence of data at the "lower end" (below 0.3 ppm non-methane hydrocarbons) of the oxidant non-methane hydrocarbon relationship described in AP-84. In fact, data does exist in this range, but was not plotted due to low confidence levels resulting from the measurement technique employed (see Reference 8 of section 4, AP-84). Consideration of this "omitted" data could result in a reduction requirement model even more stringent than Appendix J (See Control Strategy, p. 1-3). The State has not considered these data in its submitted model. The Administrator, therefore, determined that the reduction relationship developed by the State should not be accepted as the appropriate reduction model. Appendix J, on the other hand, did not account for the utilization of a reactive hydrocarbon approach and also was not considered appropriate. Since a reduction in reactive hydrocarbons relates more closely to a subsequent reduction in oxidants, a reactive hydrocarbon strategy approach is desirable. In the absense of an adequate photochemical diffusion model, an appropriate relationship for use with a reactive hydrocarbon approach is straight percentage reduction. This technique is also being used in some other critical areas of the United States. Thus, the Administrator finds that in this case straight percentage rollback is the appropriate reduction model.

It is recognized that considerable controversy exists regarding the reduction model that should be used. It is apparent at this time, however, that at least the reductions indicated by the straight percentage rollback model will be necessary in the State of Texas. Should future data indicate that further reductions are necessary, the Administrator will propose additional measures beyond what are required in this control strategy. On the other hand, the Administrator recognizes that application of Texas' Regulation V for the control of volatile carbon compounds may achieve a greater reduction in the emission of reactive hydrocarbons than is now expected, as was indicated by the stationary source strategy submitted by the State of Texas. If, after promulgation of these regulations, the State of Texas provides data to the Administrator showing that photochemical oxidant levels are being reduced at a rate greater than now expected and that further implementation of these regulations is not necessary, all or a portion of the Federal plan will be rescinded.

The reactive hydrocarbon approach proposed by EPA was criticized by the State on the basis that the reactivity factors used were incorrect. EPA believes, however, that the procedures and reactivity data developed by the State of Texas to separate reactive carbon compounds from total hydrocarbon emissions for petroleum refining, chemical processes, and certain transportation categories were inconsistent with data that showed the relationship between reactive and non-reactive components for identical processes and sources in other areas of the country. Generally, the approach used by the State overestimated reactive emissions from petroleum refining, chemical processes, aircraft and diesel engines, and underestimated the reactive emissions from gasoline powered motor vehicles. Estimates for most other emission categories are consistent. Data available to EPA from two other areas of the country validate the reactivity factors used in EPA's Texas control strategy (See EPA Region VI Technical Support Document). The state emission inventory for total hydrocarbons and the procedure used to estimate the effects of Texas' Regulation V was determined to be adequate and with some updating and improvement, it was used directly in the development of the plan utilized by EPA, except for certain transportation categories (See EPA Region VI Technical Support Document).

The measurement method and ambient data base utilized by EPA also have been criticized because of the newness of instruments used to obtain the data. EPA has utilized the best available data. The data were obtained in an EPA study in the summer of 1971, in which State and local employees operated and calibrated the instruments used, and additional data were obtained from the Texas Air Control Board for 1972. On the basis of this best available information, EPA has determined the necessary reductions in oxidants that must be achieved in order to attain the national standard for photochemical oxidants.

The control plan developed by EPA has not been based primarily on the control of hydrocarbon emissions from mobile sources. In developing the plan, EPA looked first to the control of stationary sources and in fact utilized Texas' Regulation V for the control of such sources. In areas such as the Houston-Galveston Region, where stationary sources constitute the majority of hydrocarbon emissions, the control strategy acknowledged this fact, and 87 percent of the reductions is from these sources. Only in those areas where the reduction model used by EPA showed that control of stationary sources alone would not be adequate were mobile source reduction measures proposed and utilized in this promulgation.

Reductions required for six air quality control regions in Texas are discussed individually below. These reductions are based on straight percentage rollback from the baseline oxidant air quality measurements in that region.

AIR QUALITY CONTROL REGIONS IN TEXAS

There are seven air quality control regions in the State of Texas that have been classified priority I for photochemical oxidants. The regions are: AQCR 3 Austin-Waco; AQCR 5 Corpus Christi; AQCR 7 Houston-Galveston; AQCR 8 Dallas-Fort Worth; AQCR 9 San Antonio; AQCR 10 Southern Louisiana-Southeast Texas Interstate; AQCR 11 El Paso Interstate. The regulations herein promulgated are designed to attain and maintain the national ambient air quality standard for oxidant in six of the AQCR's cited in the May 31, 1972 FEDERAL REGISTER. However, as indicated in the July 3, 1973 FEDERAL REGISTER, it has been determined that the seventh region, AQCR 10, Southern Louisiana-Southeast Texas Interstate Region, will also require a modified control strategy for the control of hydrocarbon emissions. Due to the severe schedule limitations imposed upon the Administrator by the tight deadlines of the court order and the magnitude of other promulgations, a plan for controlling hydrocarbon

emissions in Texas' portion of the Southern Louisiana-Southeast Texas Interstate Region has not been fully completed for inclusion in this promulgation. Regulations will be proposed in the FEDERAL REGISTER and a hearing will be held for this AQCR after completion of a study that is now underway. However, it is the opinion of the Administrator that, as a minimum, control for limiting reactive hydrocarbon emissions from the stationary sources located there should be included as part of this promulgation. It has been determined that approximately 80 percent of the total hydrocarbon emissions in the Region result from stationary sources (see EPA Region VI Technical Support Document).

The standard to be achieved by this plan is the national ambient air quality standard for photochemical oxidants, which is 160 $\mu g/m^3$ (0.08 ppm) for photochemical oxidants, and the straight percentage rollback reduction model was used by EPA. At the time regulations were proposed, the second highest ozone measurement in Region 8 (Dallas-Fort Worth) was thought to be 0.125 ppm (38 FR 17800). This figure would have resulted in a 36 percent emission reduction being required. The second highest ozone measurement in Region 8 was actually 0.120 ppm, which indicates that a 34 percent emission reduction is required. (See EPA Region VI Technical Support Document). This change is reflected in the table below.

Region	2d highest O_3 measurement to date (ppm)	Percent emission reduction required
3	0.109	27
5	.184	56
7	.320	75
8	.120	34
9	.145	45
10	.341	77
11	.120	34

CONTROL STRATEGY TO REDUCE REACTIVE ORGANIC (HYDROCARBON) COMPOUNDS

The Administrator's analysis of the control strategies required to meet ambient air quality standards for oxidants included evaluation of additional stationary source controls in combination with mobile source controls. The control strategy proposed on July 3, 1973 for each air quality control region was based on the most promising combination for that particular region. In addition, efforts were made to incorporate the State plan, which was done, and to follow known State priorities and planning in setting forth additional proposals. The following is a summary of the measures that were originally proposed and of those now promulgated herein after receipt of additional review and public comments were received on the proposals.

STATIONARY SOURCES

EPA looked first to the reductions in emissions that might be achieved by further control of stationary sources. The states and EPA have had significant experience in enforcing similar measures. It can be predicted with confidence that none of these measures will cause any noticeable economic or social disruption even though some burden on individuals may result from them.

The Administrator originally proposed the following emission reduction measures applicable to stationary sources of reactive organic compound emission:

(1) The extended application of Texas' Regulation V to additional counties.

(2) Control of organic solvent evaporation.

(3) Control of evaporative losses from gasoline marketing operations, including control of evaporative losses at the stage when gasoline is loaded into the storage tanks at a service station or other distribution facility, and at the stage when gasoline is loaded into the individual vehicle.

(4) Control of barge and ship loading.

(5) Control of emissions of organic compounds from architectural coatings for buildings.

(6) Elimination of degreasing operations using trichloroethylene.

(7) Limitation of new reactive carbon compound emission sources.

Texas' present Regulation V, "Control of Air Pollution for Volatile Organic Compounds" is now applied to sixteen counties. Significant reduction may be obtained by applying this regulation to additional counties and the proposal to extend the regulation has been retained in this rule making. Very little public comment was addressed to the feasibility of extended applicability of Regulation V. Comments on this topic questioned the oxidant standard, rather than the necessity of utilizing Regulation V to achieve that standard.

Additional information now available indicates that proposed Items 2 and 5 may be eliminated as part of the control strategy required to meet ambient air quality standards for oxidants. The emissions of organic compounds from organic solvent evaporation and from architectural coatings for buildings contribute only a small portion of hydrocarbon emissions in the Houston-Galveston, San Antonio, and El Paso Air Quality Control Regions, where the regulation was proposed. Testimony received at public hearings shows that these regulations would not achieve substantial reductions, but would impose unnecessary burdens on the public. For these reasons the regulations regarding control of organic solvent evaporation and architectural coatings have been omitted.

EPA is currently of the opinion that the technology to control emissions associated with storage tank filling cannot be applied in full for all affected facilities until March 1, 1976, not until June 30, 1976 for 80 percent control of emissions from individual vehicles, and not until May 31, 1977 for 90 percent control for individual vehicles (See General Preamble). It is apparent however, that control devices will be available for a portion of the affected facilities by May 31, 1975. For this reason full implementation of this regulation is being required in the Texas portion of the El Paso-Las Cruces-Alamogordo Interstate Region and the Austin-Waco Intrastate Region by that date. There are approximately 15,080 service stations in Texas for which full vapor recovery systems will be required by these regulations. Of this number, approximately 770, or about 5 percent are located in the El Paso region. Certain manufacturers of the vapor recovery systems have indicated to EPA that their systems are available for marketing at this time and can be installed within a short period of time (See EPA Region VI Technical Support Document). There also is a readily available labor market in the El Paso area. Thus, it is believed that by making the El Paso region a priority area for the installation of vapor recovery systems and by directing all available resources within the State to that area, the systems may be fully installed and operative for all affected sources within the area by May 31, 1975. Similarly, in the Austin-Waco Air Quality Control Region there are approximately 2270 service stations; about 13 percent of the stations in the state that will be required to have partial vapor recovery by these regulations. Again, the equipment necessary to implement vapor recovery systems for tank loading is available in limited quantities and by directing all available resources to the Austin-Waco region, the installation of systems can be completed by May 31, 1975.

A study prepared for EPA in 1973 indicates that installation of necessary equipment can be accomplished by local contractors since the installation is typical of service station construction and repair and does not require specialized equipment. At an estimated installation time of less than a week per station from ground breaking to surface repair, and assuming a single contractor could handle five to ten installations per week, the total contractor requirement for El Paso would be about three individual contractors for the entire region and about seven for the Austin region. It is acknowledged that there could be some delay in supplying the above ground hardware, the special nozzles and return lines, due to a sudden demand placed on manufacturers, but it is believed that by placing priority on El Paso and the Austin-Waco area, this demand will be anticipated. See "Photochemical Oxidant Control Strategy Development for Critical Texas Air Quality Control Regions" (1973, TRW, Inc.), (hereinafter, "Control Strategy").

Some public testimony regarding gasoline marketing controls objected to the cost imposed upon owners or operators of retail gasoline stations. Data available to EPA, however, indicate that the full or partial vapor recovery system is one of the most cost effective measures available. See "The Clean Act and Transportation Controls (An EPA White Paper, August, 1973)" (hereinafter, "EPA White Paper"); "Systems and Costs to Control Hydrocarbon Emissions From Stationary Sources" (EPA 1973). The

prevention of gasoline loss by means of vapor recovery systems allows the cost of the system to be recovered over a period of time.

At the present time there are no regulations controlling reactive organic compound emissions resulting from the loading of barges and ships in Texas. Technology is available which, if applied, would substantially reduce the emissions. Public testimony objecting to EPA's proposals for the application of such technology raised the issue of jurisdiction over ships and barges. Some commentators suggested that the United States Coast Guard should have sole jurisdiction over all ships and barges. EPA believes, however, that it has jurisdiction over all sources of air pollution under the authority of the Clean Air Act, and that with the cooperation of the Coast Guard it may control reactive hydrocarbon emissions from ships and barges. The proposed regulation thus has been retained in this final rule making.

The regulation requiring control of degreasing operations by eliminating the use of trichloroethylene (TCE) has been amended to allow continued use of TCE where appropriate controls are utilized. This change is based on public comments indicating that in some instances continued use of trichloroethylene is preferable and that the use of control devices will achieve similar results.

A permit system was proposed to control growth of industries emitting reactive organic compounds in Air Quality Control Regions where excessive industrial development will prevent the attainment and maintenance of air quality standards. Comments on this regulation concerned the validity of the oxidant standard, rather than the necessity of the regulation to meet the standard. As stated above, it is EPA's view that this measure is necessary to achieve the 0.08 ppm photochemical oxidant standard and it has thus been retained in final regulations.

In summary, EPA is now promulgating the following regulations for the control of reactive carbon compound emissions from stationary sources:

(1) The extended application of Texas' Regulation V to additional counties, fully implemented by 1975.

(2) Control of evaporative losses from gasoline marketing operations: (a) At the stage when gasoline is loaded into the storage tanks at a service station, fully implemented by 1975 AQCR's 3 and 11 and by 1976 in AQCR's 7, 8, and 9; and (b) at the stage when gasoline is transferred from the filling pump to the vehicle talk, fully implemented by 1975 in AQCR 11, by 1976 AQCR 8, and by 1977 in AQCR's 7 and 9.

(3) Control of barge and ship loading, fully implemented by 1975.

(4) Control of degreasing operations using trichloroethylene, fully implemented by 1975.

(5) Limitation of new reactive carbon compound emissions sources, fully implemented by 1975.

EPA is promulgating Item 1 above for Corpus Christi, Items 1 and 2-a for Austin-Waco, Items 2-a, and 2-b for El Paso, Items 1, 2-a and 2-b for Dallas-Fort Worth, Items 2-a, 2-b, and 4 for San Antonio, and all Items for the Houston-Galveston Region.

Mobile Sources

The Administrator proposed various emission reduction measures applicable to mobile sources of reactive organic compound emissions. The proposed measures and amendments made since the time of proopsal are discussed below:

(1) *Aircraft.* Emissions will be reduced due to turnover in aircraft populations. Calculations of emission reductions to be achieved by these measures have not changed since the original proposal. The reductions to be achieved by these measures were estimated at a conservative level (See EPA Region VI Technical Support Document).

(2) *Vehicles.* The controls proposed for vehicles can be divided into controls designed to reduce emissions per mile from vehicles currently in use and those designed to reduce the total number of vehicle miles traveled (VMT) in a region.

(a) *Emissions per mile.* Two measures in this category were proposed. The first is inspection and maintenance. Under it, the State will be required to test all vehicles in an area annually in a way that indicates their emission, fail those vehicles that exceed a certain emission level, and then require these vehicles to have maintenance performed in order to comply. The emission inspection procedure, which involves measuring the emissions while the vehicle is running in neutral, is called an "idle mode test". Automobiles so tested will be expected to meet emission requirements designed for the year and model of the automobile.

If the program criteria are properly designed, a reduction of 8 percent in reactive hydrocarbon emissions from light duty vehicles can be obtained in 1976. Comments have been received suggesting that a greater percentage reduction in reactive hydrocarbon emissions should be achieved. The regulations provide that the criteria will be tightened to achieve an 11 percent reduction in 1977 if the ambient standards have not been met.

The second measure involves retrofit of pre-1968 light duty vehicles in a region with a relatively simple emission control device called "vacuum spark advance disconnect."

The first of these measures were proposed for El Paso, San Antonio, Dallas, and Houston. It was further proposed that an inspection and maintenance program could be fully implemented by the State by May 31, 1975. It is now believed that the State cannot fully implement the program until May 1, 1976. Accordingly, an extension has been granted for those Regions where an inspection and maintenance program is necessary and the regulation has been amended to extend to May 31, 1976 as the date by which the State must be in full compliance with the regulation. The Attorney General for the State of Texas has issued an opinion maintaining that the Texas Air Control Board does not have the statutory authority to operate an automobile inspection and maintenance program. It is unclear at this time whether the Texas Department of Public Safety has authority for such a program as a part of its annual safety inspection program. However, promulgation of these Federal regulations as a part of the State Implementation Plan can authorize the State of Texas to proceed with implementation of the required inspection and maintenance program. The El Paso region has been eliminated from this regulation. It was determined that the standard could be achieved by 1975 by means of other measures.

Based on testimony received during the public hearing, additional changes were considered. The proposed regulation required that light duty vehicles obtaining a Texas Department of Public Safety inspection sticker must first pass an emissions test called an "idle mode test." Some citizens suggested a program in which, before a license plate is issued by the State, every vehicle owner must certify that this vehicle has been maintained according to the manufacturer's recommendations. This proposal would eliminate mandatory inspection for all vehicles. The certification would be enforced by "spot checks" and by requiring maintenance on those vehicles that failed the test. Evaluation of this proposal, however, showed that all vehicles would require maintenance before license plates could be issued. Otherwise, the vehicle owner could not truthfully certify that recommended maintenance had been performed. This would increase the total expense to all motorists over a full inspection program. Thus, the original proposal for inspection and maintenance was retained as it would require no certification of maintenance, and actual maintenance only on those vehicles failing the emission test. An additional measure has been included in this promulgation, however, that will require the State to monitor the effects of the inspection and maintenance program and retrofitting devices.

The requirement for retrofitting of pre-1968 light duty vehicles was proposed for Dallas-Fort Worth, San Antonio, and Houston-Galveston. It is the belief of the Administrator that implementation of this regulation would impose an unnecessarily onerous burden upon the poor, who own a significant percentage of pre-1968 automobiles in that region. Per capita income data shows that San Antonio had a per capita income in 1970 of $2,845, or 82 percent of the national average. This is compared to per capita income in Houston, $3,571 (103 percent of national average), Washington, D.C., $4,170 (120 percent of national average), and Los Angeles, $4,403 (127 percent of national average). See "Populational and Economic Activity in the U.S. and Standard Metropolitan Statistical Areas" (EPA/HUD). Poverty level figures also reflect the relatively low income status of San Antonio. Nationally, persons in the under $5,000 per year income range own approximately 27 percent of the pre-1968 vehicles. While exact percentages on San

Antonio are not available at this time, the above described income levels indicate that the 27 percent figure probably is low for San Antonio (See EPA Region VI Technical Support Document).

The retrofitting proposal also was eliminated in the Dallas-Fort Worth Region. It is not available prior to the attainment date granted the Dallas-Fort Worth Region to fully implement the vapor recovery regulations by 1976.

(b) *Vehicle restraints.* In the Houston-Galveston, San Antonio, and Dallas-Fort Worth Region the measures set forth above will not be sufficient to achieve the standard by 1975. The Administrator is granting extensions of time to these Regions under section 110 (e) of the Clean Air Act. The Act provides that no such extension may be granted unless all control measures which are reasonably available by May 31, 1975, are applied by that date. Accordingly the Administrator originally proposed the following measures for application to Houston and San Antonio; only the first two measures were proposed for Dallas.

(i) The conversion of motor vehicle lanes on major streets and freeways to the exclusive use of buses and carpools.

(ii) A limit on the construction of new parking facilities.

(iii) Limitations on the future growth of gasoline sales above current levels.

Final regulations require only the first item for Dallas and San Antonio and all three items for Houston-Galveston (with some changes). Carpooling measures to reduce VMT have replaced the second item for Dallas and San Antonio. EPA has evaluated a large number of measures to reduce emissions from mobile sources, including not only those included in the original proposal, but also additional measures. It has been determined that only those measures described below are practicable at this time in Texas.

The proposed regulation for preferential treatment of bus and carpool lanes required that all six- and eight-lane streets or highways in the affected areas would have preferential bus and carpool lanes. For purpose of clarity, the regulation has been amended to require preferential bus and carpool lanes in specific traffic flow corridors of major metropolitan areas. The governmental entity having jurisdiction over the roads is required to stipulate the specific streets on which lanes will be reserved, or streets that will be reserved wholly for buses and carpools, and to submit timetables indicating when the specified lanes and/or streets will be converted to preferential use, according to deadlines specified in the regulations.

The proposed regulation requiring a permit for new parking facilities applied to all parking facilities, regardless of size. In response to public comment which pointed out that the regulation would be applicable even to individual residential parking facilities, the requirement has been amended to include only those facilities that could have a significant impact upon vehicle miles traveled in a given area. As promulgated, the regulation will cover only parking facilities for five hundred or more automobiles.

Additional vehicle restraints are included in the final regulations that were not among the proposed regulations. As indicated in the July 3, 1973 FEDERAL REGISTER, the Administrator has been continuing to study additional reasonably available measures that will result in reduction of vehicle miles traveled by automobiles. By the regulations promulgated herein, the Administrator is approving a two-year extension of time in San Antonio and Houston-Galveston and a one-year extension in Dallas-Fort Worth under section 110(e) of the Clean Air Act. The Act, however, requires that all control measures that are reasonably available must be applied by May 31, 1975. Accordingly, additional measures that have come to the attention of the Administrator and that are reasonably available in the affected areas are included in this promulgation. The first of these measures is a bus and carpool incentive and promotion program that will require all private and public employers of 1000 or more employees in one location to provide incentives to those employees that will encourage them either to ride to work in carpools or to ride the bus. The second measure requires the State or approved local agencies to provide a computerized carpool service for employees working in the central business districts of Dallas, Fort Worth, San Antonio, and Houston. By this means the forming of carpools may be facilitated and the number of vehicle miles travelled by individual automobiles can be reduced. The Region VI office of EPA will provide assistance to the State or local agencies in preparing applications for Federal funds to implement the computerized carpool program.

Testimony received at the public hearings, however, revealed that a number of major metropolitan areas in Texas already have developed extensive traffic flow plans, soon to be implemented in those areas, that are similar to the measures proposed by EPA. In order to accommodate and utilize local planning where possible, EPA strongly encourages the use of local plans, and the regulations have been amended to accommodate such plans where possible. The regulations now provide that, if it is demonstrated that local plans will achieve reductions equivalent to those proposed by EPA and these plans are submitted by the State of Texas to EPA by December 1, 1973, these plans will be utilized for all or part of the VMT reduction measures, if approved by the Administrator. If such plans are not submitted or not approved, EPA regulations will continue to be effective.

Representatives of the cities of San Antonio, El Paso, Galveston, Houston, Fort Worth, and Dallas have met individually with the EPA Regional Office to discuss transportation measures that have been implemented by the cities and the plans to which the cities are committed and that will be accomplished within the next two to four years. Full details on the individual city plans and/or the VMT reductions that will be achieved by each plan are not available at this time. City representatives have indicated, however, that the cities are concentrating on emission reductions through traffic flow improvements such as computerized traffic signals, city-run vehicle inspection programs, upgrading of existing bus systems, satellite parking, limiting off-street parking to some extent, and general traffic flow improvements. The respective cities have indicated their intention to submit these plans to the Texas Air Control Board for inclusion in the State Implementation Plan.

In summary, EPA is now promulgating the following regulations for the control of reactive carbon compound emissions from mobile sources:

(1) Vehicle inspection and maintenance programs, fully implemented by 1976.

(2) Retrofitting of pre-1968 light duty vehicles, fully implemented by 1976.

(3) Conversion of motor vehicle lanes on major streets and freeways to the exclusive use of buses and carpools, fully implemented by 1976.

(4) A limit on the construction of parking facilities, effective August 15, 1973.

(5) Limitations on gasoline sales, conditionally effective in 1977.

(6) Requirements for bus and carpool incentives, fully implemented by 1975.

(7) Requirements for computerized carpool systems, fully implemented by 1975.

None of these items are required for the Austin-Waco, Corpus Christi, or El Paso AQCR's. Items 3, 6, and 7 are required for the Dallas-Fort Worth AQCR. Items 1, 3, 5, 6, and 7 are required for the San Antonio AQCR. All items are required for the Houston-Galveston AQCR. State or local plans may substitute for any of these items.

The capital costs for recovering vapors emitted during gasoline transfer from tank truck to service station is estimated to be just under $2,000 per station, which includes modification of bulk terminals. The annual operating cost for this phase of service station vapor controls is estimated to be ½ cents per gallon pumped. It is not known how much of this cost, if any, will be passed on to car owners. Car owners can expect to pay from $3 to $5 per vehicle per year for an annual idle inspection, depending on whether the inspection is state operated or operated through a franchise. The average maintenance cost for failed vehicles is expected to be about $25. Owners of vehicles that require a VSAD/LIAF retrofit can expect to pay about $20 for the device, which includes installation. Accurate cost estimates for marking bus/carpool lanes and installing signs are not available at this time. For additional information see Control Strategy; Systems and Costs to Control Hydrocarbon Emissions From Stationary Sources; EPA Region VI Technical Support Document.

AQCR 3—Austin-Waco

AQCR 3 encompasses 24,633 square miles in 29 counties located in the central section of the State. The AQCR 3 counties are: Bastrop, Bell, Blanco, Bosque, Brazos, Burleson, Burnet, Caldwell, Coryell, Falls, Fayette, Freestone, Grimes, Hamilton, Hays, Hill, Lampasas, Lee, Leon, Limestone, Llano, McLennan, Madison, Milan, Mills, Robertson, Travis, Washington, and Williamson.

The second highest one-hour oxidant measurement in AQCR 3 is 0.109 ppm and was recorded in 1971. Based on the linear rollback procedure described in this proposal, this level requires a reactive carbon compound emission reduction of 26.6 percent from 1971 levels to meet the ambient air quality standard. Present stationary source regulations and Federal motor vehicle controls will provide a reduction of approximately 19.4 percent by 1975. An additional 3.8 percent reduction will result from an extension of Texas' Regulation V to Bell and McLennan Counties. An additional 4.9 percent will be accomplished by a vapor recovery system on gasoline storage tanks for all retail gasoline sales outlets, and aircraft emission reductions due to Federal standards which limit emissions from aircraft engines (See Control Strategy).

Regulations for the Austin-Waco Region essentially are the same as proposed. All measures for AQCR 3 shall be fully implemented by May 31, 1975.

Control of evaporative losses from gasoline marketing operations at the stage when gasoline is loaded into the storage tanks at service stations or other distribution facilities was proposed for the Austin-Waco Region and is included in final regulations. Whereas extensions have been granted for various other Regions to fully implement this regulation, it has been determined that sufficient equipment necessary will be available to implement this regulation in the Austin-Waco Region by May 31, 1975. Implementation of this regulation by 1975 will obviate the necessity of an extension for the Austin-Waco Region beyond the attainment date and thus, additional measures, such as reductions in vehicle miles travelled, will not be required.

Public transit, however, is important to the transportation needs and air quality in the region. The Administrator continues to encourage efforts to improve transit service in Austin and Waco.

The baseline emission inventory is tabulated by major source category in Table 3–1. The emissions reductions for 1975, projected on the basis of the measures described above, are summarized in Table 3–2.

AQCR 5—Corpus Christi-Victoria

The Corpus Christi-Victoria AQCR covers most of the South Texas coastal region. It is composed of 18 counties: Aransas, Bee, Brooks, Calhoun, DeWitt, Duval, Goliad, Jackson, Jim Wells, Kenedy, Kleberg, Lavaca, Live Oak, McMullen, Nueces, Refugio, San Patricio, and Victoria. Fifty-two percent of the population of the AQCR is located within the Corpus Christi Standard Metropolitan Statistical Area which represents 9 percent of the land area.

The region is flat to rolling hills with a rise in altitude from the coastal plains at sea level to approximately 250 feet in the northern sector. While there is ample sunshine to aid the formation of photochemical smog, the region is geographically open and the prevailing Gulf winds provide ventilation of the region.

Table 3-1.—*AQCR 3 (Austin-Waco) emission inventory*

[Tons per year]

Source category	1971 [1]	1975
Stationary sources:		
Area sources	797	840
Chemical processing	2,681	2,870
Petroleum refining and petrochem	0	0
Other processing	833	796
Transportation sources:		
Gasoline-powered motor vehicles	47,992	34,176
Diesel-powered motor vehicles	441	510
Aircraft	5,342	5,206
Gasoline marketing	4,405	5,421
Other transportation [2]	4,085	3,839
Total	66,576	53,658
Percent reduction from baseline year resulting from present controls		19.4

[1] Baseline year.
[2] Off-highway fuel usage (farm, construction, etc.), vessels, and railroads.

Table 3–2—*AQCR 3 Emissions Reductions from 1971 Levels—Under Strategy for 1975*

Control measure:	*1975 (tons per year)*
Present controls, including Federal motor vehicle controls	12,918
Extension of regulation V to Bell and McLennan Counties	2,544
Gasoline marketing service station storage tank vapor return	2,496
Aircraft emission control	750
Total	18,708

Baseline emissions: 66,576 tons per year.
Required percent reduction: 26.6 percent.
Required emission reduction by 1975: 17,976 tons per year.

During the summer studies of 1971, the second highest one-hour oxidant measurement in AQCR 5 was 0.184 ppm. Straight percentage rollback requires a reduction of approximately 56 percent from 1971 levels of projected emissions of reactive organic compounds to achieve the national primary ambient air quality standard for photochemical oxidants.

The Administrator is requiring control of stationary sources which in combination with the Federal emission standards for new vehicles will be adequate to meet the ambient air quality standard by May 31, 1975. The required stationary source controls, which are identical to the Texas Plan revision, are applications of Texas' Regulation V in Aransas, Calhoun, Nueces, San Patricio, and Victoria counties. Regulations for the Corpus Christi-Victoria Region essentially are the same as proposed. Transportation controls are not required in this region (See Control Strategy).

Public transit is important to the transportation needs and air quality in the region. The Administrator encourages efforts to improve transit service in Corpus Christi and will make every possible effort to assure that any Federally-funded transit modernization program is carried out.

Table 5–1 is a summary of the effect of the strategy on the reactive organic compound emissions.

Table 5-1.—*AQCR 5 (Corpus Christi-Victoria) emission inventory*

[Tons per year]

Source category	1971 [1]	1975
Stationary sources:		
Area sources	395	408
Chemical processing	78,995	10,810
Petroleum refining and petrochem	1,615	170
Other processing	46	46
Ship and barge loading	2,697	2,787
Transportation sources:		
Gasoline-powered motor vehicles	23,714	16,268
Diesel-powered motor vehicles	214	225
Aircraft	6,680	6,638
Gasoline marketing	2,309	2,809
Other transportation [2]	2,486	2,407
Total	119,151	42,683
Percent reduction from baseline year resulting from present controls		64.2

[1] Baseline year.
[2] Off-highway fuel usage (farm, construction, etc.), vessels, and railroads.

Note.—Required reduction: 56 percent.

AQCR 7—Houston-Galveston

The Houston-Galveston AQCR is located on the coastal plains in the southeastern part of Texas. It is composed of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Walker, Waller, and Wharton counties.

Ninety-four percent of the population of the AQCR resides in the Houston and Galveston Standard Metropolitan Statistical Areas. The entire land area of the Region is very flat with no characteristic geomorphic features. Altitude varies from sea level on the coast to a maximum of 450 feet in Walker County to the north.

The second highest one-hour oxidant measurement in the Region is 0.32 ppm (measured in 1972). Based on straight percentage rollback, this level requires a reactive organic compound emission reduction of 75 percent from 1972 levels to meet the national ambient air quality standard for photochemical oxidants. To fully meet the requirements of the Clean Air Act by May 31, 1975, in Texas would require about 32 percent VMT reduction. However, it is the opinion of the Administrator that a reduction of 32 percent in VMT by 1975 to be achieved by limiting gasoline sales would be socially disruptive. Vehicle miles traveled cannot be practicably reduced by the required amounts before 1977. Therefore, the Administrator is requiring an alternate control strategy, which will allow substantial economic savings, that shall be fully implemented by May 31, 1977. The alternate strategy consists of the present stationary source regulations and Federal motor vehicle controls which provide a reduction of 65.4 percent by 1977, and the remaining 10 percent reduction can be attained by applying the following meas-

ures (See Control Strategy and EPA Region VI Technical Support Documents):

(1) Additional effect of Federal motor vehicle controls.

(2) Vapor recovery from all gasoline outlets, including vapor return from vehicle tanks.

(3) An inspection and maintenance program for light duty vehicles.

(4) Control of emissions from barge and ship loadings of reactive carbon compounds.

(5) Retrofitting of pre-1968 light duty vehicles utilizing VSAD/LIAF.

(6) Setting aside of motor vehicle lanes on major streets and highways for the exclusive use of buses and carpools.

(7) Limitations on gasoline sales, conditionally effective in 1977.

(8) Review of future construction of vehicle parking facilities.

(9) A computerized carpool program, and

(10) Carpool and bus incentives provided by employers.

Several regulations that were proposed on July 3, 1973 for the Houston-Galveston Region are not a part of this regulation. A regulation for control of organic solvent evaporation and architectural coatings for buildings proposed for the Houston-Galveston Region has been omitted. This regulation resulted in only a small proportion of reductions required for the Region and was not found to be practicable, as stated above in this preamble. In addition, it is believed that similar reductions may be obtained without utilizing the proposed regulation for the control of solvent evaporation (See EPA Region VI Technical Support Document).

Proposed regulations for limitation of gasoline sales also have been amended. The proposals required that the State of Texas prohibit the delivery to retail outlets of more than 100 percent of the gasoline delivered to outlets during the 1972–73 base year. Public testimony has indicated that allowing no growth above the 1972–73 base year may be socially disruptive. On this basis, the regulation requiring limitations on gasoline sales was reevaluated. It was determined that gasoline limitations should be used only in the event that the standards cannot be achieved by any other measures. The regulation thus was amended to limit gasoline sales to whatever levels may be necessary to achieve the oxidant level, but only if the oxidant standard cannot be achieved by other measures by 1977.

Additional vehicle restraints are included in the final regulations that were not among the proposed regulations. As indicated in the July 3, 1973, FEDERAL REGISTER, the Administrator has been continuing to study additional reasonably available measures that will result in reduction of vehicle miles traveled by automobiles. By the regulations promulgated herein, the Administrator is approving a two-year extension of time in the Houston-Galveston Region under section 110(e) of the Clean Air Act. The Act, however, requires that all control measures that are reasonably available must be applied by May 31, 1975. Accordingly, additional measures that have come to the attention of the Administrator and that are reasonably available in the affected areas are included in this promulgation. The first of these measures is a bus and carpool incentive and promotion program that will require all private and public employers of 1,000 or more employees in one location to provide incentives to those employees that will encourage them either to ride to work in carpools or to ride the bus. The second measure requires State or approved local agencies to provide a computerized carpool service for employees working in the central business district of Houston. By this means the forming of carpools may be facilitated and the number of vehicle miles traveled by individual automobiles can be reduced. It is now believed that these measures and those described below will be all necessary to attain the oxidant standard. If it becomes apparent, however, that further reductions will be necessary, the Administrator will propose additional regulations.

The proposed regulation for preferential use of certain highway lanes for buses and carpools has been amended to provide more clarity. As promulgated, the regulation specifies traffic flow corridors from around the city into the central business district of Houston, the major metropolitan area in the AQCR. The governmental entity having jurisdiction over the roads within each corridor will be required to specify certain lanes and/or streets that will be designed for the specific use of buses and carpools. The corridors specified for Houston encompass approximately 60 miles of roadway.

Testimony received at the public hearings shows that retrofitting devices and use of preferential bus and carpool lanes are opposed by some members of the public because of practical considerations rather than because of the efficiency of the regulations in meeting the standards. The testimony revealed, however, that some of the cities in the Houston-Galveston Region have developed extensive traffic flow plans. Subsequent information submitted by the cities suggests that the plans, soon to be implemented in those areas, would achieve reductions equivalent to the measures proposed by EPA. In order to accommodate and utilize local planning where possible EPA strongly encourages the use of these local plans. Thus, the regulations have been amended to accommodate the plans where possible. If it is demonstrated that local plans will achieve reductions equivalent to those proposed by EPA and these plans are submitted by the State of Texas to EPA by December 1, 1973, those plans will be utilized for all or part of the measures proposed for the Houston-Galveston Region if approved by the Administrator. If such plans are not submitted or not approved, EPA regulations will continue to be effective.

For additional information on transportation measures used in the Houston-Galveston Region see "Transportation Control Strategy Development for the Greater Houston Area" prepared for EPA in 1972 by TRW, Inc.

The baseline emission inventory which includes the effects of Texas' Regulation V and Federal motor vehicle controls is tabulated by major categories in Table 7-1. The emission inventory reductions for 1975 and 1977 projected on the basis of control strategies described above are summarized in Table 7-2.

TABLE 7-1.—*AQCR 7 (Houston-Galveston) emission inventory*

[Tons per year]

Source category	1972[1]	1975	
Stationary sources:			
Area sources	5,872	6,211	----------
Chemical processing	257,417	33,578	37,384
Petroleum refining and petrochem	17,064	1,561	----------
Other processing	2,526	983	----------
Ship and barge loading	11,444	12,000	12,778
Transportation sources:			
Gasoline-powered motor vehicles	83,620	67,977	52,976
Diesel-powered motor vehicles	870	980	----------
Aircraft	5,813	5,491	----------
Gasoline marketing	10,615	12,316	13,522
Other Transportation[2]	6,486	6,709	----------
Total	401,727	147,806	139,063
Percent reduction from baseline year resulting from present controls		63.2	----------

[1] Baseline year.
[2] Off-highway fuel usage (farm, construction, etc.), vessels, and railroads.

TABLE 7-2.—*AQCR 7 emission reductions from 1972 levels—under strategy*

Control measures:	*1977 (tons per year)*
Present controls, including Federal motor vehicle controls	262,664
Area source regulations	2,433
Gasoline marketing:	
Full vapor recovery from service stations, including vapor return from motor vehicles for one-half of the service stations in the AQCR	11,411
Aircraft emission controls	1,875
In-use vehicle strategies inspection/maintenance and BSAD/LIAF retrofit of light-duty vehicles	6,230
VMT reduction	2,114
Ship and barge loading controls	10,800
Limitation of additional industrial growth	4,716
Total	302,243

Baseline emissions: 401,727 tons per year.
Required percent reduction: 75 percent.
Required emission reduction by 1975: 301,295 tons per year.

AQCR 8—DALLAS-FORT WORTH

The Dallas-Fort Worth AQCR is composed of 19 counties: Collin, Cooke, Dallas, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwell, Somervell, Tarrant, and Wise. According to the 1970 census, approximately 78 percent of the people residing in this Region live in Dallas and Tarrant counties.

The terrain is composed of rolling hills and prairie with many wooded streams. The vertical relief of the area extends from 400 feet (MSL) in Navarro County

to 1,300 feet (MSL) in the northwest. Winds are generally characterized by a prevailing southerly direction with occasional northerly winds during the winter months.

The second highest one-hour oxidant measurement in the Region is 0.120 ppm (measured in 1971). The proposed regulations were based on an erroneously recorded measurement of 0.125 ppm (See EPA Region VI Technical Support Document). Based on a straight percentage rollback, the original figure required a reactive organic compound emission reduction of 36 percent from 1971 levels to meet the national ambient air quality standard for photochemical oxidants. The corrected figure, 0.120 ppm, based on straight percentage rollback, requires a reduction of 34 percent.

Present stationary source regulations and Federal motor vehicle controls will provide a reduction of 22.1 percent by 1975. The remaining 11.9 percent by 1976 can be attained by the following measures:

(1) Additional effects of Federal motor vehicle controls.

(2) The extension of Texas Regulation V to Tarrant County.

(3) Control of evaporative losses from the filling of storage vessels.

(4) Control of evaporative losses from the filling of vehicular tanks.

(5) Preferential bus and carpool lanes on certain major streets.

(6) A computerized carpool system.

(7) Bus and carpool incentives provided by employers.

The proposed regulation to limit the construction of new parking facilities has been replaced by other VMT reduction measures.

The proposed regulation for the control of degreasing operations using trichloroethylene has been eliminated for similar reasons. The control measure achieves only a relatively small reduction in hydrocarbons and the standard can be expeditiously met without the use of this control measure. Additional time will be necessary, however, in order to fully implement regulations for the control of evaporative losses from the filling of storage vessels and from the filling of vehicular tanks. Estimates now available to EPA show that the equipment necessary for all affected AQCR's to implement this program will not be available by 1975. Accordingly, the Administrator has granted an extension from the Dallas-Fort Worth Region until June 30, 1976 for attainment of the standard.

Additional vehicle restraints are included in the final regulations that were not among the proposed regulations. As indicated in the July 3, 1973, FEDERAL REGISTER, the Administrator has been continuing to study additional reasonably available measures that will result in reduction of vehicle miles traveled by automobiles. By the regulations promulgated herein, the Administrator is approving a 13-month extension in the Dallas-Fort Worth Region under section 110(e) of the Clean Air Act. The Act, however, requires that all control measures that are reasonably available must be applied by May 31, 1975. Accordingly, additional measures that have come to the attention of the Administrator and that are reasonably available in the affected areas are included in this promulgation. The first of the measures promulgated is a bus and car pool incentive and promotion program that will require all private and public employers of 1,000 or more employees to encourage them either to ride to work in car pools or to ride the bus. The second measure requires the State or approved local agencies to provide a computerized car pool service for employees working in the central business districts of Dallas and Fort Worth. By this means the forming of car pools may be facilitated and the number of vehicle miles traveled by individual automobiles can be reduced. It is now believed that these measures and those described below will be all that are necessary to attain the standards. If it becomes apparent, however, that further reductions will be necessary the Administrator will propose additional regulations.

The proposed regulation for preferential use of certain highway lanes for buses and car pools has been amended to provide more clarity. As promulgated the regulation specifies traffic flow corridors from all directions around the city into the central business districts of the major metropolitan areas of the AQCR. The governmental entity having jurisdiction over the roads within each corridor will be required to specify certain lanes and/or streets that will be designated for the exclusive use of buses and carpools. The corridors specified for Dallas encompass approximately 93 miles of roadway and those for Fort Worth encompass approximately 69 miles of roadway.

The regulation requiring preferential use of certain highway lanes for buses and carpools and the additional regulations described above were proposed to reduce the number of vehicle miles traveled. Testimony received at the public hearings suggests that Dallas and Fort Worth already have developed extensive traffic flow plans, soon to be implemented in those areas, that could achieve reductions in VMT equivalent to the measures proposed by EPA. In order to accommodate and utilize local planning EPA strongly encourages the use of these local plans. Thus, the regulations have been amended to accommodate these plans where possible. If it is demonstrated that local plans will achieve reductions equivalent to those proposed by EPA and these plans are submitted by the State to EPA by December 1, 1973, those plans will be utilized if approved by the Administrator. If such plans are not submitted and approved, EPA regulations will continue to be effective.

It also has been determined that by requiring a vapor recovery system for the control of evaporative losses from the filling of vehicular tanks for 100 percent of facilities located in the Dallas and Fort Worth Region, an inspection and maintenance system will not be necessary in that region. Public comment indicates that the general public would favor a full vapor recovery system above a mandatory inspection and maintenance program for all vehicles. For that reason, and because the standards can be achieved without an inspection and maintenance system, the requirement for such a program has been eliminated and the requirement for a full vapor recovery system has been retained. Emission inventory data indicate that the standard can be attained in the Dallas-Fort Worth area by the utilization of vapor control systems that require 80 percent control of evaporative emissions. For this reason, control systems will be required in the Dallas-Fort Worth Region by 1976 that will require 80 percent efficiency. For additional information on these control systems see "Systems and Costs to Control Hydrocarbon Emissions From Stationary Sources"; EPA Region VI Technical Support Document.

The baseline emission inventory which includes the effects of the present stationary source control and Federal motor vehicle controls is tabulated by major categories in Table 8–1. The emission inventory reductions for 1976 projected on the basis of the control strategies described above are summarized in Table 8–2.

TABLE 8–1.—*AQCR 8 (Dallas-Fort Worth) emission inventory*

[Tons per year]

Source category	1971[1]	1976
Stationary sources:		
Area sources	5,820	6,516
Chemical processing	5,696	4,553
Petroleum refining and petrochem	235	242
Other processing	4,722	4,413
Transportation sources:		
Gasoline-powered motor vehicles	107,301	65,083
Diesel-powered motor vehicles	993	1,300
Aircraft	15,693	12,176
Gasoline marketing	11,502	15,011
Other transportation[2]	5,422	5,422
Total	157,884	114,716
Percent reduction from baseline year resulting from present controls		27.3

[1] Baseline year.
[2] Off-highway fuel usage (farm, construction, etc.), vessels, and railroads.

TABLE 8–2.—*AQCR 8 emission reductions from 1971 levels under proposed strategy*

Control Measure:	1976 (tons per year)
Present controls	43,174
Extension of regulation V to Tarrant County	2,790
Full vapor recovery from service stations, including vapor return from motor vehicles	12,540
Aircraft emission controls	3,300
VMT reductions	------
Total	61,804

Baseline emission: 157,884 tons per year.
Required percent reduction: 34 percent.
Required emission reduction by 1976: 53,680 tons per year.

AQCR 9—SAN ANTONIO

AQCR 9 is composed of 24 counties covering 28,954 square miles. According

to the 1970 census the Region has a total population of 1,124,600 people. The 24 counties of AQCR 9 are: Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gillespie, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Kimble, Kinney, LaSalle, Mason, Maverick, Medina, Real, Uvalde, Val Verde, Wilson, and Zavala. Approximately 75 percent of the population is located in Bexar County which includes San Antonio and its surrounding area, the major economic center for the Region.

The physiography of the area is generally hilly in the northwest with an altitude of 2,000 feet sloping to 400 feet in the southeast. The local climatology suggests good ventilation with prevailing southeasterly winds and favorable mixing depths.

The second highest one-hour oxidant measurement in AQCR 9 is 0.145 ppm and was recorded in 1971. Based on the straight percentage rollback procedure described in the proposal, this level requires a reactive carbon compound emission reduction of 45 percent from 1971 levels to meet the primary ambient air quality standard. Present stationary source regulations and Federal motor vehicle controls will provide a reduction of approximately 18.9 percent by 1975. The remaining 26.1 percent by 1977 will result from the following measures which are promulgated herein:

(1) Additional effect of Federal motor vehicle controls.

(2) Vapor recovery from all gasoline sales outlets, including vapor return from motor vehicle tanks.

(3) An inspection and maintenance program for light duty vehicles.

(4) Requirements that certain lanes of major streets and freeways be converted to bus and carpool use.

(5) Limitations on gasoline sales conditionally effective in 1977.

(6) A computerized carpool program.

(7) Bus and carpool incentive provided by employers.

To fully meet the requirements of the Clean Air Act by May 31, 1975 in the metropolitan San Antonio area would require a 40 percent reduction in VMT. However, it is the opinion of the Administrator that a reduction of 40 percent in VMT by 1975 would be socially disruptive. Therefore, the Administrator is requiring a control strategy which will implement controls including reductions in vehicle miles traveled as expeditiously as practicable, allow substantial economic savings and be fully implemented by May 31, 1977.

Proposed regulations for the control of organic solvent evaporation and architectural coatings for buildings have not been included in this promulgation. These regulations would result in only a small percentage of the reductions required for the region and it is believed that similar reductions may be achieved without utilizing the proposed regulations for control of organic solvent evaporation and limitations on new parking facilities.

Regulations requiring limitation on future construction of vehicle parking facilities have been replaced by a carpool matching program and provisions for preferential carpool treatment.

Proposed regulations for limitation of gasoline sales required that the State of Texas prohibit the delivery to retail outlets of more than 100 percent of the gasoline delivered to outlets during the 1972–1973 base year. Public testimony indicates that allowing no growth above the 1972–1973 base year may be severely socially disruptive. On this basis, the regulation requiring limitations on gasoline sales was reevaluated. It was determined that gasoline limitations should be used only in the event that the standard cannot be achieved by other measures. The regulation thus was amended to limit gasoline sales to the extent necessary to provide for achievement of the standard beginning in 1977, if the oxidant standard has not been achieved by other measures.

Additional vehicle restraints are included in the final regulations that were not among the proposed regulations. As indicated in the July 3, 1973 FEDERAL REGISTER, the Administrator has been continuing to study additional reasonably available measures that will result in reduction of vehicle miles traveled by automobiles. By the regulations promulgated herein, the Administrator is approving a two-year extension of time in the San Antonio Region under section 110(e) of the Clean Air Act. The Act, however, requires that all control measures that are reasonably available must be applied by May 31, 1975. Accordingly additional measures that have come to the attention of the Administrator and that are reasonably available in the affected areas are included in this promulgation. The first of these measures is a bus and carpool incentive and promotion program that will require all private and public employers of 1,000 or more employees in one location to provide incentives to those employers that will encourage them either to ride to work in carpools or to ride the bus. The second measure requires the State or approved local agencies to provide a computerized carpool service for employees working in the central business district of San Antonio. By this means the forming of carpools may be facilitated and the number of vehicle miles traveled by individual automobiles can be reduced. It is now believed that these measures and those described below will be sufficient to attain the oxidant standard. If it becomes apparent, however, that further reductions will be necessary, the Administrator will propose additional regulations.

The proposed regulation for preferential use of certain highway lanes for buses and carpools has been amended to provide more clarity. As promulgated, the regulation specified traffic flow corridors from all directions around the city into the central business district of San Antonio, the major metropolitan area of the AQCR. The governmental entity having jurisdiction over the roads within each corridor will be required to specify certain lanes and/or streets that will be designated for the exclusive use of buses and carpools. The corridors specified for San Antonio encompass approximately 79 miles of roadway.

Testimony received at the public hearings suggested that San Antonio already has developed extensive traffic flow plans, soon to be implemented, that could achieve reduction equivalent to the measures proposed by EPA. In order to accommodate and utilize local planning EPA strongly encourages the use of these local plans. Thus, the regulations have been amended to accommodate these plans where possible. If it is demonstrated that the San Antonio plan will achieve VMT reductions equivalent to those proposed by EPA and these plans are submitted by the State to EPA by December 1, 1973, those plans will be utilized if approved by the Administrator. If such plans are not submitted or not approved, the EPA regulation will continue to be effective.

The baseline emission inventory which includes the effects of Texas' Regulation V and Federal motor vehicle controls is tabulated by major categories in Table 9–1. The emission inventory for 1977 projected on the basis of control strategies described above is summarized in Table 9–2.

TABLE 9-1.—*AQCR 9 (San Antonio) emission inventory*

[Tons per year]

Source category	1971 [1]	1975	1977
Stationary sources:			
Area sources	1,837	956	975
Chemical processing	520	465	471
Petroleum refining and petrochem.	873	123	125
Other processing	141	88	90
Transportation sources:			
Gasoline-powered motor vehicles	41,030	29,028	22,232
Diesel-powered motor vehicles	375	422	448
Aircraft	10,737	10,534	10,443
Gasoline marketing	4,895	6,031	6,645
Other transportation [2]	2,697	2,606	2,599
Total	63,105	51,209	45,003
Percent reduction from baseline year resulting from present controls		18.9	28.7

[1] Baseline year.
[2] Off-highway fuel usage (farm, construction, etc.), vessels, and railroads.

TABLE 9-2—*AQCR 9 emission reductions from 1971 under strategy*

Control Category:	*1977 Tons per year*
Present controls	18,102
Area source regulations	583
Full vapor recovery from service stations, including vapor return from motor vehicles	5,615
Aircraft emission controls	3,000
In-use vehicle strategies inspection/maintenance	1,301
VMT reduction	392
Total	28,993

Baseline emissions: 63,105 tons per year.
Required percent reduction: 45 percent.
Required emission reduction by 1977: 28,897 tons per year.

AQCR 11—EL PASO

The Texas portion of Region 11 is composed of 6 counties (Brewster, Culberson, El Paso, Hudspeth, Jeff Davis,

and Presidio) covering 21,778 square miles in the westernmost part of the State. The area is characterized by an arid climate, mountainous terrain, and high daytime summer temperatures.

According to the 1970 census, of the 379,261 people residing in the Region, 359,291 people are concentrated in El Paso County. The City of Juarez, Mexico lies immediately adjacent to the El Paso City Limits, separated only by the Rio Grande. The population of Juarez is estimated to be 450,000 and in terms of air pollution should most properly be considered part of the air quality control region. (Wind rose data indicates that El Paso is downwind from Juarez roughly 15 percent of the time, while the reverse is true roughly 20 percent of the time.)

The second highest one-hour oxidant measurement in the region was 0.12 ppm (measured in 1971). Based on the proportional rollback procedure described in this proposed plan, this level requires a reactive hydrocarbon emission reduction of 34 percent from 1971 levels to meet the primary ambient air quality standard. Present stationary source regulations and Federal motor vehicle controls will provide a reduction of 22.2 percent by 1975. The remaining 11.8 percent reduction by 1975 can be attained by the following measures:

(1) Control of evaporative losses from the filling of storage vessels; and

(2) Vapor recovery from all gasoline sales outlets, including vapor return from motor vehicle tanks.

Proposed regulations for the control of organic solvent evaporation and architectural coatings for buildings have been omitted from these final regulations. Implementation of the proposed regulation would achieve only about 0.3 percent of the necessary reductions. It was determined, therefore, that the required reductions could be achieved without the utilization of this regulation.

The control strategy for the El Paso AQCR is designed to attain the standards by 1975 and additional measures for the reduction of VMT were not proposed. The City of El Paso, however, has expressed a willingness and intent to improve the transit service and general traffic flow plan. Certain improvements already have been demonstrated to EPA during visits by representatives to the El Paso area. The tables reflect this. It is anticipated that further improvements will be made by the City and that although the measures are not required at this time by EPA, the VMT in the El Paso region will be decreased by the City's actions.

An inspection and maintenance program for light-duty vehicles was proposed for the El Paso region. Reevaluation of this program has shown that it cannot be fully implemented in the State of Texas until May 1, 1976. Use of this measure would require an extension of time for meeting the oxidant standard in the El Paso region. It has been determined that by requiring a full vapor recovery system for the control of evaporative losses from the filling of vehicular tanks for 100 percent of the facilities located in the El Paso region by May 31, 1975, an inspection and maintenance system will not be necessary in that region. Public testimony also shows that the general public would favor a full vapor recovery system above a mandatory inspection and maintenance program. Although extensions have been granted other AQCR's for full implementation of vapor recovery systems, it is believed that equipment is available in sufficient quantities to fully implement the systems in the El Paso region by 1975. By doing so, it will not be necessary to grant an extension to the El Paso region, and alternative or interim measures that must be implemented before an extension may be granted will not be necessary. In order to assure attainment of the standard, vapor recovery systems that will achieve 90 percent control of vapor emissions are required in the El Paso region. As explained in the general preamble above it has been determined that sufficient equipment will be available for the limited number of service stations in this region by 1975 (See Control Strategy and EPA Region VI Technical Support Document).

The emission inventory which includes the effects of Texas' Regulation V and Federal motor vehicle controls is tabulated by major categories in Table 11-1. The emissions inventory for 1975 projected on the basis of control strategies described above is summarized in Table 11-2.

TABLE II-1.—*AQCR 11 (El Paso) emission inventory*

[Tons per year]

Source category	1971 [1]	1975
Stationary sources:		
Area sources	374	376
Chemical processing	24	5
Petroleum refining and petrochem	557	53
Other processing	19	22
Transportation sources:		
Gasoline-powered motor vehicles	14,845	10,647
Diesel-powered motor vehicles	123	149
Aircraft	2,150	2,020
Gasoline marketing	1,664	1,978
Other transportation [2]	553	548
Total	20,309	15,798
Percent reduction from baseline year resulting from present controls		22.2

[1] Baseline year.
[2] Off-highway fuel usage (farm, construction, etc.), vessels, and railroads.

TABLE II-2—*AQCR 11—emission reduction from 1971 levels under strategy*

	1975 (tons per year)
Present controls	4,511
Gasoline marketing evaporative emissions:	
Underground storage tank vapor return and vapor return from motor vehicles	1,613
Aircraft emission controls	650
VMT reductions already achieved	131
Total	6,905

Baseline emissions: 20,309 tons per year.
Required percent reduction: 34%.
Required emission reduction by 1975: 6,905 tons per year.

This notice of rulemaking is issued under the authority of Sections 110(c) and 301(a) of the Clean Air Act.

(42 U.S.C. 1857C-5(c), 1857g)

Dated: October 25, 1973.

RUSSELL E. TRAIN,
Administrator.

Subpart SS, Texas, of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

1. Section 52.2272 is added to read as follows:

§ 52.2272 Extensions.

(a) The Administrator hereby extends the attainment dates for the national standards for photochemical oxidants (hydrocarbons) as follows: Houston-Galveston, two years (to May 31, 1977); Dallas-Fort Worth, thirteen months (to June 30, 1976); and San Antonio, two years (to May 31, 1977).

2. Section 52.2275 is added to read as follows:

§ 52.2275 Control strategy: Photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14(a) of this chapter are not met since the plan submitted by the State does not provide the degree of hydrocarbon emission reduction necessary to attain as expeditiously as practicable and to maintain the national standards for photochemical oxidents (hydrocarbons) in the Austin-Waco, Dallas-Fort Worth, San Antonio, El Paso-Las Cruces-Alamogordo, Corpus Christi-Victoria, and Houston-Galveston air quality control regions, and in the Texas portion of the Southern Louisiana-Southeast Texas air quality control region.

§ 52.2278 [Reserved]

3. Section 52.2278 is revoked and reserved.

§ 52.2279 [Amended]

4. In § 52.2279, the attainment date table is amended by revoking footnote "b" and by revising the first column ("Air quality control region") and the last column ("Photochemical oxidants (hydrocarbons)") to read as follows:

Abilene-Wichita Falls Intrastate	* * *	(a).
Amarillo-Lubbock Intrastate	* * *	(a).
Austin-Waco Intrastate	* * *	*May 31, 1975.*
Brownsville-Laredo Intrastate	* * *	(a).
Corpus Christi-Victoria Intrastate	* * *	*May 31, 1975.*
Midland-Odessa-San Angelo Intrastate	* * *	(a).
Metropolitan Houston-Galveston Intrastate	* * *	*May 31, 1977.*
Metropolitan Dallas-Fort Worth Intrastate	* * *	*June 30, 1976.*
Metropolitan San Antonio Intrastate	* * *	*May 31, 1977.*
Southern Louisiana-Southeast Texas Interstate	* * *	*May 31, 1975.*
El Paso-Las Cruces-Alamogordo Interstate	* * *	*May 31, 1975.*
Shreveport-Texarkana Tyler Interstate	* * *	(a).

§ 52.2280 [Reserved]

5. Section 52.2280 is revoked and reserved.

6. Sections 52.2283 through 52.2298 are added to read as follows:

§ 52.2283 Control of volatile carbon compounds.

(a) The requirements of Texas Air Control Board Regulation V are incorporated herein by reference and Rule 501 of that Regulation is amended to include (in addition to those counties named therein) Bell, McLennan, Hardin, and Tarrant Counties in Texas.

(b) Except as provided in paragraph (c) of this section, the owner or operator of a source subject to paragraph (a) of this section shall comply with the increments contained in the following compliance schedule.

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1975.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(c) Paragraph (b) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (a) of this section and which has certified such compliance to the Administrator by December 1, 1973. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 1, 1973 a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975. If approval is promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(d) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

§ 52.2284 Control of degreasing operations.

(a) Definitions:

(1) "Degreasing" means the operation of using an organic solvent as a surface cleaning agency.

(2) "Organic solvents" include diluents and thinners and are defined as organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.

(3) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates, and ammonium carbonate.

(4) "Photochemically reactive solvent" means any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below, or which exceeds any of the following individual percentage composition limitations, as referred to the total volume of solvent.

(i) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cycloolefinic type of unsaturation: 5 percent.

(ii) A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylebenzene: 8 percent.

(iii) A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichloroethylene, or toluence: 20 percent.

(b) This section is applicable in The Houston-Galveston and San Antonio Intrastate Air Quality Control Regions in the State of Texas.

(c) The following are exempt from the requirements of paragraph (d) of this section.

(1) Degreasing operations which emit less than 3 pounds per hour and less than 15 pounds per day of uncontrolled organic materials.

(2) Degreasing operations which use perchloroethylene, 1, 1, 1-tri-chloroethane, or saturated halogenated hydrocarbons as an organic solvent.

(d) No person shall use for degreasing any photochemically reactive solvent unless the uncontrolled organic emissions from such operation are controlled at least 85 percent overall.

(e) Any owner or operator of a degreasing operation who elects to switch use of solvents to one or more of the solvents exempt under paragraph (c) (2) of this section shall specify intent to the Administrator no later than January 1, 1974. Such a solvent switch shall be made no later than May 31, 1974.

(f) Except as provided in paragraph (g) of this section the owner or operator of any degreasing operation subject to the requirements of paragraph (d) of this section shall comply with the following compliance schedule:

(1) January 1, 1974—Submit to the Administrator a final control plan which describes at a minimum, steps which will be taken by the owner or operator to achieve compliance with the requirements of paragraph (d) of this section.

(2) March 1, 1974—Negotiate and sign all necessary contracts for emission control systems or process modifications, or issue orders for the purchase of component parts to accomplish emission control or process modification.

(3) July 1, 1974—Initiate on-site construction or installation of emission control equipment or process modification.

(4) May 1, 1975—Complete on-site construction or installation of emission control equipment or process modification.

(5) May 31, 1975—Achieve final compliance with the requirements of paragraph (d) of this section.

(6) Any owner or operator of a degreasing operation subject to the compliance schedule in this paragraph shall certify to the Administrator within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(g) Paragraph (f) of this section shall not apply to:

(1) A degreasing operation which is presently in compliance with the requirements of paragraph (d) of this section and which has certified such compliance to the Administrator by January 1, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) A degreasing operation for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) A degreasing operation whose owner or operator submits to the Administrator, by January 1, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975. If promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected degreasing operation.

(h) Nothing in this section shall prevent the Administrator from promulgating a separate schedule for any degreasing operation to which the application of the compliance schedule in paragraph (f) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

(i) Any person subject to this regulaton who begins a degreasing operation after the effective date of this regulation shall comply with the requirements of paragraphs (c), (d), and (e) of this section. Any degreasing operation subject to this regulation which begins operation after May 31, 1975, shall comply with the requirements of paragraphs (c) and (d) of this section at the time such operation begins.

§ 52.2285 Control of evaporative losses from the filling of storage vessels by 1976.

(a) Definitions:

(1) "Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds or greater.

(2) "Storage vessel" means any stationary vessel of more than 1,000 gallons (3,800 liters) capacity.

(b) This section is applicable within the Houston-Galveston, Dallas-Fort Worth, and San Antonio Intrastate Air Quality Control Regions in Texas.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 1,000 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed

by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight return line from the storage container to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) If a "vapor-tight vapor return" system is used to meet the requirements of this section, the system shall be so constructed as to be readily added on to retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system, and so constructed as to anticipate compliance with § 52.2288 or § 52.2289.

(3) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(iii) Gasoline storage compartments of one thousand gallons or less in gasoline delivery vehicles presently in use on the promulgation date of this regulation will not be required to be retrofitted with a vapor return system until January 1, 1977.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers used exclusively for the fueling of implements of husbandry.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfers made to storage tanks equipped with floating roofs or their equivalent.

(e) Except as provided in paragraph (f) of this section, the owner or operator of a source subject to paragraph (c) of this section shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of onsite construction or installation of emission control equipment or process change must begin not later than July 1, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(f) Paragraph (e) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by January 1, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator by January 1, 1974 a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1976. If approval is promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(g) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (e) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(h) Any gasoline dispensing facility subject to this regulation which installs a storage tank after the effective date of this regulation shall comply with the requirements of paragraphs (c) and (e) of this section. A facility subject to this regulation which installs a storage tank after May 31, 1976 shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.2286 Control of evaporative losses from the filling of storage vessels by 1975.

(1) "Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds or greater.

(2) "Storage vessel" means any stationary vessel of more than 1,000 gallons (3,800 liters) capacity.

(b) This section is applicable within the Austin-Waco Intrastate and the Texas portion of the El Paso-Las Cruces-Alamagordo Interstate Air Quality Control Regions in the State of Texas.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 1,000 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight return line from the storage container to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) If a "vapor-tight vapor return" system is used to meet the requirements of this section, the system shall be so constructed as to be readily added on to retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system, and so constructed as to anticipate compliance with § 52.2288.

(3) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(iii) Gasoline storage compartments of one thousand gallons or less in gasoline delivery vehicles presently in use on the promulgation date of this regulation will not be required to be retrofitted with a vapor return system until January 1, 1976.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers used exclusively for the fueling of implements of husbandry.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfers made to storage tanks equipped with floating roofs or their equivalent.

(e) Except as provided in paragraph (f) of this section, the owner or operator of a source subject to paragraph (c) of this section shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 1, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1975.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(f) Paragraph (e) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by January 1, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator by January 1, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975. If approval is promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(g) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (e) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

(h) Any gasoline dispensing facility subject to this regulation which installs a storage tank after the effective date of this regulation shall comply with the requirements of paragraphs (c) and (e) of this section. A facility subject to this regulation which installs a storage tank after May 31, 1975 shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.2287 Ship and barge loading and unloading facilities.

(a) Rule 503.2 of the Texas Air Control Board Regulation V as incorporated by reference on May 31, 1972 (37 FR 10842) is amended to read: "All loading and unloading facilities for crude oil or condensate are exempt from Rule 503." This amendment eliminates an exemption for ships and barges.

(b) This section is applicable to ships and barges which use the port facilities within the Houston-Galveston Intrastate Region.

(c) Except as provided in paragraph (d) of this section, the owner or operator of a source subject to paragraph (a) of this section shall comply with the increments contained in the following compliance schedule.

(1) Contracts for emission control systems or process modifications not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1975.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(d) Paragraph (c) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (a) of this section and which has certified such compliance to the Administrator by January 1, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the Administrator.

(3) To a source whose owner or operator submits to the Administrator by January 1, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975. If approval is promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(e) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (c) of this section fails to satisfy the requirements of § 51.15(b) and (c) of its chapter.

§ 52.2288 Control of evaporative losses from the filling of vehicular tanks; Houston, San Antonio, and El Paso Regions.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds or greater.

(b) This section is applicable in the Houston-Galveston and San Antonio Intrastate Regions in Texas, and the Texas portion of the El Paso-Las Cruces-Alamogordo Interstate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Prevent discharge of hydrocarbon vapors to the atmosphere from either the vehicle filler neck or the dispensing nozzle;

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered; and

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle-filler neck interface to the dispensing tank, to an adsorption, absorption, incineration, refrigeration-condensation system or equivalent.

(e) If it is demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of vehicle fill neck configuration, location, or other design features of a class of vehicles, the provisions of this section shall not apply to such vehicles. However, in no case shall such configuration exempt any gasoline dispensing facility from installing a system referred to in paragraph (c) of this section.

(f) All facilities subject to this section shall be divided into two classes. All facilities located in the Texas portion of the El Paso-Las Cruces-Alamogordo Interstate Region shall be in Class I. All other facilities in the State of Texas subject to this section shall be in Class II.

(g) Except as provided in paragraph (i) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 1, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1975.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(h) The owner or operator of a source included in Class II shall comply with the increments contained in the following compliance schedule, except as provided in paragraph (i) of this section.

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 1, 1976.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1977.

(4) Final compliance is to be achieved not later than May 31, 1977.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) Paragraphs (g) and (h) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by December 1, 1973. The Administrator may re-

quest whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 1, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1977, in the case of Class II sources. If approval is promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(j) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedules of this section fail to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(k) Any gasoline dispensing facility subject to this regulation which installs a gasoline dispensing system after the effective date of this regulation shall comply with the requirements of paragraphs (c) and (g) (or (h)) of this section. In the case of Class I sources, a facility subject to this regulation which installs a gasoline dispensing system after March 31, 1975, shall comply with the requirements of paragraph (c) of this section at the time of installation. In the case of Class II sources, a facility subject to this regulation which installs a gasoline dispensing system after March 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.2289 Control of evaporative losses from the filling of vehicular tanks; Dallas-Fort Worth Region.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds or greater.

(b) This section is applicable in the Dallas-Fort Worth Intrastate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Prevent discharge of hydrocarbon vapors to the atmosphere from the vehicle filler neck of dispenser;

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 80 percent by weight of the organic compounds in displaced vapors are recovered; and

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight return line from the fill nozzle-filler neck interface to the dispensing tank, to an adsorption, absorption, incinceration, refrigeration-condensation system or equivalent.

(e) If it is demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of vehicle fill neck configuration, location, or other design features of a class of vehicles, the provisions of this section shall not apply to such vehicles. However, in no case shall such configuration exempt any gasoline dispensing facility from installing a system referred to in paragraph (c) of this section.

(f) Except as provided in paragraph (g) of this section, the owner or operator of a source subject to this regulation shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 1, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than April 30, 1976.

(4) Final compliance is to be achieved not later than June 30, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(g) Paragraph (f) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by January 1, 1974. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 1, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1976. If approval is promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(h) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (f) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

(i) Any gasoline dispensing facility subject to this regulation which installs a gasoline dispensing system after the effective date of this regulation shall comply with the requirements of paragraphs (c) and (f) of this section. Any facility subject to this regulation which installs a gasoline dispensing system after March 1, 1976, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.2290 Regulation for a motor vehicle inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicles through identifying vehicles which need emission control related maintenance and requiring that maintenance to be performed.

(2) All other terms used in this section which are defined in appendix N of Part 51 of this chapter are used with the meanings so defined.

(b) This section is applicable in those counties contained within the Houston-Galveston Region and in Bexar, Guadalupe, Atascosa, Kendall, Medina, Comal, and Wilson counties which are within the San Antonio Instrastate Air Quality Control Region.

(c) The State of Texas shall establish an inspection and maintenance program applicable to all light duty vehicles registered in the counties subject to this section which operate on streets or highways over which it has ownership or control. No later than June 1, 1974, the State shall submit to the Administrator legally adopted regulations to adopt such a program. The State may exempt any class or category of vehicles which the State finds are rarely used on public streets and highways (such as classic or antique vehicles). The regulations shall include:

(1) Provisions for inspection of all light-duty motor vehicles at periodic intervals no more than one year apart by means of an idle test.

(2) Provisions for inspection failure criteria including measures to reduce vehicle hydrocarbon emissions by at least 8 percent in the first inspection cycle. If the Administrator determines, on the basis of air quality monitoring in the areas subject to this section, that the national ambient air quality standards for photochemical oxidants will not be attained by May 31, 1977, the foregoing failure criteria shall include measures to reduce vehicle hydrocarbon emissions by at least 11 percent, effective January 1, 1977.

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledge to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally re-adjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This should include but not be limited to spot checks of the idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After April 30, 1975, the State shall not allow issuance of a Texas Department of Public Safety Inspection sticker for any light duty motor vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After April 30, 1976, the State shall not register or allow to operate on its highways any light duty motor vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) After April 30, 1976, no owner of a light duty motor vehicle shall operate or allow the operation of such vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(g) The State of Texas shall submit, no later than March 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall also include:

(1) The date by which the State will recommend any needed legislation to the State legislature.

(2) The date by which necessary equipment will be ordered.

(3) A signed statement from the Governor or State Treasurer identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation will be submitted.

§ 52.2291 Regulation for vacuum spark advance disconnect retrofit.

(a) "Vacuum spark advance disconnect retrofit" means a device or system installed on the vehicle that prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears, or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the Houston-Galveston Intrastate Region in the State of Texas.

(c) All gasoline powered light duty vehicles of model years prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section, shall be equipped with an appropriate vacuum spark advance disconnect retrofit. The State may exempt any class or category of vehicles which the State finds are rarely used on public streets and highways (such as classic or antique vehicles), or for which the State demonstrates to the Administrator that retrofit devices are not commercially available.

(d) The State of Texas shall submit no later than January 1, 1974, a detailed compliance schedule showing steps it will take to implement and enforce this requirement. Each schedule shall include the following:

(1) A date by which the State will evaluate and approve modifications for use in this program. Such date shall be not later than March 1, 1974.

(2) A date by which this modification will begin to be required. Such date shall not be later than May 1, 1975.

(3) A date by which all light duty motor vehicles subject to this section will be modified. Such date shall be not later than May 1, 1976.

(4) An agency responsible for evaluating and approving such modifications and/or devices for use on light-duty motor vehicles subject to this section.

(5) An agency responsible for ensuring that the provisions of this section shall be enforced.

(6) A method and proposed procedures for ensuring that those performing the modification have the training and ability to accomplish the needed tasks satisfactorily and will have an adequate supply of retrofit components.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emissions testing at the time of modification or some other positive assurance that the modification achieves the desired results.

(e) After May 1, 1976, the following shall apply to the areas specified in paragraph (b) of this section:

(1) The State shall not register a light duty motor vehicle subject to this section which is not modified in accordance with paragraph (c) of this section.

(2) No owner of a light duty motor vehicle subject to this section shall operate or allow the operation of any such vehicle owned by him which is not modified in accordance with paragraph (c) of this section.

(f) No later than June 1, 1974, the State shall submit legally adopted regulations to assure full compliance with all of the provisions of this section.

§ 52.2292 Regulation for limitation of new reactive carbon compound emission sources.

(a) Definitions:

(1) "Source" means any stationary structure that emits or causes the emission of any reactive carbon compound.

(2) "Reactive carbon compound" means any compound containing carbon and hydrocarbon except for the following: C_1–C_5 n-parafins, saturated halogenated hydrocarbons, perchloroethylene, benzene, acetylene, acetone, cyclohexanone, ethyl acetate, diethylamine, isobutyl acetate, isopropyl alcohol, menthyl benzoate, 2-nitropropane, phenyl acetate, and triethylamine.

(b) This section is applicable in the Houston-Galveston Intrastate Region.

(c) Effective May 31, 1975, no person shall commence construction or modification of any source within the area specified by paragraph (b) of this section unless a permit is first issued to the source by the Texas Air Control Board pursuant to the provisions of Rule 601, et seq. of Texas Air Control Board Regulation VI, effective August 31, 1972, as amended. No permit shall be issued by the Texas Air Control Board unless there is an affirmative finding by the Texas Air Control Board that such source will emit reactive carbon compounds at a rate of less than 3 pounds per hour and less than 15 pounds per day.

§ 52.2293 Gasoline limitations.

(a) Definitions:

(1) "Distributor" means any person or entity which transports or stores or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(2) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public, or introduced into any vehicle.

(b) This section is applicable in the Houston-Galveston and San Antonio Intrastate Air Quality Control Regions (hereafter referred to as "affected areas") to all distributors of gasoline to any retail outlet in the affected areas, and to the owners and operators of all retail outlets in the affected areas.

(c) If the Administrator determines, on the basis of air quality monitoring in the affected areas, that the national ambient air quality standards for carbon monoxide and photochemical oxidants will not be attained in these areas by May 31, 1977, the Administrator shall implement a program, to be effective no later than May 31, 1977, limiting the total gallonage of gasoline delivered to retail outlets in the affected areas to that amount which, when combusted, will not result in such ambient air quality standards being exceeded.

(d) All distributors to which this section applies shall provide the Administrator with a detailed annual accounting of the amount of gasoline delivered to each retail outlet in the region for calendar year 1976, and for each calendar year during which the gasoline limitation program is in effect. The owner or operator of each retail outlet to which this section applies shall provide the Administrator with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year, for each year during which the gasoline limitation program is in effect. All accountings required by this section shall be provided no later than ninety days after the end of the applicable year. The Administrator may require any other reports that he may deem necessary for the implementation of this section.

§ 52.2294 Preferential bus/carpool treatment.

(a) Definitions:

(1) For purposes of this section, "carpool" means a motor vehicle containing three or more persons.

(2) "Bus/carpool lane" means a lane on a street or highway open only to buses (or buses and carpools), whether constructed specially for that purpose or converted from existing lanes.

(3) "Bus/carpool street" means a street or highway open only to buses (or buses and carpools), whether constructed specially for that purpose or converted from an existing street or highway.

(4) "Central business district" is defined for each of the affected areas as follows:

(i) For the City of Houston, that area bounded on the northwest by Interstate 45, on the southwest by Interstate 45, on the northeast by Franklin Street, and on the southeast by Caroline Street.

(ii) For the City of Dallas, that area bounded on the west by Interstate 35, on the south by Interstate 20, on the east by Central Expressway (U.S. 75) and on the north by Woodall Rogers Freeway right of way.

(iii) For the City of Fort Worth, that area bounded on the west by Henderson Street, on the south by Interstate 20, on the east by Interstate 35 West, and on the north by the Trinity River.

(iv) For the City of San Antonio, that area bounded on the west and northwest by U.S. 81, on the south and southeast by Alamo Street from U.S. 81 to Victoria Street, and by Victoria Street to the Southern and Pacific Railroad tracks, on the east by the Southern and Pacific Railroad tracks, and on the northeast by Jones Avenue to U.S. 81.

(b) The provisions of this section apply to the Houston-Galveston Intrastate Region, the Dallas-Fort Worth Intrastate Region, and the San Antonio Intrastate Region (hereafter the "affected areas").

(c) Each appropriate governmental entity shall establish bus/carpool lanes and/or exclusive bus/carpool streets on streets and highways over which it has ownership or control in each central business district defined above and in each of the following traffic flow corridors:

(1) *Houston-Galveston AQCR.* (i) North and South corridors, Houston: Interstate 45 from North Loop 610 to central business district to South Loop 610.

(ii) North corridor, Houston: U.S. 59 North from North Loop 610 to Interstate 10.

(iii) West corridor, Houston: Interstate 10 from West Loop 610 to Interstate 45.

(iv) Southwest corridor, Houston: U.S. 59 South from West Loop 610 to Interstate 45.

(v) East corridor, Houston: Interstate 10 East from East Loop 610 to central business district.

(2) *Dallas-Fort Worth AQCR—Dallas.* (i) North and Southeast corridors: U.S. 75 North from Loop 635 North to central business district to Loop 635 South.

(ii) Northwest and South corridors: Interstate 35 from North Loop 635 to Commerce Street to South Loop 635.

(iii) Southeast corridor: U.S. 175 from East Loop 635 to central business district.

(iv) East corridor: Interstate 20 East from East Loop 635 to central business district.

(v) Northeast corridor: Interstate 30 from East Loop 635 to Interstate 20 East.

(vi) Northwest corridor: Harry Hines Boulevard from North Loop 635 to central business district.

(vii) West corridor: U.S. 80 from West Loop 12 to central business district.

(viii) South corridor: U.S. 67 from South Dallas City Limit to central business district.

(3) *Dallas-Fort Worth AQCR—Fort Worth.* (i) North corridor: Interstate 35 W from North Fort Worth City limit to central business district.

(ii) Northeast corridor: State Highway 121 from Loop 820 East to central business district.

(iii) East corridor: U.S. 80 from East Loop 820 to central business district.

(iv) Southeast corridor: U.S. 287 from Loop 820 east to central business district.

(v) South corridor: Interstate 35 West from South Loop 820 to central business district.

(vi) West corridor: Interstate 20 from U.S. 377 to central business district.

(vii) West corridor: Camp Bowie Boulevard from U.S. 377 to central business district.

(viii) Northwest corridor: U.S. 199 from Lake Worth Village to central business district.

(4) *San Antonio AQCR.* (i) North corridor, San Antonio: U.S. 281 from Loop 410 North to U.S. 81.

(ii) Northeast corridor, San Antonio: U. S. 81 B.R. from Loop 410 North to U.S. 81.

(iii) East corridor, San Antonio: Interstate 35 (U.S. 81) from Loop 410 East to central business district.

(iv) Southeast corridor, San Antonio: Interstate 37 from Loop 410 South to Interstate 35 (U.S. 81).

(v) Southwest corridor, San Antonio: Interstate 35 from Loop 410 South to Interstate 35 North (U.S. 81).

(vi) Northwest corridor, San Antonio: Interstate 10 (U.S. 87 North) from Loop 410 North to central business district.

(vii) West corridor, San Antonio: U.S. 90 from Loop 410 West to central business district.

(d) Each affected governmental entity shall submit to the Administrator, no later than June 1, 1974, a detailed compliance schedule showing the steps which it will take to establish bus/carpool lanes and/or bus/carpool streets in those traffic flow corridors and central business districts hereinbefore identified and to enforce the limitations on their use. Each schedule shall be subject to approval by the Administrator and shall include as a minimum the following:

(1) Identification of streets and highways that shall be designated for the use of bus/carpool lanes or bus/carpool streets. At least one street or highway in each traffic flow corridor and three streets or highways in each central business district must be so designated.

(2) The date by which each street or highway shall be so designated.

(3) Identification of additional streets or highways on which one lane shall be set aside during peak hours for the exclusive use of buses only. On such streets curb parking shall be prohibited during peak hours.

(e) In unusual situations, a traffic flow corridor listed in paragraph (c) of this section may be exempt from this section if an approval of the exemption is obtained from the Administrator. The application for exemption will not be accepted after March 1, 1974. Special circumstances justifying the need and appropriateness for an exemption, such as inappropriateness of use of buses or substitution of a different corridor in its place, must be given in detail with the application.

(f) Bus/carpool lanes and streets must be prominently indicated by distinctively painted lines, pylons, overhead signs, or physical barriers. Twenty-five percent of the lanes for each of the governmental entities must be established and fully operational by March 1, 1975; fifty percent by June 1, 1975; seventy-five percent by September 1, 1975; and one hundred percent by January 1, 1976.

(g) A signed statement by the chief executive officer of each governmental entity or his designee shall be submitted to the Administrator on or before January 1, 1975, to identify the source and amount of funds for allocation required by this section.

(h) Each affected governmental entity shall submit to the Administrator, no later than October 1, 1974, legally adopted regulations to implement and enforce the provisions of this section.

(i) The State of Texas may submit to the Administrator a mass transit incentive or other VMT or emission reduction measure for any area subject to this section that will achieve the same or greater reductions in VMT and hydrocarbon emissions as those anticipated from implementation of this section. If approved by the Administrator, such measure will apply in such area in lieu of this section. Application for approval of an alternate measure will not be accepted after December 1, 1973.

§ 52.2295 Management of parking supply.

(a) Definitions:

All terms used in this section but not specifically defined below shall have the meaning given them in parts 51 and 52 of this chapter.

(1) "Parking facility" (also called "facility") means a lot, garage, building or structure, or combination or portion thereof, on or in which motor vehicles are temporarily parked.

(2) "Vehicle trip" means a single movement by a motor vehicle which originates or terminates at a parking facility.

(3) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land, a building or structure, or portion thereof, for use as a facility.

(4) "Modification" means any change to a parking facility which increases or may increase the motor vehicle capacity

of or the motor vehicle activity associated with such parking facility.

(5) "Commence" means to undertake a continuous program of on-site construction or modification.

(b) This section is applicable in the Houston-Galveston Intrastate Region.

(c) The requirements of this section are applicable to the following parking facilities in the area specified in paragraph (b) of this section, the construction or modification of which is commenced after August 15, 1973:

(1) Any new parking facility with parking capacity for 500 or more motor vehicles.

(2) Any parking facility which will be modified, and whose parking capacity after modification will be 500 or more motor vehicles.

(3) Any parking facility constructed or modified in increments which individually are not subject to review under this section, but which, when all such increments occurring since August 15, 1973, are added together, as a total would subject the facility to review under this section.

(d) No person shall commence construction or modification of any facility subject to this section without first obtaining written approval from the Administrator or an agency designated by him; provided, that this paragraph shall not apply to any proposed parking facility for which a general construction contract was finally executed by all appropriate parties on or before August 15, 1973.

(e) No approval to construct or modify a facility shall be granted unless the applicant shows to the satisfaction of the Administrator or agency approved by him that:

(1) The design or operation of the facility will not cause a violation of any control strategy which is part of the applicable implementation plan, and will be consistent with the plan's VMT reduction goals.

(2) The emissions resulting from the design or operation of the facility will not prevent or interfere with the attainment or maintenance of any national ambient air quality standard at any time within ten (10) years from the date of application.

(f) Any application for approval under this section shall include the following information:

(1) Name and address of the applicant.

(2) Location and description of the parking facility.

(3) A proposed construction schedule.

(4) The normal hours of operation of the facility and the enterprises and activities which it serves.

(5) The total motor vehicle capacity before and after the construction or modification of the facility.

(6) The number of people using or engaging in any enterprises or activities which the facility will serve on a daily basis and a peak hour basis.

(7) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projection shall include data concerning the availability of mass transit from such areas.

(8) An estimate of the average and peak hour vehicle trip generation rates, before and after construction or modification of the facility.

(9) An estimate of the effect of the facility on traffic patterns and flow.

(10) An estimate of the effect of the facility on total VMT for the air quality control region.

(11) An analysis of the effect of the facility on site and regional air quality, including a showing that the facility will be compatible with the applicable implementation plan, and a showing that the facility will not cause any national ambient air quality standard to be exceeded within ten (10) years from date of application. The Administrator may prescribe a standardized screening technique to be used in analyzing the effect of the facility on ambient air quality.

(12) Additional information, plans, specifications or documents required by the Administrator.

(g) Each application shall be signed by the owner or operator of the facility, whose signature shall constitute an agreement that the facility shall be operated in accordance with applicable rules, regulations, permit conditions and the design submitted in the application.

(h) Within 30 days after receipt of an application containing all of the information required by this section, the Administrator or agency approved by him shall notify the public, by prominent advertisement in the region affected, of the receipt of the application and the proposed action on such application (whether approval, conditional approval, or denial), and shall invite public comment.

(i) The application, all submitted information, and the terms of the proposed action shall be made available to the public in a readily accessible place within the affected air quality control region.

(j) Public comments submitted within thirty (30) days of the date such information is made available shall be considered in making the final decision on the application.

(k) The Administrator or agency approved by him shall take final action (approval, conditional approval, or denial) on an application within thirty (30) days after close of the public comment period.

(l) The State of Texas may submit to the Administrator a mass transit incentive or other VMT or emission reduction measure for any area subject to this section that will achieve the same or greater reductions in VMT and hydrocarbon emissions as those anticipated from implementation of this section. If approved by the Administrator, such measure shall apply in such area in lieu of this section. Application for approval of an alternate measure will not be accepted after December 1, 1973.

§ 52.2296 Bus/carpool matching and promotion system.

(a) Definitions:

(1) "Carpool" means two or more persons utilizing the same vehicle.

(2) "Bus/carpool matching and promotion" means assembling lists of commuters sharing similar travel needs. The aggregate of drivers and riders on each list identifies potential bus/carpools.

(3) "Time-origin-destination (TOD) information" means specifications of a driver or rider's work schedule, home and work locations, or the location of other desired origins and destinations of trips (such as shopping or recreational trips).

(4) "Pilot program" means a program that is initiated on a limited basis for the purpose of facilitating a future full scale regional program.

(5) All other terms used in this section which are defined in 40 CFR Part 51 are used herein with the meanings so defined.

(b) This section is applicable in the Houston-Galveston, Dallas-Fort Worth, and San Antonio Intrastate Regions (hereafter the "affected Regions").

(c) The State of Texas or an appropriate local agency approved by the Administrator shall implement a bus and carpool matching and promotion program in each affected region that will serve persons employed in the central business districts (as defined in § 52.2294 (a)(3)) of Houston in the Houston-Galveston Region, of Dallas and Fort Worth in the Dallas-Fort Worth Region, and of San Antonio in the San Antonio Region. The State of Texas or an appropriate local agency approved by the Administrator shall comply with the following provisions in establishing the program:

(1) A pilot program shall be initiated and fully operational by March 1, 1974.

(2) A program that will serve all persons employed in the central business districts of the areas specified in paragraph (c) of this section shall be initiated and fully operational by January 1, 1975.

(3) A timetable for implementation of the full program shall be submitted to the Administrator by March 1, 1974, and shall include legally adopted regulations establishing the program or dates by which the regulations will be adopted.

(d) Regulations adopted by the State of Texas or the approved local agencies shall include, as a minimum, the following:

(1) A method of collecting information which will include the following as a minimum:

(i) Provisions for each employee to receive an application form with a cover letter describing the matching program.

(ii) Provisions on each application for the applicant to specify his TOD information and the applicant's desire to drive only, ride only, or share driving.

(2) A computerized method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the urban area and semi-rural region surrounding incorporated cities with a population greater than 50,000, and matching applicants with compatible TOD information.

(3) A method for providing continuing service so that the master list of all applicants is retained and available for use by new applicants and a method of periodically updating the master list to

remove applicants who have moved from the area served.

(4) An agency or agencies responsible for operating overseeing and maintaining the bus/carpool computer matching system.

(e) The State of Texas may submit to the Administrator an alternate mass transit incentive or VMT or emission reduction measure for any area subject to this section that will achieve the same or greater reduction in VMT and hydrocarbon emissions as those anticipated from implementation of this section. If approved by the Administrator, such measure will apply in such area in lieu of this section. Application for approval of an alternate measure will not be accepted after December 1, 1973.

§ 52.2297 Employers provision for mass transit priority incentives.

(a) This section is applicable in the Houston-Galveston, Dallas-Fort Worth, and San Antonio Intrastate Regions (the "Regions").

(b) Each employer in the Regions who employs 1,000 or more persons and who maintains more than 700 employee parking space shall, on or before February 1, 1974, submit to the Administrator an adequate transit incentive program designed to encourage the use of mass transit and discourage the use of single-passenger automobiles by his employees. This program shall contain provisions for subsidies to employees who use mass transit, reductions in the number of employee parking spaces or surcharges on the use of such spaces by employees, provision of special charter buses or other modes of mass transit for the use of employees, preferential parking or other benefits to employees who travel to work by carpool and/or any other measures acceptable to the Administrator. By April 1, 1974, the Administrator shall approve such program for each employer if he finds it to be adequate, and shall disapprove it if he finds it not to be adequate. Notice of such approval or disapproval will be published in this part.

(c) "Employee parking space" means any parking space reserved or provided by an employer for the use of his employees.

(d) In order to be approvable by the Administrator, such program shall contain procedures whereby the employer will supply the Administrator with semi-annual certified reports which shall show, at a minimum the following information:

(1) The number of employees at each of the employer's facilities within the Regions on October 15, 1973, and as of the date of the report.

(2) The number of (i) free and (ii) non-free employee parking spaces provided by the employer at each such employment facility on October 15, 1973, and as of the date of the report.

(3) The number of employees regularly commuting to and from work by (i) private automobile, (ii) carpool, and (iii) mass transit at each such employment facility on October 15, 1973, and as of the date of the report.

(4) Such other information as the Administrator may prescribe.

(e) If, after the Administrator has approved a transit incentive program, the employer fails to submit any reports in full compliance with paragraph (d) of this section, or if the Administrator finds that any such report has been intentionally falsified, or if the Administrator determines that the program is not in operation or is not providing adequate incentives for employee use of carpools and mass transit, the Administrator may revoke the approval of such plan. Such revocation shall constitute a disapproval.

(f) By April 1, 1974, the Administrator shall prescribe a transit incentive program for each employer to whom paragraph (b) of this section is applicable if such employer has not submitted a program. By June 1, 1974, the Administrator shall prescribe a transit incentive program for each employer to whom paragraph (b) of this section is applicable if the program submitted is not adequate. Within two months after any revocation pursuant to paragraph (e) of this section, the Administrator shall prescribe a transit incentive program for the affected employer. Any program prescribed by the Administrator shall be published in this Part.

§ 52.2298 Monitoring transportation mode trends.

(a) The State of Texas or a designated agency approved by the Administrator shall monitor:

(1) The actual per vehicle emissions reductions occurring as a result of the retrofit devices and inspection and maintenance programs required under §§ 52.2290 and 52.2291.

(2) The observed changes in vehicle miles traveled (VMT) and average vehicle speeds as a result of the measures required under §§ 52.2293 (if implemented), 52.2294, 52.2295, 52.2296, and 52.2297.

(b) No later than March 1, 1974, the State of Texas shall submit to the Administrator a detailed program demonstrating compliance with paragraph (a) of this section in accordance with § 51.19 (d) of this chapter. The program description shall include the following:

(1) The agency or agencies responsible for conducting, overseeing and maintaining the monitoring program.

(2) The administrative process to be used.

(3) A description of the methods to be used to collect the emission reduction, VMT reduction, and vehicle speed data, including a description of any modeling techniques to be employed.

(4) The funding requirements, including a signed statement from the Governor or State Treasurer or their respective designees identifying the source and amount of funds for the program.

(c) All data obtained by the monitoring program shall be included in the quarterly report submitted to the Administrator by the State, as required at § 51.7 of this chapter, and in the format prescribed in Appendix M Part 51 of this chapter. The first quarterly report shall cover the period January 1–March 31, 1975.

[FR Doc.73-23187 Filed 11-5-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

TEXAS IMPLEMENTATION PLANS

Employer Provision for Mass Transit Priority Incentive

The final transportation control plan for Texas, contained elsewhere in this issue of the FEDERAL REGISTER (38 FR 30633), promulgates a regulation entitled "Employers provision for mass transit priority incentive" (40 CFR 52.2297). This regulation was included because employers who provide parking spaces to their employees thereby encourage employees to drive to work rather than to take carpools or to use mass transit. Such employers may therefore be regulated as "indirect sources" of air pollution, as that term is defined in the General Preamble. At the same time, individual employers are singularly well equipped to establish and administer programs to reduce the dependence of their employees on the single-passenger automobile.

The regulation contained in the plan as promulgated is phrased in somewhat general terms. This form was chosen because of the expressed preferences of EPA's Region VI, and because the Administrator has every reason to believe that, if it is implemented in the proper spirit, it will produce VMT reductions equivalent to those that could be expected from more specific measures. If this hope proves unfounded, however, more specific measures will have to be substituted. Accordingly, one such specific measure (similar to the measure being promulgated for California) is today being proposed for comment. Comment will be received on this proposal until December 6, 1973.

This notice of proposed rulemaking is issued under authority of sections 110 and 301(a) of the Clean Air Act, 42 U.S.C. 1857c-5 and 1857g.

Date: October 25, 1973.

RUSSELL E. TRAIN,
Administrator.

Section 52.2297 of Title 40 of the Code of Federal Regulations (set forth at 38 FR 30650) would be amended to read as follows:

§ 52.2297 Employers provision for mass transit priority incentives.

(a) Definitions:

(1) For the purposes of this section "carpool" means a vehicle containing two or more persons.

(2) "Commercial parking rate" means the average daily rate charged by the three operators of commercial parking facilities containing 100 or more commercial parking spaces which are closest in location to any employee parking space affected by this regulation.

(3) "Employer" means any person or entity that employs 1000 or more persons.

(4) "Employee parking space" means any parking space reserved or provided by an employer for the use of his employees.

(b) This section is applicable in the Houston-Galveston, Dallas-Fort Worth, and San Antonio Intrastate Regions (the "Regions").

(c) Each employer in the Regions who maintains more than 700 employee parking spaces shall, commencing on the date listed, charge no less than the following specified daily rate for the use of any such employee parking space by employees driving to work and not traveling in carpools:

Effective date:	*Daily rate commercial rate (CR) plus*
July 1, 1974	$1.00
July 1, 1976	CR plus $2.00
July 1, 1975	CR plus $2.50

No employer may charge employees traveling to work by two-person carpools more than half the parking rate specified for non-carpool vehicles by this table. Carpools of three or more shall be allowed to park free of charge, and shall be allotted the spaces closest to the employment facility. Any net revenues derived from this surcharge program by an employer shall be used to subsidize his employee's use of mass transit.

(d) Each employer subject to an obligation under paragraph (c) of this section, shall on the first date such an obligation becomes effective, also:

(1) Institute a program of reimbursing employees for their expenses of utilizing mass transit. However, such reimbursements need not exceed $200 per year per employee.

(2) Take all reasonable steps to encourage employees to commute to work by subscription charter bus and similar privately owned mass transit facilities.

(e) Each employer subject to an obligation under paragraph (c) of this section shall, at least three months prior to the effective date of any such obligation, submit to the Administrator a detailed compliance schedule setting forth the steps it will take to meet those requirements. The compliance schedule shall include a procedure for checking vehicles to see whether or not they are carpool vehicles, a procedure for collecting the fees required to be collected hereunder, for disbursing any sums to individual employees in compensation for their use of mass transit and for ensuring that such disbursements are used only for that purpose. It shall specify the steps that will be taken to determine the commercial parking rate for each affected employment center and to encourage use of such private transit facilities as charter buses.

[FR Doc.73-23188 Filed 11-5-73;8:45 am]

federal register

TUESDAY, NOVEMBER 6, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 213

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

GENERAL PROVISIONS FOR PROGRAMS

Administrative and Fiscal Requirements

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL PROVISIONS FOR OFFICE OF EDUCATION PROGRAMS

ADMINISTRATIVE AND FISCAL REQUIREMENTS

Notice of proposed rulemaking was published in the FEDERAL REGISTER on April 26, 1973 (38 FR 10388), setting forth general provisions for Office of Education programs. Pursuant to section 503 of the Education Amendments of 1972, a public hearing was held June 5 in Washington, D.C., on the proposed regulations. In addition, written comments were received and considered.

A. *Implementation of OMB Circular No. A-102.* 1. As noted in the preamble of the proposed rule (38 FR 10386), certain of the regulations are derived from OMB Circular No. A-102. In order to complete implementation of the Circular for the Office of Education, and pursuant to the Department's regulation (45 CFR Part 74, published on September 19, 1973, at 38 FR 26274) the general provisions have been substantially renumbered and expanded, as shown in the following table:

Final rule	Derivation	Proposed rule sections which have been renumbered: Proposed section numbers	Proposed rule sections which have been renumbered: Final section numbers
1. Part 100a			
Subpart A—General	Subpart A of the proposed rule (38 FR 10390).	(*)	(*)
Subpart B—Applications	Subpart B of the proposed rule (38 FR 10391).	(*)	(*)
Subpart C—Grant Application Forms for State and Local Governments.	45 CFR Part 74, Subpart N (38 FR 26284).	(*)	(*)
Subpart D—Federal Financial Participation.	Subpart C of the proposed rule (38 FR 10388).	100a.40 100a.41 100a.42 100a.43 100a.44 100a.45	100a.50 100a.51 100a.52 100a.53 100a.54 100a.55
Subpart E—Grant Payment Requirements.	45 CFR Part 74, Subpart K (38 FR 26282).	(*)	(*)
Subpart F—Cash Depositories	45 CFR Part 74, Subpart B (38 FR 26277).	(*)	(*)
Subpart G—Cost Principles	45 CFR Part 74, Subpart Q (38 FR 26288) Cf. § 100a.50 of the proposed rule (38 FR 10388).	100a.50	100a.51, 100a.52, 100a.53
Subpart H—Matching and Cost Sharing.	45 CFR Part 74, Subpart G (38 FR 26278).	(*)	(*)
Subpart I—Procurement Standards	Appendix E to the proposed rule (38 FR 10429). 10430).	(*)	(*)
Subpart J—Bonding and Insurance	§ 100a.165 of the proposed rule (38 FR 10394).	100a.165	100a.120, 100a.121, 100a.122
Subpart K—Construction Requirements.	Subpart E of the proposed rule (38 FR 10394).	(*)	(*)
Subpart L—Property Management Standards.	Subpart F of the proposed rule (38 FR 10396) and 45 CFR 74.130-74.133 (38 FR 26284).	100a.200 100a.201 100a.202 100a.203	100a.215, 100a.216 100a.217 100a.219
Subpart M—Program Income	45 CFR Part 74, Subpart F (38 FR 26278) Cf. (38 FR 10107).	(*)	(*)
Subpart N—Miscellaneous Requirements.	Subpart D of the proposed rule (38 FR 10393).	100a.63 100a.64 100a.76 100a.80 100a.98 100a.99 100a.100 100a.101 100a.107 100a.110 100a.111 100a.150	100a.250 100a.255 100a.258 (*) 100a.260 100a.261 100a.262 100a.268 100a.270 100a.275 100a.276 100a.290
Subpart O—Financial Management Systems.	45 CFR Part 74, Subpart H (38 FR 26279).	(*)	(*)
Subpart P—Financial Reporting Requirements.	45 CFR Part 74, Subpart I (38 FR 26280).	(*)	(*)
Subpart Q—Monitoring and Reporting of Program Performance.	45 CFR Part 74, Subpart J (38 FR 26281).	(*)	(*)
Subpart R—Accountability for Federal Funds.	Subpart G of the proposed rule (38 FR 10397) and 45 CFR 74.111 (38 FR 26282).	100a.277 100a.278 100a.279 100a.280 100a.281 100a.282 100a.283 100a.295 100a.296	100a.477 100a.301 (h) (*) (*) 100a.481 100a.482 100a.483 100a.495 (*)
2. Part 100b			
Subpart A—General	Subpart A of the proposed rule (38 FR 10398).	(*)	(*)
Subpart B—State Plans	Subpart B of the proposed rule	(*)	(*)
Subpart C—[Reserved]			
Subpart D—Federal Financial Participation.	Subpart C of the proposed rule	100b.42 100b.43 100b.44 100b.45 100b.50 100b.51 100b.52	100b.52 100b.53 (*) 100b.55 100b.51, 100b.52, 100b.53 100b.58 100b.59
Subpart E—Grant Payment Requirements.	45 CFR Part 74, Subpart K (38 FR 26282).	(*)	(*)
Subpart F—Cash Depositories	45 CFR Part 74, Subpart B (38 FR 26277).	(*)	(*)
Subpart G—Cost Principles	45 CFR Part 74, Subpart Q (38 FR 26288) Cf. § 100b.50 of the proposed rule (38 FR 10400).	100b.50	100b.51, 100b.52, 100b.53
Subpart H—Matching and Cost Sharing.	45 CFR Part 74, Subpart G (38 FR 26279).	(*)	(*)

Final rule	Derivation	Proposed rule sections which have been renumbered	
		Proposed section numbers	Final section numbers
Subpart I—Procurement Standards	Appendix E to the proposed rule (38 FR 10429).	[1]	[1]
Subpart J—Bonding and Insurance	100b.165 of the proposed rule (38 FR 10401).	100b.165	100b.120, 100b.121, 100b.122
SubpartK—Construction Requirements.	Subpart E of the proposed rule (38 FR 10401).	[2]	[2]
Subpart L—Property Management Requirements.	Subpart F of the proposed rule (38 FR 10402) and 45 CFR 74.130-74.133 (38 FR 26284).	100b.200 100b.201 100b.202 100b.203	100b.215 100b.216 100b.217 100b.218
Subpart M—Program Income	45 CFR Part 74, Subpart F (38 FR 26278).	[3]	[3]
Subpart N—Miscellaneous Requirements.	Subpart D of the proposed rule (38 FR 10400).	100b.63 100b.64 100b.65 100b.76 100b.80 100b.100 100b.109 100b.110	100b.250 100b.254 100b.257 100b.258 [4] 100b.262 100b.274 100b.275
Subpart O—Financial Management Systems.	45 CFR Part 74, Subpart H (38 FR 26279).	[5]	[5]
Subpart P—Financial Reporting Requirements.	45 CFR Part 74, Subpart I (38 FR 26280).	[6]	[6]
Subpart Q—Monitoring and Reporting of Program Performance.	45 CFR Part 74, Subpart J (38 FR 26281).	[7]	[7]
Subpart R—Accountability for Federal Funds.	Subpart G of the proposed rule	100b.277 100b.278 100b.279 100b.280 100b.281 100b.282 100b.283 100b.284 100b.285	100b.477 100b.301(h) [8] [8] 100b.481 100b.482 100b.483 100b.484 100b.485

[1] No renumbering.
[2] No renumbering—new subpart.
[3] No renumbering except § 100a.165.
[4] Deleted.
[5] See 100b.400-100a.407, 100a.430-100a.436.
[6] See 100a.496.
[7] See subpart E of the final regulations.

2. The regulations which have been added to Subchapter A pursuant to 45 CFR Part 74 (38 FR 26274) constitute the Commissioner's adoption of the standards set forth in Part 74.

3. Since the standards contained in OMB Circular No. A-102 have previously been published in the FEDERAL REGISTER, it has been determined that these additions to the general provisions will take effect concurrently with those sections of the regulations which were previously published in the notice of proposed rulemaking on April 26, 1973 (38 FR 10386).

B. *Summary of comments; changes in the regulations.* The following comments were submitted to the Office of Education regarding the proposed regulations, either at the public hearing held on June 5, 1973, or in writing. After the summary of each comment, a response is set forth stating changes which have been made in the regulations, or the reasons why no change is deemed necessary. The comments are arranged in order of the sections of the final regulations. Where the section number in the final regulations differs from that in the proposed rule, the proposed section number is also identified.

1. Section 100.1 *Definitions.—Comments.* A commenter suggested that the definition of "service function" is meaningful only to those in public elementary and secondary education.

Response. The definition has been amended to make it clear that it is to be used only in conjunction with the term "local educational agency."

Comment. A commenter suggested that the definitions of "equipment," "materials," and "supplies" were not in conformity with the pattern reflected in the definitions of "personal property," "expendable personal property," and "nonexpendable personal property."

Response. Many statutes under which the Office of Education provides assistance retain the concepts of "equipment," "materials," and "supplies." While the property management standards in the general provisions (Subpart L in Part 100a and Part 100b) are based on the concept of expendable-nonexpendable personal property, it is useful to retain across-the-board definitions for the other terms as well. Therefore, no change is deemed necessary.

Comment. A commenter suggested that the definition of "fellowship" would cause confusion, since it is not adequately differentiated from a "scholarship" (which is not defined), and is not characterized sufficiently as to form and source.

Response. The definition has been deleted.

2. Section 100a.10 *Scope.—Comment.* Two commenters objected to the inclusion of the educational broadcasting facilities program and the Corporation for Public Broadcasting under Part 100a (§ 100a.10(a)(14)). One commenter suggested that overlapping requirements would result which would make the processing of grant applications more difficult. The other commenter felt that Part 100a would defeat the purpose of the program by permitting States to use the Federal funds "as a part of a basic appropriation," rather than to supplement public television programming.

Response. (a) The Corporation for Public Broadcasting was included in §100a.10(a)(14) by inadvertence, since it is not a discretionary grant program administered by the Commissioner. The reference has been deleted. With respect to the possibility of overlapping requirements, this will be avoided to the maximum extent possible.

(b) In response to second commenter, the general provisions do not overrule statutory provisions which govern individual assistance programs.

(c) Pursuant to section 503 of the Education Amendments of 1972 (Pub. L. 92-318), the regulations for the educational broadcasting facilities program will be published in the FEDERAL REGISTER as a notice of proposed rulemaking in the near future. It is contemplated that certain provisions of Part 100a will be made inapplicable to the program, pursuant to § 100a.10(a). Persons interested in this program should submit their comments on its relationship to the general provisions at that time.

3. Section 100a.16 *Project description.—Comment.* A commenter objected to the information required in an application by § 100a.16 regarding the project director and project staff, and the requirement in § 100a.260 (§ 100a.98 in the proposed rule), that the Commissioner be notified of changes in the project director and key professional staff. The commenter felt that it should not be the function of the Office of Education to ascertain qualifications or expertise of persons managing Federal programs.

Response. It is felt that the qualifications and expertise of the project director and his staff are central to the success of a project. The Office of Education is under an obligation to assist those projects qualifying under Federal programs which are most likely to meet the purposes of the legislation. Therefore, the requirements regarding the project director and staff have not been changed.

4. Section 100a.18 *Designation and certification of agency to administer the project.—Comment.* Section 100a.18(b) requires that an application for Federal assistance gives assurance that it has been "adopted" by the applicant. A commenter has suggested that the term "adopted" is meaningless to nongovernmental applicants.

Response. Applications for assistance made to the Office of Education must come from the agencies, organizations, or institutions which are eligible under the particular statutory program. Individuals are not eligible applicants. In each case, the Office of Education must be assured that the applicant has taken whatever institutional steps are necessary to make the application its own. This is the intent of the term "adopted." No change in the regulation is deemed necessary.

5. Section 100a.19 *Cooperative arrangements.—Comment.* A commenter expressed concern that some institutions

may not have authority to be a "joint legal recipient" of a grant under § 100a.19 (c). The commenter requested that an option be provided for a single recipient, with subgrants or subcontracts to other participants.

Response. Section 100a.19, as written, does not require joint applications, nor does it preclude subcontracts. The statutes to which Part 100a applies do not authorize grantees to make subgrants, although they may enter into service contracts. The regulation merely provides an optional means which eligible parties may use to apply for funds, if they have the desire and authority to do so. No change has been made in the regulation.

6. Section 100a.20 *Effective date of approved project.—Comment.* A commenter asked the Commissioner to retain the option of approving preaward costs.

Response. The regulation does not preclude preaward costs, if such costs were not incurred prior to the effective date set forth in the award document. It should be noted that the regulation does not require that the effective date be the same as the date on which the award is signed. No change in the regulation is needed.

7. Section 100a.28 *Amendments.—Comment.* A commenter objected to unilateral amendments by the Commissioner based on changes in regulations or policies.

Response. The regulation has been amended to eliminate this requirement. Amendments may still be initiated by the Commissioner if mandated by Federal appropriations or laws governing the award.

8. Section 100a.30 *Service contracts.—Comment.* A commenter objected to the requirement that an application must be amended if the applicant wishes to contract out part of the work under the project. He suggested that prior approval of those contracts be required instead.

Response. It should be noted that if the original application contained a statement of the applicant's intent to enter into service contracts, no later amendment would be necessary. Prior approval of service contracts by the Commissioner is precluded, except in very limited circumstances, under Subpart I of Part 100a (Appendix E to Subchapter A in the proposed rule). The application and amendments to the application are the only way the Commissioner can exercise control over what entity actually performs under a grant or contract. No change in the regulation has been made.

9. Section 100a.31 *Preapplications.—Comment.* A commenter stated that the general provisions would require submission of a preapplication under the educational broadcasting facilities program if the standards in OMB Circular No. A–102 were followed, and objected to this requirement.

Response. Section 100a.31 makes the submission of a preapplication mandatory only when required by the Commissioner for a particular program. Section 100a.41 states, among other things, that a preapplication shall be used for construction projects where "the need for Federal funding exceeds $100,000." Section 100a.40 limits § 100a.41 by making it applicable only to State and local governments, as defined in § 100.1. Therefore, except for construction projects of State and local government which exceed $100,000, and programs where the Commissioner has determined otherwise, preapplications are not required. No change in the regulation has been made.

10. Section 100a.53 *Payments.* (§ 100a.43 in the proposed rule). *Comment.* A commenter suggested that Treasury Department letters of credit be recognized as an approved method of payment.

Response. The suggestion has been adopted in §§ 100a.62 and 100a.63.

11. Section 100a.54 *Duration of project.* (§ 100a.44 in the proposed rule). *Comment.* A commenter suggested that there is an inconsistency between the concept of a "fiscal year" (defined in § 100.1) and § 100a.54(b), which permits extension of the period for completing a project under certain circumstances. The commenter asked for "fiscal regulations that make for better management."

Response. Section 100a.54(b) provides for relief for recipients who run into special or unforeseen difficulties in completing a project. Its procedures are not intended to substitute for good project management. No change in the regulation is necessary. As to the comment regarding better fiscal management, it is hoped that the new Subparts which have been added to the regulations will be useful in meeting the commenter's request. Subparts E, F, O, and P in particular contain fiscal management requirements.

12. Section 100a.55 *Obligation by recipients.* (§ 100a.45 in the proposed rule). *Comment.* A commenter objected to the requirement that obligations be liquidated by recipients within one year following the period for obligation, pointing out that there is already a time limit for submitting fiscal reports.

Response. The requirement objected to has been deleted.

13. Subpart J—*Bonding and Insurance* (§§ 100a.120–100a.122) (§ 100a.165 in the proposed rule). *Comment.* A commenter asked that recipients be permitted to carry the insurance required of contractors under this section.

Response. The only "insurance" required of contractors under this regulation are performance and payment bonds for contracts under grants and subcontracts which exceed $100,000. It is felt that for these limited areas, the regulation should be retained as written.

14. Section 100a.215 *Nonexpendable personal property.* (§ 100a.200 in the proposed rule). *Comment.* A commenter asked whether Pub. L. 85–934 (the Grant Act) applies to Office of Education research agreements.

Response. The Grant Act applies only to scientific research. For education programs, section 436 of the General Education Provision Act (20 U.S.C. 1232e) governs vesting of title and waiver of accountability for equipment only with respect to State and local governments.

15. Section 100a.261 *Dual compensation.* (§ 100a.99 in the proposed rule). *Comment.* Two commenters felt that § 100a.99 would prevent an employee from being a consultant at a second institution.

Response. Section 100a.261 will not prevent an employee from also being a consultant at a second project, even a second federally-assisted project. The regulation merely prohibits him from receiving double payment for any given period of work. No change in the regulation is necessary.

16. Section 100a.263 *Data-collection instruments.* (§ 100a.101 in the proposed rule). *Comment.* A commenter asked that parental consent not be required for the instruments specified in § 100a.263(b) (§ 100a.101(b)(2)(ii) of the proposed rule).

Response. The regulation has been amended to incorporate this suggestion.

Comment. A commenter requested that clearance of forms under § 100a.263 be limited to special cases where special protection is needed.

Response. The regulation has been modified to provide that data collection instruments will only be submitted to and approved by the Commissioner upon request of the recipient or where the award specifically so provides.

17. Section 100a.275 *Coordination.* (§ 100a.110 in the proposed rule). *Comment.* A commenter suggested that the coordination required under this regulation would be a complete impossibility for nongovernmental institutions.

Response. The regulation has been amended by adding the phrase "to the extent feasible." This change is intended to eliminate the possibility of imposing impossible conditions on a recipient, while retaining the idea that a recipient must seek to avoid duplication of effort and to avail itself of information regarding current activities and knowledge in the field with which the project is concerned.

18. Section 100a.301 *Standards.* (Paragraph (h) of § 100a.301 was § 100a.278 in the proposed rule). *Comment.* Two commenters objected to the requirement in § 100a.278 of the proposed rule that recipients other than State and local governments provide for independent audits of their records and activities. The commenters felt that the expense of such audits would be prohibitive, and that Federal audits should be relied on instead.

Response. Section 100a.301(h) does not require audits by recipients other than State and local governments. The change conforms to Department policy set forth in 45 CFR 74.61(h) (38 FR 26279).

19. Section 100a.481 *Unexpended funds.* (§ 100a.281 in the proposed rule). *Comment.* A commenter stated that § 100a.481 "is not clear regarding unexpended funds."

Response. Section 100a.481 is intended to provide for a situation where Federal funds have not been obligated by a recipient pursuant to its approved project, and, in the judgment of the Commis-

sioner, will not be obligated for project purposes. In such cases, the Commissioner may reduce the amount of Federal funds available for obligation, subject to the procedures set forth in § 100a.495 (termination and suspension for cause—§ 100a.295 in the proposed rule). No change in the regulation is deemed necessary.

20. Section 100a.483 *Waiver of law prohibited.* (§ 100a.283 in the proposed rule). *Comment.* A commenter suggested that § 100a.483 as written would prevent the Commissioner from amending his own regulations.

Response. The regulation has been amended to make it clear that regulations may be amended by the Commissioner through publication in the FEDERAL REGISTER.

21. Section 100a.494 *Closeout.* (Paragraph (b)(3) of § 100a.494 contains the time requirement set forth in § 100a.280 of the proposed rule). *Comment.* A commenter asked that final fiscal reports be due 120 days after the expiration of a grant or contract, rather than the 90 days required under § 100a.280(b) of the proposed rule. The commenter stated that other HEW agencies use the 120-day rule, and suggested that consistency within HEW would be useful.

Response. Under 45 CFR 74.111(a)(3) (38 FR 26283). The Department has adopted the 90-day term for final fiscal reports as an across-the-board policy. Therefore, § 100a.494 need not be amended to achieve consistency within the Department. No change in the regulation is necessary.

22. Section 100b.29 *Budget revision and minor deviations.—Comment.* A commenter requested that procedures for budget deviation be left to the State agencies which administer the programs subject to Part 100b.

Response. The regulation has been revised in accordance with the comment.

23. Section 100b.32 *Effective dates of State plans and amendments.—Comment.* Several commenters objected to the proposed rule that State plans may not become effective prior to the date approved by the Commissioner, and no earlier than the date the State plan is received by the Commissioner. The commenters felt that the delays involved would seriously hamper State agencies in administering these programs.

Response. The regulation has been amended to provide that State plans shall be considered to be in effect on the date they are submitted to the Federal Government in substantially approvable form, but no earlier than July 1 of the fiscal year for which they are submitted.

24. Section 100b.58 *Tuition and fees.* (§ 100b.51 in the proposed rule). *Comment.* A commenter felt that the regulation as proposed is ambiguous; that it is not clear whether Federal funds can or cannot be used to pay tuition and fees.

Response. Section 100b.58 is intended to serve two purposes. In a program where cost sharing is required of a recipient, the recipient is prohibited from using tuition or fees which it collects from students for all or part of the non-Federal share of costs of the project. The second purpose of the regulation is to prohibit the use of Federal funds to pay for costs which have already been paid for by tuition or fees paid by students to the recipient. If this rule were not applied, the Federal funds, in effect, could be used for double payment of a particular cost. No change in the regulation has been made.

25. Section 100b.158 *Timeliness of work.—Comment.* A commenter felt that the State agency, rather than the Commissioner, should notify recipients that funds have been awarded to the recipients under the programs subject to Part 100b.

Response. The regulation has been revised in accordance with the commenter's recommendation.

26. Section 100b.215 *Nonexpendable personal property.* (§ 100b.200 in the proposed rule) *Comment.* A commenter objected to the inventory requirements contained in § 100b.215(d) (1) and (2) (§ 100b.200(e) (1) and (2) in the proposed rule), stating that they are too stringent and would require additional manpower. The commenter asked that the "old regulations" be used and that an inventory be required only for items costing $200 or more per unit.

Response. Section 100b.215 applies only to "nonexpendable personal property," which is defined in § 100.1 as tangible personal property costing $300 or more per unit. This means that § 100b.215 is less extensive in coverage than a regulation would be which applies to items costing $200 or more per unit. It should be noted that while the inventory requirements of § 100b.215 do not apply to tangible personal property costing less than $300 per unit, an inventory must be maintained for this property sufficient to enable a recipient to account to the Commissioner under § 100b.216 (§ 100b.201 in the proposed rule), which governs expendable personal property (defined in § 100.1). However, such an inventory need not meet the specific requirements of § 100b.215(d) (1) and (2), as long as it is adequate to satisfy the recipient's duty to account. No change in the regulation has been made.

Comment. A commenter objected to the provisions of the proposed rule (§ 100b.200 (c)(2) and (d)) which would give the Commissioner the authority to order disposition of equipment, on the grounds that this should be the function of the State agency under these programs.

Response. The regulation has been revised in accordance with the commenter's suggestion.

27. Section 100c.3 *Exceptions.—Comment.* A commenter stated that the intent of § 100c.3(b) is not entirely clear.

Response. Section 100c.3(b) is intended to distinguish between the administrative funds which the State agency is granted to administer the Federal program, and program funds which the State agency may use under some Federal programs (Part B of the Education of the Handicapped Act, for example) to operate projects directly. The latter are subject to the limited indirect cost rate set forth in § 100c.2(b)(2). State administrative funds are not subject to § 100c.2(b)(2). No change in the regulation has been made.

28. Appendix A–4 *Allowable costs.—Comment.* A commenter objected to the 8 percent limitation on indirect costs for training programs.

Response. As noted by the commenter, this rule has been a long standing Department policy. To avoid inconsistency within the Department, the Office of Education will retain the rule, but will forward the comment to appropriate Departmental officials for their consideration.

29. Appendix A–9 *Applicability of State and local laws and institutional procedures.—Comment.* A commenter stated that the language in this condition is "meaningless and confusing" to a nongovernmental grantee.

Response. Condition 9 is intended to make it clear that local laws and procedures which are designed for economical spending are not to be overruled by implication from the grant or Federal laws and regulations. No change in the regulation is necessary.

30. Appendix A–12 *Patents.—Comment.* A commenter suggested that where an institutional agreement has been entered into with the Department, paragraphs (e), (f), (g), and (h) should not apply. The commenter also asked for more limiting language under paragraph (f), to require patent agreements only from persons who may reasonably be expected to make inventions.

Response. It is intended that paragraphs (e) through (h), inclusive, apply to a grant whether or not an institutional agreement has been entered into. With respect to patent agreements, it is felt that the slightly broader language in paragraph (f) as proposed will better serve to protect patent rights on behalf of the Federal Government. No change has been made.

31. Appendix A–18 *Labor standards.—Comment.* A commenter asked that the condition be clarified by the insertion of the words "as a direct cost."

Response. The condition has been modified in accordance with the commenter's recommendation.

32. Appendix A–22 *Program income.—Comment.* A commenter objected to condition 22–b as being inconsistent with institutional agreements with the Department.

Response. Condition 22–b has been deleted. Program income will be governed by Subpart M of Part 100a, which is consistent with Department policy set forth in 45 CFR 74 (38 FR 26274).

33. Subchapter A *General.—Comment.* A commenter objected to the application of standards from OMB Circular No. A–102 to recipients other than State and local governments. The commenter felt that some of the standards were designed only for government agencies, and could not be applied across-the-board to other types of recipients.

Response. In preparing Part 74 of Title 45 of the Code of Federal Regulations,

the Department, as a matter of policy, has made certain provisions of the OMB Circular not applicable to entities other than State and local governments. In implementing 45 CFR Part 74, the Office of Education will also make these standards inapplicable to recipients other than State and local governments. See for example §§ 100a.105 and 100a.107. In other cases, the Department has determined that HEW agencies may apply the standards to all recipients. The Office of Education feels that uniform standards, where feasible, are in the best interests of good management and economy, and will follow the Department's lead in this regard. Where a regulation in Subchapter A is intended to apply only to State and local governments, the regulation specifically so states.

Comment. A commenter objected to the manner in which the general provisions were presented to the public for comment. The commenter felt that for each section of the regulations, an analysis should be presented which would show how conclusions were reached which resulted in the regulation.

Response. As noted in the preamble to the proposed rule (38 FR 10386), the general provisions derive from two primary sources: (1) pre-existing regulations of the Office of Education, and (2) OMB Circular No. A-102. The prior Office of Education regulations which formed the basis for the general provisions are those which are being revoked by this document. By referring to those sections in the Code of Federal Regulations, Title 45, commenters were able to compare the policies in the general provisions with the previous policies of the Office of Education. The extensive number of comments received by the Office of Education on the regulations would seem to indicate that this method of presentation was adequate to apprise interested parties of matters on which they might wish to comment. The comments received were helpful in formulating the final regulations, as evidenced by the number of changes based on the comments noted above.

C. *Other changes.* 1. Numerous typographical and technical corrections have been made.

2. The revocations of sections in other parts of Title 45 have been brought up to date.

3. In § 100.1, the definition of "recipient" has been revised to include "subgrantees," and definitions of "subgrant" and "subgrantee" have been added.

4. In § 100a.10(a) (29)–(32), four programs have been added to the list of programs subject to Part 100a.

5. Section 100a.26(b) has been revised to provide that the criteria set forth will be applied by the Commissioner in selecting applications for funding.

6. Section 100a.29(a) has been revised to conform to 45 CFR Part 74 (38 FR 26274).

7. In Part 100a, Subparts C, E, F, H, M, O, P, and Q have been added to implement 45 CFR Part 74. Other subparts and sections in Part 100a have been redesignated and added as set forth in the table above.

8. Section 100a.159(d) has been deleted.

9. Section 100a.161 has been revised to provide that a recipient's estate or interest in the site of federally-assisted construction must assure use and possession of the facility for at least 50 years.

10. Section 100a.192 has been added to cross-reference to Executive Order No. 11288, regarding water pollution.

11. Section 100a.215 (as redesignated) has been revised to conform to 45 CFR Part 74.

12. Section 100a.218 has been added to set forth the acknowledgement to be used in federally-assisted publications and presentations.

13. Section 100a.477 (as redesignated) has been revised to conform to 45 CFR Part 74.

14. Sections 100a.278, 100a.279, and 100a.280 have been deleted.

15. Section 100a.495 (as redesignated) has been revised to tie into the Department Grant Appeals Board procedure (45 CFR Part 16).

16. Section 100a.496 has been revised to conform to 45 CFR Part 74.

17. In Part 100b, Subparts E, F, H, N, O, P, and Q have been added to implement 45 CFR Part 74. Other subparts and sections in Part 100b have been redesignated and added as set forth in the table above.

18. Section 100b.161 has been amended similarly to § 100a.161, above.

19. Section 100b.192 has been added comparable to § 100a.192, above.

20. Section 100b.200(d) of the proposed rule (redesignated as § 100b.215) has been deleted.

21. Section 100b.477 (as redesignated) has been revised to conform to 45 CFR Part 74.

22. Sections 100b.278, 100b.279, and 100b.280 have been deleted.

23. Section 100b.484 (as redesignated) has been amended to make it clear that all recipients are subject to Federal audit.

24. Appendix A has been revised to conform the Office of Education grant terms and conditions to the regulations in Part 100a.

25. Appendix E is deleted.

After consideration of all comments, Title 45 of the Code of Federal Regulations is amended as set forth below. (The regulations in Part 100a will govern applications and awards made on and after the effective date set forth below).

Effective date. Pursuant to section 503(d) of the Education Amendments of 1972 (Pub. L. 92-318), these regulations become effective on December 6, 1973.

(Catalog of Federal Domestic Assistance Programs Nos. 13.400–13.524, Office of Education.)

Dated: September 25, 1973.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved: October 29, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

PART 60—FEDERAL FINANCIAL ASSISTANCE FOR NONCOMMERCIAL EDUCATIONAL RADIO AND TELEVISION BROADCAST FACILITIES

§ 60.5 [Revoked]

1. Section 60.5 is revoked.

2. Section 60.12 is amended by revising paragraph (a) and revoking paragraph (b) as follows:

§ 60.12 Processing applications.

(a) With respect to applications accepted for filing pursuant to § 60.8, the Commissioner may at any time establish temporary limitations on the maximum amount of Federal grants which may be approved for projects situated in each of the several States, if in his judgment such action would assist in promoting equitable distribution of such Federal grant throughout the several States.

(b) [Revoked.]

§§ 60.15 and 60.17 [Amended]

§ 60.19 [Revoked]

3. Sections 60.15(a), 60.17 (a), (e), (h), (i), (j), and (k), and 60.19 are revoked.

PART 102—STATE VOCATIONAL EDUCATION PROGRAMS

§§ 102.3 and 102.42 [Amended]

§§ 102.2, 102.44, 102.122–102.131, 102.134, 102.144, 102.146–102.147, 102.154–102.155, 102.158 [Revoked]

5. Sections 102.2, 102.3 (e), (h), (k), (l), (p), and (r), 102.42(b), 102.44, 102.122–102.131, 102.134, 102.144, 102.146, 102.147, 102.154, 102.155, and 102.158 are revoked.

PART 103—RESEARCH AND TRAINING, EXEMPLARY, AND CURRICULUM DEVELOPMENT PROGRAMS IN VOCATIONAL EDUCATION

§§ 103.3, 103.13, 103.24 [Amended]

§§ 103.2, 103.14, 103.16, 103.17, 103.27–103.28, 103.34–103.37, and 103.41–103.61 [Revoked]

6. Sections 103.2, 103.3 (b), (d), and (g), 103.13(a) (2)–(7), 103.14, 103.16, 103.17, 103.24 (a) (4)–(10) and (c), 103.27, 103.28, 103.34–103.37, and 103.41–103.61 are revoked.

PART 107—FEDERAL FINANCIAL ASSISTANCE FOR PLANNING AND EVALUATION

§ 107.1 [Amended]

§§ 107.3–107.9 [Revoked]

7. Sections 107.1 (b), (c), (e), and (g), and 107.3–107.9 are revoked.

PART 111—HEARINGS IN CONNECTION WITH SCHOOL CONSTRUCTION AND FINANCIAL ASSISTANCE IN FEDERALLY IMPACTED AREAS

§ 111.1 [Amended]

8. Section 111.1 (a), (d), and (e) are revoked.

PART 112—FINANCIAL ASSISTANCE FOR CONSTRUCTION OF PUBLIC ELEMENTARY AND SECONDARY AFFECTED BY CERTAIN DISASTERS

§ 112.1 [Amended]

9. Section 112.1 (b) and (h) are revoked.

PART 113—FINANCIAL ASSISTANCE FOR CURRENT SCHOOL EXPENDITURES OF LOCAL EDUCATIONAL AGENCIES AFFECTED BY CERTAIN DISASTERS

§ 113.1 [Amended]

10. Section 113.1 (b) and (f) are revoked.

PART 114—FEDERAL ASSISTANCE UNDER PUBLIC LAW 815, 81ST CONGRESS, AS AMENDED, IN CONSTRUCTION OF MINIMUM SCHOOL FACILITIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES

§ 114.1 [Amended]

11. Section 114.1 (b), and (g), and (v) are revoked.

PART 115—FINANCIAL ASSISTANCE FOR CURRENT EXPENDITURES OF LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR FREE PUBLIC EDUCATION OF CERTAIN CHILDREN RESIDING ON FEDERAL PROPERTY

§ 115.3 [Amended]

12. Section 115.3 (b) and (d) are revoked.

PART 116—FEDERAL ASSISTANCE TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED CHILDREN

§§ 116.1, 116.21, 116.53 [Amended]

§§ 116.42, 116.46–116.48, and 116.54–116.57 [Revoked]

13. Sections 116.1 (e), (j), (k), (m), (t), (u), (x), (y), and (bb), 116.21(a)–(e), 116.42, 116.46–116.48, and 116.53(a)–(c), (e), 116.54–116.57 are revoked.

PART 117—FINANCIAL ASSISTANCE FOR SCHOOL LIBRARY RESOURCES, TEXTBOOKS, AND OTHER INSTRUCTIONAL MATERIALS

§§ 117.1 and 117.3 [Amended]

§§ 117.13 [Revoked]

14. Sections 117.1 (c)–(e), (g), and (j), 117.3(l), and 117.13 are revoked.

15. Section 117.20 is revised to read as follows:

§ 117.20 Acquisition of instructional materials.

Acquisition (as defined in § 100.1 of this chapter) of school library resources, textbooks, and other printed and published instructional materials may include the necessary costs of ordering, processing, and cataloging such resources, textbooks, and materials. Funds under title II of the act are not available for the rebinding or repair of such resources, textbooks, or materials. (20 U.S.C. 823)

§§ 117.21 and 117.46 [Amended]

§§ 117.26–117.30, 117.36, 117.39, 117.43–117.45 [Revoked]

16. Sections 117.21(b), 117.26–117.30, 117.36, 117.39, 117.43–117.45, and 117.46(c) are revoked.

PART 118—SUPPLEMENTARY CENTERS AND SERVICES; GUIDANCE COUNSELING AND TESTING PROGRAMS

§§ 118.1 118.6, 118.18, 118.22 [Amended]

§§ 118.31, 118.33–118.34, 118.41–118.43, 118.45, 118.53 and 118.55–118.58 [Revoked]

17. Sections 118.1 (b), (e), (f), (g), (o), (q), (r), and (x), 118.6(e), 118.18(d), 118.22(f), 118.31, 118.33, 118.34, 118.41–118.43, 118.45, 118.53 and 118.55–118.58 are revoked.

PART 119—FEDERAL FINANCIAL ASSISTANCE FOR STRENGTHENING STATE DEPARTMENTS OF EDUCATION

§ 119.1 [Amended]

§ 119.7 [Revoked]

18. Sections 119.1(c)–(g), (i), (k), and (l), and 119.7 are revoked.

19. The introductory sentence of § 119.8 is revised to read as follows:

§ 119.8 Federal payments.

Federal payments will be made available to the States after:

* * * * *

(20 U.S.C. 1232d.)

§ 119.22 [Amended]

§§ 119.21, 119.23–119.28 and 119.40–119.52 [Revoked]

20. Sections 119.21, 119.22(b), 119.23–119.28, and 119.40–119.52 are revoked.

PART 121—PROGRAMS FOR THE EDUCATION OF HANDICAPPED CHILDREN

§§ 121.1, 121.102, 121.106, 121.127–121.128 [Amended]

§§ 121.3–121.12, 121.56–121.60, 121.80, 121.82–121.84, 121.90, 121.97, 121.110 and 121.131 and 121.133 [Revoked]

21. Sections 121.1 (a), (b–1), (d), (f)–(i), (m), (n), (p)–(r), (t), and (u), 121.3–121.12, 121.56–121.60, 121.80, 121.82–121.84, 121.90, 121.99, 121–102 (d) and (g), 121.106e, 121.110, 121.127 (c) and (d), 121.128(d), and 121.131–121.133 are revoked.

PART 123—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

§ 123.1 [Amended]

§§ 123.2–123.3, 123.6, 123.14, 123.21, 123.23–123.29, 123.35–123.38, and 123.44 [Revoked]

22. Sections 123.1 (d), (h), (i), (n), and (p)–(r), 123.2, 123.3, 123.6, 123.14, 123.21, 123.23–123.29, 123.35–123.38, and 123.44 are revoked.

PART 124—FINANCIAL ASSISTANCE FOR DEMONSTRATION PROJECTS FOR REDUCING THE NUMBER OF SCHOOL DROPOUTS

§ 124.1 [Amended]

§§ 124.4–124.7 [Revoked]

23. Sections 124.1 (b), (c), (e), (f), and (i)–(k), and 124.4–124.7 are revoked.

§ 124.8 [Amended]

24. The last sentence in § 124.8 reading, "The application shall also contain an assurance that none of the funds made available under section 807 of the act will be used for religious worship or instruction.", is revoked.

§ 124.15 [Amended]

§§ 124.16, 124.20–124.28 and 124.33–124.34 [Revoked]

25. Sections 124.15(a), (c), and (d), 124.16, 124.20–124.28, 124.33, and 124.34 are revoked.

PART 125—CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

§ 125.1 [Amended]

26. Section 125.1(c) is revoked.

PART 129—COMPREHENSIVE EDUCATIONAL PLANNING AND EVALUATION

§§ 129.1, 129.3, 129.6 [Amended]

§§ 129.9–129.19 [Revoked]

26–1. The first sentence of § 129.3, reading: "Any State or local educational agency desiring to receive a grant under this part shall submit an application for each fiscal year at such time, in such form, containing such information, and in accordance with such procedures as the Commissioner may prescribe.", is revoked.

26–2. Sections 129.1 (b), (e), (f), (h), (i), and (m), 129.6(a), and 129.9–129.19 are revoked.

PART 130—LIBRARY SERVICES, PUBLIC LIBRARY CONSTRUCTION, INTERLIBRARY COOPERATION

§§ 130.3, 130.5, 130.22 [Amended]

§§ 130.2, 130.31–130.41, 130.43–130.44, 130.52–130.53, 130.55 [Revoked]

27. Sections 130.2, 130.3(b), (d), (f), and (g), 130.5(b) (1)–(6) and (8)–(16), 130.22(c), 130.31–130.41, 130.43, 130.44, 130.52, 130.53, and 130.55 are revoked.

PART 131—COLLEGE LIBRARY RESOURCES PROGRAM UNDER TITLE II–A, HIGHER EDUCATION ACT OF 1965, AS AMENDED

28. Section 131.1 is revised to read as follows:

§ 131.1 Applicability.

The regulations in this part apply to grants made by the Commissioner pursuant to his authority under title II–A of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1021.)

§ 131.2 [Amended]

§§ 131.6, 131.10, 131.12 and 131.17 [Revoked]

29. Sections 131.2 (e), (f), and (n), 131.6, 131.10, and 131.12–131.17 are revoked.

PART 132—GRANTS FOR TRAINING IN LIBRARIANSHIP

30. Section 132.1 is revised to read as follows:

§ 132.1 Applicability.

The regulations in this part apply to grants by the Commissioner to institutions of higher education and library organizations or agencies to assist them in training persons in librarianship under title II-B of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1031.)

§ 132.2 [Amended]

§§ 132.5–132.12, 132.14 and 132.16–132.17 [Revoked]

31. Sections 132.2(b)–(e), 132.5–132.12, 132.14, and 132.16–132.27 are revoked.

PART 141—FINANCIAL ASSISTANCE FOR STRENGTHENING INSTRUCTION IN ACADEMIC SUBJECTS IN PUBLIC SCHOOLS

§ 141.1 [Amended]

§§ 141.8, 141.12–141.18, and 141.21–141.23 [Revoked]

32. Sections 141.1 (e)–(h), and (k), 141.8, 141.11(d)(4), 141.12–141.18, and 141.21–141.23 are revoked.

PART 142—LOANS TO PRIVATE NONPROFIT SCHOOLS FOR STRENGTHENING INSTRUCTION IN ACADEMIC SUBJECTS

§ 142.2 [Amended]

33. Sections 142.2 (c), (e)–(g), (j), (k), (l)–(n), and (p) are revoked.

PART 144—NATIONAL DEFENSE STUDENT LOAN PROGRAM

34. Section 144.2 (d)–(f), (v), (w), and (y) are revoked.

§ 144.2 [Amended]

PART 145—NATIONAL DEFENSE GRADUATE FELLOWSHIP PROGRAM

§ 145.1 [Amended]

35. Section 145.1 (d), (e), and (i) are revoked.

PART 147—PROCEDURES AND CRITERIA FOR RESOLVING QUESTIONS INVOLVING MORAL CHARACTER OR LOYALTY OF APPLICANTS FOR AND HOLDERS OF NDEA FELLOWSHIP

§ 147.2 [Amended]

36. Section 147.2 (e) and (f) are revoked.

PART 150—PRODUCTION AND DISTRIBUTION OF CAPTIONED FILMS FOR THE DEAF

§ 150.1 [Amended]

37. Section 150.1(f) is revoked.

PART 151—FEDERAL FINANCIAL ASSISTANCE FOR RESEARCH AND RESEARCH RELATED ACTIVITIES IN THE FIELD OF EDUCATION AND FOR CONSTRUCTION OF NATIONAL AND REGIONAL RESEARCH FACILITIES

§§ 151.2 and 151.5 [Amended]

§§ 151.4, 151.7–151.9, 151.11, 151.13–151.16, 151.18–151.23, 151.31–151.40, 151.42–151.44, 151.46–151.47 [Revoked]

38. Sections 151.2 (b), (d), (h), (j), (k), and (n), 151.4. 151.5(b), 151.7–151.9, 151.11, 151.13–151.16, 151.18–151.23, 151.31–151.40, 151.42–141.44, 151.46, and 151.47 are revoked.

PART 155—UPWARD BOUND

§§ 155.2, 155.7, 155.9 [Amended]

§§ 155.3, 155.11–155.14 [Revoked]

39. Sections 155.2 (b), (d), and (g), 155.3, 155.7 (c) and (f), 155.9(a), and 155.11–155.14 are revoked.

PART 160—TRAINING PROGRAM UNDER MANPOWER DEVELOPMENT AND TRAINING ACT OF 1962

§§ 160.2, 160.10 [Amended]

§§ 160.11–160.14, 160.16–160.17, 160.19–160.22 [Revoked]

40. Sections 160.2 (f), (q), (r), and (u), 160.10 (a), (b), (f), and (g), 160.11–160.14, 160.16, 160.17, and 160.19–160.22 are revoked.

41. In the appendix to part 160, article III, "Termination," is revoked.

PART 166—FINANCIAL ASSISTANCE FOR ADULT EDUCATION PROGRAMS

§§ 166.3, 166.16, 166.21 [Amended]

§§ 166.2, 166.22–166.31, 166.33–166.36, 166.43, 166.44, 166.46, 166.47 [Revoked]

42. Sections 166.2, 166.3 (f)–(h) and (k), 166.16(a) 166.21(a), 166.22–166.31, 166.33–166.36, 166.43, 166.34, 166.46, and 166.47 are revoked.

PART 167—SPECIAL PROJECTS AND TEACHER TRAINING IN ADULT EDUCATION

§§ 167.3, 167.7, 167.11 [Amended]

§§ 167.2, 167.8–167.10, 167.12, 167.13, 167.15, 167.17–167.27 [Revoked]

42–1. Sections 167.2, 167.3 (f)–(h), (k), and (b), 167.7(a), 167.8–167.10, 167.11(a) and (b), 167.12, 167.13, 167.15, and 167.17–167.27 are revoked.

PART 170—FINANCIAL ASSISTANCE FOR CONSTRUCTION OF HIGHER EDUCATION FACILITIES

§ 170.1 [Amended]

43. Section 170.1(f) and (l) are revoked.

* * * * *

§§ 170.5, 170.6, 170.8, and 170.13 [Amended]

§§ 170.2–170.4 [Revoked]

45. Sections 170.2–170.4, 170.5(b), 170.6(a) (1) and (2), and (b), and 170.13 (a) (4) are revoked.

§ 170.14 [Amended]

46. The first sentence of § 170.14(b), reading "Applications for grants under Title I of the Act shall be submitted on forms supplied by the Commissioner, and shall contain such assurances as are required pursuant to the Act and the regulations in this part,", is revoked.

§ 170.18 [Amended]

§§ 170.19 and 170.45 [Revoked]

47. Sections 170,18 (a) and (c), 170.19, and 170.45 are revoked.

PART 171—FINANCIAL ASSISTANCE FOR ACQUISITION OF EQUIPMENT TO IMPROVE UNDERGRADUATE INSTRUCTION IN INSTITUTIONS OF HIGHER EDUCATION

§ 171.1 [Amended]

48. Section 171.1 (h), (j), (p), and (q) are revoked.

§ 171.4 [Amended]

49. The first sentence of § 171.4(b), reading "Applications for grants under this part shall be submitted on forms supplied by the Commissioner, and shall contain such assurances as are required pursuant to the Act and the regulations in this part.", is revoked.

§ 171.7 [Amended]

§§ 171.8 and 171.10 and 171.12 [Revoked]

50. Sections 171.7(b), 171.8, and 171.10–171.12 are revoked.

PART 173—FINANCIAL ASSISTANCE FOR COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

§ 173.1 [Amended]

51. Section 173.1 (b), (d), (e), (g), and (i) are revoked.

52. Section 173.14 is revised to read as follows:

§ 173.14 Fiscal procedures.

The State plan shall contain the procedures required by section 105(a)(5) of the act.

(20 U.S.C. 1005(a)(5).)

§§ 173.16, 173.23–173.33, and 173.37 [Revoked]

53. Sections 173.16, 173.23–173.30, 173.31–173.33, and 173.37 are revoked.

PART 175—COLLEGE WORK-STUDY PROGRAM

§§ 175.2, 175.16 [Amended]

§§ 175.15 and 175.17 [Revoked]

54. Sections 175.2 (d), (h), and (s), 175.15, 175.16 (b) and (c), and 175.17 are revoked.

PART 177—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

§ 177.1 [Amended]

55. Section 177.1 (d) and (i) are revoked.

PART 178—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS AND DIRECT FEDERAL LOANS TO VOCATIONAL STUDENTS

§ 178.1 [Amended]

56. Section 178.1 (d) and (i) are revoked.

PART 180—DESEGREGATION OF PUBLIC EDUCATION

§ 180.02 [Amended]

§ 180.03–180.06 [Revoked]

57. Sections 180.02 (a), (h), and (k), and 180.03–180.06 are revoked.

PART 181—EMERGENCY SCHOOL ASSISTANCE PROGRAM

§ 181.1 [Amended]

§§ 181.13–181.14, 181.16 [Revoked]

58. Sections 181.1 (a), (e), and (h), 181.13, 181.14, and 181.16 are revoked.

Appendix A [Revoked]

59. Appendix A to part 181 is revoked.

PART 185—EMERGENCY SCHOOL AID

§§ 185.02 [Amended]

59–1. Section 185.02 (b), (c), (h), (l), and (m) is revoked.

59–2. Section 185.03 is revised to read as follows:

§ 185.03 General provisions.

Assistance provided under this part is subject to applicable provisions contained in Subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters): *Provided, however,* That for the purposes of this part, wherever the term "Commissioner" is used in Subchapter A of this chapter, it shall be read to mean "Assistant Secretary."

(20 U.S.C. 1601 et seq.)

Appendix A [Revoked]

59–3. Appendix A to Part 185 is revoked.

PART 186—INDIAN ELEMENTARY AND SECONDARY SCHOOL ASSISTANCE ACT

§ 186.2 [Amended]

§ 186.31–186.34 [Revoked]

59–4. In § 186.2, the definitions of "Commissioner," "Elementary or Secondary School," and "Equipment" are revoked.

59–5. Subpart D of Part 186 (§§ 186.31–186.34) is revoked.

PART 187—FINANCIAL ASSISTANCE FOR THE IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

§ 187.2 [Amended]

59–6. In § 187.2, the definitions of "Elementary school", "Equipment", and "Secondary school" are revoked.

59–7. A new § 187.3 is added to read as follows:

§ 187.3 General provisions.

Assistance under this part is subject to applicable provisions contained in Subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters).

(20 U.S.C. 887c.)

59–8. Section 187.21 is amended by revoking paragraphs (e)–(j) and by revising the first sentence to read as follows:

§ 187.21 Criteria for consideration of applications.

In considering whether to approve applications and in determining the amount of the award under approved applications, the Commissioner will take into account the following general criteria (in addition to the criteria set forth in § 100a.26(b) of this chapter):

* * * * *

(e)–(j) [Revoked]

§§ 187.31–187.34 [Revoked]

59–9. Sections 187.31–187.34 are revoked.

PART 188—FINANCIAL ASSISTANCE FOR THE IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR ADULT INDIANS

59–10. Section 188.3 is added to read as follows:

§ 188.3 General provisions.

Assistance provided under this part is subject to applicable provisions contained in Subchapter A of this chapter (relating to fiscal, administrative property management, and other matters).

(20 U.S.C. 1211a.)

59–11. Section 188.15 is amended by revoking paragraphs (c)–(f) and revising the first sentence to read as follows:

§ 188.15 General criteria for consideration of applications.

In considering whether to approve applications, and in determining the amount of the award under approved applications, the Commissioner will take into account the following general criteria (in addition to the criteria set forth in § 100a.26(b) of this chapter):

* * * * *

(c)–(f) [Revoked]

§§ 188.21–188.24 [Revoked]

59–12. Sections 188.21–188.24 are revoked.

60. Subtitle B, chapter I, is amended by adding a new subchapter A, reading as follows; and by designating the remainder of chapter I as subchapter B—program regulations.

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL PROVISIONS FOR OFFICE OF EDUCATION PROGRAMS

PART 100—GENERAL

§ 100.1 Definitions.

As used in this chapter (except as otherwise defined by an applicable statute or regulation):

"Acquisition" means assumption of ownership (including the receipt of gifts) and necessary delivery, and includes purchase, lease, or lease-purchase.

"Applicant" means an eligible party seeking Federal financial assistance. The term includes an offeror for a contract, as well as an applicant for a grant.

"Application" means applications for grants and offers from eligible parties to enter into contracts with the Federal Government.

"Budget period" means the interval of time into which an approved activity is divided for budgetary purposes.

"Commissioner" means the U.S. Commissioner of Education.

"Department" means the U.S. Department of Health, Education, and Welfare.

"Elementary school" means a day or residential school which provides elementary education, as determined under State law, and "Elementary school level" means the educational level at which elementary education is provided, as determined under State law.

"Equipment" includes machinery and includes all other items of tangible personal property necessary for the functioning of a particular facility as a facility for the provision of educational and related services, including items such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and books, periodicals, documents, and other related materials. Equipment does not include "supplies" (as defined in this section).

"Expendable personal property" means all tangible personal property other than nonexpendable personal property (as defined in this section).

"Fiscal year" means a period beginning on July 1 and ending on the following June 30. (A fiscal year is designated in accordance with the calendar year in which the ending date of the fiscal year occurs.)

"GEPA" means the General Education Provisions Act, title IV of Public Law 90-247, as amended.

"Grant period" means the period during which costs may be charged against a grant.

"Materials" means those items which with reasonable care and use may be expected to last for more than 1 year and are suitable for and are to be used in providing instruction under approved activities receiving Federal assistance. The term includes such items as audio and video tapes; dises; slides and transparencies; films and filmstrips; books; models and mockups; pamphlets; periodicals for indefinite retention in reference collections, and other printed and published materials such as maps, globes, and charts. The term does not include such items as textbooks or chemicals, glassware and other supplies which are consumed in use.

"Minor remodeling" means minor alterations in a previously completed building which are needed to make effective use of equipment or personnel. The term may also include the extension of utility lines, such as water and electricity, from points beyond the confines of the spaces in which the minor remodeling is undertaken but within the confines of such previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repair.

"Nonexpendable personal property" means tangible personal property, including equipment, having a useful life of more than 1 year and an acquisition cost of $300 or more per unit.

"Nonprofit," as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Personal property" means property of any kind, tangible or intangible, except real property.

"Preschool" means the educational level from a child's birth to the time at which elementary education is provided as determined under State law.

"Private" means not under public supervision or control.

"Program" means an overall plan with respect to Federal funds made available during a fiscal year, which plan is intended to be put into effect by the recipient through one or more projects. The term does not include a Federal program of assistance.

"Project" means an activity, or set of activities designed to meet the purposes of the applicable Federal program.

"Project period" means the total period of time for which a project is approved for support with Federal funds.

"Public agency" means a legally constituted organization of government under public administrative control and direction, but does not include agencies of the Federal Government.

"Recipient" means the agency, institution, or organization receiving Federal financial assistance including subgrantees (as defined in this section) but does not include contractors who receive funds from the recipient pursuant to a grant or contract awarded by the Commissioner.

"Secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12, and "Secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

"Secretary" means the Secretary of Health, Education, and Welfare.

"Service function", with respect to a local educational agency, means an educational service which is performed by a legal entity, such as an intermediate agency, whose jurisdiction does not extend to the whole of the State and which is authorized to provide consultative, advisory, or educational program services to public elementary or secondary schools, or which has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools, rather than a service which is performed by a cultural or educational resource.

As used in this subchapter the term "State and local governments" shall be determined according to the following definitions:

(a) "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of State institutions of higher education and hospitals.

(b) "Local government" means a local unit of government including specifically a county, municipality, city, town, township, school district, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, and other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

"Subgrant" means an award of money paid by a recipient as financial assistance pursuant to a grant awarded by the Commissioner.

"Subgrantee" means the agency, institution, or organization to which a subgrant is made and which is accountable to the recipient for the use of the funds provided.

"Supplies" means those nonequipment items of tangible personal property which are consumed in use or which may not reasonably be expected to last longer than 1 year.

"Works of art" means those items, which may be in the nature of fixtures, that are incorporated in facilities primarily because of their esthetic value. The cost of a work of art which is in the nature of a fixture shall be the estimated additional cost of incorporating those special esthetic features which exceed the general requirements of excellence of architecture and design.

(20 U.S.C. 1221c(b)(1).)
(Sec. 403(b)(1), Public Law 90-247, 86 Stat. 327 (20 U.S.C. 1221c(b)(1)), unless otherwise noted.)

PART 100a—DIRECT PROJECT GRANT AND CONTRACT PROGRAMS

AUTHORITY: Sec. 403(b)(1), Pub. L. 90-247, 86 Stat. 327 (20 U.S.C. 1221c(b)(1)), unless otherwise noted.

Subpart A—General

§ 100a.10 Scope.

(a) *Programs.* Except to the extent inconsistent with an applicable statute or regulation, the provisions contained in this part apply to all Federal programs of assistance authorized under the following authorities:

(1) Special programs and projects under section 306 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 844b);

(2) Program planning and evaluation under section 411 of the General Education Provisions Act (20 U.S.C. 1222);

(3) Strengthening State and local educational agencies under title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 861);

(4) Bilingual education programs under title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 880b);

(5) Dropout prevention projects under section 807 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 887);

(6) Demonstration projects to improve school nutrition and health services for children from low-income families under section 808 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 887a);

(7) Centers and services to meet special needs of the handicapped, training personnel for the education of the handicapped, research in the education of the handicapped, instructional media for the handicapped, and special programs for children with specific learning disabilities under parts C, D, E, F, and G, respectively, of the Education of the Handicapped Act (20 U.S.C. 1421, 1431, 1441, 1451, and 1461);

(8) Special experimental demonstration projects and teacher training under section 309 of the Adult Education Act (20 U.S.C. 1208);

(9) Desegregation of public education under title IV of the Civil Rights of 1964 (42 U.S.C. 2000c–2000c–9);

(10) Dissemination, surveys, exemplary projects, and studies under section 2 of the Cooperative Research Act (20 U.S.C. 331a);

(11) Research and training, exemplary programs and projects, demonstration schools, and grants to reduce borrowing costs for schools and dormitories; and curriculum development in vocational and technical education under sections 131(a), 142(c), 151, and 153; and part I of the Vocational Education Act of 1963 (20 U.S.C. 1281(a), 1302(d), 1321, 1323, 1391);

(12) The follow-through program under section 222(a)(2) of the Economic Opportunity Act of 1964 (42 U.S.C. 2809(a)(2));

(13) Emergency school aid under title VII of the Education Amendments of 1972 (20 U.S.C. 1601);

(14) Grants for noncommercial educational broadcasting facilities under part IV of title III of the Communications Act of 1934 (47 U.S.C. 390);

(15) On-the-job training, redevelopment areas, correctional institutions, work experience and training programs, and training and technical assistance under sections 204(c), 241, 251, and 309, respectively, of the Manpower Development and Training Act (42 U.S.C. 2584(c), 2610a, 2610b, 2610c, and 2619);

(16) Language development under title VI of the National Defense Education Act of 1958 (20 U.S.C. 511);

(17) Programs under the Environmental Education Act (20 U.S.C. 1531);

(18) Programs under the Drug Abuse Education Act of 1970 (21 U.S.C. 1001);

(19) Special programs and projects relating to national and regional problems under section 106 of title I of the Higher Education Act of 1965 (20 U.S.C. 1005a);

(20) College library resources and library training and research under parts A and B, respectively, of title II of the Higher Education Act of 1965 (20 U.S.C. 1021, 1031);

(21) Strengthening developing institutions under title III of the Higher Education Act of 1965 (20 U.S.C. 1051);

(22) Supplemental educational opportunity grants under part A–2 of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070b);

(23) Special programs for students from disadvantaged backgrounds under part A–4 of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070);

(24) Work-study programs under title IV–C of the Higher Education Act of 1965 (42 U.S.C. 2751);

(25) Cooperative education programs under title IV–D of the Higher Education Act of 1965 (20 U.S.C. 1087a);

(26) Attracting qualified persons to the field of education, the teacher corps, fellowships for teachers and related educational personnel, improving training opportunities for personnel serving in programs of education other than higher education, training programs for higher education personnel, and training and development programs for vocational education personnel under section 504 and parts B–1, C, D, E, and F, respectively, of the Education Professions Development Act (20 U.S.C. 1091c, 1101, 1111, 1119, 1119b, 1119c);

(27) Financial assistance for the improvement of undergraduate instruction under title VI of the Higher Education Act of 1965 (20 U.S.C. 1121);

(28) Construction of academic facilities under title VII of the Higher Education Act of 1965, except loans for construction of academic facilities; under part C thereof (20 U.S.C. 1132a);

(29) Education programs in foreign language and area studies under section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2452(b)(6));

(30) Programs under the Indian Elementary and Secondary School Assistance Act, under title III of Pub. L. 81–874 (as added by Part A of the Indian Education Act, Pub. L. 92–318, title IV) (20 U.S.C. 241aa);

(31) Financial assistance for the improvement of educational opportunities for Indian children under section 810 of the Elementary and Secondary Education Act (as added by Part B of the Indian Education Act, Pub. L. 92–318, title IV) (20 U.S.C. 887c); and

(32) Financial assistance for the improvement of educational opportunities for adult Indians under section 314 of the Adult Education Act (as added by Part C of the Indian Education Act, Pub. L. 92–3318, title IV) (20 U.S.C. 1211a).

(b) *Procurement contracts.* This part shall not apply to procurement contracts awarded by the Office of Education in accordance with title 41 of the Code of Federal Regulations.

(Comp. Gen. Op. No. B–146285 (September 15, 1971).)

Subpart B—Applications

§ 100a.15 Applications for grants or contracts.

Any applicant eligible for a grant or contract may submit, on or before such cutoff date or dates as the Commissioner may announce in the FEDERAL REGISTER for each fiscal year, an application containing such assurances and pertinent information, and in accordance with such forms, and instructions, as the Commissioner may prescribe. Such applications shall be executed by the applicant or an official or representative of the applicant duly authorized to make such application.

(20 U.S.C. 1221c(b)(1); OMB Circular A–102.)

§ 100a.16 Project description.

The application shall describe: (a) The nature, duration, purpose, and plan of the proposed project; (b) the qualifications of the project director and of the professional personnel who will be involved in the project; (c) the facilities and resources that will be made available; (d) a justification of the amount of Federal funds requested; (e) the portion of the cost of the project proposed to be contributed by the applicant; (f) a proposed budget; and (g) such other information and assurances as the Commissioner may require.

(20 U.S.C. 1221c(b)(1); OMB Circular No. A–102.)

§ 100a.17 Administrative information.

The application shall contain the name of the official authorized to submit the application and the name of the individual or official who will be responsible for carrying out the project. Unless otherwise indicated in the application, the former individual or official will be deemed to be the individual or official to whom communications shall be directed, the individual or official who shall be responsible for the receipt, custody, and disbursement of Federal funds, and the individual or official who shall have ultimate responsibility for the accounting of such Federal funds.

(20 U.S.C. 1221c(b)(1); OMB Circular No. A–102.)

§ 100a.18 Designation and certification of agency to administer the project.

(a) Each project application and amendment thereto shall give the official name of the applicant, which shall be the agency responsible for carrying out the project.

(b) Each project application and amendment shall include an assurance by the applicant to the effect that the application or amendment has been adopted by the applicant.

(OMB Circular No. A–102.)

§ 100a.19 Cooperative arrangements.

(a) Eligible parties may enter into cooperative arrangements with other eligible parties, including those in another State, to apply for assistance.

(b) A joint application made by two or more applicants under a particular Federal program may have separate budgets corresponding to the programs, services, and activities performed by each of the joint applicants, or may have a combined budget. If joint applications present separate budgets, the Commissioner may make separate awards, or may award separate amounts for each of the joint applicants.

(c) In the case of each cooperative arrangement authorized under paragraph (a) of this section and receiving assistance, except where the Commissioner makes separate awards under paragraph (b) of this section, all such applicants (1) shall be deemed to be joint legal recipients of the grant or contract and (2) shall be jointly and severally legally responsible for administering the project assisted under such grant or contract.

(20 U.S.C. 1221c(b)(1), 1232c(b)(1).)

§ 100a.20 Effective date of approved project.

Federal financial participation is available only with respect to obligations incurred subsequent to the effective date of an approved project. The effective date of the project will be set forth in the notification of grant award or contract document.

(20 U.S.C. 1221c(b)(1); OMB Circulars A–21, A–87.)

§ 100a.26 Review of applications.

(a) The Commissioner, prior to disposition of applications for grants or contracts, shall have discretion to obtain the review of a panel of experts (except where review by such a panel is required by statute). Any such review will be in addition to the review of an application by the Commissioner in accordance with such procedures as he may establish.

(b) Review by the Commissioner and by the panel of experts will take into account the following factors (in addition to such other criteria as may be prescribed by statute or regulation):

(1) The need for the proposed activity in the area served or to be served by the applicant;

(2) Relevance to priority areas of concern as reflected in provisions contained in the applicable Federal statutes and regulations;

(3) Adequacy of qualifications and experience of personnel designated to carry out the proposed project;

(4) Adequacy of facilities and other resources;

(5) Reasonableness of estimated cost in relation to anticipated results;

(6) Expected potential for utilizing the results of the proposed project in other projects or programs for similar educational purposes;

(7) Sufficiency of size, scope, and duration of the project so as to secure productive results; and

(8) Soundness of the proposed plan of operation, including consideration of the extent to which:

(i) The objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures, and capable of being measured;

(ii) Provision is made for adequate evaluation of the effectiveness of the project and for determining the extent to which the objectives are accomplished;

(iii) Where appropriate, provision is made for satisfactory inservice training connected with project services; and

(iv) Provision is made for disseminating the results of the project and for making materials, techniques, and other outputs resulting therefrom available to the general public and specifically to those concerned with the area of education with which the project is itself concerned.

(20 U.S.C. 1221c(b)(1).)

§ 100a.27 Disposition of applications.

(a) On the basis of the review of an application pursuant to § 100a.26, the

Commissioner will either (1) select the application for funding in whole or in part, for such amount of funds and subject to such conditions as he may deem necessary or desirable for the completion of the approved project, (2) not select the application for funding, or (3) defer action on the application for such reasons as lack of funds or a need for further review.

(b) An application which is deferred or not selected for funding is not precluded from reconsideration or resubmission.

(c) The Commissioner will notify the applicant in writing of the disposition of its application. A notification of grant award or contract document will be issued to notify the applicant of a project application selected for funding.

(d) If the Commissioner awards a grant, the grant shall be subject to, and the grant award document will incorporate, the grant terms and conditions set forth in appendix A to this subchapter, pursuant to § 100a.290. If the Commissioner awards a contract, the contract award document shall include whatever provisions are required by Federal law or regulations, including the regulations of the applicable Federal program.

(20 U.S.C. 1221c(b)(1).)

§ 100a.28 Amendments.

The grant or contract must be appropriately amended prior to any material change in the administration of an approved project, or in organization, policies, or operations affecting an approved project. Substantive amendments will be subject to approval in the same manner as original applications. Project amendments may be initiated by the Commissioner if changes are made in Federal appropriations or laws governing such projects. If such amendment constitutes a partial termination of the award, the procedures contained in § 100a.495 shall apply.

(20 U.S.C. 1221c(b)(1); 1232c.)

§ 100a.29 Budget revisions and minor deviations.

(a) *State and local governments.*—(1) This paragraph applies only to recipients which are State and local governments (as defined in § 100.1 of this subchapter).

(OMB Circular No. A-102, attachment K.)

(2) As used in this paragraph:

(i) "Direct cost object class budget categories" include only the following:

(*a*) Personnel;
(*b*) Fringe benefits;
(*c*) Travel;
(*d*) Equipment;
(*e*) Supplies;
(*f*) Contractual;
(*g*) Construction; and
(*h*) Other.

(ii) "Construction" means solely or primarily for construction.

(iii) "Nonconstruction" means not solely or primarily for construction.

(OMB Circular No. A-102, exhibit M-3, 5.)

(3) For nonconstruction grants and contracts, State and local government recipients shall request prior approval for budget revisions whenever:

(i) The revision results from changes in the scope or the objectives of the project;

(ii) The revision indicates the need for additional Federal funding;

(iii) The budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or 5 percent of the budget, whichever is greater. The same criteria apply to the cumulative amount of transfees among projects, functions, and activities when budgeted separately for a grant or contract, except that no transfer is permissible which could cause any Federal appropriation, or part thereof, to be used for purposes other than those intended;

(iv) The budget is $100,000 or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed 5 percent of the budget. The same criteria apply to the cumulative amount of transfers among projects, functions, and activities when budgeted separately for a grant or contract, except that no transfer is permissible which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended;

(v) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs; or

(vi) The revisions pertain to the addition of items requiring prior approval in accordance with the provisions of appendix B of this subchapter.

(OMB Circular No. A-102, attachment K, 1-2.)

(4) Budget revisions for nonconstruction grants or contracts, other than those revisions set forth in paragraph (a)(3) of this section, do not require approval by the Commissioner. Budget revisions which do not require such approval include (i) the use of recipient funds in furtherance of project objectives over and above the recipient minimum share (if any) included in the approved budget and (ii) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(OMB Circular No. A-102, attachment K, 2.)

(5) For construction grants and contracts, State and local government recipients shall request prior approval promptly from the Commissioner for budget revisions whenever;

(i) The revision results from changes in the scope or objective of the project; or

(ii) The revision increases the budgeted amounts of Federal funds needed to complete the project.

(OMB Circular No. A-102, attachment K, 2.)

(6)(i) For both construction and nonconstruction grants and contracts, State and local government recipients shall notify the Commissioner promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than $5,000 or 5 percent of the Federal grant or contract, whichever is greater.

(ii) The notification required in paragraph (a)(6)(i) of this section will not be required when applications for additional funding are submitted for continuing grants and contracts and those applications include the recipient's estimate of what the unobligated balance of federally-authorized funds will be at the end of the current period.

(OMB Circular No. A-102, attachment K, 2.)

(7) When requesting approval for budget revisions, recipients shall use the budget forms which were used in the application. However, recipients may request by letter the approvals required by paragraph (a)(3)(vi) of this section.

(8) Within 30 days from the date of receipt of the request for budget revisions, the Commissioner will review the request and notify the recipient as to whether or not the budget revisions have been approved. If the revision is still under consideration at the end of that 30-day period, the Commissioner will inform the recipient in writing as to when the recipient may expect the Commissioner's decision.

(OMB Circular No. A-102, attachment K, 3.)

(b) *Recipients other than State and local governments.*—Minor deviations from the project of a recipient other than a State or local government (as defined in § 100.1 of this subchapter) are permitted without the necessity for an approved amendment or revision where (1) they do not result in expenditures in excess of the total amount granted, (2) there is not any material change in the content or the administration of the approved project, and (c) expenditures are otherwise made in accordance with, and for kinds of expenditures authorized in, the approved application.

(20 U.S.C. 1221c(b)(1).)

§ 100a.30 Service contracts.

(a) Each project application shall provide that the activities and services for which Federal financial assistance is sought will be administered by, or under the supervision of, the applicant.

(b) The applicant shall not transfer to others responsibility in whole or in part for the use of Federal funds or for the conduct of project activities, but may enter into contracts or arrangements with others for carrying out a portion of any such activities pursuant to Subpart I of this part.

(c) In applying for Federal assistance, the applicant shall indicate in the application any intention it may have of entering into contracts or other arrangements with individuals or organizations to conduct any portion of any activity proposed in the application. The applicant shall not enter into any such contract or arrangement unless the intention to do so is included in the approved application or an approved amendment or revision thereto.

(20 U.S.C. 1221c(b)(1), 1232c(b)(1).)

§ 100a.31 Preapplications.

Where he deems it necessary or desirable for the efficient administration of a Federal program, the Commissioner may require any applicant for assistance under such program to submit a preapplication for review prior to the acceptance of an application submitted under § 100a.15.

(20 U.S.C. 1221c(b)(1).)

Subpart C—Application Forms for State and Local Governments

§ 100a.40 Authorized forms and instructions.

(a) Only those forms specified in §§ 100a.41 through 100a.45, inclusive, and such supplementary or other forms as may from time to time be authorized by the Commissioner may be used by State and local governments in applying for Federal assistance.

(b) All applicable standard instructions for use in connection with the forms specified in §§ 100a.41 through 100a.45, inclusive, shall be followed.

(c) State and local governments shall submit the number of copies of their application as prescribed by the Commissioner.

(d) Except as provided by § 100a.29(a)(7), all requests by these recipients for changes, continuations, and supplements to approved applications shall be submitted on the same form as the original application. For those purposes, only the affected pages of the forms should be submitted.

(OMB Circular No. A-102, Attachment M.)

§ 100a.41 Preapplication for Federal assistance.

(a) The preapplication for Federal assistance form prescribed by Attachment M of OMB Circular No. A-102, will be used to:

(1) Establish communication between State and local government applicants and the Office of Education;

(2) Determine these applicants' eligibility;

(3) Determine how well the project can compete with similar applications from others; and

(4) Eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplications shall be mandatory for all construction, land acquisition, or land development projects for which the need for Federal funding exceeds $100,000.

(c) Any State or local government applicant shall have the right to submit a preapplication even when not required by the Commissioner.

(OMB Circular No. A-102, Attachment M.)

§ 100a.42 Notice of preapplication review action.

The Notice of Preapplication Review Action form prescribed by Attachment M of OMB Circular No. A-102 will be used by the Commissioner to inform State and local government applicants of the results of the review of the preapplications submitted by them. The Commissioner will send a notice to the applicant within 45 days of the receipt of the preapplication form. When the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

(OMB Circular No. A-102, Attachment M.)

§ 100a.43 Application for Federal assistance (nonconstruction projects).

The application for Federal Assistance (Nonconstruction Programs) form prescribed by Attachment M of OMB Circular No. A-102 shall be used by State and local governments to apply for Federal assistance, except where the forms specified in §§ 100a.44 and 100a.45 are to be used.

(OMB Circular No. A-102, Attachment M.)

§ 100a.44 Application for Federal assistance (for construction projects).

The Application for Federal Assistance (for Construction Programs) form prescribed by Attachment M of OMB Circular No. A-102 shall be used by State and local governments to apply for any award whose purpose is solely or primarily construction, land acquisition, or land development.

(OMB Circular No. A-102, Attachment M.)

§ 100a.45 Application for Federal assistance (short form).

The Application for Federal Assistance (Short Form) form subscribed by Attachment M of OMB Circular No. A-102 shall be used to apply for any single-purpose, one-time award of less than $10,000 not requiring clearinghouse approval, an environmental impact statement, or the relocation of persons, businesses, or farms.

(OMB Circular No. A-102, Attachment M.)

Subpart D—Federal Financial Participation

§ 100a.50 Amount of award.

Federal assistance may be provided to meet all or part of the allowable costs of projects which meet the requirements contained in the applicable Federal statutes and regulations.

(20 U.S.C. 1221c(b)(1).)

§ 100a.51 Limitations on costs.

The amount of the award shall be set forth in the grant award or contract document. The total cost to the Federal Government will not exceed the amount set forth in the grant award or contract document. The Federal Government shall not be obligated to reimburse the recipient for costs incurred in excess of such amount unless and until the Commissioner has notified the recipient in writing that such amount has been increased and has specified such increased amount in a revised grant award or contract document pursuant to § 100a.28. Such revised amount shall thereupon constitute the revised maximum total cost to the Federal Government of the performance of the grant or contract.

(31 U.S.C. 200.)

§ 100a.52 Federal obligation.

The issuance of a grant award or contract document will be regarded as an obligation of the Federal Government in the amount of the award.

(31 U.S.C. 200.)

§ 100a.53 Payments.

(a) *Payment methods and adjustments.*—Payments pursuant to grants, contracts, or other arrangements may be made in installments, and in advance or by way of reimbursement, pursuant to Subpart E of this part, with necessary adjustments on account of overpayments or underpayments, as the Commissioner may determine.

(b) *Violations.*—A payment under any such grant, contract, or other arrangement for expenditures which fail to meet the requirements of any of the provisions of applicable Federal statutes, regulations, or the approved project application (including any terms and conditions applicable thereto), may be taken into account in the determination of any such overpayments and any adjustments relating thereto.

(c) *Adjustment of records.*—Each recipient, in its maintenance of project expenditure accounts, records, and reports shall promptly make any necessary adjustments in its records to reflect refunds, credits, underpayments, or overpayments, resulting from Federal or State administrative reviews and audits or otherwise. Such adjustments shall be set forth in any financial reports required to be filed with the Commissioner.

(20 U.S.C. 1232c(a)(1), 1232d.)

§ 100a.54 Duration of project.

(a) The amount of the award shall remain available for obligation by the recipient during the period specified in the grant award or contract document or until otherwise suspended or terminated. Such period may be extended by revision of the grant or contract without additional funds pursuant to paragraph (b) of this section where otherwise permitted by law.

(b) When it is determined that special or unusual circumstances will delay the completion of the project beyond the period for obligation, the recipient must in writing request the Commissioner to extend such period and shall indicate the reasons therefor.

(20 U.S.C. 1221(c)(b)(1), 1232c(b)(3).)

§ 100a.55 Obligation by recipients.

Obligations will be considered to have been incurred by a recipient on the basis of documentary evidence of binding commitments for the acquisition of goods or property or for the performance of work, except that funds for personal services, for services performed by public utilities, for travel, and for the rental of facilities, shall be considered to have been obligated as of the time

such services were rendered, such travel was performed, and such rented facilities were used, respectively.

(20 U.S.C. 1232c(b)(2); 31 U.S.C. 200.)

Subpart E—Grant Payment Requirements

§ 100a.60 Scope of subpart.

This subpart sets forth the methods of making grant payments to recipients. These methods will minimize the time elapsing between the disbursement by a recipient and the transfer of funds from the United States Treasury to the recipient, whether such disbursement occurs prior to or subsequent to the transfer of funds.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

§ 100a.61 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a recipient upon its request or through the use of predetermined payment schedules before payments are made by the recipient.

"Letter of credit" is an instrument certified by an authorized official of the Federal Government which authorizes a recipient to draw funds when needed from the Treasury, through a Federal Reserve Bank and the recipient's commercial bank, in accordance with the provisions of Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made to the recipient for construction according to a schedule which relates the amount and timing of each payment primarily or solely to the actual percentage of completion of the construction work under the grant or contract rather than to the recipient's actual rate of disbursements.

"Reimbursement by Treasury check" is a payment made to a recipient with a Treasury check upon request for reimbursement from the recipient.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

§ 100a.62 Payment methods for nonconstruction projects.

(a) Letters of credit will be used to pay recipients when all of the following conditions exist:

(1) there is or will be a continuing relationship between the recipient and the responsible Department finance office for at least a twelve-month period and the total amount of advances to be received from the finance office is $250,000 or more, as prescribed by Treasury Circular No. 1075;

(2) the recipient has established, or demonstrated to the Commissioner the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the recipient; and

(3) the recipient's financial management system meets the standards for fund control and accountability prescribed in Subpart P of this part.

(b) Advances by Treasury check will be used, in accordance with the provisions of Treasury Circular No. 1075, when the recipient meets all of the requirements specified in paragraph (a) of this section except those in paragraph (a)(1) of this section.

(c) Reimbursement by Treasury check will be the preferred (although not mandatory) method when the recipient does not meet the requirements specified in either or both of paragraphs (a)(2) and (a)(3) of this section. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program.

(d) Recipients will be authorized to submit no less often than monthly their requests for advances or reimbursements when letters of credit or predetermined automatic Treasury check advances are not used.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

§ 100a.63 Payment methods for construction projects.

(a) The percentage of completion method will not be used to pay for construction.

(b) Reimbursement by Treasury check shall be the preferred method when the recipient does not meet the requirements specified in § 100a.62(a)(2) and (3), and may be used for any other construction grant or contract except where the Commissioner has entered into an agreement with a recipient to use a letter of credit for all Federal assistance, including assistance for construction.

(c) When the reimbursement by Treasury check method is used, recipients will be authorized to submit no less often than monthly their requests for reimbursement.

(d) When the reimbursement by Treasury check method is not used, § 100a.62 (a) and (b) shall be applicable to the construction grant or contract. Implementing procedures under § 100a.62 (a) and (b) will be insofar as possible the same for construction grants and contracts as for nonconstruction grants and contracts awarded to the same recipient.

(20 U.S.C. 1243d; OMS Circular No. A-102, Attachment J.)

§ 100a.64 Withholding of payments.

Unless otherwise required by law, payments for proper charges, incurred by recipients will not be withheld unless the grant or contract is suspended pursuant to § 100a.495(c), or the recipient is indebted to the United States and collection of the indebtedness will not impair the accomplishment of the objectives of any grant or contract program sponsored by the United States. When a grant or contract is suspended, payment adjustments will be made in accordance with § 100a.495. When an indebtedness is to be collected, the Commissioner may, upon reasonable notice to the recipient, withhold from the recipient the right to receive payments under the grant or contract or require appropriate accounting adjustments to recorded cash balances for which the recipient is accountable to the Federal Government, in order to liquidate the indebtedness.

(20 U.S.C. 1243d; OMS Circular No. A-102, Attachment J.)

§ 100a.65 Requesting advances or reimbursements.

Subpart P of this part sets forth the procedures and forms for requesting advances or reimbursements.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

Subpart F—Cash Depositories

§ 100a.70 Physical segregation and eligibility.

Except as provided in § 100a.71:

(a) Physical segregation of cash depositories for Federal funds which are provided to a recipient is not required; and

(b) There will be no eligibility requirements for cash depositories in which Federal funds are deposited by recipients.

(OMB Circular No. A-102, Attachment A.)

§ 100a.71 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a recipient, the Federal Government, and the banking institutions involved. A checks-paid basis letter of credit is one under which funds are not drawn from the Treasury until the recipient's checks have been presented to its bank for payment.

(OMB Circular No. A-102, Attachment A.)

§ 100a.72 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, recipients are encouraged to use minority-owned banks.

(OMB Circular No. A-102, Attachment A.)

Subpart G—Cost Principles

§ 100a.80 Scope of subpart.

This subpart establishes the principles to be used (except to the extent inconsistent with an applicable Federal statute or regulation) in determining allowability of costs under grants and contracts awarded by the Commissioner and under cost-type contracts awarded by the recipient.

(20 U.S.C. 1221c(b)(1); OMB Circular Nos. A-21, A-87.)

§ 100a.81 State and local governments.

The principles to be used in determining the allowable costs of activities conducted or administered by State and local governments are set forth in Appendix B to this subchapter.

(OMB Circular No. A-87.)

§ 100a.82 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education are set forth in Part I of Appendix C to this subchapter.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education are set forth in Part II of Appendix C to this subchapter.

(c) *Other activities.* Appendix C to this subchapter shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education.

(OMB Circular No. A-21.)

§ 100a.83 Nonprofit organizations.

(a) *Nonconstruction.* The principles for determining the allowable costs of nonconstruction activities conducted by nonprofit organizations other than institutions of higher education, hospitals, States, and local governments are set forth in Appendix D to this subchapter.

(b) *Construction.* Appendix D to this subchapter shall be used as a guide for determining the allowable costs of construction by nonprofit organizations (other than institutions of higher education, hospitals, States and local governments).

(20 U.S.C. 1221c(b)(1).)

§ 100a.84 Cost-type contracts and subcontracts.

(a) It should be noted that the cost principles applicable to a cost-type contractor under a grant or contract will not necessarily be the same as those applicable to the recipient. For example, where a State government awards a cost-type contract to an institution of higher education, Appendix C to this subchapter would apply to the costs incurred by the institution of higher education, even though Appendix B to this subchapter would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by commercial organizations under cost-type contracts awarded to them are set forth in 41 CFR Subpart 1-15.2.

(20 U.S.C. 1221c(b)(1).)

Subpart H—Matching and Cost Sharing

§ 100a.90 Purpose and scope.

This subpart sets forth criteria and procedures for the allowability and evaluation of cash and in-kind contributions in satisfying matching or cost sharing requirements.

(OMB Circular No. A-102, Attachment F.)

§ 100a.91 Definitions.

"Cash contributions" means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties. Unless authorized by Federal legislation, outlays charged to other Federal grants or to Federal contracts may not be considered as recipient's cash contributions.

"In-kind contributions" represent the value of noncash contributions provided by the recipient or third parties. In-kind contributions may consist of charges for real property and nonexpendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the federally-supported activity. Unless otherwise authorized by Federal legislation, charges for property purchased wholly with Federal funds, and charges based on the Federal share of the value of property purchased partly with Federal funds, may not be considered as the recipient's in-kind contributions.

"Matching or cost sharing" represents, in general, that portion of project costs not borne by the Federal Government.

"Project costs" means the sum of (a) the allowable costs incurred by the recipient and (b) the allowable in-kind contributions made by third parties.

(OMB Circular No. A-102, Attachment F.)

§ 100a.92 Allowability.

(a) Matching or cost sharing may consist of:

(1) Charges incurred by the recipient as project costs. Not all charges require cash outlays during the grant period by the recipient; examples are depreciation and use allowances for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the recipient by third parties.

(3) Project costs represented by in-kind contributions made by non-Federal third parties. Where in-kind contributions are made by the Federal Government, they may be included in the recipient's matching or cost sharing only if Federal legislation authorizes such inclusion.

(b) All contributions whether cash or in-kind (including in-kind contributions from third parties) shall be accepted as part of the recipient's matching or cost sharing when such contributions:

(1) Are identifiable from the recipient's records,

(2) Are not included as contributions for any other federally assisted program, or any Federal contract,

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives,

(4) If made by the recipient, are types of costs which are allowable under the applicable cost principles specified in Subpart G of this part,

(5) Are not borne by the Federal Government directly or indirectly under any Federal grant or contract (unless the other grant or contract may, under authority of law, be used for matching or cost sharing), and

(6) Conform to other applicable provisions of this subpart.

(OMB Circular No. A-102, Attachment F.)

§ 100a.93 Valuation of in-kind contributions from third parties.

(a) *Valuation of volunteer services.*—(1) *General.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteered service may be counted as matching or cost sharing if it is an integral and necessary part of an approved program.

(2) *Rates for volunteer services.* Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the recipient. In cases where the kinds of skills required for the federally assisted activities are not found in the other activities of the recipient, rates used should be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved.

(3) *Volunteers employed by other organizations.* When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

(b) *Valuation of donated real or tangible personal property or use thereof.*—(1) *Donation of title.* If the donor transfers title to the property, the amount to be allowed as matching or cost sharing shall be determined as if the recipient had purchased the property and had paid the fair market value of the property at the time of transfer.

(2) *Donation of use.* If only use of the property is donated, and the donor retains title, the amount to be allowed as matching or cost sharing shall be determined as if the recipient had rented the property and had paid the property's fair rental value.

(3) *Appraisal.* The Commissioner may require that the value of real property be established by an independent appraiser (i.e., a private realty firm or a General Services Administration representative) and certified by the responsible official of the recipient as a precondition to allowability for matching or cost sharing purposes.

(c) *Valuation of other in-kind contributions by third parties.* Other necessary in-kind contributions made by third parties specifically for and in direct benefit to the project may be accepted as matching or cost sharing: *Provided*, That they are adequately supported and permissible under the law. Such charges must be reasonable and properly justifiable.

(OMB Circular No. A-102, Attachment F.)

§ 100a.94 Supporting records for in-kind contributions from third parties.

The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(a) The extent of volunteer services must be supported by the same methods used by the recipient for its employees.

(b) The basis for determining the charges for personal services, material, equipment, buildings and land must be documented.

(OMB Circular No. A-102, Attachment F.)

Subpart I—Procurement Standards

§ 100a.100 Scope of subpart.

This subpart provides standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct charge by the Federal Government. These standards are furnished to insure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders.

(OMB Circular No. A-102, Attachment O.)

§ 100a.101 General.

(a) Recipients may use their own procurement policies provided that procurements whose cost is borne in whole or in part as a direct charge by the Federal Government adhere to the standards set forth in this subpart.

(b) The standards contained in this subpart do not relieve the recipient of the responsibilities arising under its contracts. The recipient is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant or contract. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

(OMB Circular No. A-102, Attachment O.)

§ 100a.102 Code of conduct.

The recipient shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal funds. The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State or local law, rules or regulations, or if the recipient is not a State or local government to the extent that the recipient determines that it has the legal and practical capacity for enforcement, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the recipients' officers, employees, or agents, or by contractors of their agents.

(OMB Circular No. A-102, Attachment O.)

§ 100a.103 Free competition.

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

(OMB Circular No. A-102, Attachment O.)

§ 100a.104 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

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

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

(c) Positive efforts shall be made by the recipient to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed under Federal grants or contracts.

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

(e) If the recipient is a State or local government, formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to § 100a.105 is necessary to accomplish sound procurement. However, procurements of $2,500 or less need not be so advertised unless otherwise required by State or local law or regulations. When formal advertising is employed by the State or local government:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State or local government, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State or local government.

(3) Any or all bids may be rejected when it is in the State or local government's interest to do so, and such rejections are in accordance with applicable State or local law, rules, and regulations.

(OMB Circular No. A-102, Attachment O.)

§ 100a.105 Negotiated procurements by State or local governments.

(a) Procurements may be negotiated by State or local government recipients if it is not practicable or feasible to use formal advertising. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising;

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

(3) The aggregate amount involved does not exceed $2,500;

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

(5) The material or services are to be procured and used outside the limits of the United States and its possessions;

(6) No acceptable bids have been received after formal advertising;

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(8) Negotiation is otherwise authorized by applicable Federal, State, or local law rules or regulations.

(b) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(OMB Circular No. A-102, Attachment O.)

§ 100a.106 Contractor responsibility.

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

(OMB Circular No. A-102, Attachment O.)

§ 100a.107 Records for negotiated procurements by State or local governments.

The procurement records or files of State or local government recipients for negotiated purchases in amounts in excess of $2,500 shall include the following

pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated. Justification for the use of negotiation in lieu of advertising may be provided on a class basis or on an individual contract basis.

(OMB Circular No. A-102, Attachment O.)

§ 100a.108 Contract administration system.

A system for contract administration shall be maintained by the recipient to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow up of all purchases.

(OMB Circular No. A-102, Attachment O.)

§ 100a.109 Contract provisions.

(a) *General.* (1) The recipient shall include provisions to define a sound and complete agreement in all contracts and subcontracts which it awards when the contract or subcontract costs are to be borne as a direct charge in whole or in part by Federal funds.

(2) In awarding contracts and subcontracts, the recipient must comply with the applicable requirements of paragraph (b) of this section.

(b) *Contracts under grants and contracts.* (1) If the recipient is a State or local government, its contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts awarded by State or local government recipients in excess of $2,500 shall contain suitable provisions for termination by the recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded in excess of $100,000, the bonding requirements set forth in Subpart J of this part shall be observed.

(4) All negotiated contracts (except those of $2,500 or less) shall include provisions giving access to, and requiring retention of, the contractor's records in accordance with § 100a.477.

(5) Each contract of an amount in excess of $2,500 awarded by a recipient shall provide for compliance with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. The provision shall advise the contractor that submission of a bid or offer or the submittal of an invoice or voucher for property, goods, or services furnished under a contract or agreement with the recipient shall constitute a certification by him that amounts to be paid do not exceed maximum allowable levels authorized by the Cost of Living Council regulations or standards. Suspected violations shall be reported by the recipient in writing to the local Internal Revenue Service field office with a copy to the Commissioner.

(6) Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 as amended (42 U.S.C. 1857b, et seq.). Suspected violations shall be reported by the recipient in writing to the regional office of the United States Environmental Protection Agency, with a copy to the Commissioner.

(OMB Circular No. A-102, Attachment O.)

Subpart J—Bonding and Insurance

§ 100a.120 General.

Recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements will be imposed, including fidelity bonds, except as provided in §§ 100a.121 and 100a.122.

(OMB Circular No. A-102, Attachment B.)

§ 100a.121 Construction and facility improvement.

The recipient of a grant or contract which requires contracting for construction or facility improvement (including any grant or contract which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

(a) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) *A performance bond on the part of the contractor for 100 percent of the contract price.* A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(c) *A payment bond on the part of the contractor for 100 percent of the contract price.* A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(OMB Circular No. A-102, Attachment B.)

§ 100a.122 Loan guarantees.

Where in connection with a grant or contract, the Commissioner also guarantees the payment of money borrowed by the recipient, the Commissioner may, at his discretion, require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed to be sufficient to protect adequately the interests of the Federal Government.

(OMB Circular No. A-102, Attachment B.)

Subpart K—Construction Requirements

§ 100a.155 Scope.

The provisions contained in this subpart apply to recipients of Federal financial assistance for construction under Federal programs under which construction is authorized by law.

(20 U.S.C. 1221c(b)(1).)

§ 100a.156 Definition.

For the purposes of this subpart, the term "facilities" means one or more structures in one or more locations, constructed pursuant to this subpart.

(20 U.S.C. 1221c(b)(1).)

§ 100a.157 Manner of construction.

Construction must be functional, undertaken in an economical manner, and not elaborate in design or extravagant in the use of materials in comparison with facilties of a similar type constructed in the State (or other applicable geographic area) within such period as may be designated by the Commission as appropriate for the purposes of this section.

(20 U.S.C. 1221c(b)(1).)

§ 100a.158 Timeliness of work.

The recipient shall cause work on the project to be commenced within a reasonable time after receipt of notification from the Commissioner that funds have been awarded, and the project shall be prosecuted to completion with reasonable diligence.

(20 U.S.C. 1232c(b)(1).)

§ 100a.159 Commencement of construction.

(a) Approval by the Commissioner of the final working drawings and specifications shall be obtained before the proposed construction is advertised or placed on the market for bidding.

(b) The construction shall go to final completion in accordance with the application and approved drawings and specifications.

(c) The recipient shall submit to the Commissioner for prior approval changes that materially alter the scope or costs of the project, use of space, or functional layout.

(20 U.S.C. 1221c(b)(1).)

§ 100a.160 Civil rights assurance.

If an assurance of compliance with title VI of the Civil Rights Act of 1964 (Form HEW 441) applying to the facility described in the applicaton has not been filed, such an assurance shall be attached to the application.

(42 U.S.C. 2000d.)

§ 100a.161 Title to site.

The recipient shall have, or shall obtain, a fee simple or such other estate or interest in the site, including access

thereto, as is sufficient to assure undisturbed use and possession of the facilities for not less than the useful life of the facilities, or 50 years, whichever is the greater.

(OMB Circular No. A-102, attachment N.)

§ 100a.164 Contracting.

(a) Except as otherwise provided by State or local law, all contracting for construction (including the purchase and installation of built-in equipment) shall be on a lump sum fixed-price basis; and, except as provided in paragraph (b) of this section, contracts shall be awarded pursuant to Subpart I of this part on the basis of competitive bidding with award of the contract to the lowest responsive and responsible bidder.

(b) If one or more items of construction are covered by an established alternative procedure for awarding contracts, consistent with State and local laws and regulations, which is approved by the Commissioner and is designed to assure construction in an economical manner consistent with sound business practice, such alternative procedure may be followed.

(20 U.S.C. 1221c(b)(1).)

§ 100a.168 Reports.

The recipient shall furnish such progress reports and other information relating to the proposed construction and the project as the Commissioner may require.

(20 U.S.C. 1232c(b)(3).)

§ 100a.169 Federal access to records and work.

Representatives of the Federal Government shall have access at all reasonable times to the recipient's records and to work whenever it is in preparation or progress, and the contractor shall be required under the contract to provide proper facilities for such access and inspection.

(20 U.S.C. 1232c(a)(2).)

§ 100a.170 Operation and maintenance.

The facility shall be operated and maintained in accordance with the requirements of applicable Federal, State, and local agencies for the maintenance and operation of such facilities.

(20 U.S.C. 1221c(b)(1).)

§ 100a.171 Cost-sharing and operational funds.

Sufficient funds shall be available to meet the non-Federal share of the cost of constructing the facility (where applicable), and sufficient funds shall be available when construction is completed to assure effective operation and maintenance of the facility for the purposes for which constructed.

(20 U.S.C. 1221c(b)(1).)

§ 100a.172 Supervision and inspection.

The recipient shall provide and maintain competent and adequate architectural engineering supervision and inspection and at the construction site to insure that the completed work conforms to the approved drawings and specifications.

(20 U.S.C. 1232c(b)(1).)

§ 100a.173 Cultural activities.

Reasonable provision shall be made, consistent with the other uses to be made of the facilities, for areas in such facilities which are adaptable for artistic and cultural activities.

(20 U.S.C. 1221c(b)(1).)

§ 100a.184 Safety and health.

In planning for and designing facilities, the recipient shall observe nationally recognized safety and health standards and codes, including National Fire Protection Association standards and those adopted under the Occupational Safety and Health Act of 1970 (Public Law 91-576): *Provided, however*, That, to the extent that State and local codes are more stringent, they shall apply.

(29 U.S.C. 651.)

§ 100a.185 Environmental impact.

Each applicant shall provide the department regional office with its assessment of the impact of the project on the quality of the environment in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 and Executive Order No. 11514 (34 FR 4247).

(42 U.S.C. 4332(2)(c).)

§ 100a.186 Preservation of historic sites.

Each application for Federal financial assistance for construction shall describe the relationship to and the probable effect, or lack of effect, on any district, site, building, structure, or object that is included in the National Register of Historic Preservation of the National Park Service and published with periodical updatings in the FEDERAL REGISTER. Such information is to be furnished to the Department to enable it to take into account such an effect and to consider the comments thereon of the advisory council on historic preservation, prior to providing such Federal financial assistance, as required by section 106 of Public Law 89-665.

(16 U.S.C. 470f.)

§ 100a.187 Davis-Bacon, Copeland, and Contract Work Hours Standards Acts.

Except as otherwise provided by law, all laborers and mechanics employed by contractors and subcontractors on construction assisted under Federal programs, including minor remodeling, shall be paid wages at rates not less than those prevailing as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act. Such contractors and subcontractors shall comply with the provisions of 29 CFR part 3 ("anti-kickback" regulations); and all construction contracts and subcontracts shall incorporate the contract clauses required by 29 CFR 5.5 (a) and (c).

(20 U.S.C. 1232b; 40 U.S.C. 276a, 276c, 327-332.)

§ 100a.188 Nondiscrimination.

Construction contracts shall include the applicable provisions of Executive Order No. 11246, as amended by Executive Order No. 11375 (nondiscrimination in construction contract employment), and the applicant shall otherwise comply with the requirements of section 301 of said Executive order.

(E.O. Nos. 11246, 11375.)

§ 100a.189 Access by the handicapped.

The recipient shall require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1-1961, as modified by other standards prescribed by the Secretary or the U.S. Administrator of General Services (41 CFR 101-17.703). The applicant shall be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(42 U.S.C. 4151, 4152, 4155.)

§ 100a.190 Avoidance of flood hazards.

In the planning of the construction of facilities involving the use of Federal funds, the recipient shall, in accordance with the provisions of Executive Order No. 11296 of August 10, 1966 (31 FR 10663) and such rules and regulations as may be issued by the Secretary to carry out those provisions, evaluate flood hazards in connection with such facilities and, as far as practicable, avoid the uneconomic, hazardous, or unnecessary use of flood plains in connection with such construction.

(E.O. No. 11296.)

§ 100a.191 Relocation assistance.

Projects receiving Federal financial assistance are subject to the regulations on relocation assistance and real property acquisition policies contained in part 15 of this title.

(20 U.S.C. 1221c(b)(1).)

§ 100a.192 Water pollution.

The recipient shall comply with Executive Order No. 11288 of July 7, 1966. (31 FR 9261), "Prevention, Control and Abatement of Water Pollution."

(E.O. No. 11288.)

Subpart L—Property Management Requirements

§ 100a.209 Scope of subpart.

This subpart prescribes policies and procedures governing title, use, and disposition of real and tangible personal property whose acquisition cost was borne in whole or in part as a direct charge by Federal grants or contracts and ownership and rights for intangible personal

property developed under Federal grants and contracts.

(OMB Circular No. A-102, Attachment N.)

§ 100a.210 General.

Recipients may follow their own property management policies and procedures, provided they observe the requirements of this subpart.

(OMB Circular No. A-102, Attachment N.)

§ 100a.211 Definitions.

As used in this subpart:

"Acquisition cost" of nonexpendable personal property acquired by purchase means the net invoice price of the property, including any attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protective intransit insurance, freight, or installation shall be included in or excluded from acquisition cost in accordance with the recipient's regular accounting practices.

"Real property," means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(OMB Circular No. A-102, Attachment N.)

§ 100a.212 Real property.

Title to real property whose acquisition cost was borne in whole or in part by Federal funds shall vest in the recipient upon acquisition. In the absence of applicable statutory provisions governing the use or disposition of such property, it shall be subject to the following requirements, in addition to (and subject to) any other requirements imposed by statute or regulation.

(a) The recipient shall use the real property for the purposes authorized by the original grant or contract as long as needed.

(b) The Commissioner may authorize the recipient to use the property for the following (but no other) purposes when the grantee determines that the property is no longer needed for the originally authorized purposes:

(1) Activities sponsored by other Federal awards (regardless of which Federal agency makes the other awards), or

(2) Activities not sponsored by other Federal awards, but which, nevertheless, have purposes consistent with those of the legislation under which the original award was made.

(c) (1) When no longer used in accordance with paragraphs (a) and (b) of this section, the recipient shall return to the control of the Commissioner all real property whose acquisition cost was borne wholly by Federal funds. If the acquisition cost of the property was borne partly by Federal funds, the recipient may be relieved of accountability to the Federal Government with respect to the Federal interest in the property by compensating the Federal Government for its fair share of the current value of the property, or if the recipient no longer needs the property, by selling it and compensating the Federal Government for its fair share of the sales proceeds.

(2) The amount of compensation to the Federal Government under subparagraph (1) of this paragraph shall be computed by applying the percentage of Federal participation in the cost of the project for which the property was acquired to the property's current fair market value (if the recipient retains the property) or to the proceeds from sale (if the recipient sells the property). In most cases, the real property will have been acquired under an award whose purpose was to assist the recipient in acquiring the property (e.g., a construction grant). In such cases, the "total cost of the project for which the property was acquired" will ordinarily be the same as the acquisition cost of the property.

(OMB Circular No. A-102, Attachment N.)

§ 100b.215 Nonexpendable personal property.

(a) *Title.*—When nonexpendible personal property is acquired by a recipient wholly or in part with Federal funds, title shall be vested in the recipient.

(b) *Use.*—(1) The recipient shall retain such property in the project as long as there is a need for such property to accomplish the purpose of the project, whether or not the project continues to be supported by Federal funds.

(2) When there is no longer a need for such property to accomplish the purpose of the project, the recipient shall use the property in connection with other Federal awards it has received in the following order or priority:

(i) Other awards under Federal programs administered by the Commissioner needing the property,

(ii) Awards of other Federal agencies needing the property.

(3) When the recipient no longer has need for such property in any of its federally assisted projects, the property may be used for the recipient's own official activities in accordance with the following standards:

(i) If the property had an acquisition cost of less than $500 per unit and has been used 4 years or more, the recipient may use the property without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) For all of such property not covered under subparagraph (3)(i) of this paragraph, the recipient may retain the property for its own use provided that a fair compensation is made to the Federal Government for the Federal share of the property. The amount of such compensation shall be computed by applying the percentage of Federal participation in the cost of the project to the current fair market value of the property.

(c) *Disposition.*—If the recipient has no need for the property, disposition of the property shall be made as follows:

(1) If the property had an acquisition cost of $1,000 or less per unit (except for property covered under paragraph (b)(3)(i) of this section) the recipient shall sell the property and reimburse the Federal Government in accordance with subparagraph (2)(iii) of this paragraph.

(2) If the property had an acquisition cost of over $1,000 per unit, the recipient shall request disposition instructions from the Commissioner. The Commissioner will issue instructions to the recipient within 120 days following the receipt of such request and the following procedures shall govern:

(i) If the recipient is instructed to ship the property elsewhere, the recipient will be reimbursed by the Federal Government with an amount which is computed by applying the percentage of the recipient's participation in the project to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the recipient is instructed to otherwise dispose of the property, the recipient will be reimbursed by the Federal Government for the costs incurred in such disposition.

(iii) If disposition instructions are not issued within the 120-day period specified in subparagraph (2) of this paragraph, the recipient shall sell the property and reimburse the Federal Government with an amount which is computed by applying the percentage of Federal participation in the project to the sales proceeds. The recipient may, however, deduct and retain from that amount, $100 or 10 percent of the proceeds, whichever is greater, for the recipient's selling and handling expenses.

(d) *Special property.*—Where the Commissioner determines that nonexpendable personal property with an acquistion cost of $1,000 or more and financed soley with Federal funds is unique, or difficult or costly to replace, he may reserve the right to require the recipient to transfer title to the property to the Federal Government or to a third party to be named by the Commissioner, subject to the following provisions:

(1) The right to require the transfer of title may be reserved only by means of an express special condition in the grant or contract, or if approval for the acquisition of the property is given after the grant is awarded, by means of a written stipulation at the time the approval is given.

(2) The property shall be appropriately identified in the award document or otherwise made known to the recipient.

(3) The Commissioner will not exercise this right until the recipient no longer needs the property in the project for which it was acquired. That need will be deemed to end on the date of completion or termination of the grant or contract unless the recipient continues to conduct the project after that date and demonstrates to the Commissioner a continued need for the property in the project.

(4) The Commissioner will issue disposition instructions within 120 days after the completion of the need for the property under the project for which it was acquired. If instructions are not issued within such 120-day period the Commissioner's right shall lapse, and the recipient shall apply the applicable standards contained in paragraphs (b)(1), (b)(2), (b)(3)(ii), and (c)(2) of this section.

(5) The recipient shall be entitled to reimbursement for any shipping and interim storage costs it incurs pursuant to the Commissioner's disposition instructions.

(e) *Property management standards.*—Recipients' property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for: (i) A description of the property; (ii) manufacturer's serial number or other identification number; (iii) acquisition date and cost; (iv) source of the property; (v) percentage of Federal funds used in the purchase of the property; (vi) location, use, and condition of the property; and (vii) ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the Federal Government for the Federal share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. The recipient shall be responsible for replacing or repairing (with funds of such recipient) property which is lost, damaged, or destroyed due to the negligence of the recipient.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(OMB Circular No. A-102, Attachment N.)

§ 100a.216 Expendable personal property.

(a) The recipient may at its option either retain or sell items of expendable personal property when no longer needed for any federally sponsored activity (including activities sponsored by other Federal agencies).

(b) Compensation to the Federal government is required if the aggregate fair market value of all of those items acquired under the grant or contract exceeds $500 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project to the current fair market value of items retained, and to the sales proceeds of items sold.

(OMB Circular No. A-102, Attachment N.)

§ 100a.217 Intangible personal property of State and local governments.

(a) This section applies only to recipients which are State and local governments.

(b) Where a project results in a book or other copyrightable material, the author or recipient is free to copyright the work, but the Commissioner reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

(OMB Circular No. A-102, attachment N.)

§ 100a.218 Publications.

Any publication or presentation resulting from or primarily related to Federal financial assistance shall contain the following acknowledgment:

> The activity which is the subject of this report was supported in whole or in part by the U.S. Office of Education, Department of Health, Education, and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

(20 U.S.C. 1221c(b)(1).)

§ 100a.219 Copyrights and patents.

(a) *Copyrights.* (1) Copyright standards for State and local governments are contained in § 100a.217.

(2) Any material of a copyrightable nature produced by a recipient other than a State or local government with Federal assistance shall be subject to the copyright policy of the U.S. Office of Education set forth in its "Copyright Guidelines" of May 9, 1970 (35 FR 7317), or any modification thereof in effect at the time of the award.

(b) *Patents.* (1) All inventions conceived or first actually reduced to practice in the course of or under a grant or contract are subject to Parts 6 and 8 of this title. Each invention shall be promptly and fully reported to the Assistant Secretary for Health, Department of Health, Education, and Welfare.

(2) Determination as to ownership and disposition of rights to those inventions, including whether a patent application shall be filed, and, if so, the manner of obtaining, administering, and disposing of rights under any patent application or patent which may be issued shall be made either:

(i) By the Federal Government, or

(ii) Where the recipient has a separate formal institutional patent agreement with the Department ,by the recipient in accordance with that agreement.

(20 U.S.C. 1221c(b)(1); OMB Circular No. A-102, Attachment N)

§ 100a.220 Determining percentage of participation.

(a) Various provisions in this subpart require a determination of the percentage of Federal (or recipient) participation in the cost of the project or program in order to compute the amount of compensation for the value, or proceeds from sale of property. In determining the applicable percentage, there shall first be deducted from the allowable costs incurred during the period for obligation, any royalties or other income (not including interest income or proceeds from sale of property) earned by the federally-supported project or program during the period for obligation.

(b) The deduction of income required by paragraph (a) of this section is independent of, and is not intended to control, the disposition of such income pursuant to Subpart M of this part.

(OMB Circular No. A-102, Attachment N.)

Subpart M—Program Income

§ 100a.230 Scope of subpart.

This subpart sets forth standards for recipients in accounting for program income and other income related to projects and programs financed in whole or in part with Federal funds.

(OMB Circular No. A-102, Attachment E.)

§ 100a.231 Meaning of program income.

As used in this subpart, the term "program income" shall have the meaning set forth for that term in § 100a.401.

(OMB Circular No. A-102, Attachment E.)

§ 100a.232 Interest income.

(a) As used in paragraph (b) of this section:

(1) The term "State" shall have the meaning set forth in section 102 of the Intergovernmental Cooperation Act of 1968.

(2) The term "grant-in-aid" shall have the meaning set forth for that term in section 106 of the Intergovernmental Cooperation Act of 1968.

(b) In accordance with section 203 of the Intergovernmental Cooperation Act of 1968, States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.

(c) In all other cases, recipients shall remit to the Federal Government any interest earned on advances of Federal funds.

(Pub. L. 90-577, secs. 102, 106, 203; OMB Circular No. A-102, Attachment E.)

§ 100a.233 Sale of real and personal property.

Proceeds from the sale of real and tangible personal property whose acquisition cost was borne in whole or in part by Federal funds shall be handled in accordance with Subpart L of this part.

(OMB Circular No. A-102, Attachment N.)

§ 100a.234 Royalties.

(a) *Applicability.*—(1) *Copyrights.* This section applies to royalties received by recipients from copyrights on publications or other works developed under a Federally-assisted grant or contract.

(2) *Patents.* This section also applies to royalties received by recipients from patents on inventions conceived or first actually reduced to practice in the course of or under a Federally-assisted grant or contract.

(b) *During the grant period.* (1) If the recipient is a State or local government, royalties received during the grant period shall be retained by the recipient. The terms and conditions of the grant or contract shall provide either:

(i) That such royalties shall be used by the recipient for any purposes which

further the objectives of the legislation under which the grant was made, or

(ii) That such royalties shall be deducted from total project costs for the purpose of determining the net costs on which the Federal share of costs shall be based.

(2) When the recipient is a State or local government, the recipient shall elect either of the alternatives specified in subparagraph (1) of this paragraph in the terms and conditions of the grant or contract do not specify which is to be followed.

(3) If the recipient is not a State or local government; disposition of royalties received during the grant period shall be governed by § 100a.219(a)(2) and (b).

(c) *After the grant period*—(1) *Copyrights.* If the recipient is a State or local government and the Commissioner and the recipient have not agreed to apply § 100a.219(a)(2), the Federal share of copyright royalties in excess of $200 received annually shall be paid by the recipient to the Federal Government. In such cases, the Federal share of the royalties shall be computed on the same ratio basis as the percentage of Federal participation in the cost of the project or program. This percentage of participation shall be determined in accordance with § 100a.220.

(2) *Patents.* Disposition of patent royalties received after the termination or completion of the period for obligation shall be governed by agreements between the Assistant Secretary for Health, Department of Health, Education, and Welfare, and the recipient, pursuant to the Department's patent regulations (Parts 6 and 8 of this title).

(OMB Circular No. A-102, Attachment E.)

§ 100a.235 Other program income.

(a) This section applies to all program income earned during the grant period except royalties and proceeds from the sale of real property or tangible personal property.

(b) All such income earned during the period for obligation shall be retained by the recipient. The recipient may elect either of the following alternatives to satisfy its accountability to the Federal Government for the income:

(1) The income may be used by the recipient for purposes which further the objectives of the legislation under which the award was made, or

(2) The income may be deducted from total project costs for the purpose of determining the net costs on which the Federal share of costs shall be based.

(OMB Circular No. A-102, Attachment E.)

§ 100a.236 Earmarked revenues of State or local governments.

State or local government recipients shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of grant project transactions when such revenues are specifically earmarked for a project in accordance with the terms and conditions of a grant or contract.

(OMB Circular No. A-102, Attachment E.)

Subpart N—Miscellaneous Requirements

§ 100a.250 Financial interest prohibited.

A person who is a public official, officer, or member of, or who is otherwise associated with a recipient, may not participate in an administrative decision with respect to the recipient's project, if such decision can be expected to result in any benefit or remuneration, including, without limitation, a royalty, commission, contingent fee, brokerage fee, or other benefit, to him or to any member of his immediate family.

(20 U.S.C. 1232c(b)(1).)

§ 100a.255 Commencement of project activity.

Projects receiving Federal financial assistance shall be commenced within a reasonable period of time subsequent to the awarding of the grant or contract.

(20 U.S.C. 1232(b)(1).)

§ 100a.258 Leasing facilities.

In the case of a project involving the leasing of a facility, the recipient shall demonstrate to the Commissioner that it will have the right to occupy, to operate, and, if necessary, to maintain and improve the leased facility during the proposed period of the project.

(20 U.S.C. 1221c(b)(1).)

§ 100a.260 Changes in key personnel.

If for any reason it becomes necessary to substitute the project director or other key professional staff designated in the grant or contract, the recipient shall provide timely written notification to the Commissioner of such substitution. Such written notification shall include the name and qualifications of the successor.

(20 U.S.C. 1221c(b)(1).)

§ 100a.261 Dual compensation.

If a project staff member or consultant is involved in two or more projects, at least one of which is supported by Federal funds under this chapter, he may not be compensated for more than 100 percent of his time during any part of the period of dual involvement. The recipient shall not use any Federal funds or funds from other sources to pay a fee to, or travel expenses of, employees of the Department for lectures, attending program functions, or any other activities in connection with the grant or contract.

(20 U.S.C. 1221c(b)(1).)

§ 100a.262 Civil rights.

(a) Federal financial assistance is subject to the regulations in part 80 of this title, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of title VI of the Civil Rights Act of 1964 (Public Law 88-352).

(42 U.S.C. 2000d)

(b) Federal financial assistance is also subject to the provisions of title IX of the Education Amendments of 1972 (prohibition of sex discrimination), and any regulations issued thereunder.

(Public Law 92-318, title IX)

§ 100a.263 Data-collection instruments.

(a) *Definitions.*—For the purposes of this section:

(1) "Data-collection instruments" includes tests, questionnaires, inventories, interview schedules or guides, rating scales, and survey plans or any other forms which are used to collect information on substantially identical items from 10 or more respondents.

(2) "Respondents" means individuals or organizations from whom information is collected.

(b) *Applicability.* This section does not apply to instruments which deal solely with (1) functions of technical proficiency, such as scholastic aptitude, school achievement, and vocational proficiency; (2) routine demographic information; or (3) routine institutional information.

(c) *Protection of privacy.* (1) Data-collection instruments shall not be used which constitute unnecessary or offensive intrusions of privacy through inquiries regarding such matters as religion, sex, race, or politics.

(2) In using data-collection instruments, recipients shall provide for anonymity and confidentiality of response of individual respondents.

(d) *Clearance not required.* (1) Recipients are not required to submit data-collection instruments to the Commissioner or obtain the Commissioner's approval for the use of those instruments, except where the grant or contract document specifically so provides.

(2) If a recipient wishes to have Federal approval (Office of Education; Department of Health, Education, and Welfare; and the Office of Management and Budget) of a data-collection instrument, the recipient shall submit seven copies of the document to the Commissioner along with seven copies of the Office of Management and Budget's Standard Form No. 83 and seven copies of the Supporting Statement as required in the "Instructions for Requesting OMB Approval under the Federal Reports Act" (Standard Form No. 83A).

(e) *Responsibility for collection of information.*—The recipient shall not in any way represent or imply (either in a letter of transmittal, in the data-gathering instruments themselves, or in any other manner) that the information is being collected by or for the Federal Government or any of its subdivisions. Basic responsibility for the study and the data-gathering instruments rests with the recipient.

(f) *Parental consent.*—In the case of any survey using data-collection instruments (except those specified in paragraph (b) of this section), which will include children below the age of 18 as respondents, the recipient shall provide assurances satisfactory to the Commissioner that informed consent will be obtained from the parents of such respondents prior to the use of such instruments.

(20 U.S.C. 1221c(b)(1).)

§ 100a.270 Treatment of animals.

If animals are utilized in any project receiving assistance, the applicant for such assistance shall provide assurances satisfactory to the Commissioner that such animals will be provided with proper care and humane treatment in accordance with the Animal Welfare Act of 1970 (Pub. L. 89-544, as amended).

(20 U.S.C. 1221c(b)(1).)

§ 100a.275 Coordination.

Each project shall be developed so as to be in coordination, to the extent feasible, with other public and private programs for similar educational purposes. Such coordination shall continue during the period in which such project remains in effect.

(20 U.S.C. 1232c(b)(1).)

§ 100a.276 Evaluation.

Each project shall include procedures for effective evaluation of the extent to which project objectives are being met.

(20 U.S.C. 1221c(b)(1).)

§ 100a.290 General grant terms and conditions.

(a) The general terms and conditions set forth in appendix A to this subchapter are prescribed for use in connection with grants to eligible parties under any Federal program to which this part is applicable. Each grant awarded under any such program shall be governed by such general terms and conditions except to the extent that any such term or condition is inconsistent with a special term or condition made specifically applicable to such grant and set forth in the grant award document.

(b) In any case where a general or special term or condition is inconsistent with a statute or published regulation applicable to that Federal program (including a regulation contained in this part), the statute or regulation shall govern.

(20 U.S.C. 1221c(b)(1).)

Subpart O—Financial Management Systems

§ 100a.300 Scope of subpart.

This subpart prescribes standards for financial management systems of federally-supported activities conducted by recipients.

(OMB Circular No. A-102, Attachment G.)

§ 100a.301 Standards.

Financial management systems for grants and contracts shall provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant or contract in accordance with Subpart P of this part. Except when specifically required by law, the Commissioner will not require financial reporting on the accrual basis from organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(b) Records which identify adequately the source and application of funds for grant- or contract-supported activities. These records shall contain information pertaining to grant or contract awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all grant or contract funds, and real and personal property acquired with grant or contract funds. Grantees and contractors shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) Comparison of actual with budgeted amounts for each grant or contract, and, when specifically required by the performance reporting requirements of the grant or contract, relation of financial information with performance or productivity data, including the production of unit cost information.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever cash is advanced by the Federal Government. When advances are made by a letter-of-credit method, the recipient shall make drawdowns from the U.S. Treasury through its commercial bank as close as possible to the time of making the disbursements.

(f) Procedures for determining the allowability and allocability of costs in accordance with the applicable cost principles prescribed by Subpart G of this part.

(g) Accounting records which are supported by source documentation.

(h)(1) If the grantee or contractor is a State or local government, audits to be made by the State or local government or at its direction to determine, at a minimum, the fiscal integrity of grant or contract financial transactions and reports, and the compliance with the terms and conditions of the grant or contract. The grantee or contractor will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

(2) Recipients other than State and local governments are encouraged, but not required, to meet the standards set forth in subparagraph (1) of this paragraph.

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(OMB Circular No. A-102, Attachment G.)

Subpart P—Financial Reporting Requirements

§ 100a.400 Scope of subpart.

This subpart prescribes requirements for recipients to report financial information to the Commissioner and to request advances and reimbursement when a letter-of-credit method is not used, and promulgates standard forms incident thereto.

(OMB Circular No. A-102, Attachment H.)

§ 100a.401 Definitions.

As used in this subpart and in the forms identified by this subpart:

"Accrued expenditures" are the charges incurred by the recipient during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, and other payees; and (c) amounts becoming owed under programs for which no current services or performance are required.

"Accrued income" is the earnings during a given period which is a source of funds resulting from (a) services performed by the recipient, (b) goods and other tangible property delivered to purchasers, and (c) amounts becoming owed to the recipient for which no current services or performances are required by the recepient.

"Disbursements" are payments in cash or by check.

"Federal funds authorized" represents the total amount of the Federal funds authorized for obligations and establishes the ceiling for obligation of Federal funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

"In-kind contributions" represent the value of noncash contributions provided by the recipient or third parties. In-kind contributions may consist of charges for real property and nonexpendable personal property, and value of goods and services directly benefiting and specifically identifiable to the federally supported activity. Unless otherwise authorized by Federal legislation, charges for property purchased wholly with Federal funds, and charges based on the Federal share of the value of property purchased partly with Federal funds, may not be considered as the recipient's in-kind contributions.

"Obligations" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" represent charges made to the project or program. Outlays may be reported on a cash or accrued expenditure basis.

"Program income" represents earnings by the recipient realized from the federally supported activities as a result of the grant or contract. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant or contract funds, and royalties on patents and copyrights. Program income may be reported on a cash or accrued income basis.

"Unobligated balance" is the portion of the funds authorized by the Commis-

sioner which has not been obligated by the recipient and is determined by deducting the cumulative obligations from the funds authorized.

"Unpaid obligations" represent the amount of obligations incurred by the recipient which have not been paid.

(OMB Circular No. A-102, Attachment H.)

§ 100a.402 Authorized forms and instructions.

(a) Only those forms specified in §§ 100a.403 through 100a.406, inclusive, and such supplementary or other forms as may from time to time be authorized by the Commission, may be used:

(1) For obtaining financial information from recipients for federally-assisted programs, or

(2) For requesting advances or reimbursements when letters of credit are not used.

(b) All applicable standard instructions promulgated for use in connection with the forms specified in §§ 100a.403 through 100a.406, inclusive, shall be followed.

(c) Recipients shall submit the original and two copies of the forms required pursuant to this subpart. However, the Commissioner may waive the requirement for the second copy, or both copies, when not needed.

(d) The forms (with their instructions) specified in §§ 100a.403 through 100a.406, inclusive, will be available to the public upon request to the Commissioner.

(OMB Circular No. A-102, Attachment H.)

§ 100a.403 Financial status report.

(a) *Form.* Recipients shall use the standard Financial Status Report prescribed by Attachment H of OMB Circular No. A-102 (HEW Form 601T) to report the status of funds for all nonconstruction projects. The Commissioner may choose not to require the Financial Status Report when the Request for Advance or Reimbursement (see § 100a.405) is determined to provide adequate information to meet his needs, except that a final Financial Status Report is required at the completion of the grant or contract when the Request for Advance or Reimbursement form is used only for advances.

(b) *Accounting basis.* Each recipient shall report outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it used in maintaining its accounting records. The basis used by a recipient must be consistent for all grants and contracts.

(c) *Frequency.* For research project grants and contracts, reports shall be submitted annually, and a final report shall be submitted upon completion or termination of Federal support. For all other types of grants and contracts, the Commissioner will prescribe the frequency of the report, considering the size and complexity of the particular program. However, the report will not be required more frequently than quarterly, or less frequently than annually, and a final report is required upon completion or termination of Federal support.

(d) *Due date.* When reports are required on a quarterly or semi-annual basis, they shall be due thirty days after the end of the specified reporting period. When required on an annual basis, they shall be due ninety days after the end of the grant or contract year. Final reports shall be due ninety days after the completion or termination of Federal support. Justified requests from individual recipients for extension of reporting due dates will be approved whenever feasible.

(OMB Circular No. A-102, Attachment H.)

§ 100a.404 Report of Federal cash transactions.

(a) *Form.* When funds are advanced to recipients through letters of credit or with Treasury checks, each recipient shall submit the Report of Federal Cash Transactions prescribed by Attachment H of OMB Circular No. A-102 (HEW Forms 602T, 603T). This report will be used to monitor cash advanced to recipients and to obtain disbursement or outlay information for each project from the recipients. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the information to be submitted is not changed.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When deemed necessary and feasible by the Commissioner, recipients may be required to report in the "Remarks" section of the report the amount of cash advances in excess of three days' requirements in the hands of secondary recipients, and to provide short narrative explanations of actions taken by the recipients to reduce the excess balances.

(d) *Frequency and due date.* Recipients shall submit the Report of Federal Cash Transactions no later than fifteen working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the Commissioner may require the reports to be submitted within fifteen working days following the end of each month.

(e) *Waiver.* The Commissioner may waive the requirement for submission of the Report of Federal Cash Transactions when a recipient's monthly advances do not exceed $10,000: *Provided*, That such advances are monitored through other forms authorized pursuant to this subpart, or the recipient's accounting controls are adequate to minimize excessive Federal advances.

(OMB Circular No. A-102, Attachment H.)

§ 100a.405 Request for advance or reimbursement.

(a) Recipients shall submit their requests for advance payments or reimbursements under nonconstruction grants or contracts and their requests for advance payments under construction grants or contracts, on the Request for Advance or Reimbursement form prescribed by Attachment H of OMB Circular No. A-102 (HEW Form 604T) when letters of credit or predetermined automatic Treasury check advance methods are not used. Additionally, the Commissioner may prescribe this form for construction grants in lieu of the Outlay Report and Request for Reimbursement for Construction Programs as specified in § 100a.406(d).

(b) Recipients will be authorized to submit no less often than monthly their requests for advances or reimbursement when letters of credit or predetermined automatic Treasury check advance methods are not used.

(OMB Circular No. A-102, Attachment H.)

§ 100a.406 Outlay report and request for reimbursement for construction projects.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants and contracts shall be submitted on the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment H of OMB Circular No. A-102. The Commissioner may, however, substitute the Request for Advance or Reimbursement form specified in § 100a.405 in lieu of this form when he determines that the former provides adequate information to meet his needs.

(2) Recipients will be authorized to submit no less often than monthly their requests for reimbursement under construction grants and contracts.

(b) *Construction grants and contracts paid by letter of credit or Treasury check advances.* (1) When a construction grant or contract is paid by letter of credit or Treasury check advances, the recipient shall report its outlays to the Commissioner using the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment H of OMB Circular No. A-102. In these cases, the recipient should leave blank those items on the form which are applicable only when requesting reimbursement, i.e., items 3, 5, 10, 11t, 11u, and 11v.

(2) In lieu of the certification and signatures in items 12, 12a, and 12b, the following certification, signed on behalf of the recipient by an authorized official of the recipient, shall be submitted to the Commissioner with the outlay report:

I certify that to the best of my knowledge and belief the accompanying report is correct and complete and that all outlays reported therein are for the purposes set forth in the grant (contract) award documents.

Information as to percentage of project completion and certification thereof by the Government representative shall be submitted independently of the outlay report at such times and by such means as may be prescribed by the Commissioner.

(3) Frequency and due date of the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 100a.403 (c) and (d).

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 100a.403(b).

(d) *Alternative forms.* For construction grants and contracts paid by the reimbursement method, or by Treasury check advances based on periodic requests from the recipient, the Commissioner may substitute the Request for Advance or Reimbursement specified in § 100a.405 in lieu of the Outlay Report and Request for Reimbursement for Construction Programs. When any other payment method is used, the Commissioner may substitute the Financial Status Report specified in § 100a.403.

(OMB Circular No. A-102, Attachment H.)

Subpart Q—Monitoring and Reporting of Program Performance

§ 100a.430 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance. These procedures are designed to place greater reliance on recipients to manage the day-to-day operations of their federally-supported activities.

(OMB Circular No. A-102, Attachment I.)

§ 100a.431 Monitoring by recipients.

Recipients shall constantly monitor the performance under federally-supported activities to assure that adequate progress is being made towards achieving the goals of the project. This review shall be made for each function or activity of each project as set forth in the approved grant application or contract document.

(OMB Circular No. A-102, Attachment I.)

§ 100a.432 Performance reports for nonconstruction projects.

(a) Where the Commissioner determines that performance information sufficient to meet his programmatic needs will be available from continuation or renewal applications, the Commissioner will require the recipient to submit a performance report only with the final Financial Status Report (or other financial report equivalent thereto). Note that the "Application for Federal Assistance (Nonconstruction Programs" prescribed by Subpart C of this part, when used to request a continuation or renewal, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit a performance report with each Financial Status Report (or other financial report equivalent thereto) in the frequency established by Subpart P of this part. The Commissioner will prescribe the frequency with which performance reports will be submitted with the Request for Advance or Reimbursement when that form is used in lieu of the Financial Status Report; in such cases, performance reports will be required not more frequently than quarterly, or less frequently than annually.

(c) Performance reports shall include, to the extent appropriate to the particular grant or contract, a brief presentation of the following for each function or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of projects can be readily quantified, such quantitative data shall be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(OMB Circular No. A-102, Attachment I.)

§ 100a.433 Performance reports for construction projects.

In general, the Commissioner will rely heavily on onsite technical inspection and certified percentage-of-completion data to keep himself informed as to progress under construction grants and contracts. Therefore, formal performance reports from recipients to supplement those sources of information will be required only if deemed necessary by the Commissioner, and in no case more frequently than quarterly.

(OMB Circular No. A-102, Attachment I.)

§ 100a.434 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the federally-supported activity. In such cases, the recipient shall inform the Commissioner as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objectives of the grant or contract. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(b) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

(OMB Circular No. A-102, Attachment I.)

§ 100a.435 Budget revision.

If any performance review conducted by the recipient discloses the need for change in the budget estimates in accordance with the criteria established in § 100a.29, the recipient shall submit a request for budget revision.

(OMB Circular No. A-102, Attachment I.)

§ 100a.436 Site visits.

Site visits will be made by representatives of the Department or the Commissioner as frequently as practicable to:

(a) Review program accomplishments and management control systems; and

(b) Provide such technical assistance as may be required.

(OMB Circular No. A-102, Attachment I.)

Subpart R—Accountability for Federal Funds

§ 100a.477 Retention of records.

(a) *Records.* Each recipient shall keep intact and accessible records relating to the receipt and expenditure of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any) in accordance with section 434(a) of the General Education Provisions Act, including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the award.

(b) *Period of retention.*—(1) Except as provided in paragraphs (b)(2) and (d) of this section, the records specified in paragraph (a) of this section shall be retained (i) for 3 years after the date of the submission of the final expenditure report or (ii) for grants and contracts which are renewed annually, for 3 years after the date of the submission of the annual expenditure report.

(2) Records for nonexpendable personal property which was acquired with Federal funds shall be retained for 3 years after its final disposition.

(c) *Microfilm copies.*—Recipients may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(d) *Audit questions.*—The records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions: *Provided, however,* That records need not be retained if they relate to a grant or contract with respect to which actions by the United States to recover for diversion of Federal funds are barred by the statute of limitation in 28 U.S.C. 2415(b)

(e) *Audit and examination.*—(1) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to the records specified in paragraph (a) of this section and to any other pertinent books, documents, papers, and records of the recipient.

(2) In the case of a contract or subcontract negotiated by the recipient and exceeding $2,500, the recipient, the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor or subcontractor which the recipient, the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives determine are pertinent to the specific grant or contract for the purpose of making audit, examination, excerpts, and transcripts.

(f) *Records for indirect cost rate proposals, etc.*—(1) *Applicability.* This paragraph applies to records supporting (i) indirect cost rate proposals, (ii) cost allocation plans of State and local governments pursuant to Appendix B of this subchapter, (iii) hospital patient care rate proposals, and (iv) any similar accounting computations of the rate at which a particular group of costs is

chargeable to a grant or contract. Examples of the latter are computer usage chargeback rate computations and composite fringe benefit rate computations.

(2) *If submitted to the Federal Government.* If the proposal, plan, or other computation is required to be submitted to the Federal Government to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted to the Federal Government.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government for negotiation purposes, then the three-year retention period for its supporting records starts from the end of the recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(20 U.S.C. 1232c (a); 28 U.S.C. 2415 (b); OMB Circular No. A-102, Attachment C.)

§ 100a.481 Unexpended funds.

In the event that the amounts previously awarded have not been obligated pursuant to the approved project and, in the judgment of the Commissioner, will not be obligated for such purposes, the Commissioner may, upon notice to the recipient, reduce the amount of the grant or contract to an amount consistent with the recipient's needs pursuant to § 100a.-495.

(20 U.S.C. 1232d.)

§ 100a.482 Withholding of funds.

The approval of a grant, or the entering into of a contract or other arrangement, and any payment pursuant thereto, shall not be deemed to waive the right of the Commissioner to withhold funds by reason of the failure of a recipient to observe, either before or after such administrative action, any Federal requirements.

(20 U.S.C. 1221c(b)(1).)

§ 100a.483 Waiver of law prohibited.

No official, agent, or employee of the Office of Education or the Department of Health, Education, and Welfare shall have the authority to waive or alter any provision of the regulations in this chapter (except through amendment by publication in the FEDERAL REGISTER), or other relevant statute or regulation, and no action or failure to act on the part of such official, agent, or employee shall operate in derogation of the Commissioner's right to enforcement of said provisions in accordance with their terms.

(43 Dec. Comp. Gen. 31 (1963).)

§ 100a.494 Closeout.

(a) "Closeout" means the process by which the Commissioner determines that all applicable administrative actions and all required work of the grant or contract have been completed by the recipient and the Commissioner.

(b) In closing out grants and contracts, the following shall be observed:

(1) Upon request, the Commissioner will make, or arrange for, prompt payment to the recipient for allowable reimbursable costs not covered by previous payments.

(2) The recipient shall immediately refund to the Federal Government, or otherwise dispose of in accordance with instructions from the Commissioner, any unencumbered balance of cash advanced to the recipient.

(3) The recipient shall submit, within 90 days after the date of completion of the grant or contract, all financial, performance, and other reports required as a condition of the grant or contract. The Commissioner may grant extensions when requested by the recipient.

(4) The Commissioner will make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by applicable statutes, regulations, or the terms and conditions of the grant or contract.

(5) In the event a final audit has not been performed prior to the closeout of the grant or contract, the Commissioner retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(c) The provisions of Subpart L of this part shall be observed by the recipient in accounting for any property acquired with Federal funds, or received from the Federal Government in connection with the grant or contract.

(OMB Circular No. A-102, Attachment L.)

§ 100a.495 Termination and suspension for cause.

(a) *Termination.*—(1) This section applies to the Federal programs of assistance listed in § 100a.10(a), except those Federal programs under which recipients are entitled to an opportunity for a hearing pursuant to 5 U.S.C. 554. (2) This section applies to contracts other than those specified in § 100a.10 (b). (3) Assistance under any Federal program to which this part is applicable may be terminated in whole or in part if the Commissioner determines, after affording the recipient reasonable notice and an opportunity to be heard, that the recipient has failed to carry out its approved project proposal in accordance with the applicable law and the terms of such assistance or has otherwise failed to comply with any law, regulation, assurance, term or condition applicable to the grant or contract.

(b) *Notice of termination.* Proceedings with respect to the termination of the grant or contract shall be initiated by the mailing of a notice to the recipient setting forth the basis of the proposed termination and the procedures available to the recipient under this section and Part 16 of this title.

(c) *Suspension of assistance.* Subject to paragraph (f) of this section, assistance may be suspended during the pendency of a termination proceeding initiated pursuant to this section.

(d) *Notice of suspension.* If the Commissioner determines that suspension of assistance during the pendency of a termination proceeding is necessary, notice of the suspension shall be mailed to the recipient (which may be included in the notice of termination). The notice of suspension shall: (1) Inform the recipient of that determination, (2) advise the recipient of the effective date of the suspension (which will be no earlier than the date of the notice of termination) and (3) offer the recipient an opportunity to show cause why such action should not be taken.

(e) *Effect of notice of suspension.* (1) The notice required under paragraph (d) of this section shall advise the recipient that no new expenditures or obligations made or incurred in connection with the grant or contract during the period of the suspension will be recognized by the Government in the event that assistance is ultimately terminated. (2) Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved project, and not in anticipation of suspension or termination, will not be considered new expenditures.

(f) *Opportunity to show cause.*—If the recipient requests an opportunity to show cause why a suspension of assistance should not be continued or imposed, the Commissioner will, within 7 days after receiving such request, hold an informal meeting for that purpose.

(g) *Grant appeals board.* (1) The recipient may appeal the Government's decision to terminate the grant or contract by submitting an application for review to the Departmental Grant Appeals Board pursuant to Part 16 of this title. (2) Either the recipient or the Commissioner may request an informal meeting regarding the proposed termination, but for the purposes of § 16.5(b)(2) of this title, the recipient shall be deemed to have exhausted the Office of Education's informal procedures upon its receipt of the notice of termination.

(h) *Effective date of termination.* Termination of assistance under this section will be effected by the delivery to the recipient of the notice of termination under paragraph (b) of this section; or, where the recipient invokes the procedures available under paragraph (g) of this section, upon a final decision under § 16.10 of this title.

(i) *Effect of termination.*—(1) In the event assistance is terminated under this section, financial obligations incurred by the recipient prior to the effective date of such termination will be allowable to the extent they would have been allowable had such assistance not been terminated, except that (i) no obligations incurred during the period in which such assistance was suspended and no obligations incurred in anticipation of suspension or termination will be allowed and (ii) the recipient shall cancel as many outstanding obligations as possible.

(2) Within 60 days of the effective date of termination of assistance under this section, the recipient shall furnish an itemized accounting of funds expended, obligated, and remaining. Within 30 days of a request therefor, the recipient shall remit to the Government any amounts found due.

(20 U.S.C. 1221c(b)(1); OMB Circular No. A-102, attachment L, 2-3.)

§ 100a.496 Termination on other grounds.

(a) Except for matters subject to § 100a.495, grants and contracts may be terminated in whole or in part only as follows:

(1) By the Commissioner with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the recipient, upon written notification to the Commissioner, setting forth the reasons for the termination, the effective date, and in the case of partial terminations, the portion to be terminated.

(b) When a grant is terminated pursuant to paragraph (a) of this section, the recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Commissioner will allow full credit to the recipient for the Federal share of the noncancellable obligations properly incurred by the recipient prior to termination.

(OMB Circular No. A-102, Attachment L.)

PART 100b—STATE ADMINISTERED PROGRAMS

AUTHORITY: Sec. 403(b)(1), Pub. L. 90-247, 86 Stat. 327 (20 U.S.C. 1221c(b)(1)), unless otherwise noted.

Subpart A—General

§ 100b.10 Scope.

Except to the extent inconsistent with an applicable statute or regulation, the provisions contained in this part apply to all Federal programs of assistance authorized under the following authorities:

(a) Financial assistance to local educational agencies for the education of children of low-income families under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241a);

(b) School library resources, textbooks, and other instructional materials under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 821);

(c) Supplementary educational centers and services; guidance, counseling, and testing under title III of the Elementary and Secondary Education Act of 1965, except section 306 thereof (20 U.S.C. 841);

(d) Assistance to States for education of handicapped children under part B of the Education of the Handicapped Act (20 U.S.C. 1411);

(e) State vocational education programs, research and training in vocational education, exemplary programs and projects, and residential vocational schools—State programs; and consumer and homemaking education, cooperative vocational education programs, and work-study programs for vocational education students under part B, sections 131(b), 142(d), and 152; and parts F, G, and H, respectively, of the Vocational Education Act of 1963 (20 U.S.C. 1262, 1281(b), 1302(d), 1322, 1341, 1351, and 1371);

(f) Programs under the Adult Education Act (except special experimental

demonstration projects and teacher training under sections 309 and 314 thereof) (20 U.S.C. 1201);

(g) Programs under the Library Services and Construction Act (20 U.S.C. 351);

(h) Community service and continuing education program under title I of the Higher Education Act of 1965 (20 U.S.C. 1001);

(i) Financial assistance for strengthening instruction in science, mathematics, modern foreign languages, and other critical subjects under title III of the National Defense Education Act of 1958 (20 U.S.C. 441);

(j) Training under section 231(a) of the Manpower Development and Training Act (42 U.S.C. 2601(a)); and

(k) Attracting and qualifying teachers to meet critical teacher shortages under part B-2 of the Education Professions Development Act (20 U.S.C. 1108).

(20 U.S.C. 1221c(b)(1).)

Subpart B—State Plans

§ 100b.15 Governor's comments.

Prior to the submission to the Commissioner of any State plan, State application, or of any amendment thereto, the State agency shall afford the Governor of such State an opportunity to comment on the relationship of such State plan, application, or amendment to comprehensive and other State plans and programs. The Governor shall be afforded a period of not less than 45 days in which to make such comments. Any such comments, or, if the Governor makes no comments, a statement to that effect, shall be attached to such plan, application, or amendment when the same is submitted to the Commissioner.

(OMB Circular No. A-95.)

§ 100b.29 Budget revisions and minor deviations.

(a) *Needs of State governments.*

The State agency shall notify the Commissioner promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the State agency by more than $5,000 or 5 percent of the amount of Federal authorized funds, whichever is greater.

(OMB Circular No. A-102, attachment K, 2.)

(b) *Deviations from approved budgets.*—Expenditures of State agencies and subgrantees will not be considered ineligible for Federal financial participation solely because of minor deviations from an approved project: *Provided*, That the expenditures in question are made in connection with such project under an approved State plan (or approved State application, as the case may be), in accordance with the applicable Federal statute and regulations, and the total Federal share will not exceed the State's allotment.

(20 U.S.C. 1221c(b)(1).)

§ 100b.32 Effective dates of State plans and amendments.

(a) Federal financial participation is available only with respect to obligations incurred under an approved State plan (or State application, as the case may be), or amendments thereto. The State plan, application, or amendments thereto shall be considered to be in effect as of the date on which they are submitted to the Federal Government by the State in substantially approvable form, but in no event shall the effective date be earlier than July 1 of the fiscal year for which they are submitted. The State agency will be apprised of the effective date in the notice of approval sent to the State agency by the Commissioner.

(b) Federal funds, except funds made available expressly for the development of State plans, shall not be available for obligation with respect to binding commitments (other than those relating to personal services, utility services, travel, or the rental of equipment or facilities) entered into, or with respect to personal services, utility services, travel, or the rental of equipment or facilities rendered or performed by a State agency, prior to the effective date of the State plan (or State application, as the case may be).

(20 U.S.C. 1221c(b)(1).)

Subpart C—[Reserved]

Subpart D—Federal Financial Participation

§ 100b.52 Obligation of Federal appropriations.

The notification by the Commissioner to State agencies and Federal agencies of the amounts made available for approval or obligation by those agencies will be regarded as obligating the Government of the United States in the amounts specified. Federal appropriations so obligated will remain available for obligation as prescribed in § 100b.55.

(31 U.S.C. 200.)

§ 100b.53 Payments.

(a) *Payment methods and adjustments.*—Payments to State agencies may be made in installments, and in advance or by way of reimbursement pursuant to Subpart E of this part, with necessary adjustments on account of overpayments or underpayments, as the Commissioner may determine.

(b) *Violations.*—A payment for expenditures which fail to meet the requirements of any of the provisions of applicable Federal statutes or regulations may be taken into account in the determination of any such overpayments and any adjustments relating thereto.

(c) *Adjustment of records.*—Each State agency and subgrantee, in its maintenance of expenditure accounts, records, and reports, shall promptly make any necessary adjustments in its records to reflect refunds, credits, underpayments, or overpayments, resulting from Federal or State administrative reviews and audits or otherwise. Such adjustments shall be set forth in any financial reports required to be filed with the Commissioner.

(20 U.S.C. 1232d.)

§ 100b.55 Obligation by recipients.

(a) *Period for obligation.*—Except as otherwise provided by statute, Federal funds made available for a fiscal year shall remain available for obligation in accordance with paragraph (c) of this section during that fiscal year. Federal funds for construction of school facilities shall remain available for obligation for that purpose for a reasonable period of time as determined by the Commissioner.

(b) *Carryovers.*—In accordance with section 414(b) (20 U.S.C. 1225(b)) of the General Education Provisions Act (P.L. 90-247, title IV, as amended), any Federal funds made available, which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which they were made available, shall remain available for obligation and expenditure by the recipient during such succeeding fiscal year.

(c) *Determinations of obligation.*—For the purposes of this section, an obligation of funds will be considered to have been incurred by a recipient on the basis of documentary evidence of binding commitments for the acquisition of goods or property, for the construction of facilities, or for the performance of work. However, the obligation of funds for personal services, for services performed by public utilities, for travel, and for the rental of equipment and facilities shall be considered to have been obligated as of the time such services were rendered, such travel was performed, and such rented equipment and facilities were used, respectively.

(20 U.S.C. 1232c(b)(1).)

§ 100b.58 Tuition and fees.

Tuition and fees collected from students enrolled in courses may not be included as part of the Federal or non-Federal share of expenditures under any Federal program.

(20 U.S.C. 1221c(b)(1).)

§ 100b.59 Religious worship or instruction.

Federal funds shall not be used for the making of any payment for religious worship or instruction, or for the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

(*Lemon v. Kurtzman*, 403 U.S. 602 (1971).)

Subpart E—Grant Payment Requirements

§ 100b.60 Scope of subpart.

This subpart sets forth the methods of making grant payments to State agencies. These methods will minimize the time elapsing between the disbursement by a State agency and the transfer of funds from the United States Treasury to the State agency, whether such disbursement occurs prior to or subsequent to the transfer of funds.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

§ 100b.61 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a State agency upon its request or through the use of predetermined payment sched-

ules before payments are made by the State agency.

"Letter of credit" is an instrument certified by an authorized official of the Office of Education which authorizes a State agency to draw funds when needed from the Treasury, through a Federal Reserve Bank and the State agency's commercial bank, in accordance with the provisions of Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made to the recipient of a construction grant according to a schedule which relates the amount and timing of each payment primarily or solely to the actual percentage of completion of the construction work under the grant rather than to the State agency's actual rate of disbursements.

"Reimbursement by Treasury check" is a payment made to a State agency with a Treasury check upon request for reimbursement from the State agency.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

§ 100b.62 Payment methods for nonconstruction grants.

(a) Letters of credit will be used to pay State agencies when all of the following conditions exist:

(1) There is or will be a continuing relationship between the State agency and the responsible department finance office for at least a twelve-month period and the total amount of advances to be received from the finance office is $250,000 or more, as prescribed by Treasury Circular No. 1075;

(2) The State agency has established, or demonstrated to the Commissioner, the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the State agency; and

(3) The State agency's financial management system meets the standards for fund control and accountability prescribed in Subpart P of this part.

(b) Advances by Treasury check will be used, in accordance with the provisions of Treasury Circular No. 1075, when the State agency meets all of the requirements specified in paragraph (a) of this section except those in paragraph (a) (1) of this section.

(c) Reimbursement by Treasury check will be the preferred (although not mandatory) method when the State agency does not meet the requirements specified in either or both of paragraphs (a) (2) and (a) (3) of this section. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program.

(d) State agencies will be authorized to submit no less often than monthly their requests for advances or reimbursements when letters of credit or predetermined automatic Treasury check advances are not used.

(20 U.S.C. 1232d, OMB Circular No. A-102, Attachment J.)

§ 100b.63 Payment methods for construction grants.

(a) The percentage of completion method will not be used to pay construction grants.

(b) Reimbursement by Treasury check shall be the preferred method when the State agency does not meet the requirements specified in § 100b.62(a) (2) and (3), and may be used for any other construction grant except where the Commissioner has entered into an agreement with a State agency to use a letter of credit for all Federal assistance, including assistance for construction.

(c) When the reimbursement by Treasury check method is used, State agencies will be authorized to submit no less often than monthly their requests for reimbursement.

(d) When the reimbursement by Treasury check method is not used, § 100b.62 (a) and (b) shall be applicable to the construction grant. Implementing procedures under § 100b.62 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same State agency.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

§ 100b.64 Withholding of payments.

Unless otherwise required by law, payments for proper charges incurred by State agencies will not be withheld unless the grant is suspended pursuant to law, or the State agency is indebted to the United States, and collection of the indebtedness will not impair the accomplishment of the objectives of any grant program sponsored by the United States. When an indebtedness is to be collected, the Commissioner may, upon reasonable notice to the State agency, withhold from the State agency the right to receive payments under the grant or require appropriate accounting adjustments to recorded cash balances for which the State agency is accountable to the Federal Government, in order to liquidate the indebtedness.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

§ 100b.65 Requesting advances or reimbursements.

Subpart P of this part sets forth the procedures and forms for requesting advances or reimbursements.

(20 U.S.C. 1232d; OMB Circular No. A-102, Attachment J.)

Subpart F—Cash Depositories

§ 100b.70 Physical segregation and eligibility.

Except as provided in § 100b.71,

(a) Physical segregation of cash depositories for Federal funds which are provided to a State agency is not required; and

(b) There will be no eligibility requirements for cash depositories in which Federal funds are deposited by State agencies or their subgrantees.

(OMB Circular No. A-102, Attachment A.)

§ 100b.71 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "check-paid" basis in accordance with agreements entered into by a State agency, the Federal Government, and the banking institutions involved. A checks-paid basis letter of credit is one under which funds are not drawn from the Treasury until the State agency's checks have been presented to its bank for payment.

(OMB Circular No. A-102, Attachment A.)

§ 100b.72 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, State agencies are encouraged to use minority-owned banks.

(OMB Circular No. A-102, Attachment A.)

Subpart G—Cost Principles

§ 100b.80 Scope of subpart.

This subpart establishes the principles to be used (except to the extent inconsistent with an applicable Federal statute or regulation) in determining allowability of costs under Federal programs subject to this part, including sub-grants and cost-type contracts awarded by State agencies.

(20 U.S.C. 1221e(b)(1); OMB Circular Nos. A-21, A-87.)

§ 100b.81 State and local governments.

The principles to be used in determining the allowable costs of activities conducted or administered by State and local governments are set forth in Appendix B to this subchapter.

(OMB Circular No. A-87.)

§ 100b.82 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education are set forth in Part I of Appendix C to this subchapter.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education are set forth in Part II of Appendix C of this subchapter.

(c) *Other activities.* Appendix C of this subchapter shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education.

(OMB Circular No. A-21.)

§ 100b.83 Nonprofit organizations.

(a) *Nonconstruction.* The principles for determining the allowable costs of nonconstruction activities conducted by nonprofit organizations other than institutions of higher education, hospitals, States, and local governments are set forth in Appendix D to this subchapter.

(b) *Construction.* Appendix D to this subchapter shall be used as a guide for

determining the allowable costs of construction by nonprofit organizations (other than institutions of higher education, hospitals, States, and local governments).

(20 U.S.C. 1221c(b)(1).)

§ 100b.84 Subgrants and cost-type contracts.

(a) It should be noted that the cost principles applicable to a subgrantee or cost-type contractor under a grant will not necessarily be the same as those applicable to the State agency. For example, where a State agency awards a subgrant or cost-type contract to an institution of higher education, Appendix C to this subchapter would apply to the costs incurred by the institution of higher education, even though Appendix B to this subchapter would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by commercial organizations under cost-type contracts awarded to them are set forth in 41 CFR Subpart 1–15.2.

(20 U.S.C. 1221c(b)(1).)

Subpart H—Matching and Cost Sharing

§ 100b.90 Purpose and scope.

This subpart sets forth criteria and procedures for the allowability and evaluation of cash and in-kind contributions in satisfying matching or cost sharing requirements applicable to State agencies.

(OMB Circular No. A–102, Attachment F.)

§ 100b.91 Definitions.

"Cash contributions" means the State agency's cash outlay, including the outlay of money contributed to the State agency by third parties. Unless authorized by Federal legislation, outlays charged to other Federal grants or to Federal contracts may not be considered as cash contributions of the State agency.

"In-kind contributions" represent the value of noncash contributions provided by the State agency or third parties. In-kind contributions may consist of charges for real property and nonexpendable personal property, and the value of goods to the federally-supported activity. Unless otherwise authorized by Federal legislation, charges for property purchased wholly with Federal funds, and charges based on the Federal share of the value of property purchased partly with Federal funds, may not be considered as the State agency's in-kind contributions.

"Matching or cost sharing" represents, in general, that portion of project costs not borne by the Federal Government.

"Project costs" means the sum of (a) the allowable costs incurred by the State agency and (b) the allowable in-kind contributions made by third parties.

(OMB Circular No. A–102, Attachment F.)

§ 100b.92 Allowability.

(a) Matching or cost sharing may consist of:

(1) Charges incurred by the State agency as project costs. Not all charges require cash outlays during the grant period by the State agency; examples are depreciation and use allowances for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the State agency by third parties.

(3) Project costs represented by in-kind contributions made by non-Federal third parties. Where in-kind contributions are made by the Federal Government, they may be included in the State agency's matching or cost sharing only if Federal legislation authorizes such inclusion.

(b) All contributions whether cash or in-kind (including in-kind contributions from third parties) shall be accepted as part of the State agency's matching or cost sharing when such contributions:

(1) Are identifiable from the State agency's records,

(2) Are not included as contributions for any other federally assisted program, or any Federal contract,

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives,

(4) If made by the State agency, are types of costs which are allowable under the applicable cost principles specified in Subpart G of this part,

(5) Are not borne by the Federal Government directly or indirectly under any Federal grant or contract (unless the other grant or contract may, under authority of law, be used for matching or cost sharing), and

(6) Conform to other applicable provisions of this subpart.

(OMB Circular No. A–102, Attachment F.)

§ 100b.93 Valuation of in-kind contributions from third parties.

(a) *Valuation of volunteer services.*—(1) *General.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteered service may be counted as matching or cost sharing if it is an integral and necessary part of an approved program.

(2) *Rates for volunteer services.* Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the State agency. In cases where the kinds of skills required for the federally assisted activities are not found in the other activities of the State agency, rates used should be consistent with those paid for similar work in the labor market in which the State agency competes for the kind of services involved.

(3) *Volunteers employed by other organizations.* When an employer other than the State agency furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost): *Provided,* These services are in the same skill for which the employee is normally paid.

(b) *Valuation of donated real or tangible personal property, or use thereof*—(1) *Donation of title.* If the donor transfers title to the property, the amount to be allowed as matching or cost sharing shall be determined as if the State agency had purchased the property and had paid the fair market value of the property at the time of transfer.

(2) *Donation of use.* If only use of the property is donated, and the donor retains title, the amount to be allowed as matching or cost sharing shall be determined as if the State agency had rented the property and had paid the property's fair rental value.

(3) *Appraisal.* The Commissioner may require that the value of real property be established by an independent appraiser (i.e., a private realty firm or a General Services Administration representative) and certified by the responsible official of the State agency as a precondition to allowability for matching or cost sharing purposes.

(c) *Valuation or other in-kind contributions by third parties.* Other necessary in-kind contributions made by third parties specifically for and in direct benefit to the Federal program may be accepted as matching or cost sharing: *Provided,* That they are adequately supported and permissible under the law. Such charges must be reasonable and properly justifiable.

(OMB Circular No. A–102, Attachment F.)

§ 100b.94 Supporting records for in-kind contributions from third parties.

The following requirements pertain to the State agency's supporting records for in-kind contributions from third parties:

(a) The extent of volunteer services must be supported by the same methods used by the State agency for its employees.

(b) The basis for determining the charges for personal services, material, equipment, buildings, and land must be documented.

(OMB Circular No. A–102, Attachment F.)

Subpart I—Procurement Standards

§ 100b.100 Scope of subpart.

This subpart provides standards for use by State agencies in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct charge by the Federal Government. These standards are furnished to insure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal Law and Executive Orders.

(OMB Circular No. A–102, Attachment O.)

§ 100b.101 General.

(a) State agencies may use their own procurement policies provided that procurements whose cost is borne in whole or in part as a direct charge by the Federal Government adhere to the standards set forth in this subpart.

(b) The standards contained in this subpart do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority regarding the settle-

ment and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

(OMB Circular No. A-102, Attachment O.)

§ 100b.102 Code of conduct.

The State agency shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal funds. The State agency's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State or local law, rules or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the State agency's officers, employees, or agents, or by contractors or their agents.

(OMB Circular No. A-102, Attachment O.)

§ 100b.103 Free competition.

All procurement transactions of the State agency, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The State agency should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(OMB Circular No. A-102, Attachment O.)

§ 100b.104 Procedural requirements.

The State agency shall establish procurement procedures which provide for, as a minimum, the following:

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

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

(c) Positive efforts shall be made by the State agency to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed under Federal grants.

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

(e) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to § 100b.105 is necessary to accomplish sound procurement. However, procurements of $2,500 or less need not be so advertised unless otherwise required by State or local law or regulations. When formal advertising is employed:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State agency, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency.

(3) Any or all bids may be rejected when it is in the State agency's interest to do so, and such rejections are in accordance with applicable State or local law, rules, and regulations.

(OMB Circular No. A-102, Attachment O.)

§ 100b.105 Negotiated procurements.

(a) Procurements may be negotiated by the State agency if it is not practicable or feasible to use formal advertising. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising;

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

(3) The aggregate amount involved does not exceed $2,500;

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

(5) The material or services are to be procured and used outside the limits of the United States and its possessions;

(6) No acceptable bids have been received after formal advertising;

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and inter-changeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(8) Negotiation is otherwise authorized by applicable Federal, State, or local law, rules or regulations.

(b) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(OMB Circular No. A-102, Attachment O.)

§ 100b.106 Contractor responsibility.

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

(OMB Circular No. A-102, Attachment O.)

§ 100b.107 Records for negotiated procurements by State agencies.

The procurement records or files of State agencies for negotiated purchases in amounts in excess of $2,500 shall include the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated. Justification for the use of negotiation in lieu of advertising may be provided on a class basis or on an individual contract basis.

(OMB Circular No. A-102, Attachment O.)

§ 100b.108 Contract administration system.

A system for contract administration shall be maintained by the State agency to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(OMB Circular No. A-102, Attachment O.)

§ 100b.109 Contract and subgrant provisions.

(a) *General.* (1) The State agency shall include provisions to define a sound and complete agreement in all contracts and subgrants which it awards when the contract or subgrant costs are to be borne as a direct charge in whole or in part by Federal funds.

(2) In awarding contracts, the State agency must comply with the applicable requirements of paragraphs (b) and (c) of this section.

(3) In awarding subgrants, the State agency must comply with the applicable requirements of paragraph (c) of this section.

(b) *Contracts under grants.* (1) The State agency's contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanc-

tions and penalties as may be appropriate.

(2) All contracts awarded by State agencies in excess of $2,500 shall contain suitable provisions for termination by the State agency including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded in excess of $100,000, the bonding requirements set forth in Subpart J of this part shall be observed.

(4) All negotiated contracts (except those of $2,500 or less) shall include provisions giving access to, and requiring retention of, the contractor's records in accordance with § 100b.477.

(c) *Subgrants.* (1) Provisions for compliance with Executive Order No. 11246, entitled, "Equal Employment Opportunity," as implemented in Department of Labor regulations (41 CFR Part 60) shall be included in all subgrants to which they are applicable.

(2) All subgrants in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as implemented in Department of Labor regulations (29 CFR Part 3). The State agency shall report all suspected or reported violations to the Commissioner.

(3) All research or development agreements, whether contracts or subgrants, shall contain a notice to the effect that rights to inventions conceived or first actually reduced to practice in the course of or under the agreement shall be governed by the Department's Patent Regulations (Parts 6 and 8 of this title), implementing terms and conditions of the grant, and any pertinent regulations or other requirements consistent therewith issued by the State agency. The State agency shall assure that the performer of the research or development work either is given all necessary information regarding these matters, or is advised as to the source of such information. This subparagraph shall also apply to nonresearch and nondevelopment awards in fields of science or technology in which there has been little significant experience outside of work funded by the Federal Government.

(4) Each contract of an amount in excess of $2,500 awarded by a State agency or subgrantee shall provide that the contractor will comply with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. The provision shall advise the contractor that submission of a bid or offer or the submittal of an invoice or voucher for property, goods, or services furnished under a contract or agreement with the State agency or subgrantee shall constitute a certification by him that amounts to be paid do not exceed maximum allowable levels authorized by the Cost of Living Council regulations or standards. Suspected violations shall be reported by the State agency in writing to the local Internal Revenue Service field office with a copy to the Commissioner.

(5) Contracts and subgrants in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 as amended (42 U.S.C. 1857b, et seq.). Suspected violations shall be reported by the State agency in writing to the regional office of the United States Environmental Protection Agency, with a copy to the Commissioner.

(OMB Circular No. A-102, Attachment O.)

Subpart J—Bonding and Insurance

§ 100b.120 General.

State agencies shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements will be imposed, including fidelity bonds, except as provided in §§ 100b.121 and 100b.122.

(OMB Circular No. A-102, Attachment B.)

§ 100b.121 Construction and facility improvement.

A State agency which receives a grant which requires contracting for construction or facility improvement (including any grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

(a) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) *A performance bond on the part of the contractor for 100 percent of the contract price.* A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(c) *A payment bond on the part of the contractor for 100 percent of the contract price.* A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(OMB Circular No. A-102, Attachment B.)

§ 100b.122 Loan guarantees.

Where in connection with a grant, the Commissioner also guarantees the payment of money borrowed by the State agency, the Commissioner may, at his discretion, require adequate bonding and insurance if the bonding and insurance requirements of the State agency are not deemed to be sufficient to protect adequately the interests of the Federal Government.

(OMB Circular No. A-102, Attachment B.)

Subpart K—Construction Requirements

§ 100b.155 Scope.

The provisions contained in this subpart apply to recipients of Federal financial assistance for construction under Federal programs under which construction is authorized by law.

(20 U.S.C. 1221c(b)(1).)

§ 100b.156 Definition.

For the purposes of this subpart, the term "facilities" means one or more structures in one or more locations, constructed pursuant to this subpart.

(20 U.S.C. 1221c(b)(1).)

§ 100b.157 Manner of construction.

Construction must be functional, undertaken in an economical manner, and not elaborate in design or extravagant in the use of materials in comparison with facilities of a similar type constructed in the State (or other applicable geographic area) within such period as may be designated by the State agency as appropriate for the purposes of this section.

(20 U.S.C. 1221c(b)(1).)

§ 100b.158 Timeliness of work.

The recipient shall cause work on the project to be commenced within a reasonable time after receipt of notification from the State agency that funds have been awarded, and the project shall be prosecuted to completion with reasonable diligence.

(20 U.S.C. 1232c(b)(1).)

§ 100b.159 Commencement of construction.

(a) Approval by the State agency of the final working drawings and specifications shall be obtained before the proposed construction is advertised or placed on the market for bidding.

(b) The construction shall go to final completion in accordance with the application and approved drawings and specifications.

(c) The recipient shall submit to the State agency for prior approval changes that materially alter the scope or costs of the project, use of space, or functional layout.

(20 U.S.C. 1221c(b)(1).)

§ 100b.160 Civil rights assurance.

If an assurance of compliance with title VI of the Civil Rights Act of 1964 (Form HEW 441) applying to the facility described in the application has not been filed, such an assurance shall be attached to the application.

(42 U.S.C. 2000d.)

§ 100b.161 Title to site.

The recipient shall have, or shall obtain, a fee simple or such other estate or interest in the site, including access thereto, as is sufficient to assure undisturbed use and possession of the facilities

for not less than the useful life of the facilities, or 50 years, whichever is the greater.

(OMB Circular No. A-102, Attachment N.)

§ 100b.164 Contracting.

(a) Except as otherwise provided by State or local law, all contracting for construction (including the purchase and installation of built-in equipment) shall be on a lump-sum fixed-price basis, and, except as provided in paragraph (b) of this section, contracts shall be awarded pursuant to Subpart I of this part on the basis of competitive bidding with award of the contract to the lowest responsive and responsible bidder.

(b) If one or more items of construction are covered by an established alternative procedure for awarding contracts, consistent with State and local laws and regulations, which is approved by the Commissioner and is designed to assure construction in an economical manner consistent with sound business practice, such alternative procedure may be followed.

§ 100b.168 Reports.

The recipient shall furnish such progress reports and such other information relating to the proposed construction and the project as the State agency may require.

(20 U.S.C. 1232c(b)(3).)

§ 100b.169 Federal access to records and work.

Representatives of the Federal Government shall have access at all reasonable times to the recipient's records and to work whenever it is in preparation or progress, and the contractor shall be required under the contract to provide proper facilities for such access and inspection.

(20 U.S.C. 1232c(a)(2).)

§ 100b.170 Operation and maintenance.

The facility shall be operated and maintained in accordance with the requirements of applicable Federal, State, and local agencies for the maintenance and operation of such facilities.

(20 U.S.C. 1221c(b)(1).)

§ 100b.171 Cost-sharing and operational funds.

Sufficient funds shall be available to meet the non-Federal share of the cost of constructing the facility (where applicable), and sufficient funds shall be available when construction is completed to assure effective operation and maintenance of the facility for the purposes for which constructed.

(20 U.S.C. 1221c(b)(1).)

§ 100b.172 Supervision and inspection.

The recipient shall provide and maintain competent and adequate architectural and engineering supervision and inspection at the construction site to insure that the completed work conforms to the approved drawings and specifications.

(20 U.S.C. 1232c(b)(1).)

§ 100b.173 Cultural activities.

Reasonable provision shall be made, consistent with the other uses to be made of the facilities, for areas in such facilities which are adaptable for artistic and cultural activities.

(20 U.S.C. 1221c(b)(1).)

§ 100b.184 Safety and health.

In planning for and designing facilities, the recipient shall observe nationally recognized safety and health standards and codes, including National Fire Protection Association standards and those adopted under the Occupational Safety and Health Act of 1970 (Public Law 91-576): *Provided, however*, That to the extent that State and local codes are more stringent, they shall apply.

(29 U.S.C. 651.)

§ 100b.185 Environmental impact.

Each applicant shall provide the Department Regional Office with its assessment of the impact of the project on the quality of the environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and Executive Order No. 11514 (34 FR 4247).

(42 U.S.C. 4332(2)(c).)

§ 100b.186 Preservation of historic sites.

Each application for Federal financial assistance for construction shall describe the relationship to and the probable effect, or lack of effect, on any district, site, building, structure, or object that is included in the National Register of Historic Preservation of the National Park Service and published with periodical updatings in the FEDERAL REGISTER. Such information is to be furnished to the Department by the State agency to enable it to take into account such an effect and to consider the comments thereon of the Advisory Council on Historic Preservation, prior to providing such Federal financial assistance, as required by section 106 of Public Law 89-665.

(16 U.S.C. 470f.)

§ 100b.187 Davis-Bacon, Copeland, and Contract Work Hours Standards Act.

Except as otherwise provided by law, all laborers and mechanics employed by contractors and subcontractors on construction assisted under Federal programs, including minor remodeling, shall be paid wages at rates not less than those prevailing as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act. Such contractors and subcontractors shall comply with the provisions of 29 CFR part 3 ("anti-kickback" regulations); and all construction contracts and subcontracts shall incorporate the contract clauses required by 29 CFR 5.5 (a) and (c).

(20 U.S.C. 1232b; 40 U.S.C. 276a, 276c, 327-332.)

§ 100b.188 Nondiscrimination.

Construction contracts shall include the applicable provisions of Executive Order No. 11246, as amended by Executive Order No. 11375 (nondiscrimination in construction contract employment), and the applicant shall otherwise comply with the requirements of section 301 of said Executive order.

(E.O. Nos. 11246, 11375.)

§ 100b.189 Access by the handicapped.

The recipient shall require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1-1961, as modified by other standards prescribed by the Secretary or the U.S. Administrator of General Services (41 CFR 101-17.703). The applicant shall be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(42 U.S.C. 4151, 4152, 4155.)

§ 100b.190 Avoidance of flood hazards.

In the planning of the construction of facilities involving the use of Federal funds, the recipient shall, in accordance with the provisions of Executive Order No. 11296 of August 10, 1966 (31 FR 10663) and such rules and regulations as may be issued by the Secretary to carry out those provisions, evaluate flood hazards in connection with such facilities and, as far as practicable, avoid the uneconomic, hazardous, or unnecessary use of flood plains in connection with such construction.

(E.O. No. 11296.)

§ 100b.191 Relocation assistance.

Projects receiving Federal financial assistance are subject to the regulations on relocation assistance and real property acquisition policies contained in part 15 of this title.

(20 U.S.C. 1221c(b)(1).)

§ 100b.192 Water pollution.

The recipient shall comply with Executive Order No. 11288 of July 7, 1966 (31 FR 9261), "Prevention, Control and Abatement of Water Pollution." (E.O. No. 11288)

Subpart L—Property Management Requirements

§ 100b.209 Scope of subpart.

This subpart prescribes policies and procedures governing title, use, and disposition of real and tangible personal property whose acquisition cost was borne in whole or in part as a direct charge by Federal grants or subgrants and ownership and rights for intangible personal property developed under Federal grants and subgrants.

(OMB Circular No. A-102, Attachment N.)

§ 100b.210 General.

Recipients may follow their own property management policies and proce-

dures: *Provided*, They observe the requirements of this subpart.

(OMB Circular No. A-102, Attachment N.)

§ 100b.211 Definitions.

As used in this subpart:

"Acquisition cost" of nonexpendable personal property acquired by purchase means the net invoice price of the property, including any attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Auxiliary charges such as taxes, duty, protective in-transit insurance, freight, or installation shall be included in or excluded from acquisition cost in accordance with the recipient's regular accounting practices.

"Real property" means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(OMB Circular No. A-102, Attachment N.)

§ 100b.212 Real property.

Title to real property whose acquisition cost was borne in whole or in part by Federal funds shall vest in the recipient upon acquisition. In the absence of applicable statutory provisions governing the use or disposition of such property, it shall be subject to the following requirements, in addition to (and subject to) any other requirements imposed by the Statute or regulation:

(a) The recipient shall use the real property for the purposes authorized by the original grant or subgrant as long as needed.

(b) The State agency may authorize the recipient to use the property for the following (but no other) purposes when the recipient determines that the property is no longer needed for the orginally authorized purposes:

(1) Activities sponsored by other Federal awards (regardless of which Federal agency makes the other awards), or

(2) Activities not sponsored by other Federal awards, but which, nevertheless, have purposes consistent with those of the legislation under which the original award was made.

(c) (1) When no longer used in accordance with paragraphs (a) and (b) of this section the recipient shall return to the control of the Commissioner all real property whose acquisition cost was borne wholly by Federal funds. If the acquisition cost of the property was borne partly by Federal funds, the recipient may be relieved of accountability to the Federal Government with respect to the Federal interest in the property by compensating the Federal Government for its fair share of the current value of the property, or if the grantee no longer needs the property, by selling it and compensating the Federal Government for its fair share of the sales proceeds.

(2) The amount of compensation to the Federal Government under subparagraph (1) of this paragraph shall be computed by applying the percentage of Federal participation in the cost of the project or program for which the property was acquired to the property's current fair market value (if the recipient retains the property) or to the proceeds from sale (if the recipient sells the property). In most cases, the real property will have been acquired under an award whose purpose was to assist the recipient in acquiring the property. In such cases, the "total cost of the project or program for which the property was acquired" will ordinarily be the same as the acquisition cost of the property.

(OMB Circular No. A-102, Attachment N.)

§ 100b.215 Nonexpendable personal property.

(a) *Title.*—When nonexpendable personal property is acquired by a recipient wholly or in part with Federal funds, title shall be vested in the recipient.

(b) *Use.*—(1) The recipient shall retain such property in the project as long as there is a need for such property to accomplish the purpose of the project, whether or not the project continues to be supported by Federal funds.

(2) When there is no longer a need for such property to accomplish the purpose of the project, the recipient shall use the property in connection with other Federal awards it has received in the following order or priority:

(i) Other awards under Federal programs administered by the Commissioner needing the property,

(ii) Awards of other Federal agencies needing the property.

(3) When the recipient no longer has need for such property in any of its federally assisted projects, the property may be used for the recipient's own official activities in accordance with the following standards:

(i) If the property had an acquisition cost of less than $500 per unit and has been used 4 years or more, the recipient may use the property without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) For all of such property not covered under subparagraph (3) (i) of this paragraph, the recipient may retain the property for its own use provided that a fair compensation is made to the Federal Government for the Federal share of the property. The amount of such compensation shall be computed by applying the percentage of Federal participation in the cost of the project to the current fair market value of the property.

(c) *Disposition.*—If the recipient has no need for the property, disposition of the property shall be made as follows:

(1) If the property had an acquisition cost of $1,000 or less per unit (except for property covered under paragraph (b) (3) (i) of this section) the recipient shall sell the property and reimburse the Federal Government in accordance with subparagraph (2) (iii) of this paragraph.

(2) If the property had an acquisition cost of over $1,000 per unit, the recipient shall request disposition instructions from the State agency. The State agency will issue instructions to the recipient within 120 days following the receipt of such request and the following procedures shall govern:

(i) If the recipient is instructed to ship the property elsewhere, the recipient will be reimbursed by the State agency with an amount which is computed by applying the percentage of the recipient's participation in the project to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the recipient is instructed to otherwise dispose of the property, the recipent will be reimbursed by the State agency for the costs incurred in such disposition.

(iii) If disposition instructions are not issued within the 120-day period specified in subparagraph (2) of this paragraph, the recipient shall sell the property and reimburse the Federal Government with an amount which is computed by applying the percentage of Federal participation in the project to the sales proceeds. The recipient may, however, deduct and retain from that amount $100 or 10 percent of the proceeds, whichever is greater, for the recipient's selling and handling expenses.

(d) *Property management standards.*—Recipients' property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for: (i) A description of the property; (ii) manufacturer's serial number or other identification number; (iii) acquisition date and cost; (iv) source of the property; (v) percentage of Federal funds used in the purchase of the property; (vi) location, use, and condition of the property; and (vii) ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the Federal Government for the Federal share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. The recipient shall be responsible for replacing or repairing (with funds of such recipient) property which is lost, damaged, or destroyed due to the negligence of the recipient.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(OMB Circular No. A-102, attachment N.)

§ 100b.216 Expendable personal property.

(a) The recipient may at its option either retain or sell items of expendable personal property when no longer needed

for any federally sponsored activity (including activities sponsored by other agencies).

(b) Compensation to the Federal Government is required if the aggregate fair market value of all of those items acquired with Federal assistance exceeds $500 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project to the current fair market value of items retained, and to the sales proceeds of items sold.

(OMB Circular No. A-102, attachment N.)

§ 100b.217 Intangible personal property.

(a)(1) All inventions conceived or first actually reduced to practice in the course of or under a federally assisted project are subject to Parts 6 and 8 of this title. Each invention shall be promptly and fully reported to the Assistant Secretary for Health, Department of Health, Education, and Welfare.

(2) Determination as to ownership and disposition of rights to such inventions, including whether a patent application shall be filed, and, if so, the manner of obtaining, administering, and disposing of rights under any patent application or patent which may issue shall be made either:

(i) By the Federal Government, or

(ii) Where the recipient has a separate formal institutional patent agreement with the Department, by the recipient in accordance with that agreement.

(b) Where the project results in a book or other copyrightable material, the author or recipient is free to copyright the work, but the Commissioner reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

(OMB Circular No. A-102, attachment N.)

§ 100b.218 Publications.

Any publication or presentation resulting from or primarily related to Federal financial assistance shall contain the following acknowledgement:

The activity which is the subject of this report was supported in whole or in part by the U.S. Office of Education, Department of Health, Education, and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

(20 U.S.C. 1221c(b)(1).)

§ 100b.220 Determining percentage of participation.

(a) Various provisions in this subpart require a determination of the percentage of Federal (or recipient) participation in the cost of the project or program in order to compute the amount of compensation for the value, or proceeds from sale, of property. In determining the applicable percentage, there shall first be deducted from the allowable costs incurred during the grant period, any royalties or other income (not including interest income or proceeds from sale of property) earned by the federally supported project or program during the grant period.

(b) The deduction of income required by paragraph (a) of this section is independent of, and is not intended to control, the disposition of such income pursuant to Subpart M of this part.

(OMB Circular No. A-102, Attachment N.)

Subpart M—Program Income

§ 100b.230 Scope of subpart.

This subpart sets forth standards for recipients in accounting for program income and other income related to projects and programs financed in whole or in part with Federal funds.

(OMB Circular A-102, Attachment E.)

§ 100b.231 Meaning of program income.

As used in this subpart, the term "program income" shall have the meaning set forth for that term in § 100b.401.

(OMB Circular No. A-102, Attachment E.)

§ 100b.232 Interest income.

(a) As used in paragraph (b) of this section:

(1) The term "State" shall have the meaning set forth in section 102 of the Intergovernmental Cooperation Act of 1968.

(2) The term "grant-in-aid" shall have the meaning set forth for that term in Section 106 of the Intergovernmental Cooperation Act of 1968.

(b) In accordance with section 203 of the Intergovernmental Cooperation Act of 1968, States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.

(c) In all other cases, recipient shall remit to the Federal Government any interest earned on advances of Federal funds.

(Pub. L. 90-577, secs. 102, 106, 203; OMB Circular No. A-102, Attachment E.)

§ 100b.233 Sale of real and personal property.

Proceeds from the sale of real and tangible personal property whose acquisition cost was borne in whole or in part by Federal funds shall be handled in accordance with Subpart L of this part.

(OMB Circular No. A-102, Attachment N.)

§ 100b.234 Royalties.

(a) *Applicability*—(1) *Copyrights.* This section applies to royalties received by recipients from copyrights on publications or other works developed under a federally-assisted project.

(2) *Patents.* This section also applies to royalties received by recipients from patents on inventions conceived or first actually reduced to practice in the course of or under federally-assisted projects.

(b) *During the grant period*—(1) Royalties received during the grant period shall be retained by the recipient. The terms and conditions of the subgrant shall provide either:

(i) That such royalties shall be used by the recipient for any purposes which further the objectives of the legislation under which the subgrant was made, or

(ii) That such royalties shall be deducted from total project costs for the purpose of determining the net costs on which the Federal share of costs shall be based.

(2) The recipient shall elect either of the alternatives specified in subparagraph (1) of this paragraph if the terms and conditions of the subgrant do not specify which is to be followed.

(c) *After the grant period*—(1) *Copyrights.* The Federal share of copyright royalties in excess of $200 received annually shall be paid by the recipient to the Federal Government. The Federal share of the royalties shall be computed on the same ratio basis as the percentage of Federal participation in the cost of the project or program. This percentage of participation shall be determined in accordance with § 100b.220.

(2) *Patents.* Disposition of patent royalties received after the termination or completion of the period for obligation shall be governed by the regulations contained in Parts 6 and 8 of this title.

(OMB Circular No. A-102, Attachment E.)

§ 100b.235 Other program income.

(a) This section applies to all program income earned during the period for obligation except royalties and proceeds from the sale of real property or tangible personal property.

(b) All such income earned during the period for obligation shall be retained by the recipient. The recipient may elect either of the following alternatives to satisfy its accountability to the Federal Government for the income:

(1) The income may be used by the recipient for purposes which further the objections of the legislation under which the award was made, or

(2) The income may be deducted from total project costs for the purpose of determining the net costs on which the Federal share of costs shall be based.

(OMB Circular No. A-102, Attachment E.)

§ 100b.236 Earmarked revenues.

State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of grant project transactions when such revenues are specifically earmarked for a project in accordance with a State plan (or State application).

(OMB Circular No. A-102, Attachment E.)

Subpart N—Miscellaneous Requirements

§ 100b.250 Financial interest prohibited.

A person who is a public official, officer, or member of, or who is otherwise associated with a recipient may not participate in an administrative decision with respect to a project if such decision can be expected to result in any benefit or remuneration, including, without limitation, a royalty, commission, contingent fee, brokerage fee, or other benefit, to

him or to any member of his immediate family.

(20 U.S.C. 1232c(b)(1).)

§ 100b.254 Transfer of funds to subgrantees.

(a) State agencies shall establish policies and procedures to be used in the payment of funds to subgrantees (where applicable) pursuant to an approved project either: (1) As a reimbursement for actual expenditures or (2) as an advance prior to expenditures.

(b) Advances shall not be eligible for inclusion as expenditures for the purposes of earning Federal financial participation until adequate evidence of actual expenditures for approved projects has been received and verified by the State agency.

(c) Reimbursement or payment need not be uniform to all recipients, and the State agency may provide a method by which the ratio of reimbursement to expenditures in particular cases may be adjusted on the basis of comparative needs of individual recipients.

(20 U.S.C. 1232c(b)(1).)

§ 100b.257 Custody of funds.

The State agency shall provide for the receipt by the State treasurer (or, if there is no State treasurer, the officer identified by title exercising similar functions for the State) and for the proper safeguarding of all Federal funds granted to the State. The State agency shall promember of his immediate family.
fee, or other benefit, to him or to any vide that all Federal funds so received shall be expended solely for the purposes for which granted.

(20 U.S.C. 1232c(b)(2).)

§ 100b.258 Leasing facilities.

In the case of the lease of a facility, the State agency or other recipient shall have the right to occupy, and to operate, and if necessary to maintain and improve, the premises to be leased during the proposed period of the project.

(20 U.S.C. 1221c(b)(1).)

§ 100b.262 Civil rights.

(a) Federal financial assistance is subject to the regulations in part 80 of this title, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of title VI of the Civil Rights Act of 1964 (Pub. L. 88-352).

(42 U.S.C. 2000d.)

(b) Federal financial assistance is also subject to the provisions of title IX of the Education Amendments of 1972 (prohibition of sex discrimination), and any regulations issued thereunder.

(Pub. L. 92-318, title IX.)

§ 100b.274 Application of State rules.

Subject to the provisions and limitations of applicable Federal statutes and regulations, Federal financial participation shall be available only for expenditures made in accordance with applicable State and local laws, rules, regulations, and standards governing expenditures.

(20 U.S.C. 1221(b)(1).)

§ 100b.275 Coordination.

Each project (and each State plan) shall be developed so as to be in coordination with other public and private programs for similar educational purposes. Such coordination shall be continuous during the period in which such project or plan remains in effect.

(20 U.S.C. 1232c(b)(1).)

Subpart O—Financial Management Systems

§ 100b.300 Scope of subpart.

This subpart prescribes standards for financial management systems of Federally supported activities conducted by State agencies and their subgrantees.

(OMB Circular No. A-102, Attachment G.)

§ 100b.301 Standards.

State agency financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant in accordance with Subpart P of this part, and for each subgrant in accordance with the State agency's requirements. Except when specifically required by law, the Commissioner will not require financial reporting on the accrual basis from organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(b) Records which identify adequately the source and application of funds for grant- or subgrant-supported activities. These records shall contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all grant or subgrant funds, and real and personal property acquired with grant or subgrant funds. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) Comparison of actual with budgeted amounts for each grant or subgrant, and when specifically required by the performance or productivity data, including the production of unit cost information.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the State agency, whenever cash is advanced by the Federal Government. When advances are made by a letter-of-credit method, the State agency shall make drawdowns from the U.S. Treasury through its commercial bank as close as possible to the time of making the disbursements. Subgrantees shall institute analogous procedures when funds are advanced by the State agency.

(f) Procedures for determining the allowability and allocability of costs in accordance with the applicable cost principles prescribed by Subpart G of this part.

(g) Accounting records which are supported by source documentation.

(h) Audits to be made by the State agency or subgrantee or at its direction to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant. The grantee or subgrantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(OMB Circular No. A-102, Attachment G.)

§ 100b.302 Subgrantees.

The standards of § 100b.301, insofar as they apply to subgrantees, shall be included in the terms and conditions of subgrants by State agencies.

(OMB Circular No. A-102, Attachment G.)

Subpart P—Financial Reporting Requirements

§ 100b.400 Scope of subpart.

This subpart prescribes requirements for State agencies to report financial information to the Commissioner and to request advances and reimbursement when a letter-of-credit method is not used, and promulgates standard forms incident thereto.

(OMB Circular No. A-102, Attachment H.)

§ 100b.401 Definitions.

As used in this subpart and in the forms identified by this subpart:

"Accrued expenditures" are the charges incurred by the State agency during a given period requiring the provision of funds for: (a) goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts becoming owed under programs for which no current services or performance are required.

"Accrued income" is the earnings during a given period which is a source of funds resulting from (a) services performed by the State agency, (b) goods and other tangible property delivered to purchasers, and (c) amounts becoming owned to the State agency for which no current services or performance are required by the State agency.

"Disbursements" are payments in cash or by check.

"Federal funds authorized" represents the total amount of the Federal funds authorized for obligations and establishes the ceiling for obligation of Fed-

eral funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

"In-kind contributions" represent the value of noncash contributions provided by the State agency or third parties. In-kind contributions may consist of charges for real property and nonexpendable personal property, and value of goods and services directly benefiting and specifically identifiable to the federally-supported activity. Unless otherwise authorized by Federal legislation, charges for property purchased wholly with Federal funds, and charges based on the Federal share of the value of property purchased partly with Federal funds, may not be considered as the State agency's in-kind contributions.

"Obligations" are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" represent charges made to the grant project or program. Outlays may be reported on a cash or accrued expenditure basis.

"Program income" represents earnings by the recipient realized from the federally-supported activities as a result of the grant. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income may be reported on a cash or accrued income basis.

"Unobligated balance" is the portion of the funds authorized by the Commissioner which has not been obligated by the State agency and is determined by deducting the cumulative obligations from the funds authorized.

"Unpaid obligations" represent the amount of obligations incurred by the State agency which have not been paid.

(OMB Circular No. A-102, Attachment H.)

§ 100b.402 Authorized forms and instructions.

(a) Only those forms specified in §§ 100b.403 through 100b.406, inclusive, and such supplementary or other forms as may from time to time be authorized by the Commissioner may be used:

(1) For obtaining financial information from State agencies for federally-assisted programs, or

(2) For requesting advances or reimbursements when letters of credit are not used.

(b) All applicable standard instructions promulgated for use in connection with the forms specified in §§ 100b.403 through 100b.406, inclusive, shall be followed.

(c) State agencies shall submit the original and two copies of forms required pursuant to this subpart. However, the Commissioner may waive the requirement for the second copy, or both copies, when not needed.

(d) The forms (with their instructions) specified in §§ 100b.403 through 100b.406, inclusive, will be available to the public upon request to the Commissioner.

(OMB Circular No. A-102, Attachment H.)

§ 100b.403 Financial status report.

(a) *Form.* State agencies shall use the standard Financial Status Report prescribed by Attachment H of OMB Circular No. A-102 to report the status of funds for all non-construction grant programs. The Commissioner may choose not to require the Financial Status Report when the Request for Advance or Reimbursement (see § 100b.405) is determined to provide adequate information to meet his needs, except that a final Financial Status Report is required at the completion of the grant when the Request for Advance or Reimbursement form is used only for advances.

(b) *Accounting basis.* Each State agency shall report outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it used in maintaining its accounting records. The basis used by a State agency must be consistent for all grants.

(c) *Frequency.* For research project grants, reports shall be submitted annually, and a final report shall be submitted upon completion or termination of Federal support. For all other types of grants, the Commissioner will prescribe the frequency of the report, considering the size and complexity of the particular program. However, the report will not be required more frequently than quarterly or less frequently than annually, and a final report is required upon completion or termination of Federal support.

(d) *Due date.* When reports are required on a quarterly or semi-annual basis, they shall be due thirty days after the end of the specified reporting period. When required on an annual basis, they shall be due ninety days after the end of the grant year. Final reports shall be due ninety days after the completion or termination of Federal support. Justified requests from individual State agencies for extension of reporting due dates will be approved whenever feasible.

(OMB Circular No. A-102, Attachment H.)

§ 100b.404 Report of Federal cash transactions.

(a) *Form.* When funds are advanced to State agencies through letters of credit or with Treasury checks, each State agency shall submit the Report of Federal Cash Transactions prescribed by Attachment H of OMB Circular No. A-102 (HEW Forms 602T, 603T). This report will be used to monitor cash advanced to State agencies and to obtain disbursement or outlay information for each project from the State agencies. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the information to be submitted is not changed.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When deemed necessary and feasible by the Commissioner, State agencies may be required to report in the "Remarks" section of the report the amount of cash advances in excess of three days' requirements in the hands of subgrantees or other secondary recipients, and to provide short narrative explanations of actions taken by the State agencies to reduce the excess balances.

(d) *Frequency and due date.* State agencies shall submit the Report of Federal Cash Transactions no later than fifteen working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the Commissioner may require the reports to be submitted within fifteen working days following the end of each month.

(e) *Waiver.* The Commissioner may waive the requirement for submission of the Report of Federal Cash Transactions when a State agency's monthly advances do not exceed $10,000: *Provided*, That such advances are monitored through other forms authorized pursuant to this subpart, or the State agency's accounting controls are adequate to minimize excessive Federal advances.

(OMB Circular No. A-102, Attachment H.)

§ 100b.405 Request for advance or reimbursement.

(a) State agencies shall submit their requests for advance payments or reimbursements under nonconstruction grants, and their requests for advance payments under construction grants, on the Request for Advance or Reimbursement form prescribed by Attachment H of OMB Circular No. A-102 (HEW Form 604T) when letters of credit or predetermined automatic Treasury check advance methods are not used. Additionally, the Commissioner may prescribe this form for construction grants in lieu of the Outlay Report and Request for Reimbursement for Construction Programs as specified in § 100b.406.

(b) State agencies will be authorized to submit no less often than monthly their requests for advances or reimbursement when letters of credit or predetermined automatic Treasury check advance methods are not used.

(OMB Circular No. A-102, Attachment H.)

§ 100b.406 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment H of OMB Circular No. A-102. The Commissioner may, however, substitute the Request for Advance or Reimbursement form specified in § 100b.405 in lieu of this form when he determines that the former provides adequate information to meet his needs.

(2) State agencies will be authorized to submit no less often than monthly their requests for reimbursement under construction grants.

(b) *Construction grants paid by letter of credit or Treasury check advances.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the State agency shall report its outlays to the Commissioner using the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment H of OMB Circular No. A-102. In these cases, the State agency should leave blank those items on the form which are applicable only when requesting reimbursement, i.e., items 3, 5, 10, 11t, 11u, and 11v.

(2) In lieu of the certification and signatures in items 12, 12a, and 12b, the following certification, signed on behalf of the State agency by an authorized official of the State agency, shall be submitted to the Commissioner with the outlay report:

I certify that to the best of my knowledge and belief the accompanying report is correct and complete and that all outlays reported therein are for the purposes set forth in the Federal authorizing legislation.

Information as to percentage of project completion and certification thereof by the Government representative shall be submitted independently of the outlay report, at such times and by such means as may be prescribed by the Commissioner.

(3) Frequency and due date of the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 100b.403 (c) and (d).

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 100b.403 (b).

(d) *Alternative forms.* For construction grants paid by the reimbursement method, or by Treasury check advances based on periodic requests from the State agency, the Commissioner may substitute the Request for Advance or Reimbursement specified in § 100b.405 in lieu of the Outlay Report and Request for Reimbursement for Construction Programs. When any other payment method is used, the Commissioner may substitute the Financial Status Report specified in § 100b.403.

(OMB Circular No. A-102, Attachment H.)

§ 100b.407 Requests for supplementary Treasury checks.

When the drawing authority for a specified period under a letter of credit is insufficient, the State agency may request a supplementary Treasury check payment by letter.

(OMB Circular No. A-102, Attachment H.)

Subpart Q—Monitoring and Reporting of Program Performance

§ 100b.430 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance. These procedures are designed to place greater reliance on State agencies to manage the day-to-day operations of their federally-supported activities.

(OMB Circular No. A-102, Attachment I.)

§ 100b.431 Monitoring by State agencies.

State agencies shall constantly monitor performance under federally-supported activities to assure that adequate progress is being made towards achieving the goals of the grant. This review shall be made for each function or activity of each grant as set forth in the approved State plan or application.

(OMB Circular No. A-102, Attachment I.)

§ 100b.432 Performance reports for nonconstruction grants.

(a) Where the Commissioner determines that performance information sufficient to meet his programmatic needs will be available from continuation or renewal applications, the Commissioner will require the State agency to submit a performance report only with the final Financial Status Report (or other financial report equivalent thereto). Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by Subpart C of this part, when used to request a continuation or renewal, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, State agencies shall submit a performance report with each Financial Status Report (or other financial report equivalent thereto) in the frequency established by Subpart P of this part. The Commissioner will prescribe the frequency with which performance reports will be submitted with the Request for Advance or Reimbursement when that form is used in lieu of the Financial Status Report; in such cases, performance reports will not be required more frequently than quarterly, or less frequently than annually.

(c) Performance reports shall include, to the extent appropriate to the particular grant, a brief presentation of the following for each function or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of projects can be readily quantified, such quantitative data shall be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(OMB Circular No. A-102, Attachment I.)

§ 100b.433 Performance reports for construction grants.

In general, the Commissioner will rely heavily on on-site technical inspection and certified percentage-of-completion data to keep himself informed as to progress under construction grants. Therefore, formal performance reports from State agencies to supplement those sources of information will be required only if deemed necessary by the Commissioner and in no case more frequently than quarterly.

(OMB Circular No. A-102, Attachment I.)

§ 100b.434 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the federally-supported activity. In such cases, the State agency shall inform the Commissioner as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objectives of the grant. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(b) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

(OMB Circular No. A-102, Attachment I.)

§ 100b.436 Site visits.

Site visits will be made by representatives of the Department or the Commissioner as frequently as practicable to:

(a) Review program accomplishments and management control systems, and

(b) Provide such technical assistance as may be required.

(OMB Circular No. A-102, Attachment I.)

Subpart R—Accountability for Federal Funds

§ 100b.477 Retention of records.

(a) *Records.*—Each State agency and other recipient shall keep intact and accessible all records relating to the receipt and expenditure of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any) in accordance with section 434(a) of the General Education Provisions Act, including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the award.

(b) *Period of retention.* (1) Except as provided in paragraphs (b)(2) and (d) of this section, the records specified in paragraph (a) of this section shall be retained for 3 years after the date of submission of the annual expenditure report to the State agency.

(2) Records for nonexpendable personal property which was acquired with Federal funds shall be retained for 3 years after its final disposition.

(c) *Microfilm copies.*—Recipients may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(d) *Audit questions.*—The records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions: *Provided, however,* That records need not

be retained if they relate to a grant or contract with respect to which actions by the United States to recover for diversion of Federal funds are barred by the statute of limitations in 28 U.S.C. 2415(b).

(e) *Audit and examination.*—(1) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to the records specified in paragraph (a) of this section and to any other pertinent books, documents, papers, and records of the recipient.

(2) In the case of a subgrant (or negotiated contract exceeding $2,500) the State agency, the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the subgrantee (or the contractor) which the State agency, the Secretary, the Comptroller General of the United States, or any of their duly authorized representatives determine are pertinent to the specific grant, for the purpose of making audit, examination, excerpts, and transcripts.

(f) *Records for indirect cost rate proposals, etc.*—(1) *Applicability.* This paragraph applies to records supporting (i) indirect cost rate proposals, (ii) cost allocation plans of State and local governments pursuant to Appendix B to the subchapter, (iii) hospital patient care rate proposals, and (iv) any similar accounting computations of the rate at which a particular group of costs is chargeable to a grant. Examples of the latter are computer usage chargeback rate computations and composite fringe benefit rate computations.

(2) *If submitted to the Federal Government.* If the proposal, plan, or other computation is required to be submitted to the Federal Government to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted to the Federal Government.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government for negotiation purposes, then the three-year retention period for its supporting records starts from the end of the State agency's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(20 U.S.C. 1232c(a); 28 U.S.C. 2415(b); OMB Circular No. A-102, Attachment C.)

§ 100b.481 Unexpended funds.

Whenever any portion of any allotment to any State has not been used in the State for the purpose provided for in the Federal statute, regulations, State plan, State application, or project application, with respect to that allotment, and has not been transferred to another allotment or reallotted to other States pursuant to law in the period during which such allotment is available, a sum equal to such portion may be deducted from the next payment of funds allotted to such State.

(20 U.S.C. 1232d.)

§ 100b.482 Withholding of funds.

The approval of a State plan or State application, the approval of a grant, or the entering into of a contract or other arrangement, and any payment pursuant thereto, shall not be deemed to waive the right of the Commissioner to withhold funds by reason of the failure of the recipient to observe, either before or after such administrative action, any Federal requirements.

(20 U.S.C. 1221c(b)(1).)

§ 100b.483 Waiver of law prohibited.

No official, agent, or employee of the Office of Education of the Department of Health, Education, and Welfare shall have the authority to waive or alter any provision of the regulations in this chapter (except through amendment by publication in the FEDERAL REGISTER) or other relevant statute or regulation, and no action or failure to act on the part of such official, agent, or employee shall operate in derogation of the Commissioner's right to enforcement of said provisions in accordance with their terms.

(43 Dec. Comp. Gen. 31 (1963).)

§ 100b.484 Federal audits.

The records of a recipient are subject to audit by the Federal Government to determine whether the recipient has properly accounted for Federal funds.

(20 U.S.C. 1232c(a)(2).)

§ 100b.494 Closeout.

(a) "Closeout" means the process by which the Commissioner determines that all applicable administrative actions and all required work of the grant have been completed by the State agency and the Commissioner.

(b) In closing out grants, the following shall be observed:

(1) Upon request, the Commissioner will make, or arrange for, prompt payment to the State agency for allowable reimbursable costs not covered by previous payments.

(2) The State agency shall immediately refund to the Federal Government, or otherwise dispose of in accordance with instructions from the Commissioner, any unencumbered balance of cash advanced to the State agency.

(3) The State agency shall submit, within 90 days after the date of completion of the grant, all financial, performance, and other reports required as a condition of the grant. The Commissioner may grant extensions when requested by the State agency.

(4) The Commissioner will make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by applicable statutes, regulations, or the terms and conditions of the grant.

(5) In the event a final audit has not been performed prior to the closeout of the grant, the Commissioner retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) The provisions of Subpart L of this part shall be observed by the State agency in accounting for any property acquired with Federal funds, or received from the Federal Government in connection with the grant.

(OMB Circular No. A-102, Attachment L.)

§ 100b.495 Termination of program.

If a State desires at any time not to participate in a Federal program, or upon termination of the program, the State shall refund to the Federal Government any unexpended or unobligated funds which have been paid to the State agency under such Federal program.

(20 U.S.C. 1232d.)

PART 100c—INDIRECT COSTS UNDER CERTAIN PROGRAMS

Sec.
100c.1 Scope.
100c.2 Indirect costs.
100c.3. Exceptions.

AUTHORITY: Sec. 403(b)(1), Public Law 90-247, 86 Stat. 327 (20 U.S.C. 1221c(b)(1)), unless otherwise noted.

§ 100c.1 Scope.

Except as provided in § 100c.3, the provisions contained in this part are applicable to the Federal programs of assistance under the following authorities:

(a) Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241a);

(b) Title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 821);

(c) Title III of the Elementary and Secondary Education Act of 1965 (including sec. 306 thereof) (20 U.S.C. 841);

(d) Title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 880d);

(e) Part B of the Education of the Handicapped Act (20 U.S.C. 1411);

(f) Part B, sections 131(b), 142(d), and 152; and parts F, G, and H of the Vocational Education Act of 1963 (20 U.S.C. 1262); and

(g) The Follow Through program under section 222(a)(2) of the Economic Opportunity Act of 1964 (42 U.S.C. 2809(a)(2)).

(Authority cited in 45 CFR 100c.1.)

§ 100c.2 Indirect costs.

(a) *State educational agencies.*—A State educational agency may incur indirect costs under any Federal program listed in § 100c.1, on the basis of an indirect cost rate approved by the Department pursuant to applicable principles and procedures contained in appendix B to this subchapter.

(b) *Local educational agencies*—(1) *Approval of rates by State educational agency.*—Each State educational agency, on the basis of a plan approved by the Department, shall approve indirect cost rates for those local educational agencies

which request the establishment of such rates.

(2) *Formula for determining rates.*—Each such rate approved for a local educational agency is to be determined annually, and shall be the percentage that the amount of the local educational agency's total expenditure for administrative and fixed charges, as defined in paragraphs (b)(3) and (b)(4) of this section, is to the total of all other expenditures (excluding capital outlay, debt service, fines, penalties, contingencies, and election expenses) incurred by that agency for the operation of schools in the most recent year for which such data are available.

(3) *Administrative charges.*—For the purposes of this section, the term "administrative" refers to those activities which have as their purpose the direction and control of the local educational agency's affairs which are district-wide and not confined to one school, subject, or phase of school operations (unless such activity is a service function (such as accounting, payroll, and personnel) normally provided at the district level but is physically located elsewhere for convenience or better management, in which case it shall be so included). Expenditures for the board of education or other governing body of the school district, for the compensation of the chief administrative officer of the school district and of each of the schools of the district, and for the operation of their immediate offices, are not to be included as administrative charges for the purposes of this paragraph and are not to be charged to the Federal program involved on an indirect or direct cost basis.

(4) *Fixed charges.*—For the purposes of this paragraph, the term "fixed charges" shall be limited to school district contributions to retirement (including State, county, or local retirement funds, social security, and pension payments) and to property, employee, and liability insurance. Only the fixed charges applicable to the administrative charges specified in paragraph (b)(3) of this section may be included. Other items of expenditure commonly referred to as fixed charges are not to be included for the purpose of determining indirect cost rates.

(5) *Duplication of costs prohibited.*—Local educational agencies for whom such rates have been approved shall not be allowed to charge administrative and fixed charges (as defined in paras. (b)(3) and (b)(4) of this section) to the Federal program funds on a direct cost basis.

(6) *Maximum indirect costs.*—The amount of Federal program funds to be paid for indirect costs shall not exceed the product of the direct costs incurred in connection with such Federal program multiplied by the indirect cost rate. The same indirect cost rate shall be applicable for the determination of all indirect costs to be paid from funds appropriated under such Federal program for a particular fiscal year.

(OMB circular No. A-87; 20 U.S.C. 1231c(b); 20 U.S.C. 1221c(b)(1).)

§ 100c.3 Exceptions.

(a) *Past expenditures.*—Notwithstanding any other provision contained in this part, no cost shall be allowable under the Federal programs listed in §§ 100c.1(e) and 100c.1(h) either on a direct cost or on an indirect cost basis, if such cost has been met in the recent past (as determined by the Commissioner) by the expenditure of State, local, or private funds.

(20 U.S.C. 1413(a)(4); 42 U.S.C. 2812(d)(1).)

(b) *State-operated projects.*—Notwithstanding § 100c.2(a), indirect cost rates for programs and projects operated directly by a State agency under the Federal programs listed in § 100c.1 shall be determined in the same manner and to the same extent as for a local educational agency under § 100c.2(b).

(Authority cited in 45 CFR 100c.1.)

APPENDIX A—GENERAL GRANT TERMS AND CONDITIONS, U.S. OFFICE OF EDUCATION

1. Definitions.
2. Scope and duration of the project.
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21. Data collection instruments.
22. Program income.
23. Change of key personnel.
24. Animal care.
25. Use of small businesses and minority-owned businesses.

1. *Definitions.* As used in the grant documents relating to this award, the following terms shall have the meaning set forth below:

a. "Commissioner" means the U.S. Commissioner of Education.

b. "Department" means the U.S. Department of Health, Education, and Welfare.

c. "Grantee" means the agency, institution or organization named in the grant as the recipient.

d. "Grants Officer" means the employee of the U.S. Office of Education who is authorized to execute and is responsible for the administration of the grant on behalf of the Government.

e. "Project Officer" means the employee of the U.S. Office of Education who is responsible for the technical monitoring of the project of the grantee as representative of the grants officer.

f. "Project Director" is the person responsible for directing the project of the grantee.

g. "Project" is the activity of program defined in the proposal approved by the Commissioner for support.

h. "Grant Period" means the period specified in the notification of grant award during which costs may be charged against the grant.

i. "Budget" means the estimated cost of performance of the project as set forth in the notification of grant award.

(20 U.S.C. 1221c(b)(1).)

2. *Scope and duration of the project.*— a. The project to be carried out hereunder shall be consistent with the proposal as approved for funding support by the Commissioner and referred to in the notification of grant award and shall be performed in accordance with applicable statutes, regulations (including 45 CFR part 100a—General provisions for direct project grant and contract programs), and the approved project proposal. No substantive changes in the project shall be made unless the grantee, at least 30 days prior to the effective date of the programs, whether or not specifically referenced in this document), and the approved project proposal. No substantive changes in the project shall be made unless the grantee, at least 30 days prior to the effective date of the proposed change, submits an appropriate request therefor to the grants officer, pursuant to 45 CFR 100a.28 (Amendments), along with the juistification for the change, and this request is approved in writing by the grants officer. This condition is subject to 45 CFR 100a.29 (Budget revisions and minor deviations).

b. The grant period may be extended, if otherwise permitted by law, upon timely application of the grantee to the grants officer, and if approved by him in writing prior to the end of the grant period.

(20 U.S.C. 1221c(b)(1).)

3. *Limitations on costs.*—a. The total costs to the Government for the performance of the grant shall not exceed the amount set forth in the notification of grant award or any appropriate modification thereof. The Government shall not be obligated to reimburse the grantee for costs incurred in excess of such amounts unless the grants officer has notified the grantee in writing that the amount set forth in the notification of grant award has been increased and has specified such increased amount in a revised notification of grant award. Such revised amount shall thereupon constitute the revised maximum total cost to the Federal Government of the performance of the grant (45 CFR 100a.51 (Limitations on costs)).

b. Funds for the development and production of audio-visual materials, such as motion picture films, videotapes, filmstrips, slides sets, tape recordings, exhibits, or combinations thereof, for viewing, whether for limited or general public use, are not authorized until prior written approval is received from the grants officer.

c. In the case of educational training programs, the limitation on costs stated in conditions (3)(a) shall automatically be increased, subject to the availability of appropriations, to cover the cost of allowance for additional dependents not specified in the notification of grant award (where such allowances are otherwise authorized by statute and are allowable under the grant).

d. With respect to construction contracts, the grantee is authorized to include in initial cost estimates a project contingency fund to provide for the cost of unanticipated charges. The fund will be limited to 5 percent of construction and fixed equipment costs before bids are received, and will be reduced to 2 percent after the contracts have been awarded.

(20 U.S.C. 1221c(b)(1); 31 U.S.C. 200; authority cited in 45 CFR 100a.10.)

4. *Allowable costs.*—a. Expenditures of the grantee may be charged to this grant only if they: (1) Are in payment of an obligation in-

curred during the grant period and (2) conform to the approved project proposal.

b. Subject to condition 4(a) and applicable Federal statutes and regulations, allowability of costs incurred under this grant shall be determined in accordance with Subpart G of 45 CFR Part 100a (Cost Principles).

c. Indirect costs for educational training programs (except for State and local governments) will be allowed at either (1) the actual level of the organizational indirect costs or (2) 8 percent of total direct costs, including stipends and dependency allowances, whichever is the lesser.

(OMB Circular Nos. A-21, A-87; 20 U.S.C. 1231c(b), 1232c(b)(2).)

5. *Accounts and records.*—a. The grantee shall maintain accounts, records, and other evidence pertaining to all costs incurred, and revenues or other applicable credits acquired under this grant, including such records as are required under section 434 of the General Education Provisions Act (Public Law 90-247, title IV, as amended) pursuant to 45 CFR 100a.477 (Retention of records). The system of accounting employed by the grantee shall be in accordance with generally accepted accounting principles used by State or local agencies, or institutions of higher education, or nonprofit institutions, as appropriate, and will be applied in a consistent manner so that the project expenditures can be clearly identified.

(20 U.S.C. 1232c (a)(1), (b)(2).)

b. *Cost-sharing records.*—The grantee's records shall demonstrate that any contribution made to the project by the grantee is not less, in proportion to the charges against the grant, than the percentage specified in the grant or any subsequent revision thereof.

(20 U.S.C. 1232c(a)(1).)

c. *Examination of records.*—The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the grantee that are pertinent to the grant, at all reasonable times during the period of retention provided for in 45 CFR 100a.477 (retention of records).

(20 U.S.C. 1232c(a)(2).)

d. *Independent audit.*—Each State or local government grantee shall make appropriate provision for the auditing of project expenditure records in accordance with 45 CFR Part 100a, Subpart O (Financial Management Systems). Three copies of the reports of any such audits shall be promptly forwarded by the grantee to the cognizant department regional audit director for the region in which the grantee is located.

(20 U.S.C. 1232c (b)(2), (b)(3); OMB Circular No. A-73.)

e. *Period of retention.*—Except as provided in paragraph (5)(f), all records and books of accounts related to this grant in the possession of the grantee shall be preserved by the grantee in accordance with 45 CFR 100a.477 (retention of records).

(20 U.S.C. 1232c(a)(1).)

(20 U.S.C. 1232c(a).)

f. *Adjustments.*—The grantee shall (pursuant to 45 CFR 100a.53(c)), in maintaining project expenditure accounts, records, and reports, make any necessary adjustments to reflect refunds, credits, underpayments, or overpayments, as well as any adjustments resulting from administrative reviews and audits by the Federal Government or by the grantee. Such adjustments shall be set forth in the financial reports filed with the grants officer.

(20 U.S.C. 1232c(a)(1), 1232d.)

6. *Payment procedures.*—Payments under the grant shall be made in accordance with the payment schedule which is set forth in the special terms and conditions, or as costs occur, at the discretion of the grants officer.

(20 U.S.C. 1232d.)

7. *Reports.*—The grantee shall submit such fiscal and other reports as may be required in 45 CFR Part 100a, in the grant, or by the grants officer, and in the quantity and at the time stated in the report schedule which is set forth in the special terms and conditions.

(20 U.S.C. 1232c(b)(3).)

8. *Printing and duplicating.*—All printing or duplicating authorized under this grant is subject to the limitations and restrictions contained in the current issue of the "U.S. Government Printing and Binding Regulations" if done for the use of the U.S. Office of Education within the meaning of those regulations.

(44 U.S.C. 501.)

9. *Applicability of State and local laws and institutional procedures.*—Except to the extent specifically provided for in this grant or applicable Federal statutes and regulations, the grantee is subject to State and local laws, rules, regulations, and any instructional procedures which pertain to the expenditure of funds and which are designed to protect the public fisc.

(16 Comp. Gen. 948 (1937).)

10. *Copyrights.*—a. Any material of a copyrightable nature produced under the grant shall be subject to 45 CFR 100a.219(a) (Copyrights). Materials produced by trainees or fellows are not considered to be produced under the grant unless they are produced at the direction of the grantee.

b. With respect to any materials for which the securing of a copyright protection is authorized, the grantee hereby grants a royalty-free, nonexclusive and irrevocable license to the Government to publish, translate, reproduce, deliver, perform, use, and dispose of all such materials for governmental purposes.

c. To the extent the grantee has or acquires the right and permission to do so, the grantee hereby grants to the Government a royalty-free, nonexclusive and irrevocable license to use in any manner for governmental purposes, copyrighted material not first produced in the performance of this grant but which is incorporated in other materials so produced. The grantee shall advise the grants officer of any such copyrighted material known to it not to be covered by such a license.

(35 FR 7317; OMB Circular No. A-102, Attachment N.)

11. *Publications.*—a. Any publication or presentation resulting from or primarily related to the grant covered by these terms and conditions shall contain the acknowledgement set forth in 45 CFR 100a.218 (Publications).

b. Materials produced as a result of the grant may be published without prior review by the Commissioner. Five copies of such materials shall be furnished to the grants officer. If such materials are published for sale, disposition of the proceeds from such sale shall be governed by 45 CFR Part 100a, Subpart M (Program Income).

(20 U.S.C. 1221c(b)(1).)

12. *Patents.*—a. *Reference.*—Any inventions, whether or not patentable, produced under the grant shall be subject to the provisions contained in 45 CFR 100a.219 (Copyrights and patents).

b. *Reports.*—All inventions made in the course of or under any Office of Education grant shall be promptly and fully reported to the Assistant Secretary for Health, Department of Health, Education, and Welfare.

c. *Commitments.*—The grantee institution and the principal investigator shall neither have nor make any commitments or obligations which conflict with the requirements of this condition.

d. *Determination.*—Determination as to ownership and disposition of invention rights, including whether a patent application shall be filed, and if so, the manner of obtaining, administering, and disposing of rights under any patent application or patent which may be issued shall be either:

(1) By the Federal Government, or

(2) Where the institution has a separate formal institutional agreement with the Office of Education or the Department, by the grantee institution in accordance with such agreement. Patent applications shall not be filed on inventions under condition 12(d)(1) without prior written consent of the Federal Government. Any patent application filed by the grantee on an invention made in the course of or under an Office of Education grant shall include the following statement in the first paragraph of the sepcification:

"The invention described herein was made in the course of, or under, a grant from the U.S. Office of Education, Department of Health, Education, and Welfare."

e. *Other requirements.*—(1) A complete written disclosure of each invention in the form specified by the Assistant Secretary for Health shall be made by the grantee promptly after conception or first actual reducation to practice, whichever occurs first under the grant. Upon euqest, the grantee shall furnish such duly executed instruments (prepared by the Government) and such other papers as are deemed necessary to vest in the Government the rights reserved to it under this condition to enable the Government to apply for and prosecute any patent application, in any country, covering each invention where the Government has the right to file such application.

(2) The grantee shall furnish interim reports (Annual Invention Statements) prior to the continuation of any grant listing all inventions made during the budget period whether or not previously reported, or certifying that no inventions were made during performance of work on the supported project or certifying that no inventions were made during that work.

f. *Supplementary patent agreements.*—The grantee shall obtain appropriate patent agreements to fulfill the requirements of this condition from all persons who perform any part of the work under the grant, except such clerical and manual labor personnel as will have no access to technical data, and except as otherwise authorized in writing by the Department.

The grantee shall insert in each subcontract or agreement having experimental, developmental, or research work as one of its purposes, a clause making this provision applicable to the subcontractor and its employees.

g. *Definitions.*—As used in this section,

(1) "Invention" or "invention or discovery" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States.

(2) "Made" when used in relation to any invention or discovery means the conception or first actual reduction to practice of such invention in the course of the grant.

h. *Fellows.*—Except as specifically set forth in the grant, inventions made by a fellowship recipient during the term of his award shall be subject to this condition in cases where the fellowship was awarded to support an identifiable research project.

(45 CFR Parts 6 and 8)

13. *Travel.*—Travel allowances, where allowable, shall be paid in accordance with the principles contained in the applicable documents set forth in 45 CFR Part 100a, Subpart G (Cost Principles). No foreign travel is authorized under the grant unless prior approval is received from the gants officer. Travel between the United States and Guam, American Samoa, Puerto Rico, the U.S. Virgin Islands, the Canal Zone, the Trust Territory, and Canada is not considered foreign travel.

(16 Comp. Gen. 948 (1937).)

14. *Personal property.*—The grantee shall be accountable for personal property purchased with grant funds in accordance with 45 CFR Part 100a, Subpart L (Property Management Requirements).

(OMB Circular No. A-102, Attachment N.)

15. *Contracting under grants.*—Where appropriate, the grantee may enter into contracts (to the extent permitted by State and local laws) for the provision of part of the services under this grant by other appropriate public or private agencies or institutions, pursuant to 45 CFR. Such contract or agreement shall be subject to the provisions contained in 45 CFR 100a, Subpart I (Procurement standards).

(OMB Circular No. A-102, Attachment O.)

16. *Health and safety standards.*—Whenever the grantee, acting under the terms of the grant, rents, leases, purchases, or otherwise obtains classroom facilities (or any other facilities) which will be used by students and/or faculty, the Grantee shall comply with all health and safety regulations and laws applicable to similar facilities being used in that locality for such purpose.

(20 U.S.C. 1232c(b)(1).)

17. *Compensation.*—If a staff member or consultant is involved simultaneously in two or more projects supported by funds from the Federal Government, 45 CFR 100a.261 shall govern.

(20 U.S.C. 1232c(b)(2).)

18. *Labor standards.*—a. To the extent that grant funds will be used as a direct cost for construction, alteration, and repair (including painting and decorating) of facilities, the grantee shall furnish the grants officer with the following in order to obtain a wage determination from the Department of Labor:

(1) A description of the alteration or repair work and the estimated cost of the work to be performed at the site;

(2) The proposed advertising and bid opening dates for the work;

(3) The city, county, and State at which the work will be performed; and

(4) The name and address of the person to whom the necessary wage determination and labor standards provisions are to be sent for inclusion in contracts.

b. All of such information shall be submitted not later than 6 weeks prior to the advertisement for bids for the alteration or repair work to be performed. The grantee shall also include or have included in all such alterations or repairs the wage determination and labor standards provisions that are provided and required by the Secretary of Labor under 29 CFR parts 3 and 5.

(20 U.S.C. 1232b, 1232c(b)(3).)

19. *Equal employment opportunity.*—With respect to repair and minor remodeling, the grantee shall comply with and provide for contractor and subcontractor compliance with the requirements of Executive Order No. 11246, as amended by Executive Order No. 11375, and as implemented by 41 CFR part 60. The terms required by Executive Order No. 11246, as so amended, will be included in any contract for construction work, or modification thereof, as defined in said Executive order.

(E.O. No. 11246, as amended.)

20. *Use of consultants.*—a. The hiring and payments to consultants shall be in accordance with applicable State and local laws and regulations and grantee policies. However, for the use of and payment to consultants whose rate will exceed $100 per day, prior written approval for the use of such consultants must be obtained from the grants officer.

b. The grantee must maintain a written report for the files on the results on all consultations charged to this grant. This report must include, as a minimum: (1) The consultant's name, dates, hours, and amount charged to the grant; (2) the names of the grantee staff to whom the services are provided; and (3) the results of the subject matter of the consultation.

(c) On grants made to educational institutions for research or educational services, consultant fees may be paid to employees of the grantee institution only in unusual cases and provided one of the following sets of conditions is determined to exist:

(1) Consultation is across departmental lines and the work performed by the consultant is in addition to his regular departmental load, or

(2) Consultation involves a separate or remote operation and the work performed by the consultant is in addition to his regular departmental load.

The determination as to compliance with the above provisions may be made at the grantee level only by the head of the institution or his designated representative. In those cases where the designated representative is personally involved in the grant under consideration, this determination may only be made by the head of the institution.

(20 U.S.C. 1232c(b)(2), (b)(3).)

21. *Data-collection instruments.*—The grantee shall comply with 45 CFR 100a.263 (Data collection instruments).

(20 U.S.C. 1221c(b)(1).)

22. *Program income.*—The grantee shall comply with 45 CFR Part 100a, Subpart M (Program Income).

(OMB Circular No. A-102, Attachment E.)

23. *Change of key personnel.*—The grantee shall comply with 45 CFR 100a.260 (Changes in Key Personnel).

(20 U.S.C. 1232c(b)(1), (b)(3).)

24. *Animal care.*—Where research animals are used in any project financed wholly or in part with Federal funds, the grantee shall comply with 45 CFR 100a.270 (Treatment of animals).

(20 U.S.C. 1221c(b)(1).)

25. *Use of small businesses and minority owned businesses.* In order to stimulate small business enterprises and minority business enterprises and enable them to exercise a more effective role in the commercial life of the Nation, it is the policy of the Department and the Office of Education to encourage grantees to be aware of, solicit, and make use of such enterprises in the acquisition of services or products, including construction, alteration and renovation, consultant and other services, and procurement of supplies and equipment.

In carrying out this policy objective, grantees are encouraged to:

a. Become aware of those small business enterprises and minority business enterprises that are competent to perform the services or provide the products that the grantees usually acquire;

b. Ensure that such firms are included in invitations for bids or requests for proposals;

c. Make use of the advice and assistance available from Government organizations, such as the Small Business Administration, the Department's Office of Minority Business Assistance, and the Commerce Department's Office of Minority Business Enterprise; and

d. Contact the HEW regional engineer on construction, alteration, or repair projects.

(20 U.S.C. 1232c(b)(1).)

Appendix B—Cost Principles for State and Local Governments

Part I—General

A. *Purpose and scope.*—1. *Objectives.*—This appendix sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.*—The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.*—These principles will be applied in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to appendix C to this subchapter and (b) publicly owned hospitals and other providers of medical care.

B. *Definitions.* 1. "Approval or authorization of the grantor Federal agency" means documentation evidencing consent prior to incurring specific cost.

2. "Cost allocation plan" means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. "Cost," as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. "Cost objective" means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. "Federal agency" means the U.S. Office of Education.

6. "Grant" means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. "Grant program" means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. "Grantee" means the department or agency of State or local government which is responsible for administration of the grant.

9. "Local unit" means any political subdivision of government below the State level.

10. "Other State or local agencies" means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. "Services," as used herein, means goods and facilities, as well as services.

12. "Supporting services" means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger services, and the like.

C. *Basic guidelines.*—1. *Factors affecting allowability of costs.*—To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.*—a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. *Applicable credits.*—a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. *Composition of cost.*—1. *Total cost.*—The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.*—There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. *Direct costs.*—1. *General.*—Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.*—Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in section G of these principles.

F. *Indirect costs.*—1. *General.*—Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. *Grantee departmental indirect costs.*—All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.*—A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.*—A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.*—a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this appendix, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

G. *Costs incurred by agencies other than the grantee.*—1. *General.*—The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.*—In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a

specific service during the fiscal year involved.

a. *Standard indirect rate.*—An amount equal to 10 percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.*—A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. *Cost incurred by grantee department for others*—1. *General.*—The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

J. *Cost allocation plan*—1. *General.*—A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.*—The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.*—The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government levels as well as indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.*—a. The Department of Health, Education, and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a. above for the negotiation, approval, and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. Questions concerning the cost allocation plans approved under a. and b. above should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.*—a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval, and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval, and audit of the indirect cost proposal.

PART II. STANDARDS FOR SELECTED ITEMS OF COST

A. *Purpose and applicability*—1. *Objective.*—This part provides standards for determining the allowability of selected items of cost.

2. *Application.*—These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in part I of this appendix.

B. *Allowable costs*—1. *Accounting.*—The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of Government and is not allowable.

2. *Advertising.*—Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.*—Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.*—The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.*—Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.*—Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.*—The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.*—The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.*—Communication costs incurred for telephone calls or service, telegraph, teletype service, wide-area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.*—a. *General.*—Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) Is reasonable for the services rendered; (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.*—Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.*—a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost of any portion of the cost of build-

ings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.*—The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.*—Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) Provided pursuant to an approved leave system and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employer's contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health and welfare costs.*—The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.*—Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.*—The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.*—Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.*—The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.*—a. *Memberships.*—The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) The benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services of benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.*—The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.*—Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.*—The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

21. *Payroll preparation.*—The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.*—Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs are allowable.

23. *Printing and reproduction.*—Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature is allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.*—The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities, and services for grant programs is allowable.

25. *Taxes.*—In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.*—The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.*—Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.*—Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. *Costs allowable with approval of grantor agency.*—1. *Automatic data processing.*—The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.*—The cast of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.*—The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.*—The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, is allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.*—Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (sec. C.3) is allowable when specifically approved by the grantor agency.

d. *Depreciation and use allowances on publicly owned buildings.*—These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.*—The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.*—The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) Sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new

items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.*—a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved selfinsurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d above.

5. *Management studies.*—The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.*—Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.*—Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.*—Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. *Unallowable costs.*—1. *Bad debts.*—Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.*—Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.*—Unallowable.

4. *Entertainment.*—Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.*—Costs resulting from violations of, or failure to comply with Federal, State, and local laws and regulations are unallowable.

6. *Governor's expenses.*—The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. *Interest and other financial costs.*—Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Legislative expenses.*—Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.*—Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

(OMB Circular No. A-87.)

APPENDIX C—COST PRINCIPLES FOR EDUCATIONAL INSTITUTIONS

PART I. PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH EDUCATIONAL INSTITUTIONS

A. *Purpose and scope.*—1. *Objectives.*—This appendix provides principles for determining the costs applicable to research and development work (part I) and training (part II) performed by educational institutions under grants from and contracts with the Federal Government. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular research or development or training project. The principles are designed to provide recognition of the full allocated costs of such research or training work under generally accepted accounting principles. No provision for profit or other increment above cost is intended.

2. *Policy guides.*—The successful application of these principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for agency and institutional participation in the financing of a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable.

b. Each college and university, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own academic philosophies and institutional objectives.

c. Each institution, in the fulfillment of its obligations, should employ sound management practices.

d. The application of the principles established herein should require no significant changes in the generally accepted accounting practices of colleges and universities.

e. Institutions shall apply the cost principles and standards herein provided on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments will be fully considered during the rate negotiations and audit.

3. *Application.*—The Commissioner will apply these principles and related policy guides in determining the costs incurred for such work under any type of research and development agreement. These principles will also be used as a guide in the pricing of fixed price contracts or lump sum agreements.

B. *Definition of terms.*—1. "Organized research" means all research activities of an institution that are separately budgeted and accounted for. Such research work, which includes all research activities not encompassed under the term "organized research," is regarded for purposes of this document as a part of the instructional activities of the institution.

3. "Research agreement" means any valid arrangement to perform federally sponsored research, including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

4. "Other institutional activities" means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar activities or auxiliary enterprises. Also included under this definition is any other category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institutions indirect costs (as defined in section E.1.) are properly allocable.

5. "Apportionment" means the process by which the indirect costs of the institution are assigned as between (a) instruction and research and (b) other institutional activities.

6. "Allocation" means the process by which the indirect costs apportioned to instruction and research are assigned as between (a) organized research and (b) instruction, including departmental research.

7. "Stipulated salary support" is a fixed or a stated dollar amount of the salary of professional or other professional staff involved in the conduct of research which a Government agency agrees in advance to reimburse an educational institution as a part of sponsored research costs.

8. "Federal agency or sponsoring agency" means the U.S. Office of Education.

C. *Basic considerations.*—1. *Composition of total costs.*—The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in section C.5.

2. *Factors affecting allowability of costs.*—The tests of allowability of costs under these principles are: (a) They must be reasonable; (b) they must be allocable to research agreements under the standards and methods provided herein; (c) they must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. *Reasonable costs.*—A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) Whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the re-

search agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and research agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including Government research.

4. *Allocable costs.*—a. A cost is allocable to a particular cost objective (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the institution in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the institution and, in the light of the standards provided in this appendix, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items is specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in this appendix may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. *Applicable credits.*—a. The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs. Typical examples of such transactions are: Purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to Government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See sections F.6., J.10.b., and J.37. for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.*—Costs incurred or paid by State or local governments in behalf of educational institutions for certain personnel benefit programs such as pension plans, FICA and any other costs specifically disbursed in behalf of and in direct benefit to the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of such institutions, subject to the following:

a. Such costs meet the requirements of sections C.1. through C.5.

b. Such costs are properly supported by cost allocation plans in accordance with appendix B to this part.

c. Such costs are not otherwise borne directly or indirectly by the Federal Government.

D. *Direct costs.*—1. *General.*—Direct costs are those costs which can be identified specifically with a particular research project, an instructional activity or any other institutional activity or which can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to research agreements.*—Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical transactions chargeable to a research agreement as direct costs are the compensation of employees for performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently treated by the educational institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. *Indirect costs.*—1. *General.* Indirect costs are those that have been incurred for common or joint objectives and therefore cannot be identified specifically with a particular research project, an instructional activity or any other institutional activity. At educational institutions such costs normally are classified under the following functional categories: General administration and general expenses; research administration expenses; operation and maintenance expenses; library expenses; and departmental administration expenses.

2. *Criteria for distribution.*—a. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.*—The overall objective of the allocation and apportionment process is to distribute the indirect costs described in section F to organized research, instruction, and other activities in reasonable proportions consistent with the nature and extent of the use of the institution's resources by research personnel, academic staff, students, and other personnel or organizations. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in section E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c. below. Each such pool or cost grouping should then be distributed individually to the appertaining cost objectives, using the distribution base or method most appropriate in the light of the guides set out in d. below.

c. *General considerations on cost groupings.*—The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the three major divisions of the institution (instruction, organized research or other institutional activities) or to any two but not the third, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in b. above and d. below.

(2) Where any types of expense ordinarily treated as general administration and general expenses or departmental administration expenses are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must, through separate cost groupings, be excluded from the indirect costs allocable to those research agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organize research and other activities at the institution or within the department.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in section B.4.) provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat as indirect charges the cost of the pension plan and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to appertaining cost objectives, including organized research.

(6) The number of separate cost groupings within a functional category should be held within practical limits after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.*—(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing to applicable cost objectives the expenses assembled under each of the individual cost groupings established as indicated under b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to appertaining cost objectives should be made through use of a selected base which will produce results that are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is

potentially adaptable for use as a distribution base provided (a) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (b) it is common to the appertaining cost objectives during the base period.

(2) Results of cost analysis studies may be used when they result in more accurate and equitable distribution of costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if they produce equitable results. Cost analysis studies, however, should (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the indirect costs to the appertaining cost objectives in accord with the relative benefits derived, (c) be conducted to fairly reflect the true conditions of the activity and to cover representative transactions for a reasonable period of time, (d) be performed specifically at the institution at which the results are to be used, and (e) be updated periodically and used consistently. Any assumptions made in the study will be sufficiently supported. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(3) The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to appertaining cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. *Administration of limitations on allowances for research costs.*—Research agreements may be subject to statutory or administrative policies that limit the allowance of research costs. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise reimbursable under this appendix, the amount not recoverable under that research agreement may not be charged to other research agreements.

F. *Identification and assignment of indirect costs.*—1. *General administration and general expenses.*—a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major division of the institution; i.e., solely to (1) instruction, (2) organized research, or (3) other institutional activities. The general administration and general expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category may be apportioned and allocated on the basis of total expenditures exclusive of capital expenditures in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the institution; otherwise the distribution of general administration and general expenses should be made through use of selected bases applied to separate cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

2. *Research administration expenses.*—a. The expenses under this heading are those that have been incurred by a separate organization or identifiable administrative unit established solely to administer the research activity, including such functions as contract administration, security, purchasing, personnel administration, and editing and publishing of research reports. They include the salaries and expenses of the head of such research organization, his assistants, and their immediate secretarial staff together with the salaries and expenses of personnel engaged in supporting activities maintained by the research organization, such as stock rooms, stenographic pools, and the like. The salaries of members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to research administration is supported as required by section J.7. The research administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be allocated to organized research and, where necessary, to departmental research or to any other benefiting activities on any basis reflecting the proportion fairly applicable to each. (See section E.2.d.)

3. *Operation and maintenance expenses.*—a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture, and equipment; and care of grounds and maintenance and operation of buildings and other plan facilities. The operation and maintenance expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be apportioned and allocated to applicable cost objectives in a manner consistent with the guides provided in section E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows: (1) Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records; (2) where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost objectives normally will suffice as a means for effecting distribution of the amounts of operation and maintenance expenses involved; or (3) where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students.

4. *Library expenses.*—a. The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under section C.5. The library expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in the performance of the functions represented thereunder. Costs incurred in the purchases of rare books (museum-type books) with no research value should not be allocated to Government-sponsored research.

b. The expenses included in this category should be allocated on the basis of population including students and other users. Where the results of the distribution made on this basis are deemed to be inequitable to the Government or the institution, the distribution should then be made on a selective basis in accordance with the guides set out in section E.2. Such selective distribution should be made through use of reasonable methods which give adequate recognition to the utilization of the library attributable to faculty, research personnel, students, and others. The method used will be based on data developed periodically on the respective institution's experience for representative periods.

5. *Departmental administration expenses.*—a. The expenses under this heading are those that have been incurred in academic deans' offices, academic departments, and organized research units such as institutes, study centers, and research centers for administrative and supporting services which benefit common or joint departmental activities or objectives. They include the salaries and expenses of deans or heads, or associate deans or heads, of colleges, schools, departments, divisions, or organized research units, and their administrative staffs together with the salaries and expenses of personnel engaged in supporting activities maintained by the department, such as stockrooms, stenographic pools, and the like provided such supporting services cannot be directly identified with a specific research project, with an instructional activity or with any other institutional activity. The salaries of other members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to departmental administration expenses is supported as required by section J.7. The departmental administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The distribution of departmental administration expenses should be made through use of selected bases applied to cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

6. *Setoff for indirect expenses otherwise provided for by the Government.*—a. The items to be accumulated under this heading are the reimbursements and other receipts from the Federal Government which are used by the institution to support directly, in whole or in part, any of the administrative or service (indirect) activities described in the foregoing (secs. F.1. through F.5.). They include any amounts thus applied to such activities which may have been received pursuant to an institutional base grant or any similar contractual arrangement with the Federal Government other than a research agreement as herein defined (sec. B.3.).

b. The sum of the items in this group shall be treated as a credit to the total indirect cost pool before it is apportioned to organized research and to other activities. Such setoff shall be made prior to the determination of the indirect cost rate or rates as provided in section G.

G. *Determination and application of indirect cost rate or rates.*—1. *Indirect cost pools.*—a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use across the board on all Government research at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of Government research at the institution. For this purpose, a particular segment of Government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of Government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have obtained under a. above and (2) the volume of research work to which such rate would apply is material in relation to other Government research at the institution.

2. *The distribution base.*—Indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages of all research agreements identified with such pool. For the purpose of establishing an indirect cost rate, direct salaries and wages may include that portion contributed to the research by the institution for cost sharing or other purposes. Bases other than salaries and wages may be used provided it can be demontsrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.*—A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted research activities where the benefits derived from an institution's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before apportionment to instruction, organized research, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. *Predetermined fixed rates for indirect costs.*—Public Law 87-638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carryforward provisions.*—When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined due to the delay in audit, the carryforward may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to Government research for the forecast period plus or minus the carryforward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate. This procedure also applies to rates established for grants and contracts for training and other educational services, but does not apply to cost-type research agreements covering work performed in wholly or partially Government-owned facilities.

H. *Simplified method for small institutions.*—1. *General.*—a. Where the total direct cost of all federally supported work under research and educational service agreements at an institution does not exceed $1 million in a fiscal year (excluding direct payments by the institution to participants under educational service agreements for stipends, support, and similar costs requiring little, if any, indirect cost support), the use of the abbreviated procedure described in 2. below may be used in determining allowable indirect costs. Under this abbreviated procedure, the institution's most recent annual financial report and immediately available supporting information, with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable both to federally supported research and educational service agreements.

b. The rigid formula approach provided under this abbreviated procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. *Abbreviated procedure.*—a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student aid, student activities, and scholarships).

(2) Operation and maintenance of physical plant.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under 2.b.(1) and 2.b.(2) have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established under 2.a. the amount of salaries and wages included under 2.b.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool 2.b. by the amount of the distribution base 2.c.

e. Apply the indirect cost rate established to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

J. *General standards for selected items of cost.*—Sections J.1. through J.45. provide standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern.

1. *Advertising costs.*—The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for (a) the recruitment of personnel required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs, as set forth in J.32.; (b) the procurement of scarce items for the performance of the research agreement; or (c) the disposal of scrap or surplus materials acquired in the performance of the research agreement. Cost of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in sections D and E are observed.

2. *Bad debts.*—Any losses, whether actual or estimated arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Capital expenditures.*—The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the research agreement. Government funds shall not be used for the acquisition of land, or any interest therein, except with the specific prior approval of the sponsoring agency.

4. *Civil defense costs.*—Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in section J.10. Costs of local civil defense projects not on the institution's premises are unallowable.

5. *Commencement and convocation costs.*—Costs incurred for commencements and convocations apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

6. *Communication costs.*—Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

7. *Compensation for personal services.*—a. *General.*—Compensation for personal services covers all remuneration paid currently or accrued to the institution for services of employees rendered during the period of performance under Government research agreements. Such remuneration includes salaries, wages, staff benefits (see section J.39), and pension plan costs (see section J.23). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on Government research agreements and for other work allocable as indirect costs to organized research are determined and supported as hereinafter provided.

b. *Payroll distribution.*—Amounts charged to organized research for personal services, except stipulated salary support, regardless of whether treated as direct costs or allocated as indirect costs, will be based on institutional payrolls which have been approved and documented in accordance with generally accepted institutional practices. Support for direct and indirect allocations of personal service costs to: (1) Instruction, (2) organized research, and (3) indirect activities as defined in section E.1., or (4) other institutional activities as defined in section B.4., will be provided as described in c., d., e., and f., below.

c. *Stipulated salary support.*—As an alternative to payroll distribution, stipulated salary support amounts may be provided in the research agreement for professorial staff, any part of whose compensation is chargeable to Government-sponored research. Stipulated salary support may also be provided for any other professionals who are engaged part time in sponsored research and part time in other work. The stipulated salary support for an individual will be determined by the Government and the educational institution during the proposal and award process on the basis of considered judgment as to the monetary value of the contribution which the individual is expected to make to the research project. This judgment will take into account any cost sharing by the institution and such other factors as the extent of the investigator's planned participation in the project and his ability to perform as planned in the light of his other commitments. It will be necessary for those who review research proposals to obtain information on the total academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have such as teaching assignments, administrative assignments, number of graduate students for which they are responsible, or other institutional activities. Stipulated amounts for an individual must not per se result in increasing his official salary from the institution.

d. *Direct charges for personal services under payroll distribution.*—The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either: (1) An adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual investigators, deans, departmental chairmen or supervisors having first-hand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

e. *Direct charges for personal services under stipulated salaries.*—The amounts stipulated for salary support will be treated as direct costs. The stipulated salary for the academic year will be prorated equally over the duration of the grant or contract period during the academic year, unless other arrangements have been made in the grant or contract instrument. No time or effort reporting will be required to support these amounts. Special provision for summer salaries, or for a particular "off-period" if other than summer, will be required. The research agreements will state that any research covered by summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance in writing by the granting agency. The certification required in section K will attest to this requirement as well as all others in a given research agreement. Stipulated salary support remains fixed during the funding period of the grant or contract and will be costed at the rate described above unless there is a significant change in performance. For example, a significant change in performance would exist if the faculty member: (1) Was ill for an extended period, (2) took sabbatical leave to devote effort to duties unrelated to his research, or (3) was required to increase substantially his teaching assignments, administrative duties, or responsibility for more research projects. In the latter event, it will be the responsibility of the educational institution to reduce the charges to the research agreement proportionately or seek an appropriate amendment. In the case of those covered by stipulated salary support, the auditors are no longer required to review the precise accuracy of time or effort devoted to research projects. Rather, their reviews should include steps to determine on a sample basis that an institution is not reimbursed for more than 100 percent of each faculty member's salary and that the portion of each faculty member's salary charged to Government-sponsored research is reasonable in view of his university workload and other commitments. The stipulated salary method may also be agreed upon for that portion of a professional's salary that represents cost sharing by the institution.

f. *Indirect personal services costs.*—Allowable indirect personal services costs will be supported by the educational institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government officials.

g. *General guidance for charging personal services.*—Budget estimates on a monthly, quarterly, semester, or yearly basis do not qualify as support for charges to federally sponsored research projects and should not be used unless confirmed after the fact. Charges to research agreements may include reasonable amounts for activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues and graduate students with respect to related research, and attending appropriate scientific meetings and conferences. In no case should charges be made to federally sponsored research projects for lecturing or preparing for formal courses listed in the catalog and offered for degree credit, or for committee or administrative work related to university business.

h. *Nonuniversity professional activities.*—A university must not alter or waive university-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra university compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where university-wide policies do not adequately define the permissible extent of consultantships or other nonuniversity activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) university activities and (2) nonuniversity professional activities. If the sponsoring agency should consider the extent of nonuniversity professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

i. *Salary rates for academic year.*—Charges for work performed on Government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. Charges for work performed on research agreements during all or any portion of such period would be allowable at the base salary rate. In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation

above the base salary for work on Government research during such period would be unallowable. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to those who function as consultants or otherwise contribute to a research agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided such consulting arrangement is specifically provided for in the research agreement or approved in writing by the sponsoring agency.

j. *Salary rates for periods outside the academic year.*—Charges for work performed by faculty members on Government research during the summer months or other periods not included in the base salary period will be determined for each faculty member at a monthly rate not in excess of that which would be applicable under his base salary and will be limited to charges made in accordance with other subsections of J.7.

k. *Salary rates for part-time faculty.*—Charges for work performed on Government research by faculty members having only part-time appointments for teaching will be determined at a rate not in excess of that for which he is regularly paid for his part-time teaching assignments. Example: An institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time (25 percent of his total available time) to Government research. Thus his additional compensation, chargeable by the institution to Government research agreements, would be one-half of $5,000 or $2,500.

8. *Contingency provisions.*—Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Deans of faculty and graduate schools.*—The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

10. *Depreciation and use allowances.*—a. Institutions may be compensated for the use of buildings, capital improvements, and usable equipment on hand through use allowances or depreciation. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not considered. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides and, secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved. Amortization methods once used should not be changed for a given building or equipment unless approved in advance by the cognizant Federal agency.

c. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable and needed equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable and needed equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

d. Where the depreciation method is followed, adequate property record must be maintained and periodic inventory (a statistical sampling basis is acceptable) must be taken to insure that properties for which depreciation is charged do exist and are needed. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, under d above, would be viewed as fully depreciated: *Provided, however,* That reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

11. *Employee morale, health, and welfare costs and credits.*—The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.*—Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other facilities.*—The costs of permanent equipment or other facilities are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement. Total expenditures for permanent equipment may not exceed 125 percent of the amount allotted for the permanent equipment category by the sponsoring agency (through an approved budget or other document) except with approval. The term "permanent equipment" shall mean an item of property which has an acquisition cost of $200 or more and has an expected service life of 1 year or more.

a. *General purpose equipment.*—Approval must be obtained to acquire with Government funds any general purpose permanent equipment, i.e., any items which are usable for activities of the institution other than research, such as office equipment and furnishings, air conditioning, reproduction or printing equipment, motor vehicles, etc., or any automatic data processing equipment.

b. *Research equipment.*—Approval must be obtained to acquire with Government funds any item of permanent research equipment costing $1,000 or more.

14. *Fines and penalties.*—Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the contracting officer.

15. *Insurance and indemnification.*—a. Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) Types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obli-

gated to indemnify the institution only to the extent expressly provided for in the research agreement, except as provided in d above.

16. *Interest, fundraising, and investment management costs.*—a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are not allowable under Government research agreements.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable under Government research agreements.

d. Costs related to the physical custody and control of moneys and securities are allowable.

17. *Labor relations costs.*—Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

18. *Losses on other research agreements or contracts.*—Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

19. *Maintenance and repair costs.*—Costs incurred for necessary maintenance, repair or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

20. *Material costs.*—Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

21. *Memberships, subscriptions and professional activity costs.*—a. Costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

22. *Patent costs.*—Costs of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable (see also section J.33).

23. *Pension plan costs.*—Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

24. *Plant security costs.*—Necessary expenses incurred to comply with Government security requirements, including wages, uniforms and equipment of personnel engaged in plant protection, are allowable.

25. *Prerecearch agreement costs.*—Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

26. *Professional services costs.*— a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to b. and c. below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include: (1) The past pattern of such costs, particularly in the years prior to the award of Government research agreements; (2) the impact of Government research agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization or the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

27. *Profits and losses on disposition of plant, equipment, or other capital assets.*—Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall not be considered in computing research agreement costs.

28. *Proposal costs.*—Proposal costs are the costs of preparing bids or proposals on potential Government and non-Government research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.*—Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

30. *Rearrangement and alteration costs.*—Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

31. *Reconversion costs.*—Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted, are allowable.

32. *Recruiting costs.*—a. Subject to b., c., and d. below: *And provided*, That the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Royalties and other costs for use of patents.*—Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

34. *Sabbatical leave costs.*—Costs of leave of absence to employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institu-

tion has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all appertaining activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

35. *Scholarships and student aid costs.*—Costs of scholarships, fellowships and other forms of student aid apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, any tuition remissions to such students for work performed are allocable to such research agreements provided consistent treatment is accorded such costs. (See section J. 39.)

36. *Severance pay.*—a. Severance pay is compensation in addition to regular salaries and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover and which otherwise meet the condtions of a. above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

37. *Specialized service facilities operated by institution.*—a. The costs, including amortization by generally accepted accounting practice, of institutional services involving the use of highly complex and specialized facilities such as electronic computers, in-use, wind tunnels, and reactors are allowable provided the charges therefor meet the conditions of b. or c. below, and otherwise take into account any items of income or Federal financing that qualify as applicable credits under section C.5.

b. The costs of such institutional services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities on the basis of a schedule of rates that (1) is designed to recover only aggregate costs of providing such services over a long term agreed upon in advance by the cognizant Federal agency on an individual basis and (2) is applied on a nondiscriminatory basis as between organized research and other work of the institution, including usage by the institution for internal purposes. Commercial or accommodation sales of computer services will be charged at not less than the above rates; however, if the rates charged for these services are greater, the total amount of charges above the scheduled rates when significant may be considered in revising the schedule of rates. Further, within the constraints of this paragraph, it is not necessary that the rates charged for services be equal to the cost of providing those services during any 1 fiscal year.

c. In the absence of an acceptable arrangement for direct costing as provided in b. above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with the cognizant Federal agency in order to assure equitable distribution of the indirect costs.

38. *Special services costs.*—Costs incurred for general public relations activities, catalogs, alumni activities, and similar services, are unallowable.

39. *Staff benefits.*—a. Staff benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all institutional activities, including organized research, in proportion to the relative amount of time or effort actually devoted to each. (See sec. J.34. for treatment of sabbatical leave.)

b. Staff benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, the pension plan (see sec. J.23.), tuition or remission of tuition for individual employees or their families (see sec. J.35.), and the like, are allowable provided such benefits are granted in accordance with established institutional policies, and provided such contributions and other expenses, whether treated as indirect costs or as an increment of direct labor costs, are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

40. *Student activity costs.*—Costs incurred for intramural activities, student publications, student clubs, and other student activities, apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

41. *Student services costs.*—Costs of the deans of students, administration of student affairs, registrar, placement offices, student advisers, student health, and infirmary services, and such other activities as are identifiable with student services apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, a proportion of student services costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

42. *Taxes.*—a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or created to an institution incident to a refund of tax, interest and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

43. *Transportation costs.*—Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

44. *Travel costs.*—a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c., d., e., and f., below, when they are directly attributable to specific work under a research agreement or are incurred in the normal course of administration of the institution or a department or research program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as "any travel outside of Canada and the United States and its territories and possessions."

f. Expenditures for domestic travel may not exceed $500, or 125 percent of the amount allotted for such travel by the sponsoring agency, whichever is greater, except with approval.

45. *Termination costs applicable to research agreements.*—a. Termination of research agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this appendix in the case of termination.

b. The cost of common items of materials reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are

reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. *Certification of charges.*—To assure that expenditures for research grants and contracts are proper and in accordance with the research agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under research agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the agreements set forth in the application and award documents."

PART II. PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO TRAINING AND OTHER EDUCATIONAL SERVICES UNDER GRANTS AND CONTRACTS WITH EDUCATIONAL INSTITUTIONS

A. *Purpose.*—This part extends the scope of part I to cover the determination of costs incurred by educational institutions under Federal grants and contracts for training and other educational services.

B. *Application.*—The Commissioner will use parts I and II of this appendix as a basis for determining allowable costs under grants and cost reimbursement type contracts with educational institutions for work performed under federally supported educational service agreements.

C. *Terminology.*—The following definitions are to be used in determining the indirect cost of federally sponsored training and other educational services under this part:

1. *Educational service agreement* means any grant or contract under which Federal financing is provided on a cost reimbursement basis for all or an agreed portion of the costs incurred for training or other educational services. Typical of the work covered by educational service agreements are summer institutes, special training programs for selected participants, professional or technical services to cooperating countries, the development and introduction of new or expanded courses, and similar instructional oriented undertakings, including special research training programs, that are separately budgeted and accounted for by the institution.

The term does not extend to (a) grants or contracts for organized research, (b) arrangements under which the Federal financing is exclusively in the form of scholarships, fellowships, traineeships, or other fixed amounts such as a cost of education allowance or the normal published tuition rates and fees of an institution, or (c) construction, facility and exclusively general resource or institutional type grants.

2. *Instruction* means all of the academic work other than organized research carried on by an institution, including the teaching of graduate and undergraduate courses, departmental research (see section B.2. of part I) and all special training or other instructional oriented projects sponsored by the Federal Government or others under educational service agreements.

D. *Student administration and services.*—In addition to the five major functional categories of indirect costs described in section F of part I, there is established an additional category under the title "Student administration and services" to embrace the following:

1. The expenses in this category are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to section J.2. The student administration and services category also includes the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the cost of the operation and maintenance of the physical plant, and charges representing use allowance or depreciation applicable to the buildings and equipment utilized in the performance of the functions included in this category.

2. The expenses in this category are generally applicable in their entirety to the instruction activity. They should be allocated to applicable cost objectives within the instruction activity, including educational service agreements, when such agreements reasonably benefit from these expenses. Such expenses should be allocated on the basis of population served (computed on the basis of full-time equivalents including students, faculty, and others as appropriate) or other methods which will result in an equitable distribution to cost objectives in relation to the benefits received and be consistent with guides provided in section E.2. of part I.

E. *Direct costs of educational service agreements.*—Direct costs of work performed under educational service agreements will be determined consistent with the principles set forth in section D of part I.

F. *Indirect costs of the instruction activity.*—The indirect costs of the instruction activity as a whole should include its allocated share of administrative and supportive costs determined in accordance with the principles set forth in section D above and in section F of part I. Such costs may include other items of indirect cost incurred solely for the instruction activity and not included in the general allocation of the various categories of indirect expenses. Costs incurred for the institutions by State and local governments are allowable as provided for in section C.6. of part I.

G. *Indirect costs applicable to educational service agreements.*—The individual items of indirect costs applicable to the instruction activity as a whole should be assigned to (1) educational service agreements and (2) all other instructional work through use of appropriate cost groupings, selected distribution bases, and other reasonable methods as outlined in section E.2. of part I. A single indirect pool may be used for all educational service agreements provided this results in a reasonably equitable distribution of costs among agreements in relation to indirect support services provided. However, when the level of indirect support significantly varies for work performed either on campus or off campus under a particular agreement or group of agreements, separate cost pools should be established consistent with the principles set forth in section G.1.b. of part I. Where direct charges are provided for under educational service agreements for such things as commencement fees, student fees, and tuition, the related indirect costs, through separate cost groupings, should be excluded from the indirect costs allocable to the service agreements.

H. *Indirect cost rates for educational service agreements.*—An indirect cost rate should be determined for the educational service agreement pool or pools, as established under section G above. The rate in each case should be stated as the percentage which the amount of the particular educational service agreement pool is of the total direct salaries and wages of all educational service agreements identified with such pool. Indirect costs should be distributed to individual agreements by applying the rate or rates established to direct salaries and wages for each agreement. When a fixed rate is negotiated in advance of a fiscal year, the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation as in sections G.4. and G.5. of part I.

J. *General standards for selected items of cost.*—The standards for selected items of cost as set forth in sections J.1. through J.46. of part I applicable to research agreements will also be applied to educational

service agreements with the following modifications:

1. *Commencement and convocation costs (J.5.)*.—Expenses incurred for convocations and commencements apply to the instruction activity as a whole. Such expenses are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

2. *Compensation for personal services (J.7.)*.—Charges to educational service agreements for personal services will normally be determined and supported consistent with the provisions of section J.7. of part I. However, the provision for stipulated salary support will not be used for educational service agreements. Also, charges may include compensation in excess of the base salary of a faculty member for the conduct of courses outside the normal duties of such member provided that: (a) Extra charges are determined at a rate not greater than the basic salary rate of the member; (b) salary payments for such work follow practices consistently applied within the institution; and (c) specific authorization for such charges is included in the educational service agreement.

3. *Scholarships and student aid costs (J.35.)*.—Expenses incurred for scholarship and student aid are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

4. *Student activity costs (J.40.)*.—Expenses incurred for student activities are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

5. *Student services costs (J.41.)*.—Expenses incurred for student services are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

(OMB Circular No. A-21.)

Appendix D—Cost Principles for Non-Profit Institutions

A. *Purpose and scope.*—1. *Objectives.*—This appendix provides principles for determining the costs applicable to grants and contracts awarded by the Commissioner and performed by non-profit organizations other than educational institutions, hospitals and State and local government organizations. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a partcular project. The principles are designed to provide recognition of the full allocated costs of work under generally accepted accounting principles. No provision for profit or other increment above cost is provided for in these principles.

2. *Definition of non-profit institution.*—(a) A non-profit institution for purposes of this document is any corporation, foundation, trust, association, cooperative or other organization other than (i) educational institutions, (ii) hospitals, and (iii) State and local governmental agencies, bureaus or departments, which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, which is not organized primarily for profit and which uses all income exceeding costs to maintain, improve and/or expand its operations.

The charter or other legally binding authority for the existence of the institution must provide that no part of the net earnings, properties or other assets of the institution, on dissolution or otherwise shall inure to the benefits of any private person or individual including any member, employee, officer, director or trustee of the institution, and that, on liquidation or dissolution all properties and assets remaining after providing for all debts and obligations shall be distributed and paid over to such other fund, foundation or other organization formed and operated as a non-profit institution, as defined herein, as the board of directors or trustees may determine. Institutions which have received tax exemptions as non-profit institutions from the U.S. Internal Revenue Service shall be considered to have met the criteria of this definition.

(b) For purposes of this document, the terms non-profit and not-for-profit as they are descriptively applied to institutions shall be considered synonymous provided the requirements of 2(a) are met.

3. *Policy Guides.*—The successful application of these principles requires development of mutual understanding between representatives of nonprofit institutions and of the Federal Government as to their scope, applicability, and interpretation. It is recognized that the arrangements for agency and institutional participation in the financing of a project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable, that each institution should be expected to employ sound management practice in the fulfillment of its obligation, and that each grantee or contractor organization in recognition of its own unique combination of staff, facilities, and experience should be responsible for employing whatever form of organization and management techniques as may be necessary to assure proper efficient administration.

4. *Application.*—These principles shall be applied in determining cost incurred in the performance of all grants and cost-reimbursement type contracts awarded by the Commissioner. The principles shall also apply to cost-reimbursement type contracts performed under grants and cost-reimbursement type subcontracts and shall be used as a guide in the pricing of fixed price contracts and subcontracts. The principles do not apply to construction grants or contracts.

B. *Basic considerations.*—1. *Composition of total cost.*—The total cost of a contract or grant is the sum of the allowable direct and indirect costs allocable to the grant/contract less any applicable credits. In ascertaining what constitutes costs, any generally accepted accounting method of determining or estimating costs that is equitable under the circumstances may be used.

2. *Factors affecting allowability of costs.*—Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this document or otherwise included in the grant/contract as to types or amounts of cost items.

3. *Definition of reasonableness.*—A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with institutions or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the institution or the performance of the grant/contract;

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations, and grant/contract terms and specifications;

(c) The action that a prudent businessman would take in the circumstances, considering his responsibilities to the public at large, the Government, his employees, his clients, shareholders or members and the fulfillment of the purposes for which the institution was organized; and

(d) Significant deviations from the established practices of the institution which may unjustifiably increase the grant/contract costs.

4. *Definition of allocability.*—A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a grant/contract, project, product, service, process, or other major activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government grant/contract if it:

(a) Is incurred specifically for the grant/contract;

(b) Benefits both the grant/contract and other work and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the institution, although a direct relationship to any particular cost objective cannot be shown.

Where an organization utilizes the standards of accounting and financial reporting for voluntary health and welfare organizations (or comparable generally accepted accounting standards peculiar to its particular organizational structure or activity) to allocate costs to nonfederally supported activities it must also use such standards to allocate costs to Federal grants/contracts.

5. *Applicable credits.*—The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges. The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the grantee/contractor shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

C. *Direct costs.*—1. A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the grant/contract are direct costs of the grant/contract and may be charged directly thereto. Costs identified specifically with other work of the institution are direct costs of that work and are not to be charged to the grant/contract either directly or indirectly. Items charged as direct cost to Government-supported projects must be charged in a uniform manner to all other work of the institution in order to preclude an overcharge to the Government as a result of the Government's participation in the indirect cost pool. Conversely, where the institution's established accounting system provides for the treatment of certain items of cost as direct costs of the institution, then the same items must be considered direct

costs to Government-supported projects and may not be included in the indirect cost pool.

2. Certain types of cost, or costs associated with certain activities are not reimbursable as a charge to a grant/contract. These unallowable costs or activities are identified in section G. Even though a particular activity or cost is designated as unallowable for purposes of computing costs charged to Government work, it nonetheless must be treated as a direct cost or activity if a portion of the institution's indirect cost (as defined in section D) is properly allocable to it. The amount of indirect cost allocated must be in accordance with the principles set forth in section D.2. In general, an unallowable institutional activity shall be treated as a direct function when it (1) includes salaries of personnel, (2) occupies space, and (3) is serviced by an indirect cost grouping(s). Thus the costs associated with the following types of activities when normal or necessary to an institution's primary mission shall be treated as direct costs:

(a) Maintenance of membership rolls, subscriptions, publications and related functions.

(b) Providing services and information to members, legislative or administrative bodies or the public.

(c) Promotion, lobbying and other forms of public relations.

(d) Meetings and conferences except those held to conduct the general administration of the institution.

(e) Fund raising.

(f) Maintenance, protection ,and investment of special funds not used in operation of institutions.

(g) Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

(h) Other activities performed primarily as a service to a membership, clients, or the public.

3. This definition shall be applied to all items of cost of significant amount unless the institution demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in section D.

D. *Indirect costs.*—1. An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the grant/contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work. The overall objective of the allocation process is to distribute the indirect costs of the institution to its various major activities or cost objectives in reasonable proportions with the benefits provided to those activities or cost objective. Because of the diverse natures and purposes of organizations falling within the definition of a nonprofit organization, it is impractical to specifically identify those functions which constitute major activities for purposes of identifying and distributing indirect costs. Such identification will be dependent upon an institution's purpose-in-being, the services it renders to the public, its clients and/or members, the amount of effort devoted to fund raising activities, public relations, and membership activities, etc (see sec. C.2.).

2. Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the groupings on the basis of the benefits accruing to the several cost objectives. Subgrouping may be required where there is no single equitable distribution base for all the elements of cost comprising a group. Actual conditions must be taken into account in selecting the method or base to be used in distributing the expenses assembled under each of the individual cost groupings established to applicable cost objectives. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to the cost objectives should be made through use of a selected base which will produce results which are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided: (1) It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (2) it is common to the cost objectives during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to the cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

4. A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

E. *Determination and application of indirect cost rate or rates.*—1. *Indirect cost pools.*—(a) Subject to (b) below, indirect costs allocable to an institution's direct functions should be treated as a common pool, and the costs in such common pool should then be distributed to the individual projects benefiting therefrom by use of a single rate.

(b) In some instances a single rate for use across the board on all activities at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of work at the institution. For this purpose, a particular segment of work may be that performed under a single grant/contract or it may consist of work under a group of grants/contracts performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of work is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that: (1) Such indirect cost rate differs significantly from that which would have been obtained under (a) above, and (2) the volume of work to which such rate would apply is material in relation to other activity at the institution.

2. *The distribution base.*—Indirect costs should be distributed to each applicable project on the basis of direct salaries and wages, total direct costs or other basis which results in an equitable distribution. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section E.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the base selected.

F. *Application of principles and procedures.*—1. Costs shall be allowed to the extent that they are reasonable (see B.3.) allocable (see B.4.) and determined to be allowable in view of the other factors set forth in paragraph B.2. and section G. These criteria apply to all of the selected items of cost which follow notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

2. Costs of all subcontracts under a grant or cost-reimbursement type contract are subject to those Federal cost regulations and policies appropriate to the subcontract involved. Thus if the subcontract is for supplies or services with a nonprofit institution other than an educational institution, hospital or State and local governmental unit, this document would apply; if the subcontract is for supplies or services with a commercial organization, Federal Procurement Regulation Part 1.15.2 would apply; if the subcontract is with an educational institution, OMB Circular No. A-21 (Federal Procurement Regulation Part 1.15.3) would apply.

3. Selected items of cost are treated in section G. However, section G does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in section G is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this document and, where appropriate, the treatment of similar or related selected items.

G. *General standards for selected items of cost.*—Sections G-1 through G-46 provide standards to be applied in establishing the allowability of certain items involved in determining costs. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific grant/contract and the applicable standards provided, the provisions of the grant/contract shall govern. Under any given grant/contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with nonprofit institutions which are so diverse in nature and not subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that institutions entering into grants or contracts with the Government seek agreement in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such action may also be initiated by the Government.

Examples of costs on which advance agreements may be particularly important are:

1. Compensation for personal services;
2. Consultant fees;
3. Deferred maintenance costs;
4. Excess facility costs;
5. Materials, services and supplies sold between organizations or divisions under common control;
6. Preaward costs;
7. Publication and public information costs;
8. Royalties;
9. Training and educational costs;
10. Travel costs, as related to special or mass personnel movement, and to the class of air travel accommodations allowable;
11. Use charge for fully depreciated assets;
12. Depreciation or use charge on assets donated to the institution by third parties.

1. *Advertising costs.*—(a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, trade papers, outdoor advertising, dealer cards and window displays, conventions, exhibits, free goods and samples, and the like.

(b) The only advertising costs allowable are those which are solely for: (1) The recruitment of personnel required for the performance by the institution of obligations arising under the grant/contract, when considered in conjunction with all other recruitment costs, as set forth in G.36.; (2) the procurement of scarce items for the performance of the grant/contract; or (3) the disposal of scrap or surplus materials acquired in the performance of the project. Costs of this nature, if incurred for more than one Government award or for both Government work and other work of the institution, are allowable to the extent that the principles in paragraphs B.3., B.4., and section D are observed.

2. *Bad debts.*—Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related costs, and related legal costs, are unallowable.

3. *Bidding or proposal costs.*—Bidding or proposal costs are the immediate costs of preparing bids or proposals on potential Government and non-Government contracts or projects or applications for financial assistance under Federal grant and contract programs, including development of scientific, engineering and cost data necessary to support the institution's bids, proposals or applications. Bidding costs of the current accounting period are allowable as part of the indirect cost pool. Costs of past accounting periods are unallowable. Bidding costs do not include any of those costs described in sections G.16 and G.30.

4. *Bonding costs.*—(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the grantee/contractor. They arise also in instances where the grantee/contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the grant/contract are allowable.

(c) Costs of bonding required by the grantee/contractor in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Civil defense costs.*—(a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures), undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the institution.

(b) Costs of capital assets under (a) above are allowable through depreciation or use charges in accordance with G.10.

(c) Contributions to local civil defense funds and projects are unallowable.

6. *Compensation for personal services.*—(a) *Definition.*—Compensation for personal services includes all remuneration paid currently or accrued in whatever form and whether paid immediately or deferred for services rendered by employees of the institution during the period of grant/contract performance. It includes, but is not limited to, salary, wages, directors' and executive committee members' fees, bonuses, incentive awards, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans.

(b) *Allowability.*—Except as otherwise specifically provided in this subsection, the costs of compensation for personal services are to be treated as allowable to the extent that:

(1) Compensation is paid in accordance with policy, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of grant or contract work, result in internally consistent treatment of employees in like situations, and effectively relate compensation paid within the organization to that paid for similar services outside the organization;

(2) Total compensation of individual employees is reasonable for the services rendered; and

(3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(c) *Reasonableness.*—(1) When the institution is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the institution's other activities;

(2) When the institution is predominantly engaged in federally sponsored activities, and in cases where the kind of employees required for the federally sponsored activities are not found in the institution's other activities, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the institution competes for the kind of employees involved.

(d) *Review and approval of compensation of individual employees.*—In determining the reasonableness of compensation, the compensation of each individual employee normally need not be subject to review and approval. Reviews and approvals of individuals need be made only in those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line.

(e) *Special considerations in determining allowability.*—Certain conditions require special consideration and possible limitation as to allowability for grant and contract cost purposes where amounts appear excessive. Among such conditions are the following:

(1) Compensation to shareholders, members, trustees, directors, associates, officers or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an institution's compensation policy resulting in a substantial increase in the institution's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(3) The institution's activities are such that its compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(f) Notwithstanding any other provisions of this subsection, costs of compensation are not allowable to the extent that they result from provisions of labor management agreements that, as applied to work in the performance of Government grants or contracts are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government grant or contract involving significantly different circumstances and conditions of employment (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph unless:

(1) The institution has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether there are unusual conditions pertaining to the Government work which impose burdens, hardships, or hazards on the institution's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(g) (1) In addition to the general requirements set forth in (a) through (f) of this subsection, certain forms of compensation are subject to further requirements as specified in (2) through (9) below.

(2) *Salaries and wages.*—Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, see G.25. as it relates to compensation for overtime.

(3) *Incentive compensation.*—Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc. are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the institution and the employees before the services were rendered, or pursuant to an established plan followed by the institution so consistently as to imply, in effect, an agreement to make such payment. Awards and incentive compensation when deferred are allowable to the extent provided in (4) below.

(4) *Deferred compensation.*—(a) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence

of other events as provided in the plans, except that it does not include normal end of accounting period accruals for regular salaries and wages. It includes (i) contributions to pension and annuity plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation.

(b) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the grant/contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the institution and its employees before the services are rendered, or pursuant to an established plan followed by the institution so consistently as to imply, in effore the services are rendered, or pursuant (iv) the benefits of the plan are vested in the employees or their designated beneficiaries and no part of the deferred compensation reverts to the employer institution; (v) in the case of past service pension costs, it is amortized over a period of 10 years or more; and (vi) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service.

(c) In determining the cost of deferred compensation allowable under the grant or contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the institution; forfeitures which inure to the benefits of other employees covered by a deferred compensation plan with no reduction in the institution's costs will not normally give rise to an adjustment in grant/contract costs. Adjustments for normal employee turnover shall be based on the institution's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the institution can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future adnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the institution either as to an equitable adjustment or a method of determining such adjustment.

(d) In determining whether deferred compensation is for services rendered during the agreement period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as requirements of continued employment, consultation after retirement, and covenants not to compete.

(5) *Fringe benefits.*—Fringe benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the institution.

(6) *Severance pay.*—See G.40.

(7) *Training and education expenses.*—See G.44.

(8) *Location allowances.*—(a) "Location allowances," sometimes called "supplemental pay" or "incentive pay," are compensation in addition to normal wages or salaries and are paid by institutions to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of station allowances, extended per diem, or mileage payments for daily commuting; they also include such benefits as institution-furnished housing. Payment of location allowances shall be allowed as costs under grants and cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only with prior approval in writing from the awarding agency and only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location allowances is to be determined in the light of (a) its location and climate; (b) the availability and adequacy of housing within reasonable commuting distance; and (c) the availability and adequacy of education, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with (a) the institution's normal compensation policy, including pay scales at its principal operating locations; (b) pay scales of other organizations and concerns operating at or near the site; and (c) compensation paid by other concerns within the same field for similar services elsewhere.

(b) Locations for which location allowances are paid shall be reviewed at least once a year to determine whether such allowances should continue to be allowed.

(9) *Support of salaries and wages.*—(a) Direct charges for professionals must be supported by either:

(i) an adequate appointment and workload distribution system, accompanied by monthly reviews performed by responsible officials and a reporting of any significant change in workload distribution of each professional (i.e., an exception reporting system) or

(ii) a monthly after-the-fact certification system which will require persons in supervisory positions having firsthand knowledge of the services performed to report the distribution of effort (i.e., a positive reporting system). Such reports must account for the total salaried effort of the persons covered. Consequently, a system which provides for the reporting only of effort applicable to federally sponsored activities is not acceptable.

(b) Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

(c) Allowable indirect personal services costs will be supported by the institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government representatives.

7. *Capital expenditures.*—The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment are unallowable except as provided for in the grant/contract.

8. *Contingencies.*—(a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the institution's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., pension funds, sick leave and vacation accruals, etc. In such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the institution and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, G.17., G.21., and G.40.).

9. *Contributions and donations.*—(a) Contributions and donations by the grantee/contractor are unallowable.

(b) The value of donated services or goods provided by individual volunteers or members of volunteer organizations is not an allowable cost; however, the fair market value of donated services or goods utilized in the performance of a direct cost activity as defined in C.1. and C.2. shall be considered in the determination of the indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of indirect cost.

10. *Depreciation and use allowances.*—(a) Institutions may be compensation for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular institution's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(b) Depreciation or a use allowance on assets donated by third parties is allowable. However, any limitations on the amount of depreciation which would have applied to the donor as a result of restrictions contained in this section shall also apply to the recipient organization.

(c) Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in

amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings, and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and second, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of account, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to the grant or contract is developed from the amount thus amortized for the base period involved.

(d) Normal depreciation on an institution's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of cost provided that the amount thereof is computed:

(1) Upon a property cost basis which could have been used by the institution for Federal income tax purposes, had such institution been subject to the payment of income tax; and

(2) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(a) The straight line method;

(b) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (a) above;

(c) The sum-of-the-years-digits method; and

(d) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (b) above.

(e) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(f) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes. (See G.13.)

(g) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(h) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

(i) Depreciation and/or use charges should usually be allocated to all activities as an indirect cost.

11. *Employee morale, health, welfare costs and credits.*—(a) Employee morale, health and welfare activities are those services or benefits provided by the institution to its employees to improve working conditions, employer-employee relations, employee morale and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the institution's employees at or near its facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the institution's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conductive to accomplishment of the above objective; are not allowable, except that a loss may be allowed to the extent the institution can demonstrate that unusual circumstances exist (e.g., (i) where the institution must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could enconomically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.

(d) In those situations where the institution has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the institution's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the institution were providing the service (but see (e)).

(e) Contributions by the institution to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the institution demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the institution directly.

12. *Entertainment costs.*—Costs of amusement, diversion, social activities, ceremonials, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see G.11. and G.43.).

13. *Excess facility costs.*—(a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below:

(1) Facilities means plant or any portion thereof (inclusive of land integral to the operation); equipment individually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) Idle Facilities means completely unused facilities that are excess to the institution's current needs.

(3) Idle Capacity means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. (A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.)

(4) Costs of Idle Facilities or Idle Capacity are costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation.

(b) The cost of idle facilities are unallowable except to the extent that:

(i) They are necessary to meet fluctuations in workload; or

(ii) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, grantee/contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see G.42.(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

14. *Fines and penalties.*—Costs of fines and penalties resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a re-

sult of compliance with specific provisions of the grant or contract instructions in writing from the awarding agency.

15. *Fringe benefits.*—See G.6.(g)(5).

16. *Independent research and development.*—(a) An institution's independent research and development (IR&D) is that research and development which is not sponsored by the Government or a non-Government organization or agency under a grant/contract or other arrangement.

(b) Basic research, for the purpose of this document, is that type of research which is directed toward increase of knowledge within a particular discipline. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this document consists of that type of effort which (1) is normally derived from the results of basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research, does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as defined in (c) below. Census research, for the purpose of this document, is that type of activity devoted to the compilation and interpretation of statistical and other analytical information acquired through survey (e.g., interview, circularization of questionnaires), observations or from books, treatises, articles, or other sources relative to specifically defined activities, occurrences or conditions for the purpose of accomplishing some scientific end.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) Independent research and development will be treated in a manner consistent with the treatment of sponsored research and development. Accordingly, an institution's I R & D shall be allocated its proportionate share of indirect costs on the same basis that indirect costs are allocated to sponsored research and development.

(e) The cost of an institution's I R & D, including its proportionate share of indirect costs, is unallowable.

17. *Insurance and indemnification.*—(a) Insurance includes insurance which the institution is required to carry, or which is approved, under the terms of the grant or contract and any other insurance which the institution maintains in connection with the general conduct of its business.

(1) Costs of insurance required or approved, and maintained, pursuant to the grant or contract are allowable.

(2) Costs of other insurance maintained by the institution in connection with the general conduct of its business are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage or profit;

(c) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the institution is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the institution's trustees, directors or officers, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the institution's business, or (ii) all or substantially all of the institution's operations at any one separate location in which the grant or contract is being performed, or who are specifically identified as the project director in the project or otherwise primarily responsible for the direction and/or execution of the project supported by the grant or contract.

(d) Provisions for a reserve under an approved self-insurance program are allowable to the extent that types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see G.6.).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant or contract, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of doing business, are allowable.

(c) Indemnification includes securing the institution against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided in (a)(3) above.

18. *Interest and other financial costs.*—(a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(d) Where substantial effort or time is devoted to fund raising and investment activities as described in (b) and (c) in relation to other functions of an institution, such activities shall be considered as a major activity of the institution and shall be allocated its share of indirect costs in accordance with section D (see also C.2.).

19. *Labor relations costs.*—Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employee publications, and other related activities, are allowable.

20. *Losses on other grants or contracts.*—Any excess of costs over income on any grant or contract is unallowable as a cost of any other grant or contract.

21. *Maintenance and repair costs.*—(a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see G.10.):

(1) Normal maintenance and repair costs are allowable;

(2) Extraordinary maintenance and repair costs are allowable, provided such are allocated to the periods to which applicable for purposes of determining grant or contract costs.

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the institution's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

22. *Materials costs.*—(a) The cost of consumable supplies, serum, drugs, fabricated parts, and other materials necessary to carry out the objectives of a grant or contract, whether purchased outside or manufactured by the institution are allowable subject to the provisions (b) through (e) below. The cost may include such collateral items as inbound transportation and intransit insurance.

In computing these costs, consideration will be given to reasonable overruns, spoilage, or defective work if consistent with the nature of the project being performed and the recognized practice of the industry.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade and cash discounts, refunds, rebates, allowances, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the institution can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from difference between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the grant or contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a grant or contract, the actual purchase cost thereof should be charged to that grant or contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the institution under a common control shall be on the basis of cost incurred in accordance with these principles, except that when it is the established practice of the transferring organization to price interorganization transfers of materials, supplies and services at other than cost for non-Government work of the institution or any division, subsidiary or affiliate of the institution under a common control, allowance may be at a price when:

(1) It is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public"; or

(2) It is the result of "adequate price competition" and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity:

Provided, That in either case:

(1) The price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary or affiliate of the institution under a common

control) for a like quantity under comparable conditions, and

(2) The price is not determined to be unreasonable by the awarding agency.

The price determined in accordance with (1) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of grant or contract requirements.

23. *Organization costs.*—Expenditures, such as incorporation fees, attorney's fees, accountant's fees, brokers' fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business or (b) raising capital, are unallowable unless specified otherwise in the grant or contract.

24. *Other business expenses.*—Included in this item are such recurring expenses as preparation and publication of reports to members and trustees, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

25. *Overtime, extra-pay shift and multi-shift premiums.*—Premiums for overtime, extra-pay shift, and multi-shift work are allowable only to the extent approved by the awarding agency except:

(a) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) When by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) When lower overall cost to the Government will result.

Overtime premiums and shift premiums may be considered proper for approval when determined in writing by the awarding agency that approval:

(a) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(b) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the institution;

(c) Is necessary to eliminate foreseeable bottlenecks of an extended nature which cannot be eliminated in any other way.

Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances. Such approvals may be for an individual grant or contract project, or program, or for a division, department, or branch, as most practicable.

Overtime for which overtime premiums would be at Government expense should not be approved under an award where the institution is already obligated, without the right to additional compensation, to meet the required delivery date.

Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government grant or contract, the continued need therefor should be subject to periodic review by the awarding agency.

26. *Patent and copyright costs.*—Costs of preparing disclosures, reports, and other documents required by the grant/contract and of searching the art to the extent necessary to make such disclosures, are allowable. In accordance with the conditions of the grant or contract relating to patents or copyrights, costs of preparing documents and any other costs, in connection with the filing of a patent application or copyright where title is conveyed to the Government, are allowable. However, similar costs incurred in connection with patents or copyrights where title is not conveyed to the Government are unallowable (see G.39.).

27. *Pension plans.*—(See G.6.(g)–(4).)

28. *Plant protection costs.*—Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements are allowable.

29. *Plant reconversion costs.*—Plant reconversion costs are those incurred in the restoration or rehabilitation of the institutions' facilities to approximately the same condition existing immediately prior to the commencement of the grant or contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon in writing before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other grants or contracts.

30. *Preaward costs.*—Preaward costs are those incurred prior to the effective date of the grant or contract directly pursuant to the negotiation and in anticipation of the award of the grant or contract where such incurrence is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the prior written approval of the awarding agency.

31. *Professional service costs—legal, accounting, scientific and other.*—(a) Costs of professional services rendered by the member of a particular profession who are not employees of the institution are allowable, subject to (b), (c), and (d) below, when reasonable in relation to the services rendered (but see G.23.).

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the institution's capability in the particular area;

(3) The past pattern of such costs, particularly in years prior to the award of Government work;

(4) The impact of Government work on the institution's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants/contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government grants contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).

(c) Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting service, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent or copyright infringement litigation, are unallowable unless otherwise provided for in the grant or contract.

32. *Profits and losses on disposition of plant, equipment, or other capital assets.*—Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing grant or contract costs.

33. *Public information services costs.*—Public information services cost includes the cost associated with promotions, public relations, pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(a) Inform or instruct individuals, groups or the general public about health or social problems.

(b) Interest individuals or groups in participating in a service program of the institution.

(c) Provide stewardship reports to State and local government agencies, benefactor foundations and associations, etc.

(d) Appeal for funds.

(e) Disseminate the results of sponsored and non-sponsored research or other activity to the scientific community.

To the extent that the costs incurred for any of these purposes are identifiable with a particular cost objective they should be charged to the objective to which they relate.

If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all major activities of the institution except that costs related to fund raising appeals are unallowable as costs of grants and contracts.

Public information service costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

34. *Publication and printing costs.* Publication costs include the costs of printing (including the processes of composition, platemaking, presswork, binding, and the end products produced by such processes), distribution, promotion, mailing and general handling.

Publication costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

35. *Rearrangement and alteration costs.*—Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when written approval has been given in advance by the awarding agency.

36. *Recruitment costs.*—(a) Subject to (b), (c), and (d) of this G. 36., and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs

not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help-wanted advertising that (1) includes color, (2) includes advertising material for other than recruitment purposes, or (3) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(c) Costs of (1) help-wanted advertising and (2) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to attract personnel from another institution performing as grantee or contractor to the Government, or in excess of the standard practices in comparable institutions, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution shall be required to refund or credit such relocation costs to the Government.

37. *Relocation costs.*—(a) Relocation costs, for the purpose of this document, are costs incident to the permanent change of duty assignment (for an indefinite period, or for a stated period of no less than 12 months) of an existing employee or upon recruitment of a new employee. These costs may include, but are not limited to cost of (i) transportation of the employee, members of his immediate family and his household and personal effects to the new location; (ii) finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period; (iii) closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.), incident to the disposition of housing; (iv) other necessary and reasonable expenses normally incident to relocation, such as cost of cancelling an unexpired lease, disconnecting or reinstalling household appliances, and purchase of insurance against damages to personal property; (v) loss on sale of home; and (vi) acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.).

(b) Subject to (c) below, relocation costs of the type covered in (a) (i), (ii), (iii), and (iv) above are allowable, provided: (i) The move is for the benefit of the employer; (ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (iii) the costs are not otherwise unallowable under the provisions of G.36. or any other paragraph of this document; and (iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) Costs otherwise allowable under (b) above are subject to the following additional provisions: (i) The transition period for incurrence of costs of the type covered in (a) (ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (ii) allowance for cost of the type covered in (a) (iii) above shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in (a) (iii) and (iv) above are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) Costs of the type covered in (a) (v) and (vi) above are not allowable.

38. *Rental costs (including sale and leaseback of facilities).*—(a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the institution would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance; provided that no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the grant or contract, rental costs specified in sale and leaseback agreements, incurred by institutions through selling plant facilities to investment organizations, such as insurance companies, associate institutions, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the grantee/contractor would have received had it retained legal title to the facilities.

(d) Rentals for land, building and equipment and other personal property owned by affiliated organizations including corporations or by stockholders, members, directors, trustees, officers or other key personnel of the institution or their families either directly or through corporations, trusts or other similar arrangements in which they hold a more than token interest are allowable only to the extent that such rentals do not exceed the amount the institution would have received had legal title to the facilities been vested in it.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in G.42.(e).

39. *Royalties and other costs for use of patents and copyrights.*—(a) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent or rights thereto, necessary for the proper performance of the grant or contract applicable to grant products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent or copyright is considered to be unenforceable; or

(4) The patent or copyright is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining, e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government grant or contract would be awarded, or

(3) Royalties paid under an agreement entered into after the award of the grant or contract.

(c) In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

40. *Severance pay.*—(a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by institutions to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by: (1) Law; (2) employer-employee agreement; (3) established policy that constitutes, in effect, an implied agreement on the institution's part; or (4) circumstances of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the institution's facilities; or, where the institution provides for accrual of pay for normal severances such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the institution's facilities; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

41. *Taxes.*—(a) Taxes are certain charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income taxes and similar levies against income of the institution derived from activities unrelated to the project supported by the grant or contract.

(2) Taxes in connection with financing, refinancing, or refunding operations (see G.18.).

(3) Taxes from which exemptions are available to the institution directly or available to the institution base on an exemption afforded the Government except when the awarding agency determines that the administrative burden incident to obtaining the exemption outweights the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government grants or contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable provided the institution, prior to payment of such taxes:

(1) Promptly requests instructions from the awarding agency concerning such taxes, and

(2) Takes all action directed by the awarding agency arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to: (i) Determine the legality of such assessment, or (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the institution at the direction or with the concurrence of the awarding agency are allowable. Interest and penalties incurred by an institution by reason of the nonpayment of any tax at the direction of the awarding agency or by reason of the failure of the awarding agency to issue timely direc-

tion after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as project costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to an institution incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest or penalties.

42. *Termination costs.*—Grants and contracts terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the project not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this document in termination situations.

(a) *Common items.*—The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the project should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.*—If in a particular case, despite all reasonable efforts by the institution certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this document, except that any such costs continuing after termination due to the negligence or willful failure of the institution to discontinue such costs shall be considered unallowable.

(c) *Initial costs.*—Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of operation, investigation or production and not fully absorbed because of the termination. Such costs may include the cost of labor and material, and related indirect cost attributable to such factors as:

(a) Excessive spoilage resulting from inexperienced labor;

(b) Idle time and subnormal production occasioned by testing and changing methods of processing;

(c) Employee training; and

(d) Unfamilarity or lack of experience with the project, materials, manufacturing processes and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated project including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the institution's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the project.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the project immediately prior to termination; however, if the project includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one project shall not be allocated to other projects.

(d) Loss of useful value.

Loss of useful value of special tooling and special machinery and equipment is generally allowable if:

(1) Such special tooling, machinery or equipment is not reasonably capable of use in the other work of the institution;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency; and

(3) The loss of useful value as to any one terminated project is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the project bears to the entire terminated project and other Government projects for which the special tooling and special machinery and equipment was acquired.

(e) *Rental costs.*—Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated project less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the project and such further period as may be reasonable; and

(2) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the project, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses.*—Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the project, and

(b) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the project.

(g) *Subcontractor claims.*—Subcontractor claims, including the allocable portion of claims which are common to the project and to other work of the institution are generally allowable.

43. *Trade, business, technical, and professional activity costs.*—(a) *Memberships.*—This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.*—This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and conferences.*—This item includes costs of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

44. *Training and educational costs.*—(a) The costs of training courses taken by a bona fide employee to acquire basic skills which he should bring to the job or to qualify a person for duties other than those related

(b) Costs of on-the-job training and part-time education, at an undergraduate or postgraduate college level, related to the job requirements of bona fide employees, identified in (1) through (5) below, are allowable.

(1) Training materials;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(c) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time scientific and medical education at a postgraduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed 1 school year for each employee so trained, are allowable when approved in writing by the awarding agency.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

45. *Transportation costs.*—Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see G.22.).

Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the grant or contract shall be treated as a direct cost.

46. *Travel costs.*—(a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by institution personnel in a travel status while on official business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge. The difference in cost between first-class and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(c) Travel costs incurred in the normal course of overall administration of the busi-

ness are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific grant or contract performance are allowable and may be charged to the grant or contract in accordance with the principle or direct costing (see section C).

(e) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency.

(20 U.S.C. 1221c(b)), 31 U.S.C. 628.)

[FR Doc.73-23388 Filed 11-5-73;8:45 am]